

# "A Comparison of the Cotonou Agreement and the AGOA: trade creating or trade diverting?"

A mini-thesis submitted in partial fulfilment of the requirements for the degree  
MAGISTER LEGUM (LL.M.), University of the Western Cape, South Africa.

NAME	:	Eva Amelie Klostermann
STUDENT NO	:	2478883
FACULTY	:	Faculty of Law
UNIVERSITY	:	University of the Western Cape
DEGREE	:	LL.M. in International Trade & Business Law
SUPERVISOR	:	Patricia Lenaghan
DATE	:	November 2005

“Ladies and gentlemen, don’t feel let down:  
We know this ending makes some people frown.

We had in mind a sort of golden myth  
Then found the finish had been tampered with.

[...]

Ladies and gentlemen, in you we trust:  
There must be happy endings, must, must, must.”

Bertold Brecht, *The Good Person of Szechwan*

## Table of Contents

1	Introduction	1
1.2	Significance of the Study	3
1.3	Research Methodology	4
1.4	Overview of the Chapters	4
2	The Cotonou Agreement	5
2.1	Historical Background of the Cotonou Agreement	5
2.1.1	Implementing Convention	6
2.1.2	Yaoundé I	8
2.1.3	Yaoundé II	9
2.1.4	Lomé I	13
2.1.5	Lomé II	16
2.1.6	Lomé III	17
2.1.7	Lomé IV	18
2.2	The Cotonou Agreement	22
2.2.1	Juridical Aspects	22
2.2.2	The Objectives and the Content of the Cotonou Agreement	23
3	The African Growth and Opportunity Act	27
3.1	Historical Background of the AGOA	27
3.1.1	Pre-AGOA	27
3.1.2	AGOA I	32
3.1.3	AGOA II	36
3.2	Current Legal Status of the AGOA	37
3.2.1	The Legal Regime of AGOA III	37
3.2.2	Questions of Competencies	39
4	A Comparison of the Cotonou Agreement and the AGOA	40
4.1	The Impact on International Trade of African Countries within the Framework of the Cotonou Agreement and the AGOA	40
4.1.1	Legal Nature of the Cotonou Agreement and the AGOA	40
4.1.2	The Legal Status of the Cotonou Agreement and the AGOA	43

4.1.3	Differences and Similarities in Content	45
4.1.3.1	Similarities	45
4.1.3.2	Differences	46
4.1.4	Trade and Development	48
4.1.5	Trade Creation and Trade Diversion	51
4.2	Influence of the Cotonou Agreement and the AGOA on Trade	
	- a case study on Namibia	54
4.2.1	Namibia in brief	55
4.2.2	The Impact of the Cotonou Agreement on Namibian Trade	60
4.2.2.1	Namibian Exports to Germany	61
4.2.2.2	Namibian Exports to Germany Classified by Commodity	63
4.2.3	The Impact of the AGOA on Namibian Trade	65
4.2.3.1	Namibian Exports to the U.S.	66
4.2.3.2	Namibian Exports to the U.S. Classified by Commodity	67
5	Conclusion	71
Annex A		76
A – 1	The Cotonou Agreement	76
A – 1.1	Table of Contents	76
A – 1.2	Preamble	77
A – 2	The African Growth and Opportunity Act (AGOA III)	78
Annex B		87
B – 1	Namibian Exports to Germany Classified by Commodity	87
B – 2	Namibian Exports to the U.S. Classified by Commodity	87
B – 3	Commodity Classification	88
Bibliography		92
Books		92
Articles		93
Legislation and Regulations		95
Websites		96
Others		98

# 1 Introduction

“We have agreed to develop a common and comprehensive strategy centred on the objective of reducing and eventually eradicating poverty consistent with the objectives of sustainable development and the gradual integration of the ACP countries into the world economy.”<sup>1</sup>

This statement was made by Poul Nielsen in June 2000 at the Signing Ceremony for the new partnership agreement between the African Caribbean Pacific Group of States and the Member States of the European Union. With these words, the European Commissioner for Development Co-operation and Humanitarian Aid described the objectives of the new agreement, also known and hereinafter referred to as the Cotonou Agreement.

One month earlier, in May 2000, the President of the United States, Bill Clinton, had chosen very similar words to present the United States' Trade and Development Act of 2000 containing as Title 1 the African Growth and Opportunity Act, hereinafter referred to as the AGOA:

“This bill [...] expands Africa's access to our markets and improves the ability of African nations to ease poverty, increase growth, and heal the problems of their people.”<sup>2</sup>

Both the Cotonou Agreement and the AGOA thus became effective based on the assumption of their founders that they would help reduce or even eradicate poverty, increase growth and, first and foremost, achieve sustainable development in Africa. Both legal instruments thereby treat trade as the main tool for achieving their goals.<sup>3</sup>

---

<sup>1</sup> Extract from ‘Speech by European Commissioner for Development Cooperation and Humanitarian Aid Mr Poul Nielson at the ACP-EC Partnership Agreement Signing Ceremony’ Cotonou, Benin, 23 June 2000 <<http://europa.eu.int/rapid/pressReleasesAction.do?reference=SPEECH/00/241&format=HTML&aged=0&language=EN&guiLanguage=en>> [accessed on 26 October 2005].

<sup>2</sup> Extract from ‘Speech by President Bill Clinton at the Signing of the Trade and Development Act of 2000’ The South Lawn of the White House, Washington, D.C., 18 May 2000 <<http://abuja.usembassy.gov/wwwhcf23.html>> [accessed on 26 October 2005].

<sup>3</sup> The is underlined, for example, by the following statement of the European Commissioner Poul Nielson at the Signing Ceremony of the ACP-EC Partnership Agreement: “[...] The co-operation strategy that has been agreed makes clear the link between development support and the establishment of a policy framework favourable to trade development and investment.”; see *supra* fn 1. President Clinton further stated in his Speech at the Signing of the Trade and Development Act of 2000 that: “[...] [i]t is clear that by breaking down barriers to trade, building new opportunities and raising prosperity, we can lift lives in every country and on every continent. [...] Trade is one of the most powerful engines driving development in the region [...]”; see *supra* fn 2.

In particular, these two legal instruments attempt to promote trade by partial eradication of barriers to trade.

## 1.1 Aims of the Study - Issues at Stake

The Cotonou Agreement and the AGOA aim to support development in beneficiary African countries by opening up markets and maximising trade benefits. This approach is based on the assumption that the liberalisation of international trade will enhance trade, thereby offering short- and long-term opportunities to improve economic efficiency. It is believed that this will, in particular, raise income in beneficiary countries (here African countries), thus benefiting national economies and individuals alike.<sup>4</sup> In this sense, the international liberalisation of markets is assumed to enhance economic growth and welfare.<sup>5</sup>

However, the question is whether the Cotonou Agreement and the AGOA actually lead to the liberalisation of trade. In order to answer this question it is necessary to examine in particular two aspects of preferential trading arrangements such as the Cotonou Agreement and the AGOA, namely their (potential) effect of creating and/or diverting trade.<sup>6</sup>

Concerning this, the following study aims to examine whether the Cotonou Agreement and the AGOA truly live up to their ambitious goals. For this reason, the study will start out with an outline of the historical background to the Cotonou Agreement<sup>7</sup> and the AGOA<sup>8</sup> followed by presenting similarities and differences in general<sup>9</sup> and, in particular, with regard to trade and trade-related issues<sup>10</sup>. Following this, a case study on Namibia serves to display effect of the Cotonou Agreement and the AGOA in practice<sup>11</sup>.

---

<sup>4</sup> Shapouri and Trueblood (2003) 'The African Growth and Opportunity Act (AGOA): Does it really present opportunities?' 1 <<http://www.agoa.info/index.php?view=download&story=research>> [accessed on 18 March 2005].

<sup>5</sup> See 'Speech by President Bill Clinton at the Signing of the Trade and Development Act of 2000' The South Lawn of the White House, Washington, D.C., 18 May 2000 <<http://abuja.usembassy.gov/wwwwhcf23.html>> [accessed on 26 October 2005].

<sup>6</sup> See *infra* Chapter 4, 4.1.5, p 50 *ff.*

<sup>7</sup> See *infra* Chapter 2, 2.1, p 5 *ff.*

<sup>8</sup> See *infra* Chapter 3, 3.1, p 27 *ff.*

<sup>9</sup> See *infra* Chapter 4, 4.1.3, p 45 *ff.*

<sup>10</sup> See *infra* Chapter 4, 4.1.4, p 48 *ff.* and 4.1.5, p 50 *ff.*

<sup>11</sup> See *infra* Chapter 4, 4.2, p 54 *ff.*

## 1.2 Significance of the Study

Much criticism has been levelled against both the Cotonou Agreement and the AGOA. In general, it is claimed that the creation of individual or regional trade agreements, such as the Cotonou Agreement or the AGOA, fails to address the issue of development for developing countries *en bloc*.<sup>12</sup> Concerning the Cotonou Agreement, it is alleged that the relationship between the European Union and the African Caribbean Pacific Group of States - renewed by the signing of the Cotonou Agreement - merely remains a constant renewal of a promise of development, in fact, a constant promise on the part of the European Union to give and share its wealth with African countries.<sup>13</sup> In addition, the preferential trading system introduced by the predecessor of the Cotonou Agreement, the Lomé Conventions, has long been accused of being incompatible with the legal system established under the law of the World Trade Organisation.<sup>14</sup> This criticism is also brought forward against the new agreement.<sup>15</sup> Concerning AGOA, it is argued that this instrument is based on a questionable “trickle-down” economic theory, lacks an institutionalised role for civil society, still imposes strict eligibility requirements and thus offers Africa only unequal trading relationships with the United States.<sup>16</sup> Opponents have also claimed that AGOA benefits will remain essentially illusory for most countries in Sub-Saharan Africa.<sup>17</sup>

Apart from criticism against both legal instruments, it has to be borne in mind that the European Union and the United States are global players in world trade. Concerning this, it is, in general, of interest how these two world powers deal with their relationship in terms of international trade regarding the African continent. In particular, it is the Cotonou Agreement and the AGOA, which regulate trade between the European Union and the United States, respectively, with the African continent. An examination of the Cotonou Agreement and the AGOA will thus show the differences and/or similarities as a result of history, self-understanding or other influential factors.

---

<sup>12</sup> Dillon *International Trade and Economic Law and the European Union* 15.

<sup>13</sup> Karagiannis *Avoiding Responsibility : The Politics and Discourse of European Development Policy* 8.

<sup>14</sup> See *infra* Chapter 2, 2.1.4, p 13 ff.

<sup>15</sup> Abass 'The Cotonou Trade Régime and WTO Law' (2004) *European Law Journal* 439 (441).

<sup>16</sup> See Bread for the World 'AGOA 2004 and African Agriculture' (2004) 2 <<http://www.bread.org/institute/AGOA-4.26.04.pdf>> [accessed on 18 March 2005].

<sup>17</sup> Blackman and Mutume *No Trade-and-Investment Miracles Expected* 1.

### 1.3 Research Methodology

The research for this study primarily relies on the Cotonou Agreement and the AGOA. However, in order to provide for a most objective critical analysis, relevant secondary sources are also taken into account. Thus, research will further rely on books, articles and websites concerning the topic at issue. Moreover, use is made of data and statistics compiled by different sources such as governments, the World Trade Organisation, the International Monetary Fund etc.

### 1.4 Overview of the Chapters

Chapter 1 contains an introduction to the topic and sets out the context of the research by identifying the issue at stake and outlining the methodology.

Chapter 2 deals with the history of the Cotonou Agreement and its current legal status.

An overview of the historical background and the current legal status of the AGOA are presented in Chapter 3.

Chapter 4 analyses the impact on international trade of African countries within the framework of the Cotonou Agreement and the AGOA. In that respect, the Chapter elaborates on similarities and differences between the Cotonou Agreement and the AGOA in terms of content and legal framework and searches for definitions of 'trade creation' and 'trade diversion'. The achieved results are then applied on and verified in a case study on Namibia, which is party to the Cotonou Agreement and beneficiary of the AGOA. This case study outlines the impact of both, the Cotonou Agreement and the AGOA, on Namibian trade.

Chapter 5 draws a conclusion on the issues discussed in the first four chapters.



## 2 The Cotonou Agreement

The new partnership agreement between the African Caribbean and Pacific (ACP) Group of States<sup>18</sup>, of the one part, and the European Community (EC) and its Member States<sup>19</sup>, of the other part, was signed in Cotonou, the capital of Benin, on 23 June 2000, hereinafter referred to as the Cotonou Agreement.

### 2.1 Historical Background of the Cotonou Agreement

The Cotonou Agreement builds on twenty-five years of experience with more than four generations of co-operation agreements. The cornerstone of this relationship has already been laid down by the Treaty Establishing the European Economic Community<sup>20</sup> (EEC) and the establishment of the first European Development Fund for Overseas Countries and Territories (EDF).<sup>21</sup>



---

<sup>18</sup> The Group of ACP States has been established by virtue of the Georgetown Agreement (Guyana) in 1975, see <<http://www.caricom.org/archives/georgetownagreementonacp.htm>> [accessed on 15 January 2005], amended hereafter in 1992, see <<http://www.caricom.org/archives/georgetownagreement1992.htm>> [accessed on 15 January 2005].

With regard to the "Final Act" to the Cotonou Agreement the following 76 states are signatories to the Cotonou Agreement on behalf of the ACP group: Angola, Antigua and Barbuda, Bahamas, Barbados, Belize, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Republic of the Congo, Cook Islands, Côte d'Ivoire, Djibouti, Dominica, Dominican Republic, Eritrea, Equatorial Guinea, Ethiopia, Fiji, Gabon, the Gambia, Ghana, Grenada, Guinea, Guinea-Bissau, Guyana, Haiti, Jamaica, Kenya, Kiribati, Lesotho, Liberia, Madagascar, Malawi, Mali, Marshall Islands, Mauritania, Mauritius, Micronesia, Mozambique, Namibia, Nauru, Niger, Nigeria, Niue, Palau, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, São Tomé and Príncipe, Senegal, Seychelles, Sierra Leone, Solomon Islands, South Africa, Sudan, Suriname, Swaziland, Tanzania, Togo, Tonga, Trinidad and Tobago, Tuvalu, Uganda, Vanuatu, Zambia and Zimbabwe.

Note that South Africa has a qualified status with regard to the Agreement following from "Protocol 3" to the Cotonou Agreement.

<sup>19</sup> EC Member States at the time of signature (2000): Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom of Great Britain (UK) and Northern Ireland.

[NOTE: On 1 May 2004 the Accession Treaty entered into force and the European Union's biggest enlargement ever in terms of scope and diversity becomes a reality with 10 new countries - Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic, and Slovenia.]

<sup>20</sup> Signatories to the Treaty Establishing the European Economic Community (EEC) signed in Rome on 25 March 1957 (hereinafter referred to as the Treaty of Rome) were Belgium, France, Italy, Luxembourg, the Netherlands and West Germany.

<sup>21</sup> Becker *Die Partnerschaft von Lomé* 19.

### 2.1.1 Implementing Convention

Based on a request by France, the European Communities (ECs)<sup>22</sup> decided early to initiate and adopt a common agenda towards the “Third World”. As a consequence, Part IV – Association of the Overseas Countries and Territories (Articles 131 - 136) was included into the Treaty of Rome in 1956.<sup>23</sup>

The reason for the French request was incorporated in the special relations between Belgium, the Netherlands and France with their overseas countries and territories (OCT) on the African continent. Moreover, the establishment of a customs union and common external tariff by six EEC Member States meant that France could no longer maintain preferential trade relations with its OCT.<sup>24</sup>

Article 136 of the Treaty of Rome therefore provided for an Implementing Convention in order to associate the EEC with overseas countries and territories, which de facto have been former European colonies. Thus, the legal foundation was laid to establish an association relationship between the EEC and eighteen African States.<sup>25</sup> This Convention was limited in duration for five years until 1963. The idea behind associating the EEC with the African countries – which, at that time were mostly not yet independent states, but merely autonomous – was to “...serve primarily to further the interests and prosperity of the inhabitants of these countries and territories in order to lead them to the economic, social and cultural development to which they aspire”.<sup>26</sup>

On the contrary to these explicitly stated motives phrased by the EEC, a pragmatic approach towards the EEC’s intention to associate with the African countries yields a different result: Part IV of the Treaty of Rome was viewed as an implementation to establish a free-trade area between the EEC on the one hand and their OCT on the

---

<sup>22</sup> The term “EC”, as used here, includes the EEC, the European Coal and Steel Community (ECSC) and the European Atomic Energy Community (Euratom).

<sup>23</sup> The Treaty of Rome has been amended by subsequent Treaties, therefore Articles 131 – 136 are now equivalent to Articles 182 – 188 of the Treaty of Rome as amended. For the primary version of the Treaty of Rome, see <<http://www.hri.org/docs/Rome57/Part4.html>> [accessed on 14 June 2005]; for the current version of the Treaty of Rome see <[http://europa.eu.int/eur-lex/en/treaties/dat/C\\_2002325EN.003301.html](http://europa.eu.int/eur-lex/en/treaties/dat/C_2002325EN.003301.html)> [accessed on 15 January 2005]. In the following section the primary version of the Treaty of Rome is cited.

<sup>24</sup> Cosgrove Twitchett *A Framework for Development: The EEC and the ACP 7*.

<sup>25</sup> Mauritania, Senegal, Mali, Niger, Upper Volta (currently Burkina Faso), Côte d’Ivoire, Dahomey (currently Benin), Togo, Cameroon, Chad, Gabon, the Central African Republic, the Congo-Brazzaville, the Congo-Léopoldville (named Zaire and transformed into the Democratic Republic of the Congo), Rwanda, Burundi, Somalia and Madagascar; all listed countries have previously been under Belgian, French or Italian colonial rule.

<sup>26</sup> Article 131 paragraph 3 of the Treaty of Rome (equivalent to Article 182 of the Treaty of Rome as amended by subsequent Treaties).

other hand.<sup>27</sup> This interpretation, however, was strongly opposed by most members of the General Agreement on Tariffs and Trade (GATT) Working Party<sup>28</sup> examining this Treaty. The main reason for this opposition was the perception held that Article 133 of the Treaty of Rome does itself not provide for the possibility to establish a free-trade area, it rather merely provided for an extension of existing preferential agreements to other countries. Thus, although contemplated in Article XXIV of the GATT, it was viewed that the Treaty of Rome does not create a free-trade area and consequently was not in conformity with this provision of the GATT. This criticism was accompanied by the fear that the EEC merely aimed at transposing its former colonial ties into a privileged economic relationship within the evolving supranational European Community.<sup>29</sup>

Notwithstanding, the motivation for the association of the EEC with the OCT can last but not least be ascribed to the fact that the stakes related to the African continent were important, in particular at a time when the Cold War was in full swing. Thus, the co-operation Europe wished to develop with the eighteen African countries at least met the political and economic interests of its members, in particular those of France, Belgium and Italy.

Once again as a consequence of French insistence, the establishment of the above-mentioned EDF was included in the Implementing Convention. The EDF is the main instrument for Community aid for development co-operation in the ACP countries and the OCT. Articles 133 and 133 of the Treaty of Rome provided for its establishment with a view to granting technical and financial assistance to those African countries with which certain European countries had historical links. It was and still is directly funded by the Member States of the EEC / EC, it is covered by its own financial rules and managed by a specific committee. The EDF's primary guiding philosophy was to supplement and not substitute for bilateral aid to the OCT.

Despite all criticism, the Implementing Convention entered into force with the Treaty of Rome in 1958 and expired in 1963. During that time the struggle for the emancipation of former colonies accelerated on a global scale and the political world order was about to change as some of the former European colonies gained their

---

<sup>27</sup> McMahon *Agricultural trade, protectionism and the problems of development: a legal perspective* 171.

<sup>28</sup> BISD 6<sup>th</sup> Supplement (1958) 104 – 107.

<sup>29</sup> Babarinde *The Lomé Conventions and Development : An empirical Assessment* 12.

independence<sup>30</sup>. This new political world order and, in addition, the soon-to-come expiry of the Implementing Convention made it necessary to rethink the association status between the EEC and newly independent states.

The EEC here faced pressure from within as well as from outside the Community, which mounted in a call for thorough revision and modification or even replacement of the original association strategy.<sup>31</sup> West Germany and the Netherlands expressed their objections towards a continuation, whereas France, once again, stuck to the former approach and was finally able to convince the Member States. Thus, in 1961, the stage was set for negotiations between the EEC and its associated states.

### 2.1.2 Yaoundé I

After two years of official negotiations, the first association agreement, the Yaoundé Convention of 1963 (hereinafter referred to as Yaoundé I), was signed in the homonymous capital of Cameroon between the EEC and eighteen African States.<sup>32</sup> It entered into force on 1 June 1964 for a period of five years with an option for renewal.

The objectives of the Convention were phrased in a way to appeal to the sensibilities of the newly independent eighteen African states, which are known as the “Associated African States and Madagascar” (AASM), and to counter the criticism circulating around the relationship between the EEC and its former colonies.<sup>33</sup>

Alluding to its textual structure, Yaoundé I created an aid and trade package drawing from the relevant provisions of the previously referred to Treaty of Rome regime.

In detail, it can be divided into different parts focussing on three aspects: a commercial framework, a framework for technical and financial co-operation, and a framework dealing with the institutional structure of the relationship between the EEC and the AASM.

The commercial section of Yaoundé I was characterized by free access to the European market, the principles of reciprocity and non-discrimination and guaranteed

---

<sup>30</sup> Ghana became independent in 1957, Senegal in 1958, all French colonies had been liberated by the end of January 1961 and Belgium’s decolonization process was scheduled to be completed by the end of 1962.

<sup>31</sup> Babarinde *The Lomé Conventions and Development : An empirical Assessment* 14.

<sup>32</sup> See *supra* fn 25.

<sup>33</sup> Lister *The European Community and the Developing World : The Role of the Lomé Convention* 38.

prices<sup>34</sup>. It provided for the establishment of individual free-trade areas between each AASM and the EEC rather than the creation of one large free-trade area.

The framework for financial and technical co-operation mainly focussed on the implementation of its main instrument, the EDF. In contrast to the Treaty of Rome regime, the aim of the EDF, as established by Yaoundé I (EDF II: 1964 - 1970), was to reach a more flexible approach towards development aid. This was expected to be achieved through shifting away from exclusive grant financing to financing by means of a range of loans. Notwithstanding this, its guiding philosophy of supplementing and not substituting bilateral aid remained the same.

With regards to its institutional structure, Yaoundé I innovated the relationship of the EEC and the AASM by establishing institutions based on strict legal parity between the EEC and the AASM. The institutional structure mirrored that of the EEC itself as it incorporates a council (the so-called Association Council), a Parliamentary Conference and a Court of Arbitration.

Nevertheless, the same unfavourable judgement expressed by the GATT Working Party against Part IV of the Treaty of Rome in 1957 was then passed on Yaoundé I.<sup>35</sup> The Convention was again seen as simple extension of the preferences agreed in 1957.<sup>36</sup> Thus, criticism here was based on disappointment as the new Convention, Yaoundé I, did not include the expected changes, but only extensions.

Furthermore, the GATT provisions could not be interpreted in such a way as to allow the simultaneous formation of a customs union and a free-trade area; industrialised countries, in particular, should not require reciprocal advantages from their less-developed partners.<sup>37</sup> Thus, reciprocity should not have been asked for by the EEC of the AASM.

### 2.1.3 Yaoundé II

On 29 July 1969, after seven months of negotiations with the EEC, the AASM group made use of the option of renewal included in Yaoundé I and signed a second treaty. This convention was also concluded in Yaoundé and is therefore known as

---

<sup>34</sup> Until 1966.

<sup>35</sup> See *supra* fn 28.

<sup>36</sup> McMahon *Agricultural trade, protectionism and the problems of development: a legal perspective* 173.

<sup>37</sup> BISD 14<sup>th</sup> Supplement (1966) 100 - 115.

Yaoundé II. It entered into force on 1 January 1971 and did not provide for a specific date of expiry.

In spite of results that were overall disappointing to the AASM participants, the group actually requested the continuation of the association under Yaoundé I primarily because "...the Africans had no other option but to renegotiate"<sup>38</sup>. Moreover, in 1962, the associated African countries had confirmed their will to continue to pursue their co-operation with Europe because it allowed the financing of basic infrastructures, which the newly evolving states seriously needed. Thus, impelled by the idea of extending their relationship with the EEC and of signing a new convention, the AASM forwent their two principal concerns. The first of these concerns was originally aimed at convincing the EEC to agree to a price stabilisation scheme for tropical (agricultural) products. If successful, this would have greatly benefited the AASM once implemented. The second idea concerned the obtainment of more funds from the EEC under the EDF III scheme (1970 – 1975).

With slight modifications and additions, the content of the new Convention did not experience many changes as compared to Yaoundé I. Like the former, Yaoundé II, too, was divided into two parts – a financial and a commercial section. Hence, Yaoundé II appeared and functioned more or less like the association under Yaoundé I and its predecessor, the Treaty of Rome, in a time when the global political environment was about to change.

In August 1961 Ireland, the United Kingdom (UK) and Denmark officially applied for membership to the EEC. The first round of negotiating the accession of the UK to the EEC failed because of a French veto. It was not possible for the EEC – in particular for France and its current President Charles de Gaulle<sup>39</sup> - to overcome the burden of integrating the UK into the EEC. The ground for refusal laid in particular in the UK's close ties to the United States of America (U.S.) as well as its duties towards the Commonwealth Group of countries<sup>40</sup>, which furthered a general distrust as to the

---

<sup>38</sup> Moss *The Lomé Conventions and their Implications for the United States* 7.

<sup>39</sup> Charles de Gaulle: Since June 1, 1958 - Prime Minister of France and from 21 December 1958 until 28 April 1969 - President of France.

<sup>40</sup> The Commonwealth Group presently consists of 53 independent states. It has three intergovernmental organisations: the Commonwealth Secretariat, the Commonwealth Foundation, and the Commonwealth of Learning. Its activity relates to areas such as development, democracy, debt management and trade. It is committed to the achievement of the Millennium Development Goals, and pursues these through programmes implemented by its Divisions. For more detailed information visit <<http://www.thecommonwealth.org>> [accessed on 20 August 2005].

*Background:* In 1949, after becoming independent, India chose to become a republic while retaining its Commonwealth link. This marked the beginning of the modern Commonwealth. The number of

UK's commitment to Europe. Thus, in early 1962, negotiations of accession halted with all three countries.

In 1963, the EEC invited Commonwealth less-developed countries (LCD's) to associate with the EEC<sup>41</sup>. The first nation to start such negotiations with the EEC was Nigeria. Nigeria successfully requested a different form of association under the provision of Article 238 of the Treaty of Rome. The outcome of these negotiations was the so-called Lagos Convention, which was signed in Lagos - at that time capital of Nigeria – on 8 July 1966. It solely concerned trade-related issues and granted Nigerian products free entry to the EEC based on the Community's internal tariff rate. Not included were provisions on financial aid. Due to the outbreak of the Nigerian Civil War in 1966<sup>42</sup>, the Lagos Convention never entered into effect.

In the following years the political climate in Africa changed. In addition to this, a sustained economic growth within the industrial nations and a new thinking of the EEC's Commission prompted it to redefine its approach towards lesser-developed countries. As a consequence, the ECs' Commission adopted a general common policy towards potential associates, which finally led to the conclusion of two new agreements with non-AASM African states.

Kenya, Uganda and Tanzania, three east-African states and former British colonies, also showed interest in a relation with the EEC. These states signed the so-called Arusha Convention<sup>43</sup> with the six founding members of the EEC on 24 September 1969. Compared to the Yaoundé Conventions the Arusha Convention was more limited in scope. Nevertheless, it was based on the free-trade principle of reciprocity. Furthermore, it expressed the will of the EEC to open itself to other developing countries. This move was necessary for Europe, which for 10 years had pursued only

---

member states grew quickly between the late 1940s and the 1960s as many Asian and African countries achieved independence and decided to join the organisation as sovereign states. Since then, many small Caribbean, Indian and Pacific Ocean Island countries have become members.

<sup>41</sup> 1963 Declaration of Intent.

<sup>42</sup> The Nigerian Civil War (1966 – 1969) between the secessionist Biafran side supported by the French government and the National side supported by the UK led to a collapse of the relation between the EEC and Nigeria.

<sup>43</sup> The Arusha Convention entered into force in 1970 and expired in 1975.

two policies: the Common Agricultural Policy (CAP)<sup>44</sup> and the policy of co-operation for development<sup>45</sup>.

A second attempt by of the UK to join the EEC, along with a Danish, Irish and Norwegian application for membership, once again was vetoed by France. In 1969<sup>46</sup>, however, the EEC could finally agree to grant all applicants membership. After nearly two years of negotiation, all four prospective members signed a Treaty of Accession in Brussels, Belgium. Denmark, Ireland and the UK ratified the Treaty and became members of the EEC on 1 January 1973.

At the same time, the issue of economic relations with “third world countries” experienced re-newed attention. At the international level, a number of initiatives was brought forward in particular by the Club of Rome<sup>47</sup>, within the Organization of African Unity (OAU)<sup>48</sup> and the United Nations (UN). These pursued the goal to develop a new concept of cooperation by interdependence. The ensuing debates were influenced, on the one hand, by the “oil shock” of the early 1970s. On the other hand, in particular the so-called Group of 77<sup>49</sup> had long promoted the call for a new international economic order and change, respectively. Furthermore, the accession of the UK to the EEC made it necessary to consider how to establish analogous

---

<sup>44</sup> The CAP was established in 1962 under Article 39 of the Treaty of Rome by the EEC. The aim was to provide farmers with a reasonable standard of living and consumers with quality food at fair prices. In particular, it concentrated on attaining the goals set out in Article 39 of the Treaty, securing a fair standard of living for the agricultural community and ensuring security of supply at affordable prices, and then it had to control quantitative imbalances.

<sup>45</sup> The development co-operation policy for all developing countries is defined in Title XX of the Treaty of Rome. Objectives of this policy are the following: to “...foster: the sustainable economic and social development of the developing countries, and more particularly the most disadvantaged among them; the smooth and gradual integration of the developing countries into the world economy; the campaign against poverty in the developing countries. [... To] contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms. [... To] comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations.”

<sup>46</sup> Since 15 June 1969 Georges Pompidou has been President of France.

<sup>47</sup> The Club of Rome is a global think tank, it's mission is to act as a global catalyst of change that is free of any political, ideological or business interest. For further information visit <[www.clubofrome.org](http://www.clubofrome.org)> [accessed on 14 March 2005].

<sup>48</sup> The Organization of African Unity (OAU) was established in 1963 in Addis Abeba. From 32 independent Member States in 1963, the independent Member States of Africa are now 53. The OAU is entering from political liberalisation to phase two by focussing on the economic integration. It has therefore a new mandate and new responsibilities which will by no means make it abandon its political character and its resolve to sustain peace and security in the continent which are crucial for the socio-economic development process. For further information on the OAU visit <<http://www.un.org/popin/oau/oauhome.htm>> [accessed on 16 March 2005].

<sup>49</sup> The Group of 77 (G-77) was established on 15 June 1964 by seventy-seven developing countries signatories of the "Joint Declaration of the Seventy-Seven Countries" issued at the end of the first session of the United Nations Conference on Trade and Development (UNCTAD) in Geneva. It provides the means for the developing world to articulate and promote its collective economic interests



relations with the Commonwealth countries. By this, the last impetus was given to start new discussions between the Commonwealth Countries and the AASM, on the one side and the EEC, on the other side.

#### 2.1.4 Lomé I

Irrespective of any fixed date of expiry included in Yaoundé II, these discussions resulted in a substitution of Yaoundé II. Thus, the first Lomé Convention (hereinafter referred to as Lomé I) was signed by representatives from some fifty-three countries<sup>50</sup> in Lomé, the capital of Togo, on 28 February 1975. It entered into effect on 1 April 1976 and expired on 1 March 1980. In the interim, the Georgetown Agreement 1975<sup>51</sup> institutionalised the ACP group and the establishment of a General Secretariat as one of the institutions gave it a permanent structure.

Lomé I provided for a much wider partnership between the EEC and the ACP group. This represented a major step towards globalising EEC policy towards developing countries.<sup>52</sup> Against this background, it is not surprising that prior discussions between the EEC and the ACP group had lasted for some intensive 18 months, comprising 183 negotiating sessions, 350 joint documents, and 453 ACP co-ordinating meetings, which began in Brussels in July 1973.

Compared to the Yaoundé conventions, Lomé I was enhanced as it consisted of several sections and a total of ninety-four Articles. In particular, it was divided into seven titles whereby each title concerned itself with different issues.

In the commercial domain, the preferential - both duty-free and quota-free - access of ACP products to the European market on a non-reciprocal basis was confirmed and enlarged (Articles 1 – 15 of Lomé I). Unfortunately, in practice, the trade preferences granted to the ACP group by the EEC were small: more than three-quarters of ACP exports, mostly regarding raw materials, would have entered the EEC duty-free even without Lomé I preferences.<sup>53</sup> The same holds true for more than 90 per cent of ACP

---

and enhance its joint negotiating capacity on all major international economic issues in the United Nations system, and promote economic and technical co-operation among developing countries.

<sup>50</sup> Signatories to Lomé I: 46 states on behalf of the ACP group consisting of the 18 AASM (see *supra* fn 25), Mauritius (which has already joined Yaoundé II in 1972), 21 Commonwealth LCD's (Bahamas, Barbados, Botswana, Fidji, Gambia, Ghana, Grenada, Guyana, Jamaica, Kenya, Lesotho, Malawi, Nigeria, Sierra Leone, Swaziland, Tanzania, Trinidad, Tobago, Tonga, Uganda, Western Samoa, Zambia) and six further African states (Equatorial Guinea, Ethiopia, Guinea Bissau, Liberia, Sudan) and the nine Member States on behalf of the EEC (Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, UK, West Germany).

<sup>51</sup> See *supra* fn 18.

<sup>52</sup> Cosgrove Twitchett *Europe and Africa : From Association to Partnership* 148.

<sup>53</sup> Cosgrove Twitchett *A Framework for Development : The EEC and the ACP* Chapter 2.

industrial exports, which would have entered the EEC duty-free under the Generalised System of Preferences (GSP).<sup>54</sup> Only seven of the twenty-five most important ACP exports received any preferences over LDC suppliers.<sup>55</sup> Conclusively, Lomé I did enhance trade results, but only marginally. Thus, Lomé I did not lead to trade results expected on the outset of the accord, which created much disappointment especially on the side of the ACP states.<sup>56</sup>

Furthermore, an export earning stabilization scheme, which had already been considered during the Yaoundé regime, was included into Lomé I, Articles 16 - 24. The so-called STABEX applied to agricultural raw materials and aimed at compensating ACP countries for the shortfall in export earning due to fluctuation in the prices or supply of commodities. It operated on the basis of reference levels calculated in relation to each ACP State's average sales to the EEC over the four years duration of Lomé I. The implementation of the STABEX showed the EEC's good will, but it was disappointing as it accounted only for about 30 per cent of ACP export earnings, while leaving 70 per cent uninsured.<sup>57</sup>

The issue of industrial co-operation was subject to the third title of Lomé I, Art. 26 - 39. Aimed at promoting industrialization and technological advancement in the ACP countries, two new institutions were established: the Center for Industrial Development (CID) and the Industrial Cooperation Board (ICB). In addition, these provisions aimed at a more beneficial distribution of industries within the ACP group. Nevertheless, financial and technical assistance remained one key point provided for by Title IV, Articles 41 – 61 of Lomé I. The purpose of these provisions was "...to correct the structural imbalances in the various sectors of the ACP States' economies."<sup>58</sup> The provisions included the execution and financing of projects and programmes, which contributed essentially to the economic and social development of the beneficiary states. The possibility for private partners to benefit from loans of the European Investment Bank (EIB) and attract venture capitals or turn to co-financing was introduced. In addition, it provided for technical co-operation to be used in the development of human resources in ACP countries.

---

<sup>54</sup> Lister *The European Community and the Developing World : The role of the Lome Convention* 110.

<sup>55</sup> Moss & Ravenhill 'Trade Between the ACP and EEC during Lomé I' in Stevens (ed.) *The Atlantic Rift, EEC and the Third World : A Survey* 3.

<sup>56</sup> Becker *Die Partnerschaft von Lomé* 120.

<sup>57</sup> Lister *The European Community and the Developing World : The European Community and the Developing World : The Role of the Lomé Convention* 118.

<sup>58</sup> Article 40 paragraph 1 of Lomé I.

In total, this title – euphemistically referred to as “financial and technical co-operation” by the Convention itself – actually contained the aid component of Lomé I. It coincided with the establishment of the fourth EDF (1975 – 1980). The new EDF scheme was directed at increasing, *inter alia*, ACP states' national revenues, improving the standard of living in those societies, diversifying and integrating the economic structures in ACP countries, and encouraging South-South (intra-ACP) regional economic co-operation.<sup>59</sup>

Provisions relating to establishment, services, payments and capital movements are subject to title V, Articles 62 – 68 of Lomé I. It was hoped that through the inclusion of these issues the Member States of the EEC as well as those of the ACP group would refrain from any sort of obstruction relating to cross-border movement of capital and/or the settlement of bills.

Articles 69 – 83 of Lomé I implemented the relevant institutions that would help administer the Convention's numerous programs. These were to be jointly managed. The most important institutions are the Council of Ministers, composed of representatives of each EEC Member State, the ECs'-Commission and delegates from the ACP group, the Committee of Ambassadors and the Consultative Assembly. The latter were supposed to assist the Council.

General and concluding provisions can be found in Articles 84 – 94 of Lomé I. These provisions dealt with numerous miscellaneous issues, *inter alia*, the entry into force of the Convention.

Lomé I furthermore included seven protocols, which were attached to the Convention. These favoured certain ACP export products such as sugar, rum, bananas, bovine meat and veal. The protocols allowed a certain number of countries to sell a fixed amount of their production at guaranteed prices on the European market.

During the negotiations for Lomé I, attention focussed also on the role of the individual in the process of development and on the necessity of the principle of good governance.<sup>60</sup>

Thus, the co-operation between Europe and Africa encompassed all domains of relations between the countries of the North and the South. The main characteristics of Lomé I were based on the respect of political options for each partner, the respect

---

<sup>59</sup> Babarinde *The Lomé Conventions and Development : An empirical Assessment* 23.

<sup>60</sup> Moss *The Lomé Conventions and their Implications for the United States* 18.

of sovereignty and the practice of permanent dialogue implying mutual interest and interdependence. In order to be better integrated into a global vision, the principle of contractual solutions and the adjustment of instruments were fostered respectively.<sup>61</sup>

#### 2.1.5 Lomé II

In 1978, negotiations between the ACP group and the EEC restarted and culminated in a second accord (hereinafter called Lomé II) of 31 October 1979<sup>62</sup>. Lomé II was scheduled to enter into force on 1 March 1980 with a duration of five years, thus due to expire on 28 February 1985. It also corresponded to the fifth EDF (1980 – 1985). However, due to discrepancies between the parties, it was not possible to adhere to the envisioned schedule. Thus, Lomé II entered into effect only on 1 January 1981. It left a nine-month gap to be filled by transitional measures.

In contrast to Lomé I, Lomé II met with substantial disappointment, in particular on the side of the ACP group. It was viewed as a compromise, which did not satisfy either party. It was even referred to as a "dog's breakfast".<sup>63</sup> The main reason for disappointment was that Lomé II did not essentially differ from the provisions established by Lomé I. Although Lomé II grew out of the former experience, its provisions resembled closely those of its predecessor as it covered the same issue areas. Thus, as provisions have not been changed the same criticism regarding Lomé I holds true for Lomé II.

However, despite all disappointment and criticism Lomé II did bring some changes, although these changes were only to be found in the details.

Perhaps the most notable improvement was the implementation of another compensation system comparable to that of the STABEX, the so-called SYSMIN scheme. The SYSMIN scheme (Articles 49 – 59 of Lomé II) was designed to assist mineral producing ACP states that were experiencing chronic production problems.

Furthermore, Lomé II digressed from previous emphasis. Emphasis was laid on issues addressing the following.

---

<sup>61</sup> See <[http://europa.eu.int/comm/development/body/cotonou/lome\\_history\\_en.htm](http://europa.eu.int/comm/development/body/cotonou/lome_history_en.htm)> [accessed on 16 January 2005].

<sup>62</sup> Signatories: 58 ACP states consisting of the signatories to Lomé I (see *supra* fn 25, 50) + Cape Verde, Comoros, Djibouti, Dominica, Kiribati, Papua New Guinea, Saint Lucia, Sao Tome and Principe, Seychelles, Solomon Islands, Suriname, Tuvalu and the nine Member States of the EC (see *supra* fn 50).

<sup>63</sup> Lister *The European Community and the Developing World : The Role of the Lomé Convention* 156.

Addressed by one of the eleven titles in Articles 60 – 64 of Lomé II - whereas it was only briefly mentioned under the financial aid issue area of Lomé I - special significance was put on boosting private EEC direct investments in the ACP countries.

Articles 83 - 90 of Lomé II covered the agricultural co-operation programme. It established a Technical Center for Agricultural and Rural Cooperation (TCARC) to facilitate better access for ACP governments to information and expertise on agricultural and rural development programs from the Community.

In addition, the STABEX scheme was extended to cover ten more ACP commodities, bringing it to a grand total of forty-four (Articles 23 – 48). Finally, the financial and technical cooperation also experienced expansion (Articles 91 – 154).

#### 2.1.6 Lomé III

Shortly before Lomé II expired, negotiations on its successor began. It involved ten Member States of the EEC<sup>64</sup> and sixty-seven states of the ACP group<sup>65</sup>. The negotiations took place between September 1983 and November 1984. Lomé III was signed on 8 December 1985 in the capital of Togo and entered into force in the same year. It furthermore corresponded to the sixth EDF (1985 – 1990).

As Lomé II, the provisions of Lomé III did not essentially depart from those in the preceding two accords.

Besides the reiterated commitment of the EEC to allow for free access to the Community of commodities originating in ACP states (Article 131), several safeguards were introduced into the EEC - ACP regime which were designed to increase and diversify ACP exports and markets, respectively.

One of the most innovative aspects hitherto introduced was the Lomé III chapter on private EEC direct investment in the ACP countries.<sup>66</sup> It was devoted to encourage and increase direct EEC investment in the ACP states.

Title II, Chapter 1 (Articles 147 – 174) of the new accord improved the STABEX scheme by changing the prerequisites under which the compensatory programme

---

<sup>64</sup> On 1 January 1981 Greece joined the EC bringing the number of Member States to ten (see *supra* fn 50).

<sup>65</sup> In the interim, besides the 58 states which already enjoy membership, Angola, Antigua and Barbuda, Belize, Dominican Republic, Mozambique, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Vanuatu and Zimbabwe have joined the ACP group (see *supra* fn 25, 50, 62).

<sup>66</sup> Babarinde *The Lomé Conventions and Development : An empirical Assessment* 27.

was to apply. According to the relevant provisions (Article 161 *et seq.* of Lomé III), an ACP product fell into the compensation mechanism, if it represented at least six per cent of the affected ACP country's total exports during the claim year. Landlocked, island and least-developed ACP countries experienced a more favourable treatment. Similar changes affected the SYSMIN scheme for the mining industry (Articles 176 – 184 of Lomé III). The modified provisions implemented a special financing facility, provided that at least fifteen per cent<sup>67</sup> of an affected states' total earnings derived from mineral resources and was covered by the scheme. This financial aid was granted to help the affected industry to deal with serious short-term or unforeseeable disruptions.

#### 2.1.7 Lomé IV

Overshadowed by the news-breaking developments in East Germany<sup>68</sup> and Eastern Europe<sup>69</sup>, the fourth Lomé Convention (hereinafter referred to as Lomé IV) was signed on 15 December 1989 and entered into force on 1 September 1991. Negotiations on this agreement had already commenced in Luxembourg at a meeting between Ministers from the ACP group<sup>70</sup> and the EEC<sup>71</sup> on 12 October 1988. The so-called Central Negotiating Group (CNG) held these meetings.

In contrast to its predecessors, which only covered five-year-periods, Lomé IV was the first accord to cover a ten-year period in order to provide a more stable foundation, even though the attached financial protocol was again limited to a five-year phase. The reason for the prolongation of the time period can be found in one of the weaknesses of the first three Lomé Conventions.<sup>72</sup> These were designed to provide preferential access for ACP's countries to the EU market based on selected, mainly traditional, commodities, which tended to discourage diversification of ACP economies, in general, and industrialisation, in particular. In contrast to that Lomé IV made a considerable effort to remove this weakness by focussing more on developing trade in general rather than simply focussing on preferential access.

---

<sup>67</sup> Figures lowered for least-developed, island and landlocked ACP states, see Article 180 of Lomé III.

<sup>68</sup> The "wall" broke down and East and West Germany have been reunited ('German Unification').

<sup>69</sup> The 'Iron Curtain' was about to fall along with the end of the 'Cold War'.

<sup>70</sup> Equatorial Guinea and Haiti joined the ACP group bringing its total membership to sixty-nine (see *supra* fn 25, 50, 62, 65).

<sup>71</sup> Portugal and Spain entered the Community on January 1, 1986, thus representatives from 12 EEC Member States attended the meeting (see *supra* fn 50, 64).

<sup>72</sup> Lister *The European Community and the Developing World: The Role of the Lomé Convention* 55.

These changes, however, were timely and appropriate in terms of achieving some of the aims of the structural adjustment programmes as incorporated by Lomé IV.<sup>73</sup> Lomé IV marked Europe's conversion to support the structural adjustment process initiated by the Bretton Woods institutions<sup>74</sup>. This European model was characterised by the mutual dependence of granting preferences on the one side and implementing structural adjustment programmes on the other. In particular, Lomé IV expanded the preferential treatment to virtually all products from the ACP and removed some of the qualitative or quota restrictions, which used to be applied to some of the products enjoying tariff concessions. These changes, however, became effective when most ACP member states were implementing structural adjustment measures, some of which were aimed at broad diversification of the economies especially through promotion of non-traditional exports.

Furthermore, Lomé IV was also the first development agreement to incorporate a human rights clause as 'fundamental' part of co-operation (Article 5 of Lomé IV), and it was for the first time that Lomé policy at all became genuinely political.

Textual emphasis was put on the promotion of human rights, democracy, good governance, the strengthening of the position of women, the protection of the environment, decentralised co-operation, diversification of ACP economies, the promotion of the private sector and increasing regional co-operation.<sup>75</sup> Financial and technical co-operation was provided for areas such as the environment, agriculture and rural development, fisheries, commodities, industrial and enterprise development, mining, energy, development of services (including tourism and modern telecommunications) and trade, cultural and regional co-operation.

In respect to financial co-operation, the new Convention corresponded with the implementation of the seventh EDF (1990 – 1995), which experienced replenishment as well as some changes regarding its requirements. The replenishment quantity was brought up to ECU 10.8 billion, which was to be dispersed during the first five years

---

<sup>73</sup> "Structural adjustment" is the name given to a set of 'free market' economic policy reforms imposed on developing countries by the Bretton Woods Institutions (see *infra* fn 74) as a condition for receipt of loans, see <<http://www.chebucto.ns.ca/Current/P7/bwi/cccsap.html>> [accessed on 25 January 2005].

<sup>74</sup> The World Bank and its sister organisation, the International Monetary Fund, were created at Bretton Woods, New Hampshire in 1944. Together they are referred to as the Bretton Woods Institutions or BWIs. For further information, see <<http://www.brettonwoodsproject.org/background/index.shtml>> [accessed on 25 January 2005].

<sup>75</sup> See <[http://europa.eu.int/comm/development/body/cotonou/lome\\_history\\_en.htm](http://europa.eu.int/comm/development/body/cotonou/lome_history_en.htm)> [accessed on 16 January 2005].

of the accord.<sup>76</sup> During the same time period, it was required from the ACP states to submit proposals in order to benefit from the fund. In addition, ECU 1,150 million was set aside to encourage the member states of the ACP group to embrace further structural adjustment programmes.<sup>77</sup>

Overall however, Lomé IV carried most of the provisions over from its predecessor with only minor modifications and few innovations. The substance and structure remained essentially similar to those of Lomé III. Lomé IV is divided into five parts. While four parts contain substantive issues under the following titles: 'general provisions', 'areas of ACP-EEC cooperation', 'instruments of ACP-EEC cooperation', and 'operation of the institutions', the fifth part is titled 'final provisions' and is composed of ten individually negotiated protocols.

Between 1994 and 1995, the so-called Mid-Term Review of the Convention took place and resulted in the signature of a new agreement between fifteen members<sup>78</sup> of the EC<sup>79</sup> and 72 member states of the ACP group<sup>80</sup> in Mauritius.

The Mid-Term Review introduced a phased programming, with the aim of increasing the flexibility and improving the performances of the ACP countries. Also, more attention was given to decentralised co-operation in the form of participatory partnership including a great variety of actors from civil society.

But, in respect of the eighth EDF (1995 – 2000), it occurred for the first time, that the signature of a new convention, the Mid-Term Review, did not lead to a financial increase in real terms.

The changes and amendments brought by the Mid-Term Review were due to major economic and political changes: the globalisation of international relations and the

---

<sup>76</sup> See <[http://europa.eu.int/comm/development/body/cotonou/lome\\_history\\_en.htm](http://europa.eu.int/comm/development/body/cotonou/lome_history_en.htm)> [accessed on 16 January 2005].

European Currency Unit (ECU) was the predecessor of the Euro; it was an artificial "basket" currency that was used by the Member States of the EC as their internal accounting unit. For further information, see <<http://fx.sauder.ubc.ca/ECU.html>> [accessed on 25 January 2005].

<sup>77</sup> Babarinde *The Lomé Conventions and Development : An empirical Assessment* 31.

<sup>78</sup> Austria, Finland and Sweden have joined the EC in 1995 bringing its total membership to 15 (see *supra* fn 50, 64, 71).

<sup>79</sup> The Treaty on European Union, which was signed in Maastricht on 7 February 1992, entered into force on 1 November 1993. 'The Maastricht Treaty' changed the name of the European Economic Community to simply "the European Community" and thus completed the progression already introduced by the 'European Single Act' of 1986. It also introduced new forms of co-operation between the Member State governments - for example on defence, and in the area of "justice and home affairs". By adding this inter-governmental co-operation to the existing "Community" system, the Maastricht Treaty created a new structure with three "pillars" which is political as well economic. This is the European Union (EU).

<sup>80</sup> In the interim, Eritrea, Namibia and South Africa have joined the ACP group (see *supra* fn 25, 50, 62, 70).



liberalisation of world trade. In particular, the ACP countries on their part still experienced a fundamental democratisation and structural adjustment process, whereas Europe was influenced by further enlargement of the EC<sup>81</sup> and the increasing attention towards political developments in East Europe<sup>82</sup> and the Mediterranean<sup>83</sup>. On the international level, the Uruguay Round Agreement substantially changed GATT procedures.

In 1992, the Treaty of Maastricht established the European Union (EU). This treaty brought about fundamental changes to European law and the European institutions.

With regards to the relationship of the EC with associated partners, many fundamental principles of the Treaty of Maastricht found their way into Lomé IV, as it provided for a common policy towards economic and social development. These foremost concerned the respect of human rights, democratic principles and the rule of law. As a result, ACP countries, which did not fulfil the requirements of the last mentioned principles, ran the risk of retrieval of allocated funds.

The Treaty of Maastricht also laid the foundation for a change in the political self-understanding of the EU.<sup>84</sup> It ended the EU's political neutrality by replacing, for example, the system of economic preferences by a defined development policy. Thus, it was for the first time that a treaty verbalised basic principles of the European development policy such as sustainable development, poverty alleviation, consolidation of democracy, respect of human rights, good governance, the rule of law and the development of commerce. Poverty alleviation as a central aspect for association with developing countries was furthermore strengthened. In particular, upon the inclusion of Finland and Sweden into the EU this policy was favoured because these two countries were particularly critical towards the former colonial basis for association and development aid.

All this gave rise for the EU Commission to embark upon a process of reflection. The result of this was the 'Green Paper on relations between the EU and the ACP countries on the eve of the 21<sup>st</sup> century – challenges and options for a new partnership'. After one year of debating on the future relationship between the EU

---

<sup>81</sup> In 1990, Malta and Cyprus applied for accession to the EC; in 1991 "Europe Agreements" are signed with Poland, Hungary and Czechoslovakia.

<sup>82</sup> On 22 August 1991 a coup d'état in the Soviet Union was struck down, however, followed by the resignation of President Michail Gorbatschow and the formation of a new state: the Commonwealth of Independent States (CIS).

<sup>83</sup> In 1991, the opening of the Peace Conference on Yugoslavia was held in The Hague, Netherlands.

<sup>84</sup> Bieber, Epiney, Haag *Die Europäische Union: Europarecht und Politik* 44 f.

and the ACP group, at least two main positions evolved: On the one side it was perceived that the Lomé partnership had become an anachronism. On the other side it was felt that some transformation was needed, but that the content of the Lomé Conventions as developed over the last twenty years, for the most part should be preserved.<sup>85</sup> Both sides, however, at least admitted a general need for change. Thus, negotiations on a new agreement initiated.

## 2.2 The Cotonou Agreement

Even before signature of the Cotonou Agreement, its predecessor - Lomé IV - expired on 1 March 2000. In order to bridge the gap between the commencement of the new agreement and the expiry of Lomé IV, the EC implemented some transient provisions. Furthermore, some provisions of the Cotonou Agreement were announced in advance to gain immediate effect. This included the establishment of the ninth EDF (2000 – 2005) amounting to € 13.5 billion and an additional € 9.9 billion of uncommitted monies from previous EDF supplementing the new fund.<sup>86</sup> In favour of the ACP states the European Investmentbank provided further € 1,7 billion in form of loans.<sup>87</sup> Due to Article 56 Paragraph 1 of the Cotonou Agreement the actual financing of projects is based upon the development goals and priorities as previously defined by the ACP countries.

### 2.2.1 Juridical Aspects

According to Article 93 Paragraph 3 of the Cotonou Agreement, the convention must be ratified by the Member States of the EC and at least two-thirds of the ACP States. This number of ratifications was reached on 27 February 2003. Consequently, the Cotonou Agreement entered into force on 1 April 2003.<sup>88</sup> It has a duration of twenty years but contains a clause allowing it to be revised every five years. The pertaining financial protocols still have a duration of only five years.

---

<sup>85</sup> Karagiannis *Avoiding Responsibility : The Politics and Discourse of European Development Policy* 15.

<sup>86</sup> See <[http://europa.eu.int/comm/development/body/cotonou/overview\\_en.htm](http://europa.eu.int/comm/development/body/cotonou/overview_en.htm)> [accessed on 16 January 2005].

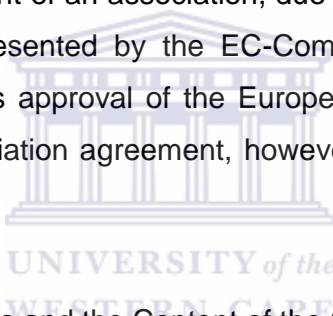
<sup>87</sup> Bieber, Epiney, Haag *Die Europäische Union: Europarecht und Politik* 631.

<sup>88</sup> Proclaimed on May 7, 2003 by the EU that all its 15 Member States and 76 states of the ACP group have ratified the Cotonou Agreement, see <[http://europa.eu.int/comm/development/body/cotonou/agreement/cotonou\\_sit.pdf#zoom=100](http://europa.eu.int/comm/development/body/cotonou/agreement/cotonou_sit.pdf#zoom=100)> [accessed on 16 January 2005].

The Cotonou Agreement is a so-called 'association agreement'. Its legal basis constitutes Article 310 of the Treaty of Rome. This Article provides for three types of association agreements: association for accession, free-trade association and development association. The Cotonou Agreement concerns a so-called development association<sup>89</sup> by means of creating a partnership. The principal aim of such 'development association' is to foster economic development in the associated states. Decisive issues are to guarantee development co-operation and to grant non-reciprocal trade benefit as well as financial aid.

Due to Article 310 of the Treaty of Rome the EC itself enjoys jurisprudence in form of an exclusive competence over the conclusion of an association agreement. Thus, it is the EC itself and not its Member States, that is authorised to agree to an association between the EC, on the one side, and third countries or international organisations, on the other side.<sup>90</sup>

Regarding the establishment of an association, due to Articles 300, 310 of the Treaty of Rome, the EC is represented by the EC-Commission during the negotiations followed by the unanimous approval of the European Parliament. The competence for conclusion of an association agreement, however, is part of the responsibility of the EC-Council.



## 2.2.2 The Objectives and the Content of the Cotonou Agreement

Pursuant to Article 1 of the Cotonou Agreement, the objectives of the partnership are "...to promote and expedite the economic, cultural and social development of the ACP countries, with a view to contributing to peace and security and to promoting a stable and democratic political environment."

It seems that the phrasing of these objectives has been carried out cautiously, but nevertheless clearly and ambitiously. Accordingly, the Agreement can be criticised for containing laudable objectives, but in the end, mere rhetoric. Whether the credible announcements made by Article 1 of the Agreement can nevertheless be put into practice, will be analysed further in regards to the issue of trade.<sup>91</sup>

---

<sup>89</sup> Streintz *Kommentar zum EUV/EGV* Art. 310 marginal no 7.

<sup>90</sup> Streintz *Kommentar zum EUV/EGV* Art. 310 marginal no 8.

<sup>91</sup> See *infra* Chapter 4, p 40 ff.

In contrast to the Lomé Conventions, the Cotonou Agreement contains a broader scope of provisions. As such, it has a different focus on trade and development policies and, in particular, attaches importance on comprehensive political dialogue.<sup>92</sup> The Cotonou Agreement contains five interlinking pillars with poverty reduction as their underlying objective. These pillars comprise an overall political dimension, participatory approaches, a strengthened focus on poverty reduction, a new framework for economic and trade co-operation and a reform of financial co-operation.<sup>93</sup> The clarity of the initial commitment to an overriding poverty reduction objective, however, is comprised in such a broad list that it threatens the transparency and consistency of the EU's approach to assessing and rewarding performance.

Like its predecessor agreements Lomé I – IV, the new partnership agreement provides for a unilateral free-trade regime adjusting specific institutions, which have to be in conformity with World Trade Organisation (WTO) law.<sup>94</sup>

The two main pillars of the Cotonou Agreement are economic and trade co-operation and aid.

With respect to economic and trade co-operation, the objectives are the promotion of smooth and gradual integration of ACP economies into the world economy, enhancement of production, supply and trading capacities, the creation of new trade dynamics and the fostering of new investment. It further envisages the gradual removal of trade barriers leading to new trading arrangements, which are compatible with the requirements of the WTO. The currently valid non-reciprocal tariff preferences are maintained until 31 December 2007, although these trade preferences are incompatible with WTO law. Since it provides for non-reciprocal duty free entry of ACP products into the EU market, it violates the Most Favoured Nation (MFN) principle of Article 1 of the GATT, which aspires to establish and advance equal treatment and non-discrimination among its member states.<sup>95</sup> Their exertion, however, was made possible in part due to an exceptional waiver given by the

---

<sup>92</sup> Bieber, Epiney, Haag *Die Europäische Union: Europarecht und Politik* 631.

<sup>93</sup> See <[http://europa.eu.int/comm/development/body/cotonou/overview\\_en.htm#Heading13](http://europa.eu.int/comm/development/body/cotonou/overview_en.htm#Heading13)> [accessed on 26 January 2005].

<sup>94</sup> For further information on the WTO, see <<http://www.wto.org>> [accessed on 26 January 2005]. See also Chapter 4, 4.1.1, p 40 ff and 4.1.2, p 43 ff.

<sup>95</sup> See *infra* Chapter 4, 4.1.1, p 40 ff for further information on the nature of non-reciprocal trade arrangements, particularly regarding the incompatibility of non-reciprocal tariff preferences with WTO law.

WTO.<sup>96</sup> Starting from 2008, a set of reciprocal Economic Partnership Agreements (EPAs) will then replace them. Although the EPAs will be individually negotiated agreements between the EU and either one ACP state or preferably a group of ACP states from one region, an ACP country that enters into such an agreement is required to set up a free trade area with the EU. Accordingly, the entering ACP state would have to open up its domestic market for almost all products from the EU, but within a twelve-year period lasting from 2008 to 2020. The driving force behind the EU's decision to conclude these regional agreements was the need to ensure the WTO compatibility of future ACP-EU trade relations.

The overall objectives and principles of EPAs are the sustainable development of ACP countries, their smooth and gradual integration into the global economy and eradication of poverty. The EPAs have to support regional integration initiatives already existing within the ACP and must not undermine them. With regards to the EPAs, the already mentioned critical point is made that the EU here in particular loses sight of practical issues for the maintenance of mere rhetoric principles. Furthermore, it is argued that, in particular, the creation of such individual or regional trade agreements fails to address the issue of development for developing countries as a bloc.<sup>97</sup> The criticism that the creation of a set of regional free trade areas does not take into account the distinct needs of the developing world as such originates in the traditional European emphasis. This emphasis hitherto was focussed on the ACP countries as a group as a whole and has now shifted to concentrate on individual free trade aspects between the EU and specific countries. The EU, however, encounters this criticism by emphasising the term "partnership". Accordingly, the creation of individual free trade areas is within the scope of the Agreement and reflects in detail the state and form of being related: on a mutual basis and by means of partnership. The EU's viewpoint seems in particular understandable against the background that the EU itself is torn between the development policy of its own and of its respective member states as well as the strategic choices of the multilateral financial institutions. Due to that, the EU has blurred its own objectives and rendered them more vulnerable to the other institutions' goals.<sup>98</sup>

---

<sup>96</sup> Abass 'The Cotonou Trade Régime and WTO Law' (2004) *European Law Journal* 439 (441).

<sup>97</sup> Dillon *International Trade and Economic Law and the European Union* 15.

<sup>98</sup> Karagiannis *Avoiding Responsibility : The Politics and Discourse of European Development Policy* 17.

Furthermore, the Cotonou Agreement inherits neither the STABEX nor the SYSMIN scheme. In case of any shortfall in export earning financial aid will be granted provided by the different aid programmes.

Touching on the issue of aid, the ninth EDF<sup>99</sup> has been established to support new programmes, which are more result-oriented than before. A wide range of operations such as macroeconomic support, sector programmes, traditional infrastructure, debt relief, additional assistance for shortfall in export earnings and decentralised co-operation and humanitarian support amongst others have been launched due to the Cotonou Agreement. These projects are financially supported by the provision of a fixed sum of resources to each individual country. A one single Country Support Strategy (CSS) worked out through dialogue with the recipient state has to be set up to cover all operations for each ACP country. The set-up dialogue requires the analysis of political, social and economic issues concerning the specific country along with an audit of the country's own development strategy. It culminates in a so-called Country Strategy Paper, which defines the measures to be taken and the timetable for their implementation; these are reviewed annually. The alterations envisage that the programming provisions for EDF monies allow quicker and more flexible disbursement.

Beyond that, emphasis is put on political factors. Political dialogue, peace-building policies, conflict prevention and conflict resolution, the respect for fundamental elements such as human rights, democratic principles, the rule of law and good governance are part and parcel of the core issue of the Cotonou Agreement.

To strengthen the focus on poverty reduction, the Cotonou Agreement also includes development strategies. These provide for co-operation strategies, the integration of the private sector and civil society and a global but integrated approach. The Agreement is considerate of the individual situation of each ACP country: It promotes local ownership of economic and social reform and ensures complementarity and interaction between the economic, social, cultural, gender, institutional and environmental dimensions of policies and strategies.<sup>100</sup>

---

<sup>99</sup> The ninth EDF amounts to € 13.5 billion supplemented by additional € 9.9 billion of uncommitted monies from previous EDF, see *supra* Chapter 2, 2.2, p 22, fn 86.

<sup>100</sup> See <[http://europa.eu.int/comm/development/body/cotonou/overview\\_en.htm#Heading13](http://europa.eu.int/comm/development/body/cotonou/overview_en.htm#Heading13)> [accessed on 26 January 2005].

### 3 The African Growth and Opportunity Act

#### 3.1 Historical Background of the AGOA

With the beginning of the new millennium, the U.S. initiated a new trade and investment policy towards Africa. This policy resulted in the enactment of the Trade and Development Act of 2000, which contains as Title 1 the African Growth and Opportunity Act (herein after referred to as AGOA)<sup>101</sup>. The AGOA considers trade, trade-related and economic development-related issues between the U.S. and eligible sub-Saharan African (SSA) countries. Since 2000, the AGOA has been amended and modified twice, once in 2002 and also in 2004.

##### 3.1.1 Pre-AGOA

In contrast to the historical relationship between the EC Member States and the ACP countries<sup>102</sup>, the U.S. is not subject to a resembling burden of the past. It did not have close ties or a comparable relation to African countries.

Besides former colonial ties, however, a state may have other motivations for a trade regime favouring lesser-developed countries, such as those on the African continent. With regard to the U.S., it may be argued that such motivation flows in particular from its standing as a leading economic world power, which makes support for lesser-developed countries not only an obligation, but also a challenge and, last but not least, an opportunity for further (global) economic growth.

Historically, Africa has never been central to U.S.'s foreign policy. Nevertheless, some U.S. involvement in the African continent can be traced back to as far as 1789. However, for the most part, official U.S. attitudes and policies toward Africa have been marked by indifference and neglect. Compared to timely and economic resources allocated toward other regions of the world, Africa was rather treated as a *backwater* in official policy-making circles.<sup>103</sup>

In the 1840's, the U.S. established an independent Liberia on the west coast of Africa. The reason for this move was to provide for a resettlement option for freed slaves and others of African decent residing in the U.S. It did not, however, intend to treat Liberia as a prodigal son or as an official colony of the U.S. Thus, U.S. interest

---

<sup>101</sup> PL 106-200, 2000 HR 434.

<sup>102</sup> See *supra* Chapter 2, 2.1, p 5 *ff.*

in Liberia was restricted to open up Liberian economy and its natural resources to American capital such as the Firestone Rubber Company.<sup>104</sup>

Nevertheless, some observers have noted that the general trend in U.S. policies toward Africa have traditionally followed a 'hands off' principle; that is, until the onset of the Cold War.<sup>105</sup>

During the Cold War period, U.S. foreign policymakers discovered a new national interest, which also influenced U.S. policy towards African countries. This vital national interest was to fight and contain Communism wherever it appeared in the world. In pursuit of this interest, a consistent axiom of U.S. foreign policy was: "We have no permanent friends or enemies, but only permanent interests."

This anticommunist posture gained particular strength under the administration of the Republicans Nixon and Ford<sup>106</sup> in the 1960s and 1970s. This led the U.S. to support rebel movements like the South-African sponsored guerrilla group UNITA in Angola<sup>107</sup> and military incursions by South Africa itself as part of the later destabilisation policies.<sup>108</sup>

Besides those anticommunist resentments, there existed a further U.S. interest in Africa during this time, which had a geostrategic background. It was recognised that the African continent contained a large supply of raw materials critical in particular to military and industrial purposes. As it became clear that the U.S. could benefit from this by "engaging" or "disengaging" with one or another African country, it took the necessary steps to do so.<sup>109</sup>

Thus, for example, the basis for U.S. commitment in the Congo crisis of 1960-1964 was the dependence of the U.S. on strategic minerals such as cobalt and uranium for use in its growing nuclear weapons programme. Although Congo-Kinshasa

---

<sup>103</sup> Schraeder 'Reviewing the study of US policy towards Africa: From intellectual 'backwater' to theory construction', November 1993, Volume 14, No. 4, *Third World Quarterly : Journal of Emerging Areas*, 775 (776).

<sup>104</sup> For further information on Liberia, its history and the Firestone Rubber Company, which has been established in Liberia in 1923, see <<http://personal.denison.edu/~waite/liberia/history/index.htm>> [accessed on 16 March 2005].

<sup>105</sup> See Skinner 'Historical Framework Paper Written for the National Summit on Africa' (1998) *National Summit on Africa* 1.

<sup>106</sup> After U.S. presidencies of Democrat John F. Kennedy (1961 – 1963) and Democrat Lyndon Johnson (1963 – 1969), the Republican Richard Nixon became U.S. President in 1969, followed by Republican Lyndon Ford in 1974.

<sup>107</sup> For further information on UNITA (National Union for the total independence of Angola), see <<http://www.namibian.com.na/2002/February/africa/02458C31EE.html>> [accessed on 16 March 2005].

<sup>108</sup> For analysis of South Africa's destabilisation policies, see Turok *Witness from the frontline: Aggression and Resistance in Southern Africa*.

<sup>109</sup> Rothchild 'The Impact of US Disengagement on African Intrastate Conflict Resolution' in Harbeson and Rothchild *Africa in World Politics: The African State System in Flux* 160 ff.



(presently the Democratic Republic of Congo) was under the rule of the brutal kleptocratic dictator Mobutu Sese Seko, the U.S., for geostrategic reasons, tolerated Mobutu and his excesses.

In West Africa, U.S. relations were focussed on Nigeria, which became the second leading exporter of oil to the U.S. in the early 1970s.

In southern Africa, U.S. policy had a number of foci. These were to protect U.S. business investments, maintain access to a superior supply of strategic mineral (especially diamonds, manganese, chromium and platinum-group metals), protect oil routes around the Cape of Good Hope and along the eastern and western shores of the region, and check Soviet influence and perceived expansionism in the subcontinent.<sup>110</sup>

In sum, the U.S. traditionally played only a strategic role in Africa to further its own interests. The objectives pursued involved preserving the U.S. access to strategic resources, while containing the influence of the Soviet Union in Africa as the continent became a theatre for balance-of-power games between the superpowers during the Cold War.<sup>111</sup>

Against this background, U.S. Congress implemented “[a]n Act to promote the development of an open, non-discriminatory and fair world economic system, to stimulate fair and free competition between the United States and foreign nations, to foster the economic growth of, and full employment in, the United States, and for other purposes”.<sup>112</sup>

This so-called Trade Act of 1974 contained, *inter alia*, one title specifically alluding to trade between the U.S. and developing countries. This Title (Title V, Section 501 - 505) implemented the U.S. GSP<sup>113</sup>, a programme designed by the U.S. to promote economic growth in the developing world. The U.S. GSP comprises a list of eligible products, which enjoy duty-free access to the U.S. market. In order to qualify for duty-free treatment, a product has to comply with specific requirements<sup>114</sup>. *Inter alia*, the product in question has to be included in the “U.S. GSP eligibility” list and must

---

<sup>110</sup> Walters ‘U.S. - Africa Relations’ in Krieger *The Oxford Companion to Politics of the World* 945 (945 ff.).

<sup>111</sup> Bender, Coleman and Sklar *African Crisis Areas and U.S. Foreign Policy* 18.

<sup>112</sup> Preamble of the Trade Act of 1974, PL 93-618, 1975 HR 10710.

<sup>113</sup> For further information on the U.S. GSP, see

<[http://www.ustr.gov/Trade\\_Development/Preference\\_Programs/GSP/Section\\_Index.html](http://www.ustr.gov/Trade_Development/Preference_Programs/GSP/Section_Index.html)> [accessed on 3 March 2005].

<sup>114</sup> For details regarding the requirements, see ‘U.S. Generalized System Of Preferences Guidebook’

not be considered “import-sensitive”. Articles of one of the following categories are regarded as import-sensitive: textile and apparel articles, which are subject to the textile agreement; watches; import-sensitive electronic articles; import-sensitive steel articles; specified footwear articles; import-sensitive semi-manufactured and manufactured glass products; and any other articles, which the U.S. President determines to be import-sensitive in the context of the U.S. GSP.

With respect to historical developments, the U.S. during the 1980s pursued a policy of what the Reagan<sup>115</sup> administration called “peace through strength” or “constructive engagement”<sup>116</sup>. This policy ostensibly aimed at brokering peace deals and ending regional conflicts without cutting U.S. ties to, for example, the *apartheid* regime in South Africa. Although President Carter<sup>117</sup> had attempted to put pressure on South Africa to reform its regime in the late 1970s, Reagan here followed a policy of quiet diplomacy. In particular due to the anticommunist posture, it was proclaimed that race relations were an internal affair, and that, as far as U.S. policy was concerned, the most important objective was to assist South Africa in containing Communism in the region. In this regard, engaging the South African government was the centrepiece of U.S. policy.

By the late 1980s, U.S. foreign policy toward Africa lacked an integrated political strategy. It rather vacillated between a policy of disengagement and selective engagement. Most of the U.S. efforts aimed at promoting and supporting democratic forces throughout the continent. At the same time, however, relatively modest amounts of material support were devoted to such purposes. This strategy also marked the presidency of George H.W. Bush<sup>118</sup> in the 1990s. Although by this time, the overall approach of U.S. foreign policy toward Africa was one of disengagement, the U.S. was also concerned with the impact of drought and famine on the African continent.<sup>119</sup> Hence, U.S. troops participated in UN humanitarian missions, for example in Somalia from August 1992 until March 1994<sup>120</sup>. From a humanitarian

---

<[http://www.ustr.gov/assets/Trade\\_Development/Preference\\_Programs/GSP/asset\\_upload\\_file333\\_5430.pdf](http://www.ustr.gov/assets/Trade_Development/Preference_Programs/GSP/asset_upload_file333_5430.pdf)> [accessed on 23 February 2005].

<sup>115</sup> From 1981 until 1989, Republican Ronald Reagan was U.S. President.

<sup>116</sup> See <<http://www.whitehouse.gov/history/presidents/rr40.html>> [accessed on 9 March 2005].

<sup>117</sup> In 1977, Democrat Jimmy Carter, predecessor to Ronald Reagan, became U.S. President.

<sup>118</sup> Republican George Herbert Walker Bush was U.S. President from 1989 until 1993.

<sup>119</sup> Malone ‘A Decade of U.S. Unilateralism?’ in Malone and Foong Khong *Unilateralism & U.S. Foreign Policy : International Perspectives* 19 (26).

<sup>120</sup> The U.S. Army began by assisting in relief operations in Somalia, but by December 1992 it was deeply engaged on the ground in Operation RESTORE HOPE in that ‘chaotic’ African country. For detailed information on the issue see Thakur ‘UN Peace Operations and U.S. Unilateralism and

perspective, this policy undoubtedly deserved support. However, it was challenged politics, which came increasingly to impinge upon the humanitarian mission. The climax of this interaction for the U.S. was reached in October 1993<sup>121</sup>, when eighteen U.S. soldiers were killed in Mogadishu.<sup>122</sup>

The U.S. administration under then President Clinton immediately responded by moving back into a cautious mode of disengagement.<sup>123</sup> Within six months, however, it became clear that such “policy of disengagement” was only a remnant of Cold War assumptions and rationales which could not work toward Africa in a post Cold War era. It was recognized that a lacking proactive Africa policy leave the U.S. unprepared to effectively respond to international crises. This newly formulated approach towards U.S. foreign policy in Africa was influenced in particular by the genocide in Rwanda, which erupted in April of 1994. To avoid that the U.S. would be taken by surprise or be guilty of neglecting potentially explosive situations such as occurred in Rwanda, President Clinton decided to create three new governmental institutions. These were The Office of the Ambassador at Large for War Crimes Issues<sup>124</sup>, The Atrocities Prevention Interagency Working Group<sup>125</sup> and The African Crisis Response Initiative<sup>126</sup>. The latter was designed to build African capacity for peacekeeping with U.S. assistance.

From this point on, it was clear that the Clinton Administration was committed to a new partnership with Africa. To show this new commitment, the first White House Conference on Africa was held in June of 1994. This was the beginning of efforts to look at Africa in a broad manner rather than on a selective case-by-case basis. At this conference, President Clinton proclaimed that it was the policy of his administration “to unleash the human potential of the people of the African continent

---

Multilateralism” in Malone and Foong Khong *Unilateralism & U.S. Foreign Policy : International Perspectives* 153 (161 ff).

<sup>121</sup> This happened only ten months after Democrat William Jefferson Clinton assumed office as 42<sup>nd</sup> U.S. President in 1993.

<sup>122</sup> Keller ‘Rethinking African Regional Security’ in Lake and Morgan *Regional Orders: Building Security in a New World* 296 (310).

<sup>123</sup> Thakur ‘UN Peace Operations and U.S. Unilateralism and Multilateralism” in Malone and Foong Khong *Unilateralism & U.S. Foreign Policy : International Perspectives* 153 (167).

<sup>124</sup> See <<http://www.state.gov/s/wci/>> [accessed on 16 March 2005].

<sup>125</sup> Scheffer ‘War Crimes and the Clinton Administration - International Justice, War Crimes and Terrorism: The US Record’ <[http://www.findarticles.com/p/articles/mi\\_m2267/is\\_4\\_69/ai\\_97756597](http://www.findarticles.com/p/articles/mi_m2267/is_4_69/ai_97756597)> [accessed on 16 March 2005].

<sup>126</sup> See <<http://usinfo.state.gov/regional/af/acri/>> [accessed on 16 March 2005].

in ways that would lead to a safer and more prosperous world, a better life for them and a better life for us.”<sup>127</sup>

In 1995, a large U.S. private and public sector delegation attended the African-American Summit in Dakar, Senegal.<sup>128</sup> At this Summit, the U.S. announced its aim to actively construct economic relationships with Africa through an invigorated emphasis on trade and investment.<sup>129</sup> In the following year, the U.S. administration launched the first substantive engagement with Congress on the proposed African Growth and Opportunity Act (AGOA).

At the same time, however, the U.S. Congress implemented the so-called GSP Renewal Act of 1996<sup>130</sup>, which modified the scheme of preferences under the U.S. GSP. Criteria regarding country eligibility as well as product eligibility were modified. Moreover, it enhanced the U.S. GSP for developing countries, in particular favouring least-developed countries.

Regarding the above mentioned and in 1995 announced “new partnership” with Africa, it was not until Clinton’s second term of presidency that it began to take clear form.<sup>131</sup> The strategy behind it was a two-pronged one to increase the importance of Africa as a trading and strategic partner. First, it sought to accelerate Africa’s integration into the global economy by promoting economic development, democracy, respect for human rights, and conflict prevention and resolution. Second, it sought to address security threats emanating from Africa including terrorism, international crime, trafficking in drugs and illicit arms.

### 3.1.2 AGOA I

On 24 January 2000, the 106<sup>th</sup> U.S. Congress enacted the first trade-related act specifically favouring SSA countries<sup>132</sup> as Title 1 of The Trade and Development Act

---

<sup>127</sup> ‘Remarks by the President to the White House Conference on Africa’ <<http://www.clintonfoundation.org/legacy/062794-remarks-by-president-to-white-house-conference-on-africa.htm>> [accessed on 16 March 2005].

<sup>128</sup> See <[http://www.thesummit.org/summit\\_history.htm](http://www.thesummit.org/summit_history.htm)> [accessed on 16 March 2005].

<sup>129</sup> ‘Statement by the Press Secretary on African American Summit’ (2 May 1995) <<http://www.clintonfoundation.org/legacy/050295-statement-by-press-secretary-on-african-american-summit.htm>> [accessed on 16 March 2005].

<sup>130</sup> PL 104-188, 1996 HR 3448.

<sup>131</sup> ‘Remarks by President Clinton to Conference on U.S.-Africa Partnership for the 21<sup>st</sup> Century’ (16 March 1999) <<http://www.mtholyoke.edu/acad/intrel/clintafr.htm>> [accessed on 16 March 2005].

<sup>132</sup> According to section 107 of AGOA I, the term SSA countries refers to the following or any successor political entities: Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Republic of Congo, Côte d’Ivoire, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-

of 2000<sup>133</sup>. The Act (hereinafter called AGOA I) was signed into law on 18 May 2000 by U.S. President Clinton “[t]o authorize a new trade and investment policy for sub-Saharan Africa, expand trade benefits to the countries in the Caribbean Basin, renew the generalized system of preferences, and reauthorize the trade adjustment assistance programs”<sup>134</sup>. Starting from October 2000, AGOA I was supposed to cover a period of eight years.<sup>135</sup>

The rationale of AGOA I<sup>136</sup> was, first and foremost, to offer tangible incentives for SSA countries to assist their efforts in opening up their economies and establishing free markets. By this means, the U.S. administration aimed to promote specific SSA countries on their way to globalisation. Against the historical background of the relation between the U.S. and the SSA countries, by the time AGOA I went into effect, the stage was not yet set to implement a free-trade area between SSA countries and the U.S. Falling short of this, an unilateral approach as provided by AGOA I nevertheless intends to establish special trade-relations with eligible SSA countries. As a result, an eligible SSA country then enjoys a more liberal access to the U.S. market.

Another ambition of AGOA I was to support U.S. businesses by encouraging reform of Africa’s economic and commercial regimes and thus increase the number of possible partners for U.S. firms. Furthermore, it was expected that stronger markets in SSA countries would emerge.

Objectives of AGOA I were phrased as follows: to “...change the course of trade relations for the long term, while helping millions of African families find opportunities to build prosperity:

- By reinforcing African reform efforts;
- By providing improved access to U.S. technical expertise, credit, and markets; and
- By establishing a high-level dialogue on trade and investment.”<sup>137</sup>

---

Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tomé and Príncipe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Tanzania, Togo, Uganda, Zambia, Zimbabwe.

<sup>133</sup> PL 106-200, 2000 HR 434.

<sup>134</sup> See Preamble of AGOA I, PL 106-200, 2000 HR 434.

<sup>135</sup> See <<http://www.agoa.info/>> [accessed on 1 November 2004].

<sup>136</sup> For further information on AGOA, see <<http://www.agoa.info/>> [accessed on 1 November 2004].

<sup>137</sup> See <[http://www.agoa.gov/agoa\\_legislation/agoa\\_legislation.html](http://www.agoa.gov/agoa_legislation/agoa_legislation.html)> [accessed on 24 February 2005].

With regard to the scope of application of AGOA I, it may be distinguished between the requirements of eligibility regarding countries and those regarding products.

Section 104 of AGOA I alludes to certain “country eligibility” requirements. In order to receive the benefits of AGOA I, a SSA country must prove to have established, or to have been making continual progress towards establishing a market-based economy, the rule of law and political pluralism, elimination of barriers to U.S. trade and investment, protection of intellectual property, efforts to combat corruption, policies to reduce poverty, increasing availability of health care and educational opportunities, protection of human rights and worker rights, and elimination of certain child labour practices.

Section 111 of AGOA I titled “Eligibility For Certain Benefits” provides for product eligibility criteria. This Section amends Title V of the Trade Act of 1974 by inserting a new section. Thereafter “[t]he President may provide duty-free treatment for any article described in Section 503(b)(1)(B) through (G) that is the growth, product or manufacture of a beneficiary sub-Saharan African country described in sub-section (a), if, after receiving the advice of the International Trade Commission in accordance with section 503(e), the President determines that such article is not import-sensitive in the context of imports from beneficiary sub-Saharan African countries.”

Section 111 of AGOA I expands the list of U.S. GSP-eligible articles introduced by the Trade Act of 1974. Accordingly, subsequent to authorisation by the U.S. Trade Representative, the U.S. International Trade Commission and the U.S. President, beneficiary SSA countries may export U.S. GSP-eligible articles to the U.S. market subject to zero import duty under the U.S. GSP. Furthermore, AGOA I exempts SSA beneficiary countries from competitive need limitations which cap the U.S. GSP benefits available to beneficiaries in other regions.

Special provisions (Section 112 of AGOA I) were also made with regard to the apparel industry. Under certain conditions, duty-free and quota-free access to the U.S. market is granted.

Although eligibility criteria for the scheme of preferences under the U.S. GSP and the AGOA I overlap, U.S. GSP eligibility does not immediately imply AGOA I eligibility. Certain differences in the prerequisites can be determined.

The AGOA, for example, requests a country to respect and/or fulfil certain criteria as described above. These are, *inter alia*, to respect the rule of law, to establish a market-based economy, to protect intellectual property, to combat corruption and

bribery and so forth. In contrary to that, a developing country may enjoy U.S. GSP benefits, if it does not expropriate property without compensation or nullifies existing contracts with U.S. citizens. Moreover, it shall not be a communist country unless it receives MFN<sup>138</sup> treatment from the U.S. and is member of the GATT and the International Monetary Fund (IMF). A country is further excluded from U.S. GSP benefits which is a member of the Organisation of the Petroleum Exporting Countries (OPEC) or is engaged in activities to withhold supplies of vital commodity resources so as to increase prices. Nevertheless, both documents appoint the U.S. President to finally determine a (SSA / developing) countries' status. Regarding product eligibility, in general, the AGOA as well as the U.S. GSP provide a zero tariff on products except those regarded as "import-sensitive"<sup>139</sup>, notwithstanding AGOA I amends this list of products, which enjoy duty-free access to the U.S. market.

With a special emphasis on trade, Section 103 of AGOA I provides a "Statement of Policy", which contains selected issues supported by the U.S. Congress. The most vibrant trade and trade-related issues concerns reduction of tariff and non-tariff barriers, negotiation of reciprocal and mutually beneficial trade agreements, including even the possibility of establishing free-trade areas and strengthening and expanding of the private sector in SSA countries.

Moreover, AGOA I provides for the establishment of an U.S.-SSA Trade and Economic Forum. This Forum is to be organised by the U.S. President and hosted by the Secretaries of State, Commerce, Treasury, and the U.S. Trade Representative. The Forum is intended to keep alive the dialogue between the United States and African countries on issues of economics, trade, and investment.

In order to implement AGOA I, an AGOA Implementation Subcommittee of the Trade Policy Staff Committee (TPSC) was appointed. This Committee had to deal with implementation issues such as the determination of country and product eligibility, determinations of compliance with the conditions for apparel benefits, the establishment of the U.S.-SSA Trade and Economic Forum and provisions for technical assistance to help countries qualify for benefits.

---

<sup>138</sup> Most-Favoured-Nation (MFN) trade is a concept promulgated in Article 1 of the GATT. The article provides that contracting parties to GATT must grant each other treatment as favourable as they give to any country in the application and administration of import duties.

<sup>139</sup> See *supra* Chapter 3, 3.1.1, p. 29 *f.*

### 3.1.3 AGOA II

On 6 August 2002, amendments to AGOA I were signed into law by U.S. President George W. Bush<sup>140</sup> and went into effect immediately thereafter (hereinafter referred to as AGOA II<sup>141</sup>).

The motivation for AGOA II was to improve the application and functioning of AGOA I. Moreover, it was expected to encourage foreign direct investment in SSA countries by means of clarifying and expanding trade opportunities for these countries under AGOA I. Upon the request of many SSA countries, an effort to maximise AGOA benefits was made.

AGOA II affects a series of regulations, although in content, it predominantly concerns 'apparel' provisions and rules of origin for garments.

AGOA II refers to Section 3108: "Trade Benefits under the African Growth and Opportunity Act", for example, and thereby amends Section 112 (b) of AGOA I. This Section provides for preferential treatment of textile and apparel products. It is codified outside the U.S. GSP statutory framework<sup>142</sup> because the U.S. GSP excludes most textile and apparel articles from preferential treatment. Thus, Section 112 in effect operates as an exception to the approach under the U.S. GSP.

In particular, it provides for preferential treatment of so-called knit-to-shape<sup>143</sup> articles or wholly formed and cut articles assembled from the U.S. or from a SSA beneficiary country. Knit-to-shape components have to originate either from the U.S. or from a SSA beneficiary country or the components have to be knit-to-shape from yarn in a SSA beneficiary country. Hybrid articles<sup>144</sup> enjoy fabric eligibility provided that the place of cutting was either the U.S. or a SSA beneficiary country.

Moreover, Section 3108 of AGOA II modifies Section 112 (b)(3)(A)(ii) of AGOA I. According to this, the apparel cap for apparel produced in Africa from regional fabric made with regional yarn will be more than doubled within eight years, from three to seven per cent starting from October 2002. The amount of the annual quantitative limit on apparel articles assembled in lesser-developed beneficiary countries will be doubled. Apparel assembled in lesser-developed beneficiary countries from third

---

<sup>140</sup> George Walker Bush: 43<sup>rd</sup> and current President of the U.S. since 2001.

<sup>141</sup> PL 107-210, 2002 HR 3009.

<sup>142</sup> The U.S. GSP is codified in Title V, Section 501 - 505 of the Trade Act of 1974.

<sup>143</sup> 'Knit-to-shape' articles consist of components, which take their shape in the knitting process, rather than being cut from a bolt of cloth. Under AGOA II, the definition of the term 'fabric' was broadened to specifically include knit-to-shape components.

<sup>144</sup> 'Hybrid articles' are those containing both fabric and knit-to-shape components.



country (neither the U.S. nor SSA beneficiary country) fabric, however, is excluded from these benefits.

Furthermore, AGOA II also modified the U.S. GSP.<sup>145</sup>

And regarding 'country eligibility', Namibia and Botswana were granted the status of "lesser developed beneficiary sub-Saharan African country", Section 3108 (a)(3)(B)(ii) of AGOA II. In such countries, producers are allowed to use third country fabric in AGOA benefit eligible apparel.

### 3.2 Current Legal Status of the AGOA

In 2004 some provisions of the AGOA again experienced modification. On 13 July 2004, the U.S. Congress enacted the so-called AGOA Acceleration Act 2004 (hereinafter referred to as AGOA III).<sup>146</sup>

#### 3.2.1 The Legal Regime of AGOA III

Section 7 of AGOA III modifies Section 506 (B) of the Trade Act of 1974, which contains the statutory regime of the U.S. GSP. It particularly extends the preferential access for imports from beneficiary SSA countries to the U.S. market until 30 September 2015.

Section 7 of AGOA III further revises Section 112 (b)(3)(A)(ii)(I) and Section 112 (b)(3)(B)(i) of AGOA I. These provisions dealing with third country fabric are extended for three years, starting from September 2004 until September 2007 including a phase down in the third year. This means that the apparel quota remains at the full current level for year one and two and in the third year, the cap will be phased down by 50 per cent.

Moreover, Section 7 of AGOA III provides for minor technical corrections, which include, *inter alia*, a modification of the rule of origin in order to allow U.S. import of articles assembled either in the U.S. or SSA countries to qualify for AGOA treatment (hybrid).

Regarding folklore and similar ethnic and handmade articles respectively, the current applicability of AGOA (Section 112 (b)(5)(A) of AGOA I) has been expanded by

---

<sup>145</sup> In particular, Section 4101: "Extension of the Generalized System of Preferences" amends Section 505 of the Trade Act of 1974; Section 4102 amends Section 502 (b)(2)(F) of the Trade Act of 1974 and Section 507 (4) of the Trade Act of 1974.

<sup>146</sup> PL 108-274, 2004 HR 4103, see *infra* Annex A, A – 2, p 77 *ff.*

Section 7 of AGOA III to include certain machine-made ethnic printed fabric made in SSA countries or the U.S.

Section 7 of AGOA III further modifies certain eligibility criteria codified in Section 112 (d) of AGOA I. *Inter alia*, the list of “permitted” components of AGOA-eligible apparel and textile products has been amended. Accordingly, articles<sup>147</sup> exported to the U.S. enjoy AGOA benefits although containing components such as collars, cuffs, drawstrings, padding/shoulder pads, waistbands, belts attached to garments, straps with elastic, and elbow patches, regardless of their country of origin.

Due to Section 7 of AGOA III the De Minimis Rule<sup>148</sup> codified in Section 112 (d)(2) of AGOA I has been increased from seven to ten per cent.

Besides these changes, AGOA III further provides for two so-called “Sense of Congress”. The first one<sup>149</sup> includes a request for SSA states to take active part in WTO negotiations and trade liberalisation. The second one<sup>150</sup> requests the executive branch to interpret, implement and enforce the AGOA provisions relating to preferential treatment of textile and apparel articles. This is expected to be executed in a broad manner in order to maximise opportunities for imports of such articles from eligible SSA countries and thus expand trade between the SSA countries and the U.S.

Section 3 of AGOA III encourages bilateral investment agreements and requests the U.S. administration to implement an interagency trade advisory committee. It also states that U.S. Congress supports various SSA efforts such as reducing poverty, promoting peace, attracting investment and trade, and fighting HIV-AIDS. Moreover, it includes findings and statements of policy on the benefits of AGOA for Africa. In this regard, it particularly encourages the development of infrastructure projects, which increase trade capacity through the ecotourism industry. Therefore, investment in infrastructure projects is promoted. Such projects are supposed to support the

---

<sup>147</sup> Provided that such apparel article is otherwise eligible for preferential treatment.

<sup>148</sup> The ‘De Minimis Rule’ applies to apparel products which contain fibres or yarns not wholly produced either in the U.S. or beneficiary SSA countries. Under the general AGOA system, such products could not benefit from the system even if there were primarily manufactured in SSA countries. Here, the ‘De Minimis Rule’ functions as an exemption in that it stipulates the eligibility of such products for AGOA benefits if the total weight of all foreign fibres and yarns does not exceed a certain percentage of the total weight of the article in whole (currently ten per cent).

For further information on ‘De Minimis Rule’ see U.S. Customs and Border Protection *What Every Member of the Trade Community should know about: African Growth and Opportunity Act 7* <[http://www.cbp.gov/linkhandler/cgov/toolbox/legal/informed\\_compliance\\_pubs/textiles/icp065.ctt/icp065.pdf](http://www.cbp.gov/linkhandler/cgov/toolbox/legal/informed_compliance_pubs/textiles/icp065.ctt/icp065.pdf)> [accessed on 10 March 2005].

<sup>149</sup> Section 4 of AGOA III, see *infra* Annex A, A – 2, p 79.

<sup>150</sup> Section 5 of AGOA III, see *infra* Annex A, A – 2, p 80.

development of land transport, roads, railways, ports, the expansion of modern information and communication technologies, and agriculture.

With regard to agriculture, the U.S. President shall assign U.S. state personnel for the purpose of providing agricultural technical assistance to selected SSA beneficiary countries. Those countries shall be advised on improvements in their sanitary and phytosanitary standards to help them meet U.S. requirements.

To reduce time in transit and increase efficiency and safety procedures, AGOA III furthermore facilitates increased co-ordination between customs services at ports and airports in the U.S. and SSA countries.

### 3.2.2 Questions of Competencies

In contrast to bilateral or multilateral international agreements, the AGOA is a unilateral legal act. It forms part of U.S. federal statutory law.

In the U.S., statutory law exists both on the federal and on the state level. According to the U.S. Federal Constitution, federal legislative and executive power exists only in specifically enumerated cases.<sup>151</sup> Accordingly, in legal theory, the respective U.S. states enjoy supremacy over consolidated federal action. However, in particular economic realities have removed most if not all legal barriers to the exercise of federal legislative authority.<sup>152</sup> In particular when it comes to commercial issues, the authority of U.S. Federal Congress is now almost as broad as that of the states.<sup>153</sup>

As an example of this, the AGOA has been enacted by U.S. Congress. It can be amended or withdrawn at the sole discretion of Congress.<sup>154</sup> With the enactment of AGOA I in 2000, U.S. Congress has accroached this competence. Thus, the implementation or amendment of AGOA is covered by the authority of the federal government.

---

<sup>151</sup> The first three Articles of the U.S. Federal Constitution, according to which the federal government enjoys only the authority explicitly granted to it by the Constitution, imply this. These powers are further limited by the Ten Amendments to the Constitution. If the Constitution does not expressly provide for federal legislation, the Tenth Amendment expressly reserves legislative powers to the states. However, the "Supremacy Clause" of Article VI of the U.S. Federal Constitution provides for the supremacy of federal legislation over inconsistent state law. Federal law in this sense consists of the Federal Constitution, federal statutes and federal treaties.

<sup>152</sup> Morrison *Fundamentals of American Law* 29.

<sup>153</sup> Article I, Section 8 [3] of the Constitution grants the U.S. Congress power, *inter alia*, "To regulate Commerce with Foreign Nations, and among the several States, and with the Indian Tribes".

<sup>154</sup> Federal legislative is the U.S. Congress, which consists of the U.S. Senate and the U.S. House of Representatives.

## 4 A Comparison of the Cotonou Agreement and the AGOA

As has already been pointed out, this thesis has two objectives: first, it aims at working out in general the differences between the Cotonou Agreement and the AGOA. Furthermore, it intends in particular to explore the impact of these two legal documents on trade between the EU and the U.S. ~~respectively~~ with African countries.<sup>155</sup> The focus of the current chapter is the latter objective. Thereby, it is divided into a theoretical and a practical part.

Thus, the first part of this chapter contains information on the theoretical background to the Cotonou Agreement and the AGOA. This includes an analysis of the legal nature and status of these two documents, a presentation of their general similarities and differences and an outline of the terms 'trade creation' and 'trade diversion'. Based on that, the Cotonou Agreement and the AGOA will finally be compared with regard to their general impact on trade with African countries. The practical part contains a specific case study on Namibia in order to display in detail how the Cotonou Agreement and the AGOA affect trade between African countries and the EU and the U.S., respectively.

### 4.1 The Impact on International Trade of African Countries within the Framework of the Cotonou Agreement and the AGOA

#### 4.1.1 Legal Nature of the Cotonou Agreement and the AGOA

Both the Cotonou Agreement and the AGOA establish non-reciprocal trade preferences for African countries with regard to their trade with the EU and the U.S., respectively. ~~Legalisation~~ ~~The~~ initiation (Einführung) implementation of such non-reciprocal preferential trade arrangements ~~originated with~~ has its origins with/in is part of the concept of special treatment ~~for~~ of for developing countries. This concept is based on the fact that, compared to the so-called developed world, developing countries have traditionally suffered from an unequal economic status and the idea that this unequal status must be compensated. ~~This status of developing countries as~~ The unequal economic status was officially acknowledged for the first time officially

---

<sup>155</sup> Trade based on the Cotonou Agreement and the AGOA concerns only the so-called ACP and SSA countries (see *supra* Chapter 2, p 5 ff and Chapter 3, p 27 ff) For simplification, however, these countries are generally termed 'African countries' throughout Chapter 4.

~~put on paper~~ at a GATT Ministerial Conference in November 1957.<sup>156</sup> This conference may be deemed the ~~was likely to be~~ first serious attempt of the industrialised countries to acknowledge as a major problem ~~major~~ “the failure of the trade of less developed countries to develop as rapidly as that of industrialised countries”.<sup>157</sup> As a consequence, the Conference authorised a Panel of Experts to examine past and current international trade trends and their implications, for trade with less developed countries.<sup>158</sup> Composed of three eminent experts and headed by Gottfried Haberler, this panel was appointed to prepare a comprehensive report (the so-called Haberler Report) for consideration by the next GATT Ministerial Conference. In particular, the task of the Harberler’s Report was to provide for an assessment of medium-term prospects for international trade including expected increases in the level of consumption of agricultural products and of the volume and efficiency of agricultural production in all countries.<sup>159</sup> However, the experts were expected to refrain from any judgement or recommendation with regard to the trade policy of particular countries.<sup>160</sup>

Upon its presentation, the Harberler Report corroborated the finding already made at the GATT Ministerial Conference in 1957, namely that export earnings of developing countries were unsatisfactory.<sup>161</sup> As a consequence, international attention finally turned to the need to establish specific rules to improve (export) trade of developing countries. However, at that point in time, the idea of favoured treatment of developing countries stood in contrast to fundamental principles within the GATT framework. In particular, the GATT MFN Clause as contained in Article 1 of GATT obliged the GATT Contracting Parties to grant each other equal treatment with regard to inter-party import trade. Since this fostered the already existing economic disequilibrium between developed and developing (less developed) countries, it was necessary to implement legislative changes in order to especially favour treatment of developing countries.<sup>162</sup>

<sup>156</sup> The GATT Ministerial Conference is the highest authority within the WTO. ~~It, which~~ convenes at least once every two years. It has the ~~compatibility-authority~~ to decide on all matters ~~under concerning~~ any of the multilateral trade agreements under the WTO system. For further information on the issue, see <[http://www.wto.org/english/thewto\\_e/minist\\_e/minist\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/minist_e.htm)> [accessed on 5 April 2005].

<sup>157</sup> BISD 6<sup>th</sup> Supplement (1958) 18 (2<sup>nd</sup> recital in preamble).

<sup>158</sup> BISD 6<sup>th</sup> Supplement (1958) 18.

<sup>159</sup> BISD 6<sup>th</sup> Supplement (1958) 18 (3<sup>rd</sup> recital in decision).

<sup>160</sup> BISD 6<sup>th</sup> Supplement (1958) 18 (4<sup>th</sup> recital in decision).

<sup>161</sup> GATT ‘Trends in International Trade’ (October 1958) [known as the “Haberler Report”].

<sup>162</sup> A developing country is a country with a low income average, a relatively undeveloped infrastructure and a poor human development index when compared to the global norm. (See

In order to demonstrate their new concern for the interests of developing countries, the GATT Contracting Parties therefore adopted Part IV of the GATT in 1965. However, this did not yet ~~achieve-lead to~~ ~~Aa~~ major change in GATT trade policy since ~~it-the new provisions did not~~ ~~contained~~ ~~no-any~~ legal obligations. Six years later, in 1971, a truly legal exception to MFN was established for the benefit of developing countries. This was ~~done-achieved~~ by incorporating the GSP programme into the GATT in form of a GATT waiver to the MFN.<sup>163</sup> This waiver authorised the industrial countries to establish their own national GSP programme, provided that the programme benefited all developing countries.<sup>164</sup> In 1971, the GATT Contracting Parties also adopted a second waiver favouring developing countries, which ~~permitted-allowed for~~ developing countries to exchange tariff preferences among themselves.

Both waivers were initially ~~primarily~~ granted for a period of ten years, but then extended indefinitely in 1979 through the “Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries” decision in conjunction with the so-called Enabling Clause ~~-in-1979~~.<sup>165</sup> The enactment of a permanent waiver to the MFN finally institutionalised the policy of special treatment of trade with developing countries.<sup>166</sup> It must be conceded that this change in traditional GATT policy was not exclusively owed to altruistic reasons. Rather, developing countries composed the majority of the WTO members already in the 1970s and therefore their (potential) political power played a decisive factor. Nevertheless, it was also recognised that trade liberalisation would be beneficial rather than

---

<[http://en.wikipedia.org/wiki/Developing\\_nation](http://en.wikipedia.org/wiki/Developing_nation)> [accessed on 19 October 2005].) Thus, classifying a country as *developing* already implies an existing disequilibrium between developed and developing countries.

<sup>163</sup> With regard to EU's GSP see *supra* Chapter 2, 2.1.4,p 13, fn 54;regarding the U.S. GSP see *supra* Chapter 3, 3.1.1,p 29, fn 113.

<sup>164</sup> For more detailed information on the GSP see Jackson *The World Trading System: Law and Policy of International Economic Relations* 322 ff.

<sup>165</sup> BISD 26<sup>th</sup> Supplement (1980) 203 - 205. Regarding the legal text of the “Enabling Clause” see <[http://www.wto.org/english/docs\\_e/legal\\_e/enabling1979\\_e.htm](http://www.wto.org/english/docs_e/legal_e/enabling1979_e.htm)> [accessed on 31 August 2005].

<sup>166</sup> The Uruguay Round explicitly continued this policy. The Uruguay Round (1986 - 1994) was the last of eight rounds of multilateral trade negotiations within the GATT-framework. These rounds were held periodically to reduce tariffs and other trade barriers. The Uruguay Round primarily focussed on reduction of non-tariff barriers. Notwithstanding, it culminated in the creation of an extensive new body of international law relating to trade: The basic texts of the WTO agreements (> 400 pages) and the Final Act (> 26,000 pages) signed in Marrakesh, Morocco on 15 April 1994 (the so-called ‘Marrakesh Agreement’) have been implemented. Thus, the Marrakesh Agreement transformed the GATT into a new, fully-fledged international organisation called the WTO. For further information on the Uruguay Round see <[http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact5\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm)> [accessed on 31 August 2005].

detrimental to economic development.<sup>167</sup> Since then, the need for differential treatment of developing countries has become a recognised part, in particular, of GATT policy.

#### 4.1.2 The Legal Status of the Cotonou Agreement and the AGOA

Both the EU and the U.S. created a legal relationship to the African countries in order to, *inter alia*, strengthen the economic development of these countries by maximising trade benefits. However, the means by which the EU and the U.S., respectively, acted, differs: the EU concluded an agreement with African countries (the Cotonou Agreement), whereas the U.S. implemented a unilateral act favouring African countries (the AGOA).<sup>168</sup>

The EU as well as the U.S. are leading players in the modern world of economics and, in particular, (international) trade. Even though both the Cotonou Agreement and the AGOA aim at favouring African countries, the outstanding power of the EU and the U.S. could therefore raise doubts as to whether the concerns of African countries were equally observed upon the implementation of the said legal instruments.

With regard to the Cotonou Agreement, such doubts already appear to be refuted by its legal status, although it is argued, however, that particularly the multilateral contractual form that the Cotonou Agreement takes is emblematic of a will to bind all parties.<sup>169</sup> Notwithstanding this, as an 'agreement', this legal act presents a multilateral accord between the ACP group of States, of the one part, and the EU and its Member States, of the other part. The conclusion of such an agreement generally demands dialogue and a certain balance of interests between the potential contracting parties. Particularly from a linguistic (etymological) and juridical analysis of the term 'agreement' it becomes clear that ~~manifesting a relation—legal relationships~~ in form of an 'agreement' must be based upon mutual consent and thus have to please both sides at least to a certain extent.<sup>170</sup> Various provisions of the

---

<sup>167</sup> Matsushita, Schoenbaum and Mavroidis *The World Trade Organization : Law, Practice, and Policy* 378.

<sup>168</sup> On the content of the Cotonou Agreement see *supra* Chapter 2, 2.2, p 22 ff; On the content of AGOA see *supra* Chapter 3, 3.2, p 37 ff.

<sup>169</sup> Karagiannis *Avoiding Responsibility : The Politics and Discourse of European Development Policy* 8.

<sup>170</sup> Agreement (etymological): "n. 1425, in *Proceedings of the Privy Council*, borrowed from Old French *agrément* from *agréer* to please"; -ment: "a suffix forming nouns, especially from the verbs, and meaning act or process of \_\_\_ing, as in *enjoyment*; condition of being \_\_\_ed, as in *amazement*; product or result of \_\_\_ing, as in *pavement*, means or instrument that \_\_\_s, as in *inducement*." in

Cotonou Agreement confirm this proposition. These provisions outline the intention of the EU to pursue equality and co-operation and show that the Cotonou Agreement truly aims to establish a 'partnership' with African countries rather than at furthering traditional paternalism on the side of the EU.<sup>171</sup> In this sense, ~~its the P~~reamble of the Cotonou Agreement, for example, already ~~already~~ asserts to strengthen the "[...] *partnership* based on political dialogue, development *cooperation* and economic and trade relations."<sup>172</sup> In sum, the fact that the Cotonou Agreement was concluded between the ACP group and the EU as well as the EU Member States and, furthermore, in light of the explicit objectives spelled out in the treaty itself, therefore lead to the conclusion that this treaty is based on mutual consent and freedom of choice of the contracting parties.<sup>173</sup>

In contrast to the Cotonou Agreement, the U.S. implemented the AGOA as a unilateral act benefiting African countries. As such, the design of the AGOA ~~s implementation~~ neither requires ~~any~~ consent of the African countries nor the taking into account of interests other than that of ~~the~~ U.S. Congress. The involvement of other countries, ~~however,~~ is not part of ~~the U.S.~~ legislative procedure. Moreover, ~~T~~he AGOA may be ~~only~~ revised, modified, and even withdrawn at the sole discretion of ~~the~~ U.S. Congress. The legal instrument chosen by the U.S. in order to establish a relationship with African countries is therefore very different from the one chosen by the EU. At least at first sight, the '*modus operandi*' of the U.S. gives way to the impression that the U.S. have played out their superiority against the African countries. However, advantages of the unilateral nature of the AGOA may be found in the fact that it provides for distinctive and unambiguous regulations at least as far as it concerns the AGOA's implementation, modification or withdrawal. As such, it is not dependent on the consent of others. And with regards to the benefits and preferences the AGOA provides for African countries, it is the U.S. decision to grant

---

Barnhart *The Barnhart Dictionary of Etymology*; agreement (jur.): "A manifestation of mutual assent on the part of two or more persons as to the substance of a contract" in Black *Black's Law Dictionary*.

<sup>171</sup> See, *inter alia*, Article 2 "Fundamental Principles", Article 9 "Essential Elements and Fundamental Element", Article 20 "The Approach", Article 57 of the Cotonou Agreement "Guidelines", <[http://europa.eu.int/comm/development/body/cotonou/agreement/agr04\\_en.htm](http://europa.eu.int/comm/development/body/cotonou/agreement/agr04_en.htm)> [accessed on 24 May 2005].

<sup>172</sup> See *infra* Annex A, A - 1.2, p 76 [Typeface modified by author.]

<sup>173</sup> Certainty, however, exists only with the parties involved. However, the EU's decision to establish an EU - ACP relation by agreement (instead of a unilateral legislative act) by itself provides further proof as to the impression that the EU intended to create a trade relationship with African countries based on an equal partnership.



these preferences or not, although it may contradict with the needs and the will of the African countries.

In sum, it can be stated that each decision - that of the EU to conclude an agreement and that of the U.S. to implement a unilateral act - raises a certain impression regarding the use of powers. However, it is still difficult to provide for reasons as to why the EU and the U.S., respectively, chose different methods of granting trade preferences to African countries. Apart from legislative requirements, historical experiences, different economic perceptions as well as a diverging self-understanding and outward appearance may have played a decisive part here.<sup>174</sup>

#### 4.1.3 Differences and Similarities in Content

In the following, the content of the Cotonou Agreement and the AGOA will be analysed with a focus on the general similarities and differences between these two legal instruments.

##### 4.1.3.1 Similarities

Notwithstanding their differences in structure and content analysed in the following paragraph, the Cotonou Agreement and the AGOA also share some common characteristics, in particular with regards to trade.

First, average Tariff preferences provided for by the Cotonou Agreement and the AGOA are relatively similar in the sense that they generally grant reduced or duty-free access to certain products from beneficiary African countries.

However, there are some differences in particular with regard to African products deemed sensitive or competitive to E.U. and U.S. domestic products: while the AGOA provides for duty free access of non-import-sensitive products by developing countries, it generally excludes import-sensitive products from any benefit.<sup>175</sup> In contrast to that, beneficiaries of the Cotonou Agreement enjoy either duty free access for non-import-sensitive products or an incremental tariff reduction relative to a product's import sensitivity.<sup>176</sup>

---

<sup>174</sup> With regard to 'legislative requirements', see *supra* Chapter 2, 2.2.1, p 22 *f* and Chapter 3, 3.2.2, p 39 *f*. Regarding the different historical background of the Cotonou Agreement and the AGOA, see *supra* Chapter 2, 2.1, p 5 *ff*) and Chapter 3, 3.1, p 27 *ff*).

<sup>175</sup> See Section 111 (a) and Section 211 (b) of the AGOA [PL 106-200, 2000 HR 434].

<sup>176</sup> See Protocol 2 to Annex V of the Cotonou Agreement ("On The Implementation Of Article 9").

Second, both the Cotonou Agreement and the AGOA contain so-called “rules of origin”.<sup>177</sup> These rules take into account the natural fact that the production of beneficiary goods may depend on the use of material, which is not available in the producing country, but has to be imported. In order to ensure that tariff advantages are granted only to products, which can be truly considered to originate from a beneficiary country under the Cotonou Agreement or the AGOA, the relevant rules of origin therefore stipulate that imported material may only be used to produce goods for exports and must comply with specific criteria. Such Ccriteria may be that concern, for example, a specified maximum percentage of imported material to be included in the product in question or ~~that a~~ a specific amount and type of processing.<sup>178</sup>

Further similarity ~~ies between the AGOA and the Cotonou Agreement can be provides the fact that both legal documents contain found~~ with regard to the requirements ~~regarding on~~ country eligibility.<sup>179</sup> These ~~requirements provisions are in form of concern~~ certain ~~country state~~ practices and depend upon countries’ having and ~~require various state~~ policies in place, *inter alia*, to ensure worker rights, the protection of intellectual property and the respect of the rule of law.<sup>180</sup>

#### 4.1.3.2

#### Differences

The first outstanding difference between the Cotonou Agreement and the AGOA concerns their applicability *ratione personae*: Currently, there are seventy-six ACP

<sup>177</sup> See Protocol 1 to Annex V of the Cotonou Agreement (“Concerning the definition of the concept of “originating products” and methods of administrative cooperation”), regarding the “Trade regime applicable during the preparatory period referred to in Article 37(1)”. The AGOA provides for rules of origin in Section 111 (as amended by Section 7 of the AGOA III, see *infra* Annex A, A – 2, p 80 f) and Section 112 (as amended by Section 3108 of the AGOA II and Section 7 of the AGOA III, see *infra* Annex A, A – 2, p 80 f, only referring to textile and apparel products).

<sup>178</sup> It should be mentioned that both the EU and the U.S. to a varied extent allow, ~~to a verifying extent,~~ beneficiary countries to comply with rules of origin by cumulating inputs or sharing production processes with designated beneficiary countries or groups of countries. With regard to the EU see Article 6 (“Cumulation of Origin”) of Protocol I to Annex V of the Cotonou Agreement; regarding the U.S. see Section 111 (a) “Sec. 506 A (b) (2) (B) of the AGOA (as amended by Section 7 (a) (2) of the AGOA III, see *infra* Annex A, A – 2, p 80 f).

<sup>179</sup> See *supra* Chapter 2, 2.2.2, p 23 ff and Chapter 3, 3.2.1, p 37 ff.

<sup>180</sup> With regard to the Cotonou Agreement see, *inter alia*, Article 9, 46 and Article 96, which provides for consultation procedures and appropriate measures as regards human right, democratic principles and the rule of law. With regards to the AGOA, see, *inter alia*, Section 104 (“Eligibility Requirements”) of the AGOA.

countries, which are party to the Cotonou Agreement, while merely thirty-seven SSA countries enjoy AGOA eligibility.<sup>181</sup>

Second, compared to the AGOA, the Cotonou Agreement is more comprehensive in content and structure as it includes six annexes and three protocols attached to it and is itself divided into six parts containing 100 provisions in total. The AGOA, on the other side, neither contains annexes nor protocols and is ~~structured-divided~~ into six titles containing “only” fifty-three sections.

The almost doubled amount of provisions contained in the Cotonou Agreement can be explained in particular by two facts: First, its legal predecessors contained even larger volumes of provisions. Second, the Cotonou Agreement addresses various issues, which are not addressed by the AGOA at all or not in such detail. Concerning the latter fact, ~~the~~ Cotonou Agreement, *inter alia*, ~~particularly~~ contains broadly stated development strategies dealing with economic, social and human development, regional co-operation and integration and as well as thematic and cross-cutting issues such as gender issues, environment and natural resources, institutional development and capacity building. In this sense, the Cotonou Agreement presents a framework agreement, which provides for objectives, general principles and instruments to implement and secure these objectives and principles. The majority of the implementation rules have been shifted to the annexes of the Cotonou Agreement. In particular those on trade and the implementation of financial co-operation. Thus, for example, Part IV, Articles 55 – 83 of the Cotonou Agreement contains general provisions and objectives on financial co-operation. These objectives are supported and put in concrete terms by two annexes (Annex I and II of the Cotonou Agreement), which on their part as well ensure the implementation of issues, which are contained in the first four parts of the Agreement, from a financial perspective. Thus, the Cotonou Agreement is in complete an agreement containing trade related issues as well as aid mechanisms. As such the Cotonou Agreement does not only allude to issues of conflict within the ACP countries, but contains aid mechanisms for selected fields providing for (financial) solutions.

In contrast to that, already the title of the AGOA implies that this act primarily aims at trade and development. This is emphasised further by the substantive provisions of the AGOA, which mainly concern ~~As such, it concerns~~ trade and trade-related issues.

---

<sup>181</sup> Regarding the parties to the Cotonou Agreement see *supra* p 5 fn 18 *f*. With regard to the AGOA beneficiaries see <<http://www.agoa.gov>> [accessed on 6 April 2005].

Changes to this mainly trade oriented approach were established in particular through the implementation of AGOA III in 2004. With AGOA III, the U. S. has, *inter alia*, committed itself to develop “[...] innovative approaches to encourage development and investment in sub-Saharan Africa”<sup>182</sup> and supports the aims of the New Partnership for Africa’s Development (NEPAD), which include poverty reduction, the promotion of peace, democracy, security, human rights, integration, trade and economic diversification and the improvement of transparency, good governance, as well as political accountability.<sup>183</sup> Furthermore, the AGOA addresses broader issues ~~Notwithstanding this, the AGOA does allude to issues~~ such as general “development”.<sup>184</sup> In total, however, all but these provisions are by far not as detailed as ~~the those of the~~ Cotonou Agreement. In particular, they do not provide for any financial solutions to ensure co-operation in the relevant fields and thus essentially differ from the Cotonou Agreement.

#### 4.1.4 Trade and Development

The objective of the Cotonou Agreement is ~~is formulated as~~ “...to promote and expedite the economic, cultural and social development of the ACP countries...”. This objective is to be achieved by means of encouraging and supporting the integration of the ACP countries into the world economy in terms of trade.<sup>185</sup> The objective of the AGOA is to “...change the course of trade relations for the long term, while helping millions of African families find opportunities to build prosperity...”.<sup>186</sup>

<sup>182</sup> See Section 3 (1) of the AGOA.

<sup>183</sup> See Section 3 (5) of the AGOA III, see *infra* Annex A, A - 2, p 79. The new AGOA also touches ~~on~~ gender issues, provides for the expansion of access to social, educational and health services, for capacity building of governments, enforcement of the rule of law, regional integration (Section 3 (10) of the AGOA III, see *infra* Annex A, A - 2, p 79) and economic diversification (Section 3 (11) of the AGOA III, see *infra* Annex A, A - 2, p 79). The NEPAD is a vision and a strategic framework for Africa’s renewal. It is designed to address the current challenges facing the African continent. NEPAD’s primary objectives are to eradicate poverty; to place African countries, both individually and collectively, on a path of sustainable growth and development; to halt the marginalisation of Africa in the globalisation process and enhance its full and beneficial integration into the global economy and to accelerate the empowerment of women. For further information on NEPAD see <<http://www.nepad.org>> [accessed on 5 April 2005].

<sup>184</sup> Thus, ~~In particular for example, it the AGOA~~ provides for “assistance [...] to prevent and reduce HIV/AIDS in sub-Saharan Africa” (see Section 128 f of the AGOA) and emphasises the need for a “study on improving African agriculture practices” (see Section 130 of the AGOA). Moreover, it declares its “[...] efforts to combat desertification in Africa and other countries” (see Section 131 of the AGOA).

<sup>185</sup> See Article 1 of the Cotonou Agreement <[http://europa.eu.int/comm/development/body/cotonou/agreement/agr04\\_en.htm](http://europa.eu.int/comm/development/body/cotonou/agreement/agr04_en.htm)> [accessed on 24 May 2005].

<sup>186</sup> See <[http://www.agoa.gov/agoa\\_legislation/agoa\\_legislation.html](http://www.agoa.gov/agoa_legislation/agoa_legislation.html)> [accessed on 24 February 2005].

These objectives display that, within the framework of both the Cotonou Agreement and the AGOA, “trade” is regarded as a main tool for development of eligible developing and least-developed countries.<sup>187</sup> The value of this thesis - the interconnection between trade and development - will be assessed in the following.

In general, the goal “development” is understood to ~~can be divided into include various different categories aspects~~ with economic development as one part. Economic development itself is interconnected with trade: while ~~A definition of “economic development” reveals that it~~ aims at the sustained increase in the economic standard of living of a country's population, normally accomplished by increasing its stocks of physical and human capital and improving its technology;<sup>188</sup> “trade”, in general terms, is the sale of goods and services. More specifically, trade concerns ~~can be~~ the export and import of goods and/or a transaction in a financial market.<sup>189</sup>

~~One reason for this~~ The main reasoning behind this point of view is that trade is interconnected with industry: National as well as international trade require a domestic productive industry. Vice versa, domestic industry can only be productive if national and international trade mechanisms function properly. In this sense, it is in particular flourishing international trade, which has the potential to increase the stock of physical capital in a producing country since the needs for its productive industry may, *inter alia*, attract foreign direct investment, improve the country's capacity and technology and thus finally also raise the national economic standard of living.<sup>190</sup>

In conclusion, trade indeed is a tool for development. Since both the Cotonou Agreement and the AGOA regard “trade” as the basis of supporting development in African countries (by means of fostering and supporting existing trade relations with the region and creating new ones), they are therefore in line with the generally accepted opinion.<sup>191</sup>

---

<sup>187</sup> With regard to the Cotonou Agreement - in addition to the cited objectives - see, for example, Article 18: “The cooperation strategies shall be based on development strategies and economic and trade cooperation which are interlinked and contemporary. ...” and Article 24: “Cooperation will aim at the sustainable development of the tourism industry in the ACP countries and sub-regions, recognising its increasing importance to the growth of the services sector and in ACP countries and to the expansion of their global trade, ...”.

<sup>188</sup> See “economic development” on <<http://www-personal.umich.edu/~alandear/glossary/>> [accessed on 28 April 2005].

<sup>189</sup> Rutherford (2002) *Routledge Dictionary of Economics* 566.

<sup>190</sup> Barth ‘Wem nutzen Sozialstandards im internationalen Handel?’ <<http://library.fes.de/fulltext/asfo/00697010.htm>> [accessed on 21 October 2005].

<sup>191</sup> For example: “Trade for development is the *raison d’être* and vocation of UNCTAD” on <[www.unctad.org](http://www.unctad.org)> [accessed on 28 April 2005]; “...providing technical assistance to least developed

However, the question is by what exact means the EU and the U.S., respectively, attempt to reach their goal of maximising trade benefits in favour of the African countries. An earlier analysis of both legal documents has shown that they are generally meant to open-up markets.<sup>192</sup> This leads to the question whether the Cotonou Agreement or the AGOA actually aim to establish “free trade”. The idea of free trade has been examined in detail by various experts on (international) economy such as Adam Smith<sup>193</sup>, David Ricardo<sup>194</sup> and their predecessors. Without going into the details of those studies, free trade can essentially be described as the supremacy of market powers lacking any external interference provided that the sole control of the market is the allocation of commodities.<sup>195</sup> Thus, free trade concerns ~~an~~ international trade, which is unhindered by tariffs or other restrictions on import and export subsidies.<sup>196</sup> ~~By this, it is recommended as free trade resembles~~ a means of achieving international specialisation of production and maximisation of world economic welfare.<sup>197</sup>

Both the Cotonou Agreement and the AGOA provide for preferential treatment regarding imports from the African countries ~~to their respective countries~~. Thus, these legal documents do not eliminate trade barriers ~~en bloc in general~~, but rather provide for non-reciprocal trade preferences. ~~In particular,~~ they implement reduced import tariffs, increased quotas and similar favourable import measures in favour of the

---

countries to enable them to harness trade as a tool for development.” in Tan ‘Bank and Fund watchers must watch WTO’ 4 <<http://www.brettonwoodsproject.org/topic/adjustment/wtobrief.pdf>> [accessed on 28 April 2005]; “ITC firmly believes in trade as a tool for development.” in Bélisle ‘Trade as a Tool for Development - How can developing countries benefit more from the multilateral trading system?’ <[http://www.tradeforum.org/news/fullstory.php/aid/383/Trade\\_as\\_a\\_Tool\\_for\\_Development\\_-\\_How\\_can\\_developing\\_countries\\_benefit\\_more\\_from\\_the\\_multilateral\\_trading\\_system\\_.html](http://www.tradeforum.org/news/fullstory.php/aid/383/Trade_as_a_Tool_for_Development_-_How_can_developing_countries_benefit_more_from_the_multilateral_trading_system_.html)> [accessed on 28 April 2005].

<sup>192</sup> See *supra* Chapter 2, 2.2.2, p 22 *f* and Chapter 3, 3.2.1, p 37 *ff*.

<sup>193</sup> Adam Smith (1723 – 1790) was a Scottish moral philosophers and economist, who is best known for his book “The Wealth of Nations”, where he developed the Theory of Moral Sentiments. This theory has establishes a new liberalism, in which social organisation is seen as the outcome of human action but not necessarily of human design. It was one of the foundations of the era of liberal free trade that dominated the Nineteenth Century. And as such Adam Smith impulses led to our modern day theories and his work marks the breakthrough of an evolutionary approach, which has progressively displaced the stationary Aristotelian view. He is thus regarded as the founder of classical economics.

<sup>194</sup> David Ricardo (1772 – 1823) introduced the classic model of international trade to explain the pattern and the gains from trade in terms of ‘comparative advantage’. It assumes perfect competition and a single factor of production, labour, with constant requirements of labour per unit of output that differ across countries.

<sup>195</sup> Christe (1995) *Die USA und der EG-Binnenmarkt* 18 *f*.

<sup>196</sup> In contrast to “free trade”, the theoretical construct of “protectionism” ~~– This contains aims~~ the protection of the domestic industry against foreign competition by means of implementing tariffs, quotas or other trade barriers, respectively, see Foldvary (1998) *Dictionary of Free-Market Economics* 146.

<sup>197</sup> Rutherford (2002) *Routledge Dictionary of Economics* 220.

African countries. Thus, neither the Cotonou Agreement nor the AGOA create “free trade”, but, ~~These legal documents rather constitute~~ implement a preferential trading arrangement with the African countries. By this, both the Cotonou Agreement and the AGOA make an effort to approach free trade as close as possible within their framework.

#### 4.1.5 Trade Creation and Trade Diversion

As has been said, both the Cotonou Agreement and the AGOA aim at opening-up markets by creating a preferential trading arrangement with the African countries. Even though that does not (yet) amount to complete free trade, it is intended to improve trade relations between the EU and the U.S. and the African countries as well as amongst the African countries themselves. However, it may seem doubtful whether the Cotonou Agreement and/or the AGOA truly achieve the goal to create trade or, in contrast, rather divert trade.

The concepts of “trade creation” and “trade diversion” ~~are were~~ first introduced by the Canadian economist Jacob Viner.<sup>198</sup> ~~Thereafter According to Viner,~~ “trade creation” occurs ~~if occurs when~~ a reallocated pattern of production leads to international specialisation based on efficient low-cost territories.<sup>199</sup> This is achieved in particular through the conclusion of a trading arrangement (for example, a customs union)<sup>200</sup>, which increases the volume of trade ~~through the elimination of~~ by eliminating previous trade barriers between the contracting parties.<sup>201</sup> Within the framework of such trading arrangement, the reduction or abolishment of tariffs, quotas or other trade impediments based on geographical reasons<sup>202</sup> consequently leads to the replacement of a high-cost source of production (formerly subsidised by reduced or abolished taxes etc.) by a lower cost source and, in this sense, creates trade. ~~More practically phrased~~ In still other words, “trade creation” is the result of an emphasis on production costs for important products, rather than a safeguard of national economic interests by reliance on import taxes and other trade impediments for foreign

---

<sup>198</sup> Viner (1950) *The Customs Union Issue*.

The subsequent presentation of the concepts of trade creation and trade diversion is displayed from the perspective of a free trader and does not take the perception of a protectionist into account.

<sup>199</sup> Johns (1985) *International Trade Theorie and the Evolving International Economy* 145.

<sup>200</sup> Viner in *The Customs Union Issue* developed the concept of trade creation and trade diversion on the example of a customs union.

<sup>201</sup> Rutherford (2002) *Routledge Dictionary of Economics* 567.

<sup>202</sup> Pearce (1992) *Macmillan : Dictionary of Modern Economics* 431.

products. Based on this, a party to such trading arrangement will import goods rather than purchase ~~been~~-national products if the imported product is available at a lower price.

~~In contrast, Opposed to that,~~ “trade diversion” results from discriminatory trade controls and leads to a diversion of trade from low-cost countries.<sup>203</sup> Just like trade creation, trade diversion is a result of the implementation of preferential trading agreements. However, it presents the “other side of the coin”. A preferential trading agreement establishes changes in tariffs, quotas or other trade impediments for the contracting parties. Within the circle of parties, this leads to trade creation. From the perspective of non-parties, however, this can cause trade diversion by supplanting a more efficient through a less efficient source.<sup>204</sup> The reason for that is that the preferential trading agreement excludes benefits to non-parties. As a consequence, goods produced in the countries enjoying favourable changes under the agreement are not burdened with tariffs etc. and may therefore have lower price than tariff-inclusive goods produced in non-parties to the agreement.<sup>205</sup> This may lead to a change in the supply of goods from countries not party to the agreement: An importing country which is party to a preferential trading agreement may decide to receive its goods rather from another party to the agreement instead of importing them from a non-party. This however, again leads to a diversion of trade from lower-cost to higher-cost producers and consequently reduces world efficiency.<sup>206</sup>

As has been pointed out, trade creation and trade diversion therefore present two sides of the same coin: the implementation of preferential trading agreements. The difference between trade creation and trade diversion thus depends only on the perspective: Trade diversion concerns the discontinuity of trade between two countries due to the implementation of a preferential trading system, whereas trade creation concerns originating trade inside the newly implemented preferential trading system. Trade, which evolves based on the implementation of a new preferential trading arrangement, therefore implies a shift in the locus of production and as such a shift from a high-cost to a lower cost point between the contracting parties (trade

---

<sup>203</sup> Johns (1985) *International Trade Theory and the Evolving International Economy* 145.

<sup>204</sup> Pearce (1992) *Macmillan : Dictionary of Modern Economics* 431.

<sup>205</sup> Black (1997) *A Dictionary of Economics* 470 f.

<sup>206</sup> Foldvary (1998) *Dictionary of Free-Market Economics* 281.



creation), and vice versa, a shift from a lower cost point to a higher cost point in relation to non-contracting parties (trade diversion).<sup>207</sup>

In conclusion, trade creation means the establishment of new import relations, whereas trade diversion describes a mere change in the source of imports. As such, both concepts affect different spheres. However, their evaluation must take into account that both phenomena are not mutually exclusive, but rather constitute the inevitable consequence of the implementation of a preferential trading agreement. This makes it hardly possible to evaluate one concept independently from the other. However, it is submitted that trade creation is generally associated with welfare improvement for the importing country since it reduces the cost of the imported good. Contrary to that, trade diversion is generally associated with welfare reduction for the importing country since it increases the cost of the imported good.<sup>208</sup> The reason for that is that the trade creating aspect of a preferential trading agreement leads to trade of goods which are produced most efficiently, whereas the trade diverting aspect of a preferential trading agreement results in the import of goods from a source, which produces less efficiently, but is able to supply the respective goods to a lower price because of reduced import costs.

The Cotonou Agreement as well as the AGOA provide for ~~a~~ preferential trading arrangement. However, they both function on a non-reciprocal basis, meaning ~~Solely that only~~ the EU and the U.S., respectively grant preferential access for the African countries to their ~~own~~ markets.<sup>209</sup> Based on Viner's model, the Cotonou Agreement as well as the AGOA ~~consequently~~ lead both to trade creation and trade diversion. ~~With regard to following from the establishment of preferential access to~~ the EU's and the U.S.' market, ~~the~~ African countries are in the role of ~~the~~ exporters. ~~Consequently a~~ From the standpoint of an exporter, both trade creation and trade diversion theoretically lead to an expansion of exports. In this line, the EU and the U.S., respectively, preferentially import from the ACP/SSA countries: either because these countries produce at lower costs compared to their own national industry or because these countries are able to supply the goods to a lower end-price compared to countries, which are not party to the Cotonou Agreement and beneficiary of the AGOA, respectively. Consequently, both the Cotonou Agreement

<sup>207</sup> Viner (1950) *The Customs Union Issue* 43 f.

<sup>208</sup> See "trade creation" and "trade diversion" on <<http://www-personal.umich.edu/~alandear/glossary/>> [accessed on 25 April 2005].

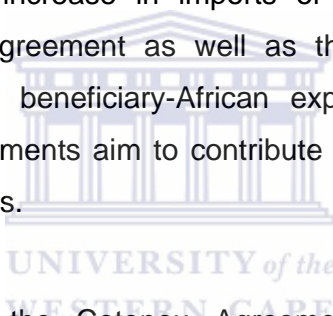
<sup>209</sup> See *supra* Chapter 2, 2.2, p 22 ff and Chapter 3, 3.2., p 37 ff.

as well as the AGOA - irrespective of their nature as either trade creating or trade diverting or both - will lead to an increase of export from such beneficiary African countries to the EU and the U.S., respectively.

This conclusion is supported by Shapouri and Trueblood.<sup>210</sup> Even though the work of these two experts focuses on the impact of the AGOA, they provide for a similar definition for and conclusion on the concepts of trade creation and trade diversion.

Accordingly, trade creation occurs because ~~the~~ U.S. consumers will buy a larger amount of lower priced goods from the SSA countries. Trade diversion, on the other hand, occurs because of the decline in U.S. imports from other exporting countries. In sum, the implementation of the AGOA will thus lead to an increase in U.S. imports at least from beneficiary SSA countries.

To sum up, the following conclusion seems justified: Based on the assumption that (1) trade serves development and (2) the implementation of preferential trading agreements leads to an increase in imports of goods produced in beneficiary countries, the Cotonou Agreement as well as the AGOA can be classified as furthering an increase of beneficiary-African exports to the EU and the U.S. Therefore, both legal documents aim to contribute to economic development in the beneficiary African countries.



#### 4.2 Influence of the Cotonou Agreement and the AGOA on Trade - a case study on Namibia

The following case study on Namibia provides one practical example of how the Cotonou Agreement and the AGOA affect trade with African countries. This serves clarification and puts the observations made above in an “every day life” context.

It might be argued that the decision for one specific country out of thirty-seven possible countries<sup>211</sup> affects impartiality of a judgement on the impact of the two legal documents as each country has its own profile regarding, *inter alia*, natural resources, political environment or geographic features. However, for the objective of

---

<sup>210</sup> Shapouri and Trueblood (2003) ‘The African Growth and Opportunity Act (AGOA): Does it really present opportunities?’ 7 <<http://www.agoa.info/index.php?view=download&story=research>> [accessed on 18 March 2005].

<sup>211</sup> In December 2004, U.S. President George W. Bush determined that thirty-seven SSA countries continue to be eligible for AGOA benefits; see ‘Statement on the African Growth and Opportunity Act’ <<http://www.whitehouse.gov/news/releases/2004/12/20041222-1.html>> [accessed on 8 April 2005].

this paper – the examination of the Cotonou Agreement's and AGOA's impact on trade – a case study helps to exemplify authenticity and true effect. Moreover, a case study exposes differences and/or similarities of the Cotonou Agreement and the AGOA in real terms.

#### 4.2.1 Namibia in brief<sup>212</sup>

In the following a portrait of Namibia will be presented. Apart from a special relation between Namibia and Germany due to former colonial ties, the current interesting economic and political structure undermines the decision taken in favour of Namibia as a role model for this case study.

The Republic of Namibia is situated along the south Atlantic coast of Africa and is divided into 13 regions. It is bordered by Angola and Zambia in the north, by Botswana and Zimbabwe in the east and South Africa in the south. The country has a surface area of 824 268 square kilometres. Its geography is marked by perennial rivers, which run along the country's borders, the Namib desert in the west and the Kalahari Desert on the southeastern border with Botswana. Due to a decrease in water supplies from the north to the south, the country's landscape varies from vast expanses of desert and dunes to rock formations in the south, contrasting the savannah and woodlands of the central regions and the lush and forested scenery of the northeast. Namibia's population is 1,83 million with a current growth rate of 2.6 per cent.<sup>213</sup> As much as 39 per cent of the population is under 15 years of age; only 7 per cent are aged over 60. Despite rapid urbanisation the country so far remains a mainly rural society with only 33 per cent of the population living in urban areas. The official language of Namibia is English and the currency used is Namibia Dollar (N\$).<sup>214</sup>

Since Namibia became independent in 1990, it has a parliamentary democracy. On 21 March 2005, Hifikepunye Pohamba was elected President, while Theo-Ben

---

The same thirty-seven countries are also part of the Cotonou Agreement, see Final Act to the Cotonou Agreement <[http://europa.eu.int/comm/development/body/cotonou/pdf/agr05\\_en.pdf#zoom=100](http://europa.eu.int/comm/development/body/cotonou/pdf/agr05_en.pdf#zoom=100)> [accessed on 8 April 2005].

<sup>212</sup> The following information on Namibia including the presented facts and figures are sourced from <<http://www.grnnet.gov.na>> [accessed on 8 April 2005].

<sup>213</sup> Figures are based on the 2001 Population Census, see <[http://www.grnnet.gov.na/Nav\\_frames/Nutshell\\_launch.htm](http://www.grnnet.gov.na/Nav_frames/Nutshell_launch.htm)> [accessed on 8 April 2005].

<sup>214</sup> Apart from English as the official language, six other languages exist in Namibia: Afrikaans, Oshivambo, Otjiherero, Nama, Damara and German.

Gurirab was elected Prime Minister. Both politicians belong to the ruling party named SWAPO.<sup>215</sup> Parliament consists of two chambers, the National Assembly and the National Council.<sup>216</sup> In 1993, Namibia became a GATT signatory and has been a member of the World Trade Organization since its creation in 1995. Furthermore, Namibia is a member of the following international organisations: UN, Commonwealth, African Union (AU), the Cotonou Agreement, Worldbank, IMF, Southern African Development Community (SADC) and Southern Africa Customs Union (SACU).

Namibian infrastructure consists of a network of quality gravel trunk as well as main and district roads, which link the country to its neighbouring countries. There are two harbours (Walvis Bay in the Erongo Region on the Atlantic coast and Luderitz harbour in the Karas Region), through which merchandise imports and exports as well as Namibia's fishing industry are handled. Walvis Bay is the only deep-sea harbour and handles some two million tonnes of cargo annually, mainly dry bulk, break bulk, petroleum products and containerised cargo. Namibia's railway network runs in the main line from the border with South Africa via Keetmanshoop to Windhoek, Okahandja, Swakopmund and Walvis Bay. Furthermore, Namibia has one main (international) airport, which is situated 48 kilometres east of Namibia's capital, Windhoek, two medium-size airports and several smaller aerodromes, which enable access to the thirteen regions of the country.

With regards to Namibia's macro-economy, since Namibia's independence positive results have been achieved: In 1998, Namibia's GDP per capita was at U.S.\$ 1,810, which is four times higher than the average of SSA countries and thus classifies Namibia as a middle-income country. Average real economic growth amounted to 3.7 per cent per year. Real national income per capita expanded on average by 1.6 per cent over the first years of independence, from N\$ 4,520 in 1990 to N\$ 44,884 in 1999. During the last five years of the 1990s, the average inflation rate was at a reduced level of 8.3 per cent per year, with a record low of 6.2 per cent in 1998.<sup>217</sup>

---

<sup>215</sup> SWAPO = South West Africa People's Organisation. Opposition parties are the CoD (Congress of Democrats), the DTA (Democratic Turnhalle Alliance), the MAG (Monitor Action Group - Afrikaans), the UDF (United Democratic Front - Damara) and the NUDO (National Unity Democratic Organisation - Herero).

<sup>216</sup> The National Assembly has seventy-nine members, whereas seventy-two are elected by means of proportional representation and six members are appointed directly by the President of Namibia. The National Council consists of twenty-six members composed of two representatives for each of the thirteen Namibian regions. These representatives are elected by majority voting system.

<sup>217</sup> In sum, the inflation rate in Namibia averaged 10 per cent over the last ten years.

The Real Gross Fixed Capital Formation grew at an average of 6.5 per cent per year during the 1990s.<sup>218</sup> Moreover, Namibia's balance of payments has yielded surpluses for most years of the 1990s, with strong current account surpluses outweighing net capital outflows.

Namibia has also implemented measures to ensure and attract foreign investment: Regarding exchange control, Namibia has embarked upon a continuous programme of exchange control relaxation, which started, *inter alia*, with the abolition of the financial Rand system in the Common Monetary Area (CMA) in 1995 and recently culminated in the accession of Namibia to Article VIII of the IMF's Articles of Agreement.<sup>219</sup> This ensures that international investors may invest in Namibia with the confidence that they will not be affected by any exchange control measures and that capital and dividends can be freely repatriated. Furthermore, Namibia has implemented a zero-tax regime called Export Processing Zone (EPZ)<sup>220</sup>. This regime was implemented on 1 March 1994 and has already attracted significant investments in manufacturing and re-export operations.

---

<sup>218</sup> Most of the investment was directed to the primary sector.

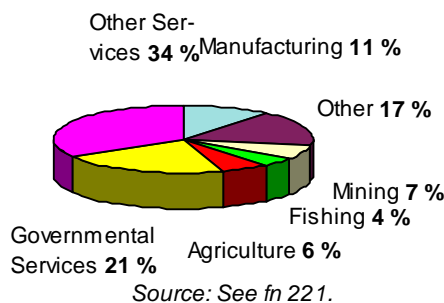
<sup>219</sup> The Common Monetary Area (CMA) is a monetary union consisting of Namibia, South Africa, Lesotho and Swaziland. At independence in 1990, Namibia opted to remain in the CMA, whereby South Africa continued to set monetary and exchange rate policies. With certain exceptions, free movement of capital is allowed within the area and a common exchange control regime is maintained with the rest of the world. The currencies of Namibia, Lesotho and Swaziland are pegged to the South African Rand (ZAR) on a one-to-one basis. Namibia's currency (N\$), however circulating on par with the ZAR, is also legal tender. Each member country has its own central bank, which is responsible for monetary policy within the respective country, and issues its own currency. Namibia (as well as Lesotho) has to back its currency issues by ZAR assets. For detailed information on the issue see Metzger 'The Common Monetary Area in Southern Africa: A typical South-South Coordination Effort?' <<http://www.duei.de/iik/de/content/forschung/pdf/commonmonetaryarea.pdf>> [accessed on 8 April 2005].

In 1994, Namibia started with gradual phasing-out of exchange control: Early in 1994, a final debt rescheduling agreement was reached with foreign creditors. In March 1995, the financial was abolished and the restrictions applicable to the repatriation of non-resident owned funds were removed. See Ministry of Finance 'Statement on exchange change control issued jointly by Mr. Trevor Manuel, Minister of Finance and Dr Chris Stals, Governor of the South African Reserve Bank – 12 March 1997' 1 <<http://www.treasury.gov.za/press/other/1997/1997031201.pdf>> [accessed on 24 October 2005].

Under Article IV of the IMF's Articles of Agreement, the IMF holds bilateral discussions with members, usually every year. A staff team visits the country, collects economic and financial information, and discusses with officials the country's economic developments and policies. On return to headquarters, the staff prepares a report, which forms the basis for discussion by the Executive Board. At the conclusion of the discussion, the Managing Director, as Chairman of the Board, summarises the views of Executive Directors, and this summary is transmitted to the country's authorities. To view the 'Articles of Agreement of the International Monetary Fund' see <<http://www.imf.org/external/pubs/ft/aa/>> [accessed on 8 April 2005].

<sup>220</sup> Via its EPZ regime, Namibia offers a very attractive fiscal incentive in Africa. The EPZ provides a tax haven for manufacturers, importers and exporters, as well as a wide range of concessions and benefits. For further information on the issue, see <<http://www.namibianembassyusa.org/Trade%20%20Investment/epz.php>> and / or <<http://www.namibweb.com/epz.htm>> [both accessed on 8 April 2005].

## Namibia: Economic Structure



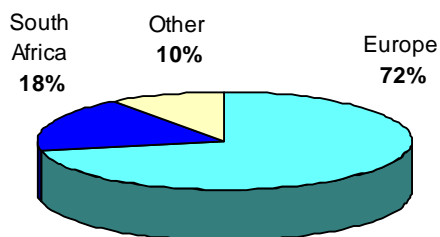
With regard to Namibia's (macro-) economic structure, the above diagram shows that services (governmental and others) account for a major share of 56 per cent of the economy. However, it should be noted that the country is relatively rich in natural resources. These comprise diamonds, copper, uranium, gold, plumb, tin, lithium, cadmium, zinc, salt, vanadium, natural gas, water energy and fish. Accordingly, the Namibian economy relies on the primary and the tertiary sectors.<sup>222</sup> Agriculture, fishing and mining make up 17 per cent of Namibian economy and thus build the backbone of national economy. For this reason, Namibian economic potential is dictated to a large extent by external factors such as weather, oceanic conditions and international commodity prices. In particular, world market prices for diamonds and uranium, of which Namibia is the fifth and sixth largest global producer by value, have a determining impact on national economy in whole. The manufacturing sector, which is mainly based on fish, food and meat processing activities, is steadily growing and already an important sector of the Namibian economy (11 per cent).

---

<sup>221</sup> Standard Bank, Economics Division, Africa Economic Research 'Annual Profile: Namibia' (2003) <[http://www.sarpn.org.za/documents/d0000206/P197\\_Namibia.pdf](http://www.sarpn.org.za/documents/d0000206/P197_Namibia.pdf)> [accessed on 15 April 2005].

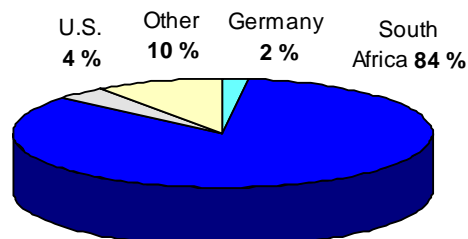
<sup>222</sup> A (developed) economy consists of three main industrial categories: The primary sector of industry generally involves the conversion of natural resources into primary products. Most products from this sector are considered raw materials for other industries. Major businesses in the primary sector include agriculture, agribusiness, fishing, forestry and all mining and quarrying industries. The secondary sector of industry is the manufacturing sector of industry. This sector of industry generally takes the output of the primary sector and manufactures finished goods or products to a point where they are suitable for use by other businesses, for export, or sale to domestic consumers. The tertiary sector of industry is also called the service sector or the service industry. It involves the provision of services to other businesses as well as final consumers. Services may involve the transport, distribution and sale of goods from producer to a consumer, as may happen in wholesaling and retailing, or may involve the provision of a service, such as in tourism or entertainment.

Namibia: Destination of Exports, 1994 -2003



Note: Figures of 2002 estimated, figures of 2003 forecasted  
Source: See fn 223.

Namibia: Source of Imports, 1994 - 2003



Note: Figures of 2002 estimated, figures of 2003 forecasted  
Source: See fn 223.

South Africa is Namibia's major trading partner, accounting for 84 per cent of imports and 18 per cent of exports. Reason for this is, *inter alia*, that monetary and exchange rate policy in Namibia is influenced by Namibia's membership of the CMA.<sup>224</sup> Due to the CMA, the one-to-one parity between the ZAR and the N\$ eliminates exchange rate uncertainty and promotes trade and investment flows between the two countries.<sup>225</sup>

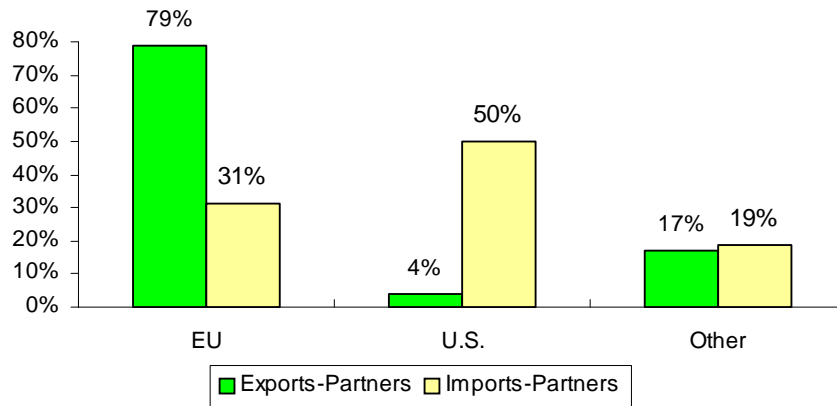
As the above diagram shows, other main destinations for exports are Europe, in particularly the UK, Spain and Germany. Regarding imports, the U.S. and Germany are the second and third main supplier accounting for four and two per cent, respectively, of total imports to Namibia. In 2001, the U.S. and the EU were also major trading partners regarding Namibian exports as outlined in the following diagram. This shows that the shares of each trading partner vary from year to year regarding the amount of exports and imports.

<sup>223</sup> Standard Bank, Economics Division, Africa Economic Research 'Annual Profile: Namibia' (2003), <[http://www.sarpn.org.za/documents/d0000206/P197\\_Namibia.pdf](http://www.sarpn.org.za/documents/d0000206/P197_Namibia.pdf)> [accessed on 15 April 2005].

<sup>224</sup> With regards to the CMA, see *supra* fn 219.

<sup>225</sup> Tjirongo 'Short-Term Stabilisation Versus Long-Term Price Stability: Evaluating Namibia's Membership of the Common Monetary Area' 2 <<http://www.csae.ox.ac.uk/workingpapers/pdfs/9518text.pdf>> [accessed on 24 October 2005].

### Namibia: Exports- & Imports-Partners, 2001



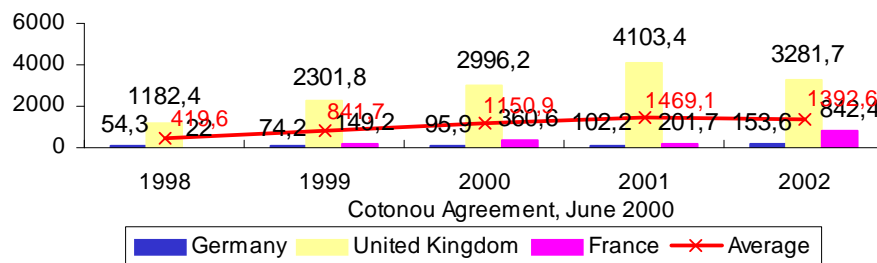
Source: See supra fn 223.

#### 4.2.2 The Impact of the Cotonou Agreement on Namibian Trade

Earlier, it has been concluded that the Cotonou Agreement creates both trade creation and trade diversion with regard to exports of eligible African countries. It has also been found that in general, this will nevertheless lead to an increase of export of African countries to EU Member States.<sup>226</sup>

This conclusion, however, needs further analysis regarding its validity. Thus, in the following, it will be examined whether this general conclusion also applies to trade relations between Namibia and the EU.

### Namibian Exports to Selected EU Member States, 1998 - 2002



NOTE: All figures are in millions of Namibian dollars. Source: See fn 227.

The above diagram shows Namibian exports to selected EU Member States during the years 1998 until 2002. The latter states are France, Germany and the UK. From

<sup>226</sup> See supra Chapter 4, 4.1.5, p 50 ff.

<sup>227</sup> 'IMF Country Report No. 05/96' (March 2005) <<http://www.imf.org/external/pubs/ft/scr/2005/cr0596>.



1998 until 2000, Namibia enjoyed an increase in exports to each selected EU Member State. In 2001, the year following the implementation of the Cotonou Agreement (June 2000), Namibian exports to France slightly decreased. In contrast, exports from Namibia to Germany and to the UK remained on an increase. In 2002, the UK - generally the main EU customer of Namibian exports in terms of value of exported goods<sup>228</sup> faced a decrease in Namibian exports. On the contrary, Germany and, in particular, France experienced an increase in Namibian exports in that year. The individual export results for the selected EU Member States are also represented in the joint graph, which indicates the average of Namibian exports to the EU: from 1998 until 2001, Namibian exports to the EU enjoyed a steady and relatively large increase. The average figure of Namibian exports increased from 419,6 millions of N\$ in 1998, over 841,7 in 1999, 1150,9 in 2000 to 1469,1 millions of N\$ in 2001. This changed in 2002 due to declining UK imports. The average Namibian export figure hence decreased to an amount of 1392,6 millions of N\$ in 2002.

Notwithstanding 2002, the general trend in Namibian exports is characterised by a steady increase. This result corresponds to the earlier theoretical finding that the Cotonou Agreement leads to an overall increase in exports of eligible African countries to the EU, regardless of whether the Agreement's individual provisions be trade creating or trade diverting.



#### 4.2.2.1 Namibian Exports to Germany

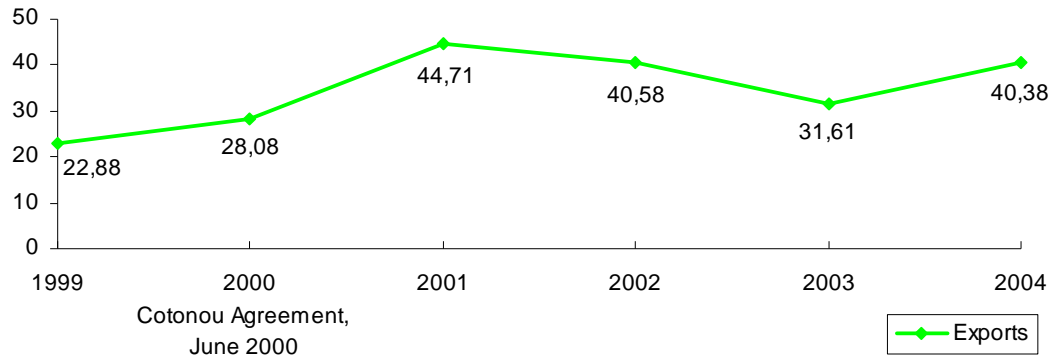
The following analysis focuses on Namibian exports to Germany in order to prove that the Cotonou Agreement leads to an increase of exports between African countries and EU Member States also with regard to individual states. The relevant time period examined will be from 1999 to 2004.

---

pdf> [accessed on 15 April 2005].

<sup>228</sup> The value meant here is measured in earnings for Namibian imports in Namibian dollars.

### Namibian Total Exports to Germany, 1999 - 2004



NOTE: All figures are in millions of Euros. Source: See fn 229.

A first insight into the export trade relations from Namibia to Germany derives from the above diagram, which displays Namibian total exports in terms of millions of Euro between 1999 until 2004.

On the outset, it shall be recalled that EU-legislation regulating trade relations between the ACP countries and the EU Member States was subject to a renewal in 2000, when the Cotonou Agreement replaced the Lomé Conventions. The Cotonou Agreement implemented new provisions and regulations and as such affected different industries of Namibia.<sup>230</sup>

It is hard to determine how long it actually takes for legal reforms to have an impact on a country's economy since this depends on various factors, *inter alia*, on the mode of legislative procedures. Insofar as an affected industry has taken part in or has at least followed the legislative procedure, this industry may be able to react to newly implemented rules immediately. There is no information available to that effect concerning Namibia. Nevertheless, the natural fact that the country in general and its affected businesses in particular needed a certain "time to respond" to the newly implemented Cotonou Agreement must be taken into account upon subsequent evaluation.

During the first years of the implementation of the Cotonou Agreement, Namibian export figures steadily increased and the value of exports in terms of N\$ even doubled in 2001 compared to 1999. In terms of figures, Namibia exported goods of a value of 22,88 million Euro to Germany in 1999. Export figures increased up to 28,08 million Euro in 2000, and to 44,71 million in 2001. Thus, on the basis of these figures, it has to be assumed that this increase is owed to the implementation of the Cotonou Agreement as figures doubled in the year following the implementation of the Cotonou Agreement. In 2002 and 2003, however, Namibian exports to Germany

<sup>229</sup> Eurostat <<http://fd.comext.eurostat.cec.eu.int/xtweb/>> [accessed on 29 April 2005].

<sup>230</sup> See *supra* Chapter 2, 2.2, p 22 ff.

experienced a decline. In 2002, Namibia exported goods of a value of 40,58 million Euro and, in 2003, of 31,61 million Euro.

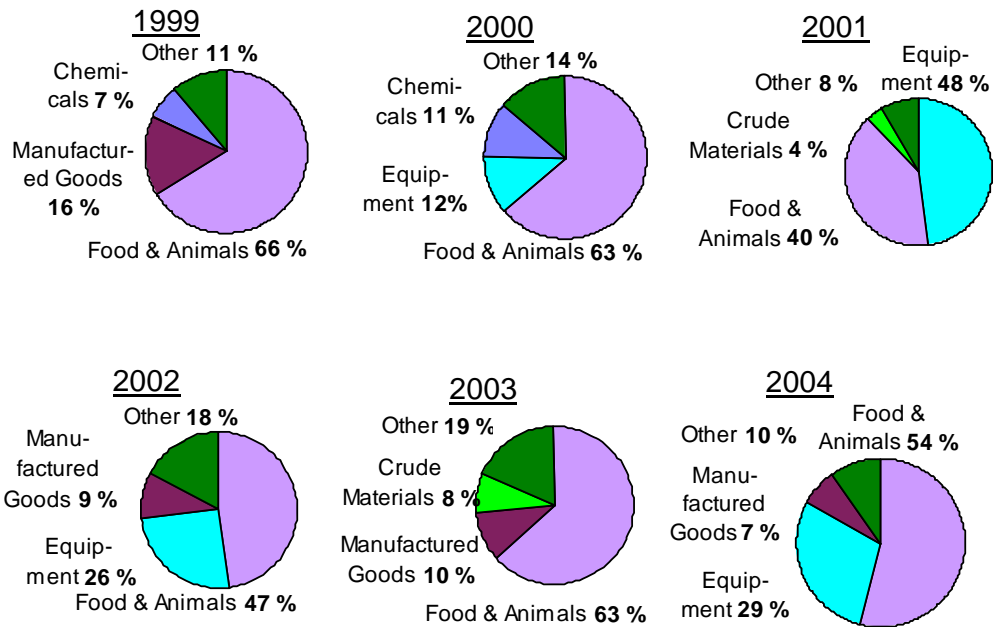
An analysis on the basis of the whole time period examined appears to suggest that the Cotonou Agreement does not favour trade between Namibia and Germany in general. However, it is hardly possible to discern individual factors and motives which have influenced the results found, all the more so because these may not necessarily be owed to the Agreement. Therefore, it cannot be determined from this analysis alone whether the Cotonou Agreement leads to an increase or a decrease of trade relations between Namibia and Germany.

All that can be said so far is that Namibian export figures with regard to Germany since the implementation of the Cotonou Agreement have never decreased to a level below the amount of Namibian exports in 1999/2000. Particularly in 2004, Namibian exports to Germany augmented again and even reached a value of 40,38 million Euro. In general, it therefore appears that the Cotonou Agreement has had a rather positive influence on trade relations between Namibia and Germany.

#### 4.2.2.2 Namibian Exports to Germany Classified by Commodity

The validity of the aforementioned evaluation will be examined in detail by an analysis of data on Namibian export to Germany classified by specific commodities during the same time period (1999 – 2004).

#### Namibian Exports to Germany Classified by Commodity, 1999 - 2004



Source: See fn 231.

The diagram above consists of six circular charts, each representing one year from 1999 until 2004. Each chart is divided into four parts, three of them presenting export figures of those commodity groups, which constitute the main export volume during the respective year. The fourth part combines the remaining seven commodity groups into one part called “Other”.<sup>232</sup>

In 1999, Namibia’s main export commodity group with regard to Germany constituted ‘Food & Animals’ (technically called ‘Food and Live Animals’) with 66 per cent of the total share, followed by ‘Manufactured Goods’ (technically named ‘Manufactured Goods Classified Chiefly by Material’) with 16 per cent. The part called ‘Other’ made up 11 per cent and ‘Chemicals’ (technically named ‘Chemicals and Related Products, N.E.S.’) had 7 per cent of the total share.<sup>233</sup>

A comparison over the years shows that Namibian exports of ‘Food and Live Animals’ and ‘Chemicals and Related Products, N.E.S.’ has suffered a decrease. This decrease, however, has been substituted by other commodities. In particular,

<sup>231</sup> Eurostat <<http://fd.comext.eurostat.cec.eu.int/xtweb/>> [accessed on 29 April 2005]; for further information on the classification of the commodities, see *infra* Annex A, A - 2, p 79.

<sup>232</sup> Respective data, which forms the basis of the diagram can be viewed in Annex I. There a table shows exports figures presented in millions of Euro for each of the ten commodity groups in each year.

<sup>233</sup> In 1999, the part named ‘Other’ consists of the commodity groups 1. Beverages and Tobacco, 2. Crude Materials, Inedible, Except Fuels, 3. Mineral Fuels, Lubricants and Related Materials, 4.

'Equipment' (technically named 'Machinery and Transport Equipment') enjoyed an increase in export figures, as well as 'Manufactured Goods Classified Chiefly by Material' and 'Crude Materials' (technically named 'Crude Materials, Inedible, Except Fuels'). Though export figures regarding these three commodity groups fluctuate over the years, a general increase can be asserted.

The fluctuation in Namibian export figures is also visible with regard to other commodities. Thus, for example, 'Machinery and Transport Equipment' made up 12 per cent of total exports in 2000, 48 per cent in 2001 and 26 per cent in 2002. In 2003, this commodity group does not even constitute one of the three main export groups, whereas in 2004, exports surprisingly increased again to amount to 29 per cent of the total export share.

These results can hardly be ascribed exclusively to the implementation of the Cotonou Agreement in June 2000, even more so as the diagram displays the distribution amongst the Namibian exports to the EU of a given amount. Thus, rather other factors, such as a greater or lesser demand in Germany regarding particular goods previously a given year may have had an impact. However, factors of this kind do not refute the position that the Cotonou Agreement did have a positive influence on trade relations between Namibia and Germany. In sum, the above diagram can therefore not provide for a definite answer to the question of whether the Cotonou Agreement had a positive or negative impact on Namibian exports to Germany. It rather shows that the implementation of the Cotonou Agreement obviously caused fluctuation amongst the various exported goods from Namibia to Germany in the first years of the implementation of the Cotonou Agreement.

#### 4.2.3 The Impact of the AGOA on Namibian Trade

Namibia gained AGOA eligibility on 2 October 2000 simultaneously to the Act's implementation. However, apparel provisions of AGOA I became only applicable to beneficiary countries upon being expressly granted to an individual state.<sup>234</sup> With regard to Namibia, this happened on 3 December 2001.

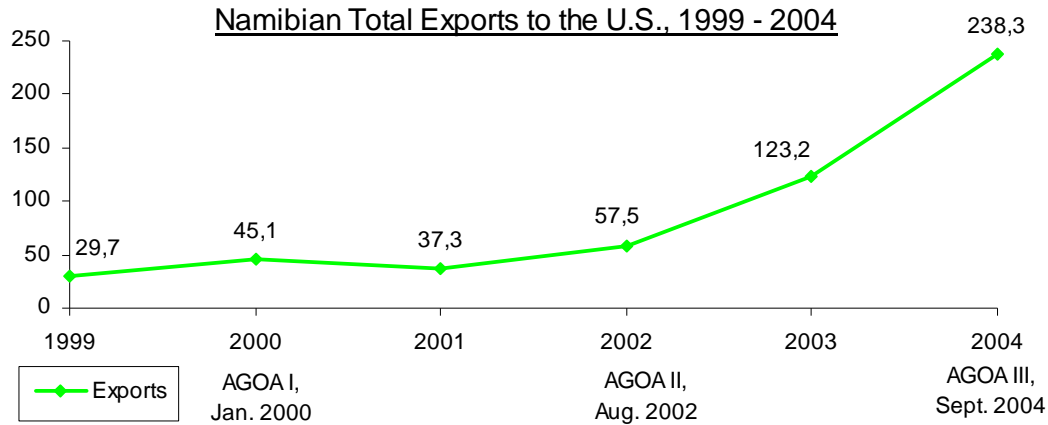
---

Machinery and Transport Equipment, 5. Miscellaneous Manufactured Articles, 6. Other Products and 7. Animal and Vegetable Oils, Fats and Waxes (see *infra* Annex A, A - 2, p 79).

<sup>234</sup> Apparel provisions are those provisions of the AGOA providing for preferential import of apparel and textile products from SSA countries to the U.S. See also *supra* Chapter 3, 3.1.3, p 36 f.

#### 4.2.3.1 Namibian Exports to the U.S.

A first insight in the impact of AGOA on trade between Namibia and the U.S. is derived from the following charts, which display Namibian total export figures to the U.S. over the last six years (1999 - 2004), measured in millions of U.S. dollars.



NOTE: All figures are in millions of U.S. dollars. Source: See Fn 235.

Once more, it has to be taken into account that Namibia and its affected businesses needed a certain “time to respond” to the newly implemented AGOA. This holds true all the more so since applicable legislation concerning AGOA was subject to three modifications and amendments over the last six years: In January 2000 AGOA I came into effect, in December 2001 Namibia gained apparel eligibility under the AGOA, in August 2002 AGOA II and in September 2004 AGOA III was implemented. These modifications brought changes to numerous provisions, which likewise had an effect on the affected Namibian industries.<sup>236</sup>

The ascending graph of the diagram clearly indicates that Namibian exports to the U.S. have generally enjoyed a steady increase. Notwithstanding a slight decrease in 2001, Namibian exports to the U.S. boosted from 29,7 million U.S. dollars in 1999 up to 238,3 million in 2004. Particularly since 2002, export figures doubled: from 57,5 millions U.S. dollars in 2002, over 123,2 million in 2003, finally amounting to 238,3 million in 2004.

The increasing figures of Namibian exports to the U.S. support the theoretical conclusion that the implementation of the AGOA had a positive impact on exports of

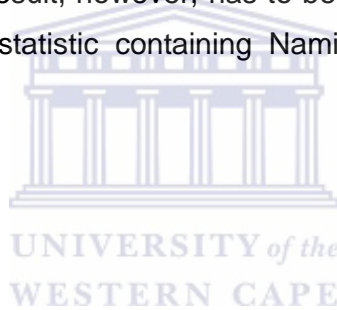
<sup>235</sup> U.S. Census Bureau <<http://www.census.gov/foreign-trade/balance/c7920.html#1999>> [accessed on 8 April 2005].

<sup>236</sup> See *supra* Chapter 3, 3.2, p 37 ff.

eligible SSA countries, such as those from Namibia to the U.S.<sup>237</sup> The slight increase of Namibian exports to the U.S. during the years 1999 and 2001/2002 is likely to have been the result of the implementation of AGOA I. Furthermore, the remarkable increase in the amount of Namibian exports to the U.S. in 2003 most probably results from the implementation of AGOA II in August 2002, which granted Namibia the status of a lesser developed beneficiary SSA country and thus allowed Namibian producers to use third country fabric in AGOA benefit eligible apparel. In addition, AGOA II modified provisions regarding preferential treatment of textile and apparel products. Both changes brought about by AGOA II imply that this reform was used by the Namibian industry to expand production in their textile and apparel industry and therefore enjoyed an increase in exports to the U.S.

#### 4.2.3.2 Namibian Exports to the U.S. Classified by Commodity

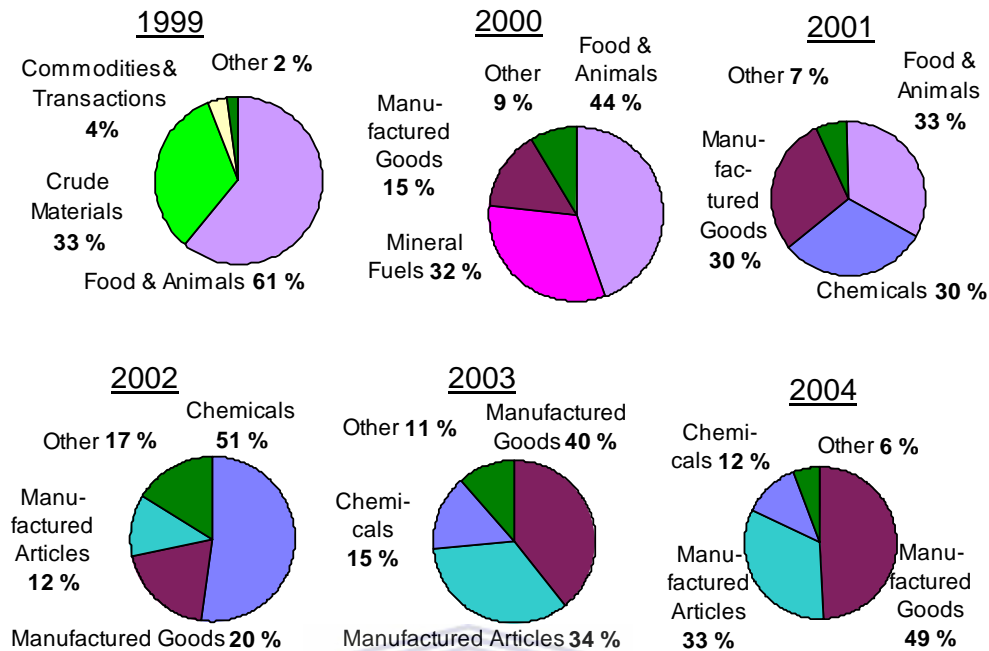
The validity of the above result, however, has to be further analysed on the grounds of the presentation of a statistic containing Namibian export figures to the U.S. classified by commodity.



---

<sup>237</sup> See *supra* Chapter 4, 4.1.5, p 50 *ff.*

## Namibian Exports to the U.S. Classified by Commodity, 1999 - 2004



Source: See fn 238.

The composition of the diagram 'Namibian Exports to the U.S. Classified by Commodity, 1999 - 2004' is equivalent to that of the diagram 'Namibian Exports to Germany Classified by Commodity, 1999 - 2004'.<sup>239</sup> Therefore, the explanations above apply here *mutatis mutandis*.<sup>240</sup>

In 1999, Namibia's main export commodity groups with regard to the U.S. constituted 'Food and Live Animals' and 'Crude Materials, Inedible, Except Fuels' with 61 and 33 per cent of the total export share. This changed in 2000 when the commodity group 'Crude Materials, Inedible, Except Fuels' ceased to be one of the main commodity groups; thus, this commodity is not represented in following charts. Also in 2000, the share in exports of 'Food and Live Animals' decreased, ultimately resulting in non-representation as one of the three main export commodity groups since 2002. In contrast, the commodity groups 'Manufactured Goods Classified Chiefly by Material' and 'Mineral Fuels' (technically named 'Mineral Fuels, Lubricants and Related Materials') enjoyed a radical increase in exports in 2000. Since then 'Manufactured

<sup>238</sup> U.S. Census Bureau <<http://www.census.gov/foreign-trade/sitc1/index.html>> [accessed on 15 April 2005]; for further information on the classification of the commodities, see *infra* Annex B, B – 2, p 86 *f*.

<sup>239</sup> See *supra* Chapter 4, 4.2.2.1, p 61 *f*.



Goods Classified Chiefly by Material' - with slight fluctuation over the years - constituted one of the main export groups. In contrast, the amount of "Minerals Fuels, Lubricants and Related Material' has diminished radically in 2001, and since then, this commodity group is not further represented in the charts. As a "substitute", Namibia exported 'Chemicals and Related Materials, N.E.S.' to the U.S. in the following years.

Since 2002, the charts show a rather steady result. From 2002 until 2004, the three main export commodity groups were 'Chemicals and Related Materials, N.E.S.', 'Manufactured Goods Classified Chiefly by Material' and 'Mineral Fuels' and 'Manufactured Articles' (technically named 'Miscellaneous Manufactured Articles'), whereby the amount in exports of these commodity groups fluctuated throughout the years.

In sum, the diagram displays an interesting result. Commodities, which were mainly exported by Namibia to the U.S. from 1999 until 2001 - most obvious the commodity group of 'Food and Live Animals' -, were "substituted" by other commodity groups. Since 2002, the main export groups are comprised of 'Chemicals and Related Materials, N.E.S.', 'Manufactured Goods Classified Chiefly by Material' and 'Miscellaneous Manufactured Articles'. In particular, since 2003 the main share in Namibian exports to the U.S. is made up of 'Manufactured Goods Classified Chiefly by Material' and 'Miscellaneous Manufactured Articles' with 73 per cent of the total share, whereas the share of exports in 'Chemicals and Related Products, N.E.S.' steadily decreases.

These results are most likely influenced by the implementation of AGOA II in August 2002. The modifications in trade relations between the U.S. and the SSA countries brought about by AGOA II predominantly concerned apparel provisions and rules of origin for garments.<sup>241</sup> In particular, AGOA II provided for preferential treatment of textile and apparel products not favoured before, introducing for example, an apparel cap for apparel articles produced in Africa from regional fabric made with regional yarn of the doubled amount compared to previous legislation. Furthermore, AGOA II doubled the annual quantitative limit on apparel articles assembled in lesser-developed beneficiary countries. Moreover, AGOA II granted Namibia the status of a

---

<sup>240</sup> Respective data, which forms the basis of the diagram 'Namibian Exports to the U.S. Classified by Commodity, 1999 - 2004' can be viewed in Annex B. There a table shows exports figures presented in millions of U.S. dollars for each of the ten commodity groups in each year.

<sup>241</sup> See *supra* Chapter 3, 3.1.3, p 36 f.

"lesser developed beneficiary sub-Saharan African country". As shown *infra* in Annex B, B – 3, p 89, the commodity group of 'Manufactured Goods Classified Chiefly by Material' comprises, *inter alia*, textile yarn, fabrics made-up articles and related products. The commodity group of 'Miscellaneous Manufactured Articles' contains, *inter alia*, articles of apparel and clothing accessories. These modifications of the AGOA suggest that for a beneficiary country to augment the amount of export earnings from exports to the U.S., it has to produce the goods listed in the latter such apparel articles, textile yarn etc.

With regards to the above diagram, it is shown that Namibia surprisingly did augment export in the said fields. Thus, on the one side, AGOA II has offered Namibia the possibility to maximise trade benefits with the exports of textiles and apparels and their related products. On the other side, Namibia has discovered this possibility and has converted it into practice. Apart from evaluating this result as being negative or positive, it can be asserted that the AGOA offered Namibia a possibility to maximise their trade benefits from export to the U.S., which has been taken by the country.



This thesis has attempted to provide an analysis of two legal instruments: the Cotonou Agreement and the AGOA. Specific attention was hereby directed to these instruments' impact on trade between the EU and the U.S., respectively, and beneficiary African countries. In this respect, the thesis has addressed two main questions regarding the preferential trading arrangements of the Cotonou Agreement and the AGOA.

The first question concerned the historical background of the Cotonou Agreement and the AGOA.

Thereby, the analysis has displayed that the EU looks back on a long history with the African continent, in particular, with the African countries, which are now part of the ACP group of states party to the Cotonou Agreement<sup>242</sup>: Due to an already existing relationship between Europe and Africa since the beginning of colonialism, the Treaty of Rome<sup>243</sup> in conjunction with the establishment of the first EDF<sup>244</sup> laid down the cornerstone for two generations of association agreements (Yaoundé I in 1964 and Yaoundé II in 1971). In the mid-seventies international attention was put on the (economic) relation between "first-" and "third-world-countries".<sup>245</sup> Europe was thereby forced to reconsider its relationship with the African continent, due to the fact, *inter alia*, that this relation was hitherto still influenced by former colonialism. Accordingly, in 1976 the EEC agreed to implement a co-operation agreement with the ACP group of states, the first so-called Lomé Convention<sup>246</sup>, which experienced a renewal in 1979 (Lomé II)<sup>247</sup>, in 1985 (Lomé III)<sup>248</sup> and in 1991 (Lomé IV)<sup>249</sup>. Thus, former colonial ties and the *acquis* of 25 years of Lomé Conventions are one reason for the current status of the relationship between the EU and the African countries of the ACP group of states. Furthermore, economic considerations induced by globalisation influenced the EU to create the Cotonou Agreement as a broad agreement, which not only contains trade and trade related issues but also concerns aid mechanism regarding different fields of development.

---

<sup>242</sup> See *supra* Chapter 2, p 5 fn 18 f.

<sup>243</sup> The Treaty of Rome, also known as the 'Treaty Establishing the European Economic Community' was signed in Rome on 25 March 1957.

<sup>244</sup> Becker *Die Partnerschaft von Lomé* 19.

<sup>245</sup> A number of initiatives was brought forward by, *inter alia*, the Club of Rome, the OAU and the UN, see *supra* Chapter 2, 2.1.3, p 12, fn 47 f.

<sup>246</sup> See *supra* Chapter 2, 2.1.4, p 12 ff.

<sup>247</sup> See *supra* Chapter 2, 2.1.5, p 15 ff.

<sup>248</sup> See *supra* Chapter 2, 2.1.6, p 17 f.

Compared to the EU, the U.S. does not look back on such an intense history with the African continent.<sup>250</sup> Apart from the early 19<sup>th</sup> century, when the U.S. established an independent Liberia on the west coast of Africa as a resettlement area for freed slaves and others of African decent residing in the U.S., U.S. policy towards Africa ever since has been based on the so-called 'hands-off' principle. This changed during the Cold War period: On the one side, the U.S. recognised the geostrategic potential of Africa as a large supplier for raw materials critical in particular to military and industrial purposes. On the other side, U.S. foreign policymakers discovered the new vital national interest to obviously fight Communism wherever it appeared in the world. During the 1960s until the 1970s, the zenith of the U.S. anticommunist posture has been reached, when the U.S. supported rebel movements like the South-African sponsored guerrilla group UNITA in Angola<sup>251</sup> and military incursions by South Africa itself as part of the later destabilisation policies.<sup>252</sup> Against this background, U.S. Congress thus implemented the Trade Act of 1974 containing, *inter alia*, the U.S. GSP designed to promote economic growth in the developing world by providing duty-free access to the U.S. for eligible products. Between the following 1980s and the 1990s, U.S. policy towards Africa was primarily based on the principle of quiet diplomacy followed by a lack of integrated strategy and interrupted solely by the participation of the U.S. in the UN humanitarian mission in Somalia from 1992 until 1994.<sup>253</sup> As that experience has shown, a lack of proactive Africa policy might bring the U.S. in a situation unprepared to effectively respond to international crises and the Clinton Administration therefore established new governmental institutions, which are meant to, *inter alia*, build African capacity for peacekeeping with U.S. assistance. This evolving commitment to build a new partnership with Africa gave rise to a White House Conference on Africa in 1994 followed by an African Summit in 1995, which for the first time has been attended by a large U.S. delegation. These new initiatives laid down the cornerstone for new U.S. legalisation favouring African countries by establishing economic relationships through an invigorated emphasis on trade and investment. For this and for other reasons, in May 2000 the U.S. implemented the

---

<sup>249</sup> See *supra* Chapter 2, 2.1.7, p 18 ff..

<sup>250</sup> See *supra* Chapter 3, 3.1, p 27 ff.

<sup>251</sup> For further information on UNITA (National Union for the total independence of Angola), see <<http://www.namibian.com.na/2002/February/africa/02458C31EE.html>> [accessed on 16 March 2005].

<sup>252</sup> For analysis of South Africa's destabilisation policies, see Turok, *Witness from the frontline: Aggression and Resistance in Southern Africa*.

<sup>253</sup> See *supra* Chapter 3, 3.1.1, p 30, fn 120.

AGOA as a unilateral piece of legislation, which benefits SSA countries solely with regard to trade and trade-related issues.<sup>254</sup> In order to improve the application and functioning of AGOA, the AGOA has been twice amended and modified ever since: once in August 2002 by AGOA II<sup>255</sup> and again in July 2004 by AGOA III<sup>256</sup>.

The current legal status of both trading arrangements, namely the Cotonou Agreement and the AGOA, are in conformity with WTO Law.<sup>257</sup> Since 1979 special treatment of trade with developing countries enjoys conformity with WTO law due to an indefinite extent of two waivers, which, first, incorporated the GSP programme into the GATT as an exception to the MFN principle and, second, allowed developing countries to exchange tariff preferences among themselves.

With regard to their textual emphasis, the EU and the U.S. stated in the preamble to the Cotonou Agreement and the AGOA, respectively, that the objectives are, *inter alia*, to support eligible countries on the African continent in their effort to reach sustainable development. In order to reach these objectives, the Cotonou Agreement and the AGOA contain provisions, *inter alia*, which are supposed to promote trade, maximise trade benefits and thus push forward the trading countries' economy by means of simplifying the rules of origin, reducing tariffs, increasing quotas etc. However, it has to be taken into consideration that the EU and the U.S. are world economic powers, who also pursue their own (economic) interests. This is already been adumbrated by their respective legal status: whereas the U.S. implemented a unilateral piece of legislation, the EU agreed to a legal instrument based on mutual consent. However, an analysis as to why the two world powers have chosen these different ways of granting preferences to the African countries has shown that it is not possible to reduce the answer to one reason: it is rather an answer composed of a bundle of reasons, which are not separable from each other.<sup>258</sup> According to this, honourable motivation as to, *inter alia*, foster and promote development might be one reason for their actions but not the only one. In any case, here it is trade, which is understood to be the main tool for development as (international) trade has the potential to raise the economic standard of living in a country due to its national productive industry.<sup>259</sup>

---

<sup>254</sup> See *supra* Chapter 3, 3.1.2, p 32 ff.

<sup>255</sup> See *supra* Chapter 3, 3.1.3, p 36 f.

<sup>256</sup> See *supra* Chapter 3, 3.2, p 37 ff.

<sup>257</sup> See *supra* Chapter 4, 4.1.2, p 43 ff.

<sup>258</sup> See *supra* Chapter 4, 4.1.2, p 43 ff.

<sup>259</sup> See *supra* Chapter 4, 4.1.4, p 48 ff.

The interconnection between trade and development leads to the second question concerning the issue of whether the Cotonou Agreement and the AGOA are trade creating or diverting. It has been pointed out, that trade creation and trade diversion are both the consequential effect of the implementation of a preferential trading arrangement: Whereas trade creation concerns originating trade inside a newly implemented preferential trading arrangement, trade diversion describes the phenomenon of discontinuity of trade between two countries due to the implementation of such arrangement.<sup>260</sup> For eligible African countries under the Cotonou Agreement and the AGOA, the analysis has shown that both legal instruments in general will lead to a maximisation of trade, notwithstanding the fact that specific national and international trade relations of the African countries concerned may experience trade creating or trade diverting effects.

The trade creating and/or trade diverting effect has then been evaluated on a practical basis having used Namibia as a role model for the African countries, because it is, *inter alia*, party to the Cotonou Agreement as well as beneficiary of the AGOA. The analysis of Namibian exports to the EU and the U.S. supports the proposition that these legal instruments overall further international trade by eligible African countries disregarding of the theoretical determination of individual provisions as trade creating and trade diverting.

The first diagram displayed a graph of Namibian exports to the EU between 1998 and 2002 and revealed, however, a steady and smooth increase throughout the whole time period.<sup>261</sup> Accordingly, it was not possible to unambiguously ascribe the increase to the implementation of the Cotonou Agreement in 2000. Namibian total export figures to Germany between 1999 until 2004 offered a very similar vague result.<sup>262</sup> Though the graph did not enjoy a steady and smooth increase during the analysed time period and rather fluctuated over the years, this result can neither be ascribed to the implementation of the Cotonou Agreement. The only possible result taken here was that since the implementation of the Cotonou Agreement Namibian export figures to Germany have never decreased to a level below its initial level in 2000. The diagram regarding Namibian export figures to Germany classified by commodity did also not present a graph, whose fluctuation can be ascribed to a

---

<sup>260</sup> See *supra* Chapter 4, 4.1.5, p 50 ff.

<sup>261</sup> See *supra* Chapter 4, 4.2.2, p 59 f.

<sup>262</sup> See *supra* Chapter 4, 4.2.2.1, p 60 ff.

certain reason.<sup>263</sup> Thus, the result of the case study regarding (international) trade between Namibia and the EU and Germany, respectively, did not definitely display a neither positive nor negative impact of the Cotonou Agreement. It rather showed that tracing the Cotonou Agreement's impact on beneficiary countries' economic behaviour, the situation is much more complex and it requires more than simply evaluating export figures. In sum, however, it can be stated that, although figures have not been clear enough to be certainly traced back to the implementation of the Cotonou Agreement, Namibian exports to the EU, and, in particular, to Germany on an average enjoyed an increase since the implementation of the Cotonou Agreement.

With regard to the U.S., export figures offered a more definite result: Exports from Namibia to the U.S. augmented steadily and particularly since AGOA II (2002) even rapidly. Accordingly, Namibia has been able to expand the quantity of its exports to the U.S. each year by a doubled amount. With regard to specific commodities traded, Namibia has thereby shifted from the export of mainly food and animals to manufactured goods and articles, in particular textile and apparel. This shift is due to a modification in the rules of origin regarding textile and apparel products.

Thus, the Cotonou Agreement and the AGOA have the effect of both: trade creation and trade diversion as these two legal instruments, in particular the AGOA, lead to more trade between the involved parties. However, it has to be assumed that they also have the potential to change the structure of a country's economy, in particular regarding the production of commodities - as shown by the example of Namibia and the U.S. With regard to the issue of sustainable development, it has generally to be taken into account that trade benefits resulting from a country's comparative advantage due to lower export costs only prevail as long as a country is part of that specific preferential trading arrangement.

---

<sup>263</sup> See *supra* Chapter 4, 4.2.2.2, p 62 ff.

## Annex A

### A – 1 The Cotonou Agreement

PARTNERSHIP AGREEMENT  
BETWEEN THE MEMBERS OF THE AFRICAN,  
CARIBBEAN AND PACIFIC GROUP OF STATES  
OF THE ONE PART, AND THE EUROPEAN COMMUNITY  
AND ITS MEMBER STATES, OF THE OTHER PART,  
SIGNED IN [...] ON [...]  
([...] AGREEMENT)

#### A – 1.1 Table of Contents

##### PREAMBLE

##### PART 1: GENERAL PROVISIONS

###### Title I – Objectives, principles and actors

###### Chapter 1: Objectives and principles

###### Chapter 2: The actors of the partnership

###### Title II – The political dimension

##### PART 2: INSTITUTIONAL PROVISIONS

##### PART 3: COOPERATION STRATEGIES

###### Title I – Development strategies

###### Chapter 1: General framework

###### Chapter 2: Areas of support

###### Section 1: Economic development

###### Section 2: Social and human development

###### Section 3: Regional Cooperation and Integration

###### Section 4: Thematic and cross-cutting issues

###### Title II – Economic and trade Cooperation

###### Chapter 1: Objectives and principles

###### Chapter 2: New trading arrangements

###### Chapter 3: Cooperation in the international fora

###### Chapter 4: Trade in services

###### Chapter 5: Trade-related areas

###### Chapter 6: Cooperation in other areas

##### PART 4: DEVELOPMENT FINANCE COOPERATION

###### Title I – General provisions

###### Chapter 1: Objectives, principles, guidelines and eligibility

###### Chapter 2: Scope and nature of financing





Title II – Financial cooperation

Chapter 1: Financial resources

Chapter 2: Debt and structural adjustment support

Chapter 3: Support in case of short-term fluctuations in export earnings

Chapter 4: Support for sectoral policies

Chapter 5: Microprojects and decentralised cooperation

Chapter 6: Humanitarian and emergency assistance

Chapter 7: Investment and private sector development support

Title III – Technical cooperation

Title IV – Procedures and management systems

PART 5: GENERAL PROVISIONS FOR THE LEAST-DEVELOPED, LANDLOCKED AND ISLAND ACP STATES (LDLICs)

Chapter 1: General provisions

Chapter 2: Least-developed ACP States

Chapter 3: Landlocked ACP States

Chapter 4: Island ACP States

PART 6: FINAL PROVISIONS

A – 1.2

Preamble



HAVING REGARD TO the Treaty establishing the European Community, on the one hand, and the Georgetown Agreement establishing the Group of African, Caribbean and Pacific States (ACP), on the other;

AFFIRMING their commitment to work together towards the achievement of the objectives of poverty eradication, sustainable development and the gradual integration of the ACP countries into the world economy;

ASSERTING their resolve to make, through their cooperation, a significant contribution to the economic, social and cultural development of the ACP States and to the greater well-being of their population, helping them facing the challenges of globalisation and strengthening the ACP-EU Partnership in the effort to give the process of globalisation a stronger social dimension;

REAFFIRMING their willingness to revitalise their special relationship and to implement a comprehensive and integrated approach for a strengthened partnership based on political dialogue, development cooperation and economic and trade relations;

ACKNOWLEDGING that a political environment guaranteeing peace, security and stability, respect for human rights, democratic principles and the rule of law, and good governance is part and parcel of long term development; acknowledging that responsibility for establishing such an environment rests primarily with the countries concerned;

ACKNOWLEDGING that sound and sustainable economic policies are prerequisites for development;

REFERRING to the principles of the Charter of the United Nations, and recalling the Universal Declaration of Human Rights, the conclusions of the 1993 Vienna Conference on

Human Rights, the Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Elimination of all forms of Discrimination against Women, the International Convention on the Elimination of all forms of Racial Discrimination, the 1949 Geneva Conventions and the other instruments of international humanitarian law, the 1954 Convention relating to the status of stateless persons, the 1951 Geneva Convention relating to the Status of Refugees and the 1967 New York Protocol relating to the Status of Refugees;

CONSIDERING the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe, the African Charter on Human and Peoples' Rights and the American Convention on Human Rights as positive regional contributions to the respect of human rights in the European Union and in the ACP States;

RECALLING the Libreville and Santo Domingo declarations of the Heads of State and Government of the ACP countries at their Summits in 1997 and 1999;

CONSIDERING that the development targets and principles agreed in United Nations Conferences and the target, set by the OECD Development Assistance Committee, to reduce by one half the proportion of people living in extreme poverty by the year 2015 provide a clear vision and must underpin ACP-EU cooperation within this Agreement;

PAYING particular attention to the pledges made at the Rio, Vienna, Cairo, Copenhagen, Beijing, Istanbul and Rome UN conferences and acknowledging the need for further action to be taken in order to achieve the goals and implement the action programmes which have been drawn up in those fora;

ANXIOUS to respect basic labour rights, taking account of the principles laid down in the relevant conventions of the International Labour Organisation;

RECALLING the commitments within the framework of the World Trade Organisation,  
HAVE DECIDED TO CONCLUDE THIS AGREEMENT:"

A – 2 The African Growth and Opportunity Act (AGOA III)<sup>264</sup>

"H. R. 4103

*One Hundred Eighth Congress  
of the  
United States of America*

**AT THE SECOND SESSION**  
*Begun and held at the City of Washington on Tuesday,  
the twentieth day of January, two thousand and four*  
*An Act*

To extend and modify the trade benefits under the African Growth and Opportunity Act.  
*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "AGOA Acceleration Act of 2004".

---

<sup>264</sup> PL 108-274, 2004 HR 4103.

## **SEC. 2. FINDINGS.**

The Congress finds the following:

- (1) The African Growth and Opportunity Act (in this section and section 3 referred to as “the Act”) has helped to spur economic growth and bolster economic reforms in the countries of sub-Saharan Africa and has fostered stronger economic ties between the countries of sub-Saharan Africa and the United States; as a result, exports from the United States to sub-Saharan Africa reached record levels after the enactment of the Act, while exports from sub-Saharan Africa to the United States have increased considerably.
- (2) The Act’s eligibility requirements have reinforced democratic values and the rule of law, and have strengthened adherence to internationally recognized worker rights in eligible sub-Saharan African countries.
- (3) The Act has helped to bring about substantial increases in foreign investment in sub-Saharan Africa, especially in the textile and apparel sectors, where tens of thousands of new jobs have been created.
- (4) As a result of the Agreement on Textiles and Apparel of the World Trade Organization, under which quotas maintained by WTO member countries on textile and apparel products end on January 1, 2005, sub-Saharan Africa’s textile and apparel industry will be severely challenged by countries whose industries are more developed and have greater capacity, economies of scale, and better infrastructure.
- (5) The underdeveloped physical and financial infrastructure in sub-Saharan Africa continues to discourage investment in the region.
- (6) Regional integration establishes a foundation on which sub-Saharan African countries can coordinate and pursue policies grounded in African interests and history to achieve sustainable development.
- (7) Expanded trade because of the Act has improved fundamental economic conditions within sub-Saharan Africa. The Act has helped to create jobs in the poorest region of the world, and most sub-Saharan African countries have sought to take advantage of the opportunities provided by the Act.
- (8) Agricultural biotechnology holds promise for helping solve global food security and human health crises in Africa and, according to recent studies, has made contributions to the protection of the environment by reducing the application of pesticides, reducing soil erosion, and creating an environment more hospitable to wildlife.
- (9) (A) One of the greatest challenges facing African countries continues to be the HIV/AIDS epidemic, which has infected as many as one out of every four people in some countries, creating tremendous social, political, and economic costs. African countries need continued United States financial and technical assistance to combat this epidemic.  
(B) More awareness and involvement by governments are necessary. Countries like Uganda, recognizing the threat of HIV/AIDS, have boldly attacked it through a combination of education, public awareness, enhanced medical infrastructure and resources, and greater access to medical treatment. An effective HIV/AIDS prevention and treatment strategy involves all of these steps.
- (10) African countries continue to need trade capacity assistance to establish viable economic capacity, a wellgrounded rule of law, and efficient government practices.

## **SEC. 3. STATEMENT OF POLICY.**

The Congress supports—

- (1) a continued commitment to increase trade between the United States and sub-Saharan Africa and increase investment in sub-Saharan Africa to the benefit of workers, businesses, and farmers in the United States and in sub-Saharan Africa, including by developing innovative approaches to encourage development and investment in sub-Saharan Africa;
- (2) a reduction of tariff and nontariff barriers and other obstacles to trade between the countries of sub-Saharan Africa and the United States, with particular emphasis on reducing barriers to trade in emerging sectors of the economy that have the greatest potential for development;
- (3) development of sub-Saharan Africa’s physical and financial infrastructure;
- (4) international efforts to fight HIV/AIDS, malaria, tuberculosis, other infectious diseases, and serious public health problems;

(5) many of the aims of the New Partnership for African Development (NEPAD), which include—

- (A) reducing poverty and increasing economic growth;
  - (B) promoting peace, democracy, security, and human rights;
  - (C) promoting African integration by deepening linkages between African countries and by accelerating Africa's economic and political integration into the rest of the world;
  - (D) attracting investment, debt relief, and development assistance;
  - (E) promoting trade and economic diversification;
  - (F) broadening global market access for United States and African exports;
  - (G) improving transparency, good governance, and political accountability;
  - (H) expanding access to social services, education, and health services with a high priority given to addressing HIV/AIDS, malaria, tuberculosis, other infectious diseases, and other public health problems;
  - (I) promoting the role of women in social and economic development by reinforcing education and training and by assuring their participation in political and economic arenas; and
  - (J) building the capacity of governments in sub-Saharan Africa to set and enforce a legal framework, as well as to enforce the rule of law;
- (6) negotiation of reciprocal trade agreements between the United States and sub-Saharan African countries, with the overall goal of expanding trade across all of sub-Saharan Africa;
- (7) the President seeking to negotiate, with interested eligible sub-Saharan African countries, bilateral trade agreements that provide investment opportunities, in accordance with section 2102(b)(3) of the Trade Act of 2002 (19 U.S.C. 3802(b)(3));
- (8) efforts by the President to negotiate with the member countries of the Southern African Customs Union in order to provide the opportunity to deepen and make permanent the benefits of the Act while giving the United States access to the markets of these African countries for United States goods and services, by reducing tariffs and non-tariff barriers, strengthening intellectual property protection, improving transparency, establishing general dispute settlement mechanisms, and investor-state and state-to-state dispute settlement mechanisms in investment;
- (9) a comprehensive and ambitious trade agreement with the Southern African Customs Union, covering all products and sectors, in order to mature the economic relationship between sub-Saharan African countries and the United States and because such an agreement would deepen United States economic and political ties to the region, lend momentum to United States development efforts, encourage greater United States investment, and promote regional integration and economic growth;
- (10) regional integration among sub-Saharan African countries and business partnerships between United States and African firms; and
- (11) economic diversification in sub-Saharan African countries and expansion of trade beyond textiles and apparel.

#### **SEC. 4. SENSE OF CONGRESS ON RECIPROCITY AND REGIONAL ECONOMIC INTEGRATION.**

It is the sense of the Congress that—

(1) the preferential market access opportunities for eligible sub-Saharan African countries will be complemented and enhanced if those countries are implementing actively and fully, consistent with any remaining applicable phase-in periods, their obligations under the World Trade Organization, including obligations under the Agreement on Trade-Related Aspects of Intellectual Property, the Agreement on the Application of Sanitary and Phytosanitary Measures, and the Agreement on Trade Related Investment Measures, as well as the other agreements described in section 101(d) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d));

(2) eligible sub-Saharan African countries should participate in and support mutual trade liberalization in ongoing negotiations under the auspices of the World Trade Organization, including by making reciprocal commitments with respect to improving market access for industrial and agricultural goods, and for services, recognizing that such commitments may need to reflect special and differential treatment for developing countries;

(3) some of the most pernicious trade barriers against exports by developing countries are the trade barriers maintained by other developing countries; therefore, eligible sub-Saharan African countries will benefit from the reduction of trade barriers in other developing countries, especially in developing countries that represent some of the greatest potential markets for African goods and services; and

(4) all countries should make sanitary and phytosanitary decisions on the basis of sound science.

#### **SEC. 5. SENSE OF CONGRESS ON INTERPRETATION OF TEXTILE AND APPAREL PROVISIONS OF AGOA.**

It is the sense of the Congress that the executive branch, particularly the Committee for the Implementation of Textile Agreements (CITA), the Bureau of Customs and Border Protection of the Department of Homeland Security, and the Department of Commerce, should interpret, implement, and enforce the provisions of section 112 of the African Growth and Opportunity Act, relating to preferential treatment of textile and apparel articles, broadly in order to expand trade by maximizing opportunities for imports of such articles from eligible sub-Saharan African countries.

#### **SEC. 6. DEFINITION.**

In this Act, the term “eligible sub-Saharan African country” means an eligible sub-Saharan African country under the African Growth and Opportunity Act.

#### **SEC. 7. EXTENSION OF AFRICAN GROWTH AND OPPORTUNITY ACT.**

(a) GENERALIZED SYSTEM OF PREFERENCES.—

(1) EXTENSION OF PROGRAM.—Section 506B of the Trade Act of 1974 (19 U.S.C. 2466b) is amended by striking “2008” and inserting “2015”.

(2) INPUTS FROM FORMER BENEFICIARY COUNTRIES.—Section 506A of the Trade Act of 1974 (19 U.S.C. 2466a) is amended—

(A) in subsection (b)(2)(B), by inserting “or former beneficiary sub-Saharan African countries” after “countries”; and

(B) in subsection (c)—

(i) by striking “title, the terms” and inserting “title—“(1) the terms”; and

(ii) by adding at the end the following: “(2) the term ‘former beneficiary sub-Saharan African country’ means a country that, after being designated as a beneficiary sub-Saharan African country under the African Growth and Opportunity Act, ceased to be designated as such a country by reason of its entering into a free trade agreement with the United States.”.

(b) APPAREL ARTICLES.—

(1) Section 112(b)(1) of the African Growth and Opportunity Act (19 U.S.C. 3721(b)(1)) is amended by striking “(including)” and inserting “(or both (including))”.

(2) Section 112(b)(3) of the African Growth and Opportunity Act (19 U.S.C. 3721 (b)(3)) is amended—

(A) in the matter preceding subparagraph (A)—

(i) by striking “either in the United States or one or more beneficiary sub-Saharan African countries” each place it appears and inserting “in the United States or one or more beneficiary sub-Saharan African countries or former beneficiary sub-Saharan African countries, or both”; and

(ii) by striking “subject to the following:” and inserting “whether or not the apparel articles are also made from any of the fabrics, fabric components formed, or components knit-to-shape described in paragraph (1) or (2) (unless the apparel articles are made exclusively from any of the fabrics, fabric components formed, or components knit-to-shape described in paragraph (1) or (2)), subject to the following:”; and

(B) by striking subparagraphs (A) and (B) and inserting the following:

“(A) LIMITATIONS ON BENEFITS.—

“(i) IN GENERAL.—Preferential treatment under this paragraph shall be extended in the 1-year period beginning October 1, 2003, and in each of the 11 succeeding 1-year periods, to imports of apparel articles in an amount not to exceed the applicable percentage of the

aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available.

“(ii) APPLICABLE PERCENTAGE.—For purposes of this subparagraph, the term ‘applicable percentage’ means—

“(I) 4.747 percent for the 1-year period beginning October 1, 2003, increased in each of the 5 succeeding 1-year periods by equal increments, so that for the 1-year period beginning October 1, 2007, the applicable percentage does not exceed 7 percent; and

“(II) for each succeeding 1-year period until September 30, 2015, not to exceed 7 percent.

“(B) SPECIAL RULE FOR LESSER DEVELOPED COUNTRIES.—

“(i) IN GENERAL.—Preferential treatment under this paragraph shall be extended through September 30, 2007, for apparel articles wholly assembled, or knit-to-shape and wholly assembled, or both, in one or more lesser developed beneficiary sub-Saharan African countries, regardless of the country of origin of the fabric or the yarn used to make such articles, in an amount not to exceed the applicable percentage of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available.

“(ii) APPLICABLE PERCENTAGE.—For purposes of the subparagraph, the term ‘applicable percentage’ means—

“(I) 2.3571 percent for the 1-year period beginning October 1, 2003;

“(II) 2.6428 percent for the 1-year period beginning October 1, 2004;

“(III) 2.9285 percent for the 1-year period beginning October 1, 2005; and

“(IV) 1.6071 percent for the 1-year period beginning October 1, 2006.

“(iii) LESSER DEVELOPED BENEFICIARY SUB-SAHARAN AFRICAN COUNTRY.—For purposes of this subparagraph, the term ‘lesser developed beneficiary sub-Saharan African country’ means—

“(I) a beneficiary sub-Saharan African country that had a per capita gross national product of less than \$1,500 in 1998, as measured by the International Bank for Reconstruction and Development;

“(II) Botswana; and

“(III) Namibia.”

(3) Section 112(b)(5)(A) of the African Growth and Opportunity Act (19 U.S.C. 3721(b)(5)(A)) is amended to read as follows:

“(A) IN GENERAL.—Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries, to the extent that apparel articles of such fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabrics or yarns, under Annex 401 to the NAFTA.”

(c) HANDLOOMED, HANDMADE, FOLKLORE ARTICLES AND ETHNIC PRINTED FABRICS.—Section 112(b)(6) of the African Growth and Opportunity Act (19 U.S.C. 3721(b)(6)) is amended to read as follows:

“(6) HANDLOOMED, HANDMADE, FOLKLORE ARTICLES AND ETHNIC PRINTED FABRICS.—

“(A) IN GENERAL.—A handloomed, handmade, folklore article or an ethnic printed fabric of a beneficiary sub-Saharan African country or countries that is certified as such by the competent authority of such beneficiary country or countries. For purposes of this section, the President, after consultation with the beneficiary sub-Saharan African country or countries concerned, shall determine which, if any, particular textile and apparel goods of the country (or countries) shall be treated as being handloomed, handmade, or folklore articles or an ethnic printed fabric.

“(B) REQUIREMENTS FOR ETHNIC PRINTED FABRIC.—

Ethnic printed fabrics qualified under this paragraph are—

“(i) fabrics containing a selvedge on both edges, having a width of less than 50 inches, classifiable under subheading 5208.52.30 or 5208.52.40 of the Harmonized Tariff Schedule of the United States;

“(ii) of the type that contains designs, symbols, and other characteristics of African prints—

“(I) normally produced for and sold on the indigenous African market; and

“(II) normally sold in Africa by the piece as opposed to being tailored into garments before being sold in indigenous African markets;

“(iii) printed, including waxed, in one or more eligible beneficiary sub-Saharan countries; and

“(iv) fabrics formed in the United States, from yarns formed in the United States, or from fabric formed in one or more beneficiary sub-Saharan African country from yarn originating in either the United States or one or more beneficiary sub-Saharan African countries.”.

(d) REGIONAL AND U.S. SOURCES.—Section 112(b)(7) of the African Growth and Opportunity Act (19 U.S.C. 3721(b)(7)) is amended by inserting “or former beneficiary sub-Saharan African countries” after “and one or more beneficiary sub-Saharan African countries” each place it appears.

(e) SPECIAL RULES.—

(1) CERTAIN COMPONENTS.—Section 112(d) of the African Growth and Opportunity Act (19 U.S.C. 3721(d)) is amended by adding at the end the following:

“(3) CERTAIN COMPONENTS.—An article otherwise eligible for preferential treatment under this section will not be ineligible for such treatment because the article contains—

“(A) any collars or cuffs (cut or knit-to-shape),

“(B) drawstrings,

“(C) shoulder pads or other padding,

“(D) waistbands,

“(E) belt attached to the article,

“(F) straps containing elastic, or

“(G) elbow patches, that do not meet the requirements set forth in subsection

(b), regardless of the country of origin of the item referred to in the applicable subparagraph of this paragraph.”.

(2) DE MINIMIS RULE.—Section 112(d)(2) of the African Growth and Opportunity Act (19 U.S.C. 3721(d)(2)) is amended—

(A) by inserting “or former beneficiary sub-Saharan African countries” after “countries”; and

(B) by striking “7 percent” and inserting “10 percent”.

(f) DEFINITIONS.—Section 112(e) of the African Growth and Opportunity Act (19 U.S.C. 3721(e)) is amended by adding at the end the following:

“(4) FORMER SUB-SAHARAN AFRICAN COUNTRY.—The term ‘former sub-Saharan African country’ means a country that, after being designated as a beneficiary sub-Saharan African country under this Act, ceased to be designated as such a beneficiary sub-Saharan African country by reason of its entering into a free trade agreement with the United States.”.

## **SEC. 8. ENTRIES OF CERTAIN APPAREL ARTICLES PURSUANT TO THE AFRICAN GROWTH AND OPPORTUNITY ACT.**

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, the Secretary of the Treasury shall liquidate or reliquidate as free of duty and free of any quantitative restrictions, limitations, or consultation levels entries of articles described in subsection (d) made on or after October 1, 2000, and before the date of the enactment of this Act.

(b) REQUESTS.—Liquidation or reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefor is filed with the Secretary of the Treasury within 90 days after the date of the enactment of this Act and the request contains sufficient information to enable the Secretary to locate the entry or reconstruct the entry if it cannot be located.

(c) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of any entry under subsection (a) shall be paid not later than 180 days after the date of such liquidation or reliquidation.

(d) ENTRIES.—The entries referred to in subsection (a) are entries of apparel articles that meet the requirements of section 112(b) of the African Growth and Opportunity Act, as amended by section 3108 of the Trade Act of 2002 and this Act.

## **SEC. 9. DEVELOPMENT STUDY AND CAPACITY BUILDING.**

(a) REPORTS.—The President shall, by not later than 1 year after the date of the enactment of this Act, conduct a study on each eligible sub-Saharan African country, that—

- (1) identifies sectors of the economy of that country with the greatest potential for growth, including through export sales;
  - (2) identifies barriers, both domestically and internationally, that are impeding growth in such sectors; and
  - (3) makes recommendations on how the United States Government and the private sector can provide technical assistance to that country to assist in dismantling such barriers and in promoting investment in such sectors.
- (b) **DISSEMINATION OF INFORMATION.**—The President shall disseminate information in each study conducted under subsection (a) to the appropriate United States agencies for the purpose of implementing recommendations on the provision of technical assistance and in identifying opportunities for United States investors, businesses, and farmers.

**SEC. 10. ACTIVITIES IN SUPPORT OF INFRASTRUCTURE TO SUPPORT INCREASING TRADE CAPACITY AND ECOTOURISM.**

(a) **FINDINGS.**—The Congress finds the following:

(1) Ecotourism, which consists of—

(A) responsible and sustainable travel and visitation to relatively undisturbed natural areas in order to enjoy and appreciate nature (and any accompanying cultural features, both past and present) and animals, including species that are rare or endangered,

(B) promotion of conservation and provision for beneficial involvement of local populations, and

(C) visitation designed to have low negative impact upon the environment, is expected to expand 30 percent globally over the next decade.

(2) Ecotourism will increase trade capacity by sustaining otherwise unsustainable infrastructure, such as road, port, water, energy, and telecommunication development.

(3) According to the United States Department of State and the United Nations Environment Programme, sustainable tourism, such as ecotourism, can be an important part of the economic development of a region, especially a region with natural and cultural protected areas.

(4) Sub-Saharan Africa enjoys an international comparative advantage in ecotourism because it features extensive protected areas that host a variety of ecosystems and traditional cultures that are major attractions for nature-oriented tourism.

(5) National parks and reserves in sub-Saharan Africa should be considered a basis for regional development, involving communities living within and adjacent to them and, given their strong international recognition, provide an advantage in ecotourism marketing and promotion.

(6) Desert areas in sub-Saharan Africa represent complex ecotourism attractions, showcasing natural, geological, and archaeological features, and nomad and other cultures and traditions.

(7) Many natural zones in sub-Saharan Africa cross the political borders of several countries; therefore, transboundary cooperation is fundamental for all types of ecotourism development.

(8) The commercial viability of ecotourism is enhanced when small and medium enterprises, particularly microenterprises, successfully engage with the tourism industry in sub-Saharan Africa.

(9) Adequate capacity building is an essential component of ecotourism development if local communities are to be real stakeholders that can sustain an equitable approach to ecotourism management.

(10) Ecotourism needs to generate local community benefits by utilizing sub-Saharan Africa's natural heritage, parks, wildlife reserves, and other protected areas that can play a significant role in encouraging local economic development by sourcing food and other locally produced resources.

(b) **ACTION BY THE PRESIDENT.**—The President shall develop and implement policies to—

(1) encourage the development of infrastructure projects that will help to increase trade capacity and a sustainable ecotourism industry in eligible sub-Saharan African countries;



- (2) encourage and facilitate transboundary cooperation among sub-Saharan African countries in order to facilitate trade;
- (3) encourage the provision of technical assistance to eligible sub-Saharan African countries to establish and sustain adequate trade capacity development; and
- (4) encourage micro-, small-, and medium-sized enterprises in eligible sub-Saharan African countries to participate in the ecotourism industry.

**SEC. 11. ACTIVITIES IN SUPPORT OF TRANSPORTATION, ENERGY, AGRICULTURE, AND TELECOMMUNICATIONS INFRASTRUCTURE.**

(a) FINDINGS.—The Congress finds the following:

- (1) In order to increase exports from, and trade among, eligible sub-Saharan African countries, transportation systems in those countries must be improved to increase transport efficiencies and lower transport costs.
- (2) Vibrant economic growth requires a developed telecommunication and energy infrastructure.
- (3) Sub-Saharan Africa is rich in exportable agricultural goods, but development of this industry remains stymied because of an underdeveloped infrastructure.

(b) ACTION BY THE PRESIDENT.—In order to enhance trade with Africa and to bring the benefits of trade to African countries, the President shall develop and implement policies to encourage investment in eligible sub-Saharan African countries, particularly with respect to the following:

- (1) Infrastructure projects that support, in particular, development of land transport road and railroad networks and ports, and the continued upgrading and liberalization of the energy and telecommunications sectors.
- (2) The establishment and expansion of modern information and communication technologies and practices to improve the ability of citizens to research and disseminate information relating to, among other things, the economy, education, trade, health, agriculture, the environment, and the media.
- (3) Agriculture, particularly in processing and capacity enhancement.

**SEC. 12. FACILITATION OF TRANSPORTATION.**

In order to facilitate and increase trade flows between eligible sub-Saharan African countries and the United States, the President shall foster improved port-to-port and airport-to-airport relationships.

These relationships should facilitate—

- (1) increased coordination between customs services at ports and airports in the United States and such countries in order to reduce time in transit;
- (2) interaction between customs and technical staff from ports and airports in the United States and such countries in order to increase efficiency and safety procedures and protocols relating to trade;
- (3) coordination between chambers of commerce, freight forwarders, customs brokers, and others involved in consolidating and moving freight; and
- (4) trade through air service between airports in the United States and such countries by increasing frequency and capacity.

**SEC. 13. AGRICULTURAL TECHNICAL ASSISTANCE.**

(a) IDENTIFICATION OF COUNTRIES.—The President shall identify not fewer than 10 eligible sub-Saharan African countries as having the greatest potential to increase marketable exports of agricultural products to the United States and the greatest need for technical assistance, particularly with respect to pest risk assessments and complying with sanitary and phytosanitary rules of the United States.

(b) PERSONNEL.—The President shall assign at least 20 fulltime personnel for the purpose of providing assistance to the countries identified under subsection (a) to ensure that exports of agricultural products from those countries meet the requirements of United States law.

**SEC. 14. TRADE ADVISORY COMMITTEE ON AFRICA.**

The President shall convene the trade advisory committee on Africa established by Executive Order 11846 of March 27, 1975, under section 135(c) of the Trade Act of 1974, in

order to facilitate the goals and objectives of the African Growth and Opportunity Act and this Act, and to maintain ongoing discussions with African trade and agriculture ministries and private sector organizations on issues of mutual concern, including regional and international trade concerns and World Trade Organization issues.

*Speaker of the House of Representatives.  
Vice President of the United States and  
President of the Senate.*



## Annex B

### B – 1 Namibian Exports to Germany Classified by Commodity

The diagram “Namibian Exports to Germany Classified by Commodity” - *supra* Chapter 4, 4.2.2.2, p 63 - is based on the following data:

	1999	2000	2001	2002	2003	2004
Food and Live Animals (Food & Animals)	15,19	18,25	18,03	19,25	19,84	20,46
Beverages and Tobacco	0,01	0,03	0,01	0,01	0,02	0,02
Crude Materials, Inedible, Except Fuel (Crude Materials)	0,78	1,59	1,67	2,83	2,63	1,57
Mineral Fuels, Lubricants and Related Materials (Mineral Fuels)	0	0	0	0	0	0
Chemicals and Related Products, N.E.S. (Chemicals)	1,63	3,06	0,97	1,77	1,51	0,33
Manufactured Goods Classified Chiefly by Material (Manufactured Goods)	3,6	1,23	0,61	3,78	3,28	2,75
Machinery and Transport Equipment (Equipment)	0,29	3,33	21,32	10,38	0,68	11,01
Miscellaneous Manufactured Articles (Manufactured Articles)	0,47	0,44	0,61	0,72	0,69	1,19
Other Products	0,91	0,72	1,5	1,82	2,96	0,65
Animal & Vegetable Oils, Fats & Waxes	0	0	0	0	0	0

NOTE: All figures are in millions of Euros.

Source: Eurostat, <<http://fd.comext.eurostat.ec.eu.int/xtweb/>> [accessed on 29 April 2005].

### B – 2 Namibian Exports to the U.S. Classified by Commodity

The diagram “Namibian Exports to the U.S. Classified by Commodity” – *supra* Chapter 4, 4.2.3.2, p 67 - is based on the data presented in the following table:

	1999	2000	2001	2002	2003	2004
Food and Live Animals (Food & Animals)	18,09	18,82	12,44	6,35	9,94	8,02
Beverages and Tobacco	0,04	0,04	0,04	0,04	0,04	0,04
Crude Materials, Inedible, Except Fuels (Crude Materials)	9,82	1,09	0,68	0,33	1,85	1,14
Mineral Fuels, Lubricants and Related Materials (Mineral Fuels)	0	13,43	0	0,77	0	0

Chemicals and Related Products, N.E.S. (Chemicals)	0,04	0,04	11,32	29,93	18,35	27,85
Manufactured Goods classified Chiefly by Material (Manufactured Goods)	0,4	6,43	11,06	11,26	48,76	117,15
Machinery and Transport Equipment (Equipment)	0,06	0,28	0,04	0,22	0,04	0,13
Miscellaneous Manufactured Articles (Manufactured Articles)	0,1	0,33	0,14	6,78	42,11	79,07
Commodities and Transactions, N.E.S. (Commodities & Transactions)	1,18	1,83	1,6	1,77	2,21	4,9
Animal and Vegetable Oils, Fats and Waxes	0,04	0	0	0	0	0

NOTE: All figures are in millions of U.S. dollars.

Source : U.S. Census Bureau <<http://www.census.gov/foreign-trade/sitc1/index.html>> [accessed on 15 April 2005].

### B – 3 Commodity Classification

Both, the diagram “Namibian Exports to Germany Classified by Commodity“ in Chapter 4 (4.2.2.2, p 63) and the diagram “Namibian Exports to the U.S. Classified by Commodity“ in Chapter 4 (4.2.3.2, p 67) present Namibian export figures, which are classified into ten commodity groupings. This classification is based on the so-called Standard International Trade Classification (SITC) 1-digit code.<sup>265</sup> In the following a list is presented, which sheds light on each commodity grouping and their respective undergroupings (SITC 2-digit code).<sup>266</sup>

#### FOOD AND LIVE ANIMALS (Food & Animals)

- live animals other than fish, crustaceans, molluscs and aquatic invertebrates of division 4 in this paragraph
- meat and meat preparations
- dairy products and bird's eggs

<sup>265</sup> The SICT (SITC-United Nations Statistical Papers, Series M, No. 34/Rev.3) is a statistical classification of the commodities entering external trade designed to provide the commodity aggregates needed for purposes of economic analysis and to facilitate the international comparison of trade-by-commodity data. For further information on the issue see <<http://www.census.gov/foreign-trade/www/sec2.html#sitc>> [accessed on 2 May 2005].

<sup>266</sup> Source: Foreign Trade Division, U.S. Census Bureau, Washington, DC <<http://www.census.gov/foreign-trade/reference/codes/sitc/sitc.txt>> [accessed on 2 May 2005].

- fish (not marine mammals), crustaceans, molluscs and aquatic invertebrates, and preparations thereof
- cereals and cereal preparations
- vegetables and fruit
- sugars, sugar preparations and honey
- coffee, tea, cocoa, spices and manufactures thereof
- feeding stuff for animals (not including unmilled cereals)
- miscellaneous edible products and preparations

#### BEVERAGES AND TOBACCO

- beverages
- tobacco and tobacco manufactures

#### CRUDE MATERIALS, INEDIBLE, EXCEPT FUELS (Crude Materials)

- hides, skins and furskins, raw
- oil seeds and oleaginous fruits
- crude rubber (including synthetic and reclaimed)
- cork and wood
- pulp and waste paper
- textile fibers (other than wool tops and other combed wool) and their wastes (not manufactured into yarn or fabric)
- crude fertilisers (imports only), except those of division 56, and crude minerals (excluding coal, petroleum and precious stones)
- metalliferous ores and metal scrap
- crude animal and vegetable materials, N.E.S.

#### MINERAL FUELS, LUBRICANTS AND RELATED MATERIALS (Mineral Fuels)

- coal, coke and briquettes
- petroleum, petroleum products and related materials
- gas, natural and manufactured
- electric current

#### ANIMAL AND VEGETABLE OILS, FATS AND WAXES

- animal oils and fats
- fixed vegetable fats and oils, crude, refined or fractioned

- animal or vegetable fats and oils processed; waxes and inedible mixtures or preparations of animal or vegetable fats or oils, N.E.S.

#### CHEMICALS AND RELATED PRODUCTS, N.E.S. (Chemicals)

- organic chemicals
- inorganic chemicals
- dyeing, tanning and colouring materials
- medicinal and pharmaceutical products
- essential oils and resinoids and perfume materials; toilet, polishing and cleansing preparations
- fertilisers (exports include group 272; imports exclude group 272)
- plastic in primary forms
- plastics in nonprimary forms
- chemical materials and products, N.E.S.

#### MANUFACTURED GOODS CLASSIFIED CHIEFLY BY MATERIAL (Manufactured Goods)

- leather, leather manufactures, N.E.S., and dressed furskins
- rubber manufactures, N.E.S.
- cork and wood manufactures other than furniture
- paper, paperboard, and articles of paper pulp, paper or paper board
- textile yarn, fabrics, made-up articles, N.E.S., and related products
- non-metallic mineral manufactures, N.E.S.
- iron and steel
- nonferrous metals
- manufactures of metals, N.E.S.

#### MACHINERY AND TRANSPORT EQUIPMENT (Equipment)

- power generating machinery and equipment
- machinery specialised for particular industries
- metalworking machinery
- general industrial machinery and equipment, N.E.S., and machine parts, N.E.S.
- office machines and automatic data processing machines
- telecommunications and sound recording and reproducing apparatus and equipment
- electrical machinery, apparatus and appliance, N.E.S., and electrical parts thereof (including nonelectrical counterparts of household type, N.E.S)
- road vehicle (including air-cushion vehicles)

- transport equipment, N.E.S.

#### MISCELLANEOUS MANUFACTURED ARTICLES (Manufactured Articles)

- prefabricated buildings; sanitary, plumbing, heating and lighting fixtures and fittings, N.E.S.
- furniture and parts thereof; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings
- travel goods, handbags and similar containers
- articles of apparel and clothing accessories
- footwear
- professional, scientific and controlling instruments and apparatus, N.E.S.
- photographic apparatus, equipment and supplies and optical goods, N.E.S.; watches and clocks
- miscellaneous manufactured articles, N.E.S.

#### COMMODITIES AND TRANSACTIONS NOT CLASSIFIED ELSEWHERE IN THE SITC (Commodities & Transactions / Other Products)

- special transactions and commodities not classified according to kind
- coin, including gold coin; proof and presentation sets and current coin
- coin (other than gold coin), not being legal tender
- gold, nonmonetary (excluding gold ores and concentrates)
- estimates of import items valued under \$251 and of other lower valued items nonexempt from formal entry
- estimates of low value shipments

## Bibliography

### Books

- Babarinde, Olufemi A. (1994) *The Lomé Conventions and Development : An empirical Assessment* Avebury - Ashgate Publishing Limited
- Barnhart, Robert K. (ed) (1988) *The Barnhart Dictionary of Etymology* UK: H.W. Wilson Company
- Becker, Jürgen (1979) *Die Partnerschaft von Lomé* Baden-Baden, Germany: Nomos-Verlagsgesellschaft
- Bender, Gerald J., Coleman, James S. and Sklar, Richard S. (1985) *African Crisis Areas and U.S. Foreign Policy* Berkeley: University of California Press
- Bieber, Roland, Epiney, Astrid, Haag, Marcel (2005, 6th edition) *Die Europäische Union: Europarecht und Politik* Baden-Baden: Nomos Verlagsgesellschaft
- Black, Henry Campbell, M. A. (1990, 6<sup>th</sup> edition) *Black's Law Dictionary : Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern* The Publisher's Editorial Staff UK: West Publishing Co.
- Black, John (1997) *A Dictionary of Economics* Oxford, UK: Oxford University Press
- Blackman, K. and Mutume, G. (1998) *No Trade-and-Investment Miracles Expected* New York: Inter Press Service
- Christe, Hans-Joachim (1995) *Die USA und der EG-Binnenmarkt* Baden-Baden, Germany: Nomos Verlagsgesellschaft
- Cosgrove Twitchett, Carol (1978) *Europe and Africa : From Association to Partnership* England: Saxon House, Teakfield Limited, Westmead, Farnborough, Hants
- Cosgrove Twitchett, Carol (1981) *A Framework for Development: The EEC and the ACP* London, UK: George Allen & Unwin Ltd
- Dillon, Sara (2002) *International Trade and Economic Law and the European Union* Oxford – Portland, Oregon: hart Publishing
- Foldvary, Fred E. (1998) *Dictionary of Free-Market Economics* Cheltenham, UK: Edward Elgar Publishing Limited
- Jackson, John H. (1997, 2nd edition) *The World Trading System: Law and Policy of International Economic Relations* London, UK: The MIT Press
- Johns, Richard Anthony (1985) *International Trade Theorie and the Evolving International Economy* London, UK: Frances Pinter (Publishers)



Karagiannis, Nathalie (2004) *Avoiding Responsibility : The Politics and Discourse of European Development Policy* Pluto Press

Lister, Marjorie (1988) *The European Community and the Developing World : The Role of the Lomé Convention* England: Avebury

Matsushita, Mitsuo; Schoenbaum, Thomas J. and Mavroidis, Petros C. (2003) *The World Trade Organization – Law, Practice, and Policy* Oxford, UK: Oxford University Press

McMahon, Joseph A. (1992) *Agricultural trade, protectionism and the problems of development: a legal perspective* Great Britain: Leicester University Press

Morrison, Alan B. (1996) *Fundamentals of American Law* Oxford, UK: Oxford University Press

Moss, J. (1982) *The Lomé Conventions and their Implications for the United States* Boulder, Westview

Pearce, David W. (ed) (1992, 4<sup>th</sup> edition) *Macmillan : Dictionary of Modern Economics* London and Basingstoke, UK: The Macmillan Press Ltd

Rutherford, Donald (2002, 2<sup>nd</sup> edition) *Routledge Dictionary of Economics* London and New York: Routledge, Taylor & Francis Group

Streintz, Rudolf (2003) *Kommentar zum EUV/EGV* München: Verlag C.H. Beck

Turok, Ben (ed.) (1993) *Witness from the frontline: Aggression and Resistance in Southern Africa* Bloomington, Indiana University Press

Viner, Jacob (1950) *The Customs Union Issue* New York, USA: Carnegie Endowment for International Peace

### Articles

Abass, Abou 'The Cotonou Trade Régime and WTO Law' (July 2004, Vol. 10, Issue 4) *European Law Journal* 439

Barth, Hans J. 'Wem nutzen Sozialstandards im internationalen Handel?' <<http://library.fes.de/fulltext/asfo/00697010.htm>> [accessed on 21 October 2005]

Bélisle, J. Denise 'Trade as a Tool for Development - How can developing countries benefit more from the multilateral trading system?' (October 2001) <[http://www.tradeforum.org/news/fullstory.php/aid/383/Trade\\_as\\_a\\_Tool\\_for\\_Development\\_-\\_How\\_can\\_developing\\_countries\\_benefit\\_more\\_from\\_the\\_multilateral\\_trading\\_system\\_.html](http://www.tradeforum.org/news/fullstory.php/aid/383/Trade_as_a_Tool_for_Development_-_How_can_developing_countries_benefit_more_from_the_multilateral_trading_system_.html)> [accessed on 28 April 2005]

Bread for the World 'AGOA 2004 and African Agriculture' (2004) <<http://www.bread.org/institute/AGOA-4.26.04.pdf>> [accessed on 18 March 2005]

International Monetary Fund 'IMF Country Report No. 05/96' (March 2005) <<http://www.imf.org/external/pubs/ft/scr/2005/cr0596.pdf>> [accessed on 15 April 2005]

Keller, Edmond J. 'Rethinking African Regional Security' in Lake, David A. and Morgan, Patrick M. (eds.) (1997) *Regional Orders: Building Security in a New World* 296, University Park, PA, USA: The Pennsylvania State University Press

Malone, David M. 'A Decade of U.S. Unilateralism?' in Malone, David M. and Foong Khong, Yuen (ed.) (2003) *Unilateralism & U.S. Foreign Policy : International Perspectives* 19, USA: Lynne Rienner Publishers, Inc.

Metzger, Martina 'The Common Monetary Area in Southern Africa: A typical South-South Coordination Effort?' (July 2004) <<http://www.duei.de/iik/de/content/forschung/pdf/commonmonetaryarea.pdf>> [accessed on 8 April 2005]

Ministry of Finance 'Statement on exchange change control issued jointly by Mr. Trevor Manuel, Minister of Finance and Dr Chris Stals, Governor of the South African Reserve Bank – 12 March 1997' <<http://www.treasury.gov.za/press/other/1997/1997031201.pdf>> [accessed on 24 October 2005]

Moss, J., Ravenhill, J., 'Trade Between the ACP and EEC during Lomé I' in Stevens, C. (ed.) (1983) *The Atlantic Rift, EEC and the Third World : A Survey* 3, London: Hodder and Stoughton

Rothchild, Donald 'The Impact of US Disengagement on African Intrastate Conflict Resolution' in Harbeson, John W. and Rothchild, Donald (eds.) (2000) *Africa in World Politics: The African State System in Flux* 160, Boulder, CO: Westview

Scheffer, David J 'War Crimes and the Clinton Administration - International Justice, War Crimes and Terrorism: The US Record' (Winter 2002) *Social Research* <[http://www.findarticles.com/p/articles/mi\\_m2267/is\\_4\\_69/ai\\_97756597](http://www.findarticles.com/p/articles/mi_m2267/is_4_69/ai_97756597)> [accessed on 16 March 2005]

Schraeder, Peter, 'Reviewing the study of US policy towards Africa: From intellectual 'backwater' to theory construction' (November 1993, Volume 14, No. 4) *Third World Quarterly : Journal of Emerging Areas* 775, Carfax Publishing Company

Shapouri, Shahla and Trueblood, Michael 'The African Growth and Opportunity Act (AGO): Does it really presents opportunities?' (23 – 26 June 2003) Contributed paper presented at the *International Conference, Agricultural policy reform and the WTO: where are we heading?* Capri, Italy <<http://www.agoa.info/index.php?view=download&story=research>> [accessed on 18 March 2005]

Skinner, Elliot P. 'Historical Framework Paper Written for the National Summit on Africa' (1998) *National Summit on Africa* 1, Washington DC

Standard Bank, Economics Division, Africa Economic Research 'Annual Profile: Namibia' (2003) <[http://www.sarpn.org.za/documents/d0000206/P197\\_Namibia.pdf](http://www.sarpn.org.za/documents/d0000206/P197_Namibia.pdf)> [accessed on 15 April 2005]

Tan, Celine 'Bank and Fund watchers must watch WTO' (November 2001) <<http://www.brettonwoodsproject.org/topic/adjustment/wtobrief.pdf>> [accessed on 28 April 2005]

Thakur, Ramesh 'UN Peace Operations and U.S. Unilateralism and Multilateralism' in Malone, David M. and Foong Khong, Yuen (ed.) (2003) *Unilateralism & U.S. Foreign Policy : International Perspectives* 153, USA: Lynne Rienner Publishers, Inc.

Tjirongo, Meshack Tunee 'Short-Term Stabilisation Versus Long-Term Price Stability: Evaluating Namibia's Membership of the Common Monetary Area' (December 1995, WPS/95-18) Centre for the Study of African Economies, Institute of Economics and Statistics, University of Oxford <<http://www.csae.ox.ac.uk/workingpapers/pdfs/9518text.pdf>> [accessed on 24 October 2005]

U.S. Customs and Border Protection 'What Every Member of the Trade Community should know about: African Growth and Opportunity Act' <[http://www.cbp.gov/linkhandler/cgov/toolbox/legal/informed\\_compliance\\_pubs/texties/icp065.ctt/icp065.pdf](http://www.cbp.gov/linkhandler/cgov/toolbox/legal/informed_compliance_pubs/texties/icp065.ctt/icp065.pdf)> [accessed on 10 March 2005]

Walters, Ronald 'U.S. - Africa Relations' in Krieger, Joel (ed.) (1993) *The Oxford Companion to Politics of the World* 945, Oxford, Uk: Oxford University Press

### Legislation and Regulations

The Cotonou Agreement

- <[http://europa.eu.int/comm/development/body/cotonou/agreement/cotonou\\_sit.pdf#zoom=100](http://europa.eu.int/comm/development/body/cotonou/agreement/cotonou_sit.pdf#zoom=100)> [accessed on 16 January 2005]
- <[http://europa.eu.int/comm/development/body/cotonou/overview\\_en.htm](http://europa.eu.int/comm/development/body/cotonou/overview_en.htm)> [accessed on 16 January 2005]
- <[http://europa.eu.int/comm/development/body/cotonou/overview\\_en.htm#Heading13](http://europa.eu.int/comm/development/body/cotonou/overview_en.htm#Heading13)> [accessed on 26 January 2005]
- <[http://europa.eu.int/comm/development/body/cotonou/pdf/agr05\\_en.pdf#zoom=100](http://europa.eu.int/comm/development/body/cotonou/pdf/agr05_en.pdf#zoom=100)> [accessed on 8 April 2005]
- <[http://europa.eu.int/comm/development/body/cotonou/agreement/agr04\\_en.htm](http://europa.eu.int/comm/development/body/cotonou/agreement/agr04_en.htm)> [accessed on 24 May 2005]

Title 1 "African Growth and Opportunity Act" of the U.S. Trade and Development Act of 2000 (AGOA I), PL 106-200, 2000 HR 434

U.S. Trade Act of 1974, PL 93-618, 1975 HR 10710

U.S. GSP Renewal Act of 1996, PL 104-188, 1996 HR 3448

Amendments to the U.S. 'African Growth and Opportunity Act' in August 2002 (AGOA II), PL 107-210, 2002 HR 3009

U.S. AGOA Acceleration Act of 2004 (AGOA III), PL 108-274, 2004 HR 4103

Treaty of Rome <<http://www.hri.org/docs/Rome57/Part4.html>> [accessed on 14 June 2005]

Treaty of Rome (as amended by subsequent Treaties) <[http://europa.eu.int/eur-lex/en/treaties/dat/C\\_2002325EN.003301.html](http://europa.eu.int/eur-lex/en/treaties/dat/C_2002325EN.003301.html)> [accessed on 15 January 2005]

### Websites

The African Growth and Opportunity Act

- <<http://www.agoa.info/>> [accessed on 1 November 2004]
- <<http://www.agoa.gov>> [accessed on 6 April 2005]
- <[http://www.agoa.gov/agoa\\_legislation/agoa\\_legislation.html](http://www.agoa.gov/agoa_legislation/agoa_legislation.html)> [accessed on 24 February 2005]

Bretton Woods Institutions <<http://www.brettonwoodsproject.org/background/index.shtml>> [accessed on 25 January 2005]

Georgetown Agreement

- <<http://www.caricom.org/archives/georgetownagreementonacp.htm>> [accessed on 15 January 2005]
- <<http://www.caricom.org/archives/georgetownagreement1992.htm>> [accessed on 15 January 2005]

U.S. Census Bureau

- <<http://www.census.gov/foreign-trade/balance/c7920.html#1999>> [accessed on 8 April 2005]
- <<http://www.census.gov/foreign-trade/www/sec2.html#sitc>> [accessed on 2 May 2005]
- Foreign Trade Division <<http://www.census.gov/foreign-trade/reference/codes/sitc/sitc.txt>> [accessed on 2 May 2005]

Structural Adjustment Programmes <<http://www.chebucto.ns.ca/Current/P7/bwi/cccsap.html>> [accessed on 25 January 2005]

Club of Rome <[www.clubofrome.org](http://www.clubofrome.org)> [accessed on 14 March 2005]

History of the Lomé Conventions <[http://europa.eu.int/comm/development/body/cotonou/lome\\_history\\_en.htm](http://europa.eu.int/comm/development/body/cotonou/lome_history_en.htm)> [accessed on 16 January 2005]

Eurostat <<http://fd.comext.eurostat.cec.eu.int/xtweb/>> [accessed on 29 April 2005]

The University of British Columbia on the history of the European Currency Unit (ECU) <<http://fx.sauder.ubc.ca/ECU.html>> [accessed on 25 January 2005]

The Government of the Republic of Namibia <<http://www.grnnet.gov.na>> [accessed on 8 April 2005]

Articles of Agreement of the International Monetary Fund <<http://www.imf.org/external/pubs/ft/aa/>> [accessed on 8 April 2005]

National Union for the total independence of Angola (UNITA) <<http://www.namibian.com.na/2002/February/africa/02458C31EE.html>> [accessed on 16 March 2005]

The Namibian Embassy in the United States <<http://www.namibianembassyusa.org/Trade%20&%20Investment/epz.php>> [accessed on 8 April 2005]

Walvis Bay: Export Processing Zone <<http://www.namibweb.com/epz.htm>> [accessed on 8 April 2005]

The New Partnership for Africa's Development (NEPAD) <<http://www.nepad.org>> [accessed on 5 April 2005]

The History of Liberia (Firestone Rubber Company) <<http://personal.denison.edu/~waite/liberia/history/index.htm>> [accessed on 16 March 2005]

Glossary of International Economics <<http://www-personal.umich.edu/~alandear/glossary/>> [accessed on 25 and 28 April 2005]

U.S. Department of State: Office of War Crime Issues <<http://www.state.gov/s/wci/>> [accessed on 16 March 2005]

Commonwealth Secretariat <<http://www.thecommonwealth.org>> [accessed on 20 August 2005]

Leon H. Sullivan Summit: African-African American Summit <[http://www.thesummit.org/summit\\_history.htm](http://www.thesummit.org/summit_history.htm)> [accessed on 16 March 2005]

Organization of African Unity (OAU) <<http://www.un.org/popin/oua/ouahome.htm>> [accessed on 16 March 2005]

United Nations Conference on Trade and Development (UNCTAD) <[www.unctad.org](http://www.unctad.org)> [accessed on 28 April 2005]

U.S. Department of State: African Crisis Response Initiative <<http://usinfo.state.gov/regional/af/acri/>> [accessed on 16 March 2005]

Office of the United States Trade Representative: Generalized System of Preferences <[http://www.ustr.gov/Trade\\_Development/Preference\\_Programs/GSP/Section\\_Index.html](http://www.ustr.gov/Trade_Development/Preference_Programs/GSP/Section_Index.html)> [accessed on 3 March 2005]

Wikipedia - The Free Encyclopedia: Developing Countries <[http://en.wikipedia.org/wiki/Developing\\_nation](http://en.wikipedia.org/wiki/Developing_nation)> [accessed on 19 October 2005]

History of the White House <<http://www.whitehouse.gov/history/presidents/rr40.html>> [accessed on 9 March 2005]

World Trade Organisation (WTO):

- <<http://www.wto.org>> [accessed on 26 January 2005]
- Enabling Clause <[http://www.wto.org/english/docs\\_e/legal\\_e/enabling1979\\_e.htm](http://www.wto.org/english/docs_e/legal_e/enabling1979_e.htm)> [accessed on 31 August 2005]
- GATT Ministerial Conference <[http://www.wto.org/english/thewto\\_e/minist\\_e/minist\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/minist_e.htm)> [accessed on 5 April 2005]
- Uruguay Round <[http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact5\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm)> [accessed on 31 August 2005]

2001 Population Census of the Republic of Namibia <[http://www.grnnet.gov.na/Nav\\_frames/Nutshell\\_launch.htm](http://www.grnnet.gov.na/Nav_frames/Nutshell_launch.htm)> [accessed on 8 April 2005]

### Others

GATT 'Trends in International Trade' (October 1958) ["Haberler Report"]

General Agreement on Tariffs and Trade - Basic Instruments and Selected Documents (March 1958) *Sixth Supplement : Decisions, Reports, etc. of the Twelfth Session* Geneva: Index

General Agreement on Tariffs and Trade - Basic Instruments and Selected Documents (March 1966) *Fourteenth Supplement : Decisions, Reports etc.* Geneva: Index

General Agreement on Tariffs and Trade - Basic Instruments and Selected Documents (March 1980) *Twenty-sixth Supplement : Protocols, Decisions, Reports 1978-1979 and Thirty-fifth Session* Geneva: Index

'Remarks by the President to the White House Conference on Africa' (27 June 1994) <<http://www.clintonfoundation.org/legacy/062794-remarks-by-president-to-white-house-conference-on-africa.htm>> [accessed on 16 March 2005]

'Remarks by President Clinton to Conference on U.S.-Africa Partnership for the 21<sup>st</sup> Century' (16 March 1999) <<http://www.mtholyoke.edu/acad/intrel/clintafr.htm>> [accessed on 16 March 2005]

'Speech by President Bill Clinton at the Signing of the Trade and Development Act of 2000' The South Lawn of the White House, Washington, D.C., 18 May 2000 <<http://abuja.usembassy.gov/wwwhcf23.html>> [accessed on 26 October 2005].

'Speech by European Commissioner for Development Cooperation and Humanitarian Aid Poul Nielson at the ACP-EC Partnership Agreement Signing Ceremony' Cotonou, Benin, 23 June 2000 <<http://europa.eu.int/rapid/pressReleasesAction.do?reference=SPEECH/00/241&format=HTML&aged=0&language=EN&guiLanguage=en>> [accessed on 26 October 2005]

'Statement by the Press Secretary on African American Summit' (2 May 1995) <<http://www.clintonfoundation.org/legacy/050295-statement-by-press-secretary-on-african-american-summit.htm>> [accessed on 16 March 2005]

'Statement on the African Growth and Opportunity Act' (December 2004)  
<<http://www.whitehouse.gov/news/releases/2004/12/20041222-1.html>> [accessed on 8 April 2005]

'U.S. Generalized System On Preferences Guidebook'  
<[http://www.ustr.gov/assets/Trade\\_Development/Preference\\_Programs/GSP/asset\\_upload\\_file333\\_5430.pdf](http://www.ustr.gov/assets/Trade_Development/Preference_Programs/GSP/asset_upload_file333_5430.pdf)> [accessed on 23 February 2005]

