



An Historical Appraisal of the EU-ACP Trade Relations: Blessing or Curse ?

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ARTICLE INFO

Keywords:

Trade, Africa Caribbean and Pacific (ACP), European Union (EU), World Trade Organisation (WTO)

How to cite:

Onu N.O.K.
An Historical Appraisal of the EU-ACP Trade Relations: Blessing or Curse ?

DOI:

[10.18196/jls.2018.0096](https://doi.org/10.18196/jls.2018.0096)

ABSTRACT

There is a maxim that no man is an island. The above proclamation stands valid for country states additionally, as no country has ever effectively created with shut fringes. This demonstrates the certainty of exchange relations among countries. The Europe and the Africa, Caribbean and the Pacific (ACP) have been trading ever before the advent of slave trade up to date; and are strong trade allies up to date. It is a relationship that initially begun on the premise of business associations between early European wayfarers and indigenous anglers most particularly in the seaside regions of the Delta. This article examines these trade relations from pre-colonial period up to the extant Economic Partnership Agreement of 2007 that is being negotiated. This article finds that it was the pre-colonial trade relations that enjoyed parity between the two parties, however, the affairs changed during the slave trade era when the trade changed from the products to the producers. This article further finds that ACP did not profit much from the subsequent agreements; this finding is hinged on the fact that after the seven centuries of the EU-ACP trade association, 39 out of the 70 ACP states remain among the Less Developed Countries. This article also finds that this poor performance can be attributed to both internal and external factors. This article advocates for a paradigm shift from the status quo to a regime where reciprocity should be based on achievement of human centered socio-economic indicators in ACP States. It further recommends the adoption of AU proposal for Common and Enhanced Trade Preference System (CETPS).

1. Introduction

Trade relationship between the European Union (EU)¹ and the African Caribbean and the Pacific (ACP)² has a checkered history. Some scholars had posited that this history dates back to

¹The EU as presently composed for the Economic Partnership Agreement is comprised of 28 European nations which include: The Kingdom of Belgium, The Republic of Bulgaria, The Czech Republic, The Kingdom of Denmark, The Federal Republic of Germany, The Republic of Estonia, Ireland, The Hellenic Republic, The Kingdom of Spain, The French Republic, The Italian Republic, The Republic of Croatia, The Republic of Cyprus, The Republic of Latvia, The Republic of Lithuania, The Grand-Duchy of Luxembourg, The Kingdom of the Netherlands, The Hungary, The Kingdom of Malta, The Republic of Austria, The Republic of Poland, The Portuguese Republic, The Romania, The Republic of Slovenia, The Slovak Republic, The Republic of Finland, The Kingdom of Sweden, and The United Kingdom of Great Britain and Northern Ireland.

²The ACP countries from Africa and the dates of their signing of relevant conventions and/or admissions are: Angola (1985), Benin (1963), Botswana (1975), Burkina Faso (1963), Burundi (1963), Cameroon (1963), Cape Verde (1977), Central African Republic (1963), Congo (1963), Cote d'Ivoire (1963), Democratic Republic of Congo (1963), Djibouti (1978), Eritrea (1995), Ethiopia (1975), Equatorial Guinea (1975), Gabon (1963), Gambia (1975), Ghana (1975), Guinea (1975), Guinea Bissau (1975), Kenya (1969), Lesotho (1975), Liberia (1975), Madagascar (1963), Malawi (1975), Mali (1963), Mauritius (1972), Mauritania (1963), Mozambique (1984), Namibia (1990), Niger (1963), Nigeria (1975), Rwanda (1963),

colonial times and the treaty of Rome.³ Other scholars like Oloruntoba are of the opinion that the “relationship first started on the basis of commercial interactions between early European explorers and indigenous fishermen most especially in the coastal areas of the Delta”.⁴ This was before the trans-Atlantic trade era when trade was on produces before it shifted from the produce to the producers in Africa.⁵

This paper traces the origin of trade relationship between the EU and ACP (especially the ECOWAS region) from pre-1500AD to the Cotonou Agreement. This history is used to understand the spirit and letter of EPA,⁶ and its legal and economic bases.

The first commercial contact between Europe and SSA⁷ was with European explorers and SSA fishermen along the coastal areas of the delta.⁸ They traded on palm oil, ivory, hides and skins, cocoa and other food items in exchange for gun powders, rums and other commodities from Europe. The trade relationship was based on parity. There was also little or no gap in the development of both parties as early Dutch traders that visited Benin City (in present day South-South region of Nigeria) observed that the city already had magnificent streets and a great palace for the king and princes.⁹ However, it must be noted that at this period there existed serious rivalry between the various ethnic and tribal configurations in Africa who were battling for supremacy; a loophole the Europeans noticed and capitalized upon in changing the trade course between the two regions later.

Upon the discovery of the new world by European explorers in the 16th Century, European capitalists who emerged as a result of the collapse of feudalism moved to the new world to establish plantations. Their government assisted them by providing them condemned criminals as workforce. Overtime, they ran short of manpower owing to the large expanse of land and also high demand for the commodities at home. In order to increase manpower, they utilized the divisions among the Africa ethnic tribes by offering to exchange African tribal prisoners of war for western commodities. This approach brought about a shift from trade on produces to trade on the producers. Many of the early African rulers never saw anything bad with the trade as they only traded off their enemies. As time progressed they ran out of prisoners of war, and to maintain the trade relations, they started to trade on their subjects. Oloruntoba aptly captured this era when he posited that the relentless development of shipper capital, in the particular type of Atlantic slave exchange, altogether adjusted the social arrangements of the area. Abdoulaye Bathiley posited that,

Sao Tome & Principe (1977), Senegal (1963), Seychelles (1976), Sierra Leone (1975), Somalia (1963), South Africa (1997), Sudan (1975), Swaziland (1975), Tanzania (1969), Togo (1963), Uganda (1969), Zambia (1975), and Zimbabwe (1980).’ See Akandji-Kombe J., ‘Introduction to the Cotonou Agreement.’ in Heynes C. (Ed.) *Human Rights in Africa*, 2004, p. 703, 705 cited in Udombana N.J., ‘Back to Basics: The ACP-EU Cotonou Trade Agreement and Challenges for the African Union.’ *Text International Law Journal*, 2004, 40.1: 59-122 at 63

Caribbean configuration known as the Caribbean Forum (CARIFORUM) is comprised of Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Saint Lucia, Saint Vincent and the Grenadines, Saint Kitts and Nevis, Surinam, and Trinidad and Tobago.

The Pacific configuration is made of all the countries that make the Pacific Island Forum safe for Australia and New Zealand, they are Cook Islands, East Timor, Fiji, Kiribati, the Marshall Islands, Micronesia, Nauru, Niue, Palau, Papua New Guinea, Samoa, the Solomon Islands, Tonga, Tuvalu, and Vanuatu.

³ See Reisen, M, ‘The Enlarged European Union and the Developing World: What Future?’, in Mold, A., (ed.) *EU Development Policy in a Changing World: Challenges for the 21st Century*. Amsterdam University Press, Amsterdam, 2007, p. 13; and Hurts, S., ‘Understanding EU Development Policy: history, global context and self-interest?’, *Third World Quarterly*, 2010, 31: 1, p. 159-168

⁴Oloruntoba S.O. ‘Paternalism or Partnership? EU-ACP Economic Partnership Agreement and implications for Nigeria’s non-oil sector development.’ *PAS working papers* 2011, No. 21 at p. 2. See also Bathiley A ‘The West Africa in Historical Perspectives’ in E. Osaghae (ed.) *Between State and Civil Society in Africa: Perspectives on Development*. CODESRIA, Dakar, Senegal, 1994.

⁵ Ibid

⁶ Economic Partnership Agreement

⁷ Sub-Saharan Africa

⁸Oloruntoba op. cit p. 2

⁹ Rodney W., *How Europe Underdeveloped Africa.*, Bogle-L’Ouverture Publishers, London, 1973, p. 62

the epoch of the slave trade opened by the assault of merchant capital on the social formations of the region and the role of the latter in the transformation of the state in Africa had a number of fundamental features. These include the fact that the Atlantic slave trade was conducted by merchant capitalists benefiting from the military support of the European powers; the Atlantic system shifted the trade items from natural produce to the producers themselves as slaves became the main commodity; the development of the Atlantic slave trade and the expansion of the colonial conquest set the scene for the loss of autonomy for African social formations, which led to their ultimate subjugation... This loss of autonomy became even more manifested during the colonial rule as the foreign powers took effective control of both social, economic and political institutions and deployed these to the best advantage of their home countries.¹⁰

Walter Rodney in his great book¹¹ also supported above position and further argued 'that beyond the internal disarticulations that slave trade caused in Africa, it has some external dimensions.'¹² For example, he insisted that it was "European capitalism, which set slavery and the Atlantic slave trade in motion".¹³ This was done to give workers to sugar manors in Brazil, Portugal and Spain, among different spots, at the end of the day, slave exchange adequately laid the reason for the present position of underdevelopment and unequal trade amongst EU and Africa. Amid the time of this exchange, capable men who ought to have built up the landmass were mightily emptied, with millions biting the dust en route. The nearby economies additionally endured on the grounds that there was huge decrease in populace. Despite the fact that no genuine figure can be expressed for the number of Africans sent out into Europe, they are at least ten million individuals inside the four centuries of slave trade from 1445 to 1870. Simple additions from offers of kindred people additionally redirected consideration from farming, art and nearby innovations which would have prompted entrepreneur improvement in the mainland.¹⁴

Some authors¹⁵ had tried to blame the slave trade on external factor of European escapade, but we seek to differ from that; we submit that the atrocity is double-faceted as it has both internal and external factors, being that the Europeans never went to the hinterlands to capture slaves. Africans captured fellow Africans and handed them over to Europeans as slaves irrespective of whatsoever justification (if any) that they might come up with. We therefore submit that it was a contributory wickedness between African merchants and warlords, and European merchants which had its ugly reparation on Africa solely.

Following wide spread criticism, slave trade was abolished in early 1800 globally. However, Europe waxing on its gains from the slave trade decided to metamorphose its already gained dominance of the south to colonialism pursuant to Berlin partitioning of Africa for that purpose in the same period. Colonialism even proved to be more potent than the slave trade; as it granted Europe access into Africa to exploit and milk both the human and natural resources (being that slave trade only limited Europe to human resources) without much agitations or censure as it did not appear as brutal as its predecessor. The colonial territories were used as raw material base for the European colonial masters. This was obviously showed in the idea of the political economy that was built up which guaranteed that consideration was moved to the generation of fare based money trim. Arrangement of foundation, for example, railroad systems was likewise given just to interface the ports to the hinterland where the items can be conveyed

¹⁰ Oloruntoba op. cit p. 2

¹¹ Rodney W. *How Europe Underdeveloped Africa*. Bogle-L'Ouverture Publishers, London, 1973, p. 62

¹² Oloruntoba S.O. 2011 op. cit.

¹³ Ibid

¹⁴ Oloruntoba S.O. 2011 op. cit.

¹⁵ Ibid

to the ports for sends out. The mix of tight specialization in essential creation, concentrated exchanging accomplices, all mirror the non-reasonable joining of the underdeveloped nations into the world economy. This is as for such fundamental files as the offer of outside exchange the economy of the ACP nations, the product synthesis of fares, low-intra-provincial exchange, unequal trade and exchange changes¹⁶We submit that although slave trade and colonialism contributed to underdevelopment in Africa, they are not the only factors, as bulk of the reasons is internal. For instance, Ethiopia was never colonized by any country, yet Ethiopia and Eritrea (formerly part of Ethiopia) are still ranked as LDCs.

Europe made effects into entering a formal trade agreement with Africa during the colonial period. This part was blazed by France before it was extended to the rest of Europe.

2. Method

2.1 The French Union

With the end of first and Second World War, the French sought to assert its empiric relevance, by forming economic and political synergy with its colonies in Africa through the concept of *Eurafrica* by the establishment of the French Union under the French Constitution of 1946.¹⁷ Michel Debre stated then that:

France is not only a European territory, she is not only a European nation; she is also an African nation, a musliman power, and her citizens embrace not only many religions but many races. The French Union forms a whole, a single legal conception.¹⁸

This Union was economically made to increase market access of French colonies to the French market, but political to tighten the grip of France on its colonial territories.

2.2 The Treaty of Rome¹⁹

Some European nations came together in 1957 to establish a European Common Market (ECM) after protracted negotiations in a bid to establish a resurgent political and economic integration of Europe through the elimination of all barriers to trade and service²⁰. This was made possible by the signing of the European Economic Community treaty (EEC)²¹ popularly known as the Treaty of Rome.

France had at the negotiation for EEC insisted that the French Union (that is French foreign territories and colonies) be included in the treaty by incorporation of trade ties between France and its colonies into the Treaty. This request was accept which caused a portion of the preamble to the Treaty of Rome to read thus:

The Member States agree to associate with the Community the non-European countries and territories which have special relations with Belgium, France, Italy and the Netherlands. These countries and territories

¹⁶Oloruntoabaop.cit. pp. 23-24

¹⁷ "The French Union included France (and its overseas departments), the African colonies (on which see *infra* note 24), a North African group, and an Indo-Chinese group. In the Constitution of 4 Oct. 1958 the French Union was reconfigured as the ' French Community ' ." culled from Bartels L. 'The Trade and Development Policy of the European Union.' *The European Journal of International Law* 2007, 18:4. Pp. 715-756 at 720 Retrieved May, 20, 2017 from <http://ejil.oxfordjournals.org/10.1093/ejil/chm042/>

¹⁸Assemblée ad hoc: *Debats*, 10 Mar. 1953, at 510 cited in Bartels (supra) at p.718

¹⁹ The Treaty of Rome (1957) is Retrieved June, 1, 2015 from http://ec.europa.eu/economy_finance/emu_history/documents/treaties/rometreaty2.pdf

²⁰See Shaw M.N. *International Law*. 6th Ed., Cambridge University Press, Cambridge, 2010, p. 1288; Chalmers D. and Tomkins A. *European Union Public Law*. Cambridge Press, Cambridge, 2007, p. 102.

²¹ EEC is now known as European Community by virtue of European Union (EU) Treaty of 1992. EEC was originally consisted of interlocking three communities of the European Coal and Steel Community 1951, the European Atomic Energy Community 1957 and the European Economic Community 1957. The founding members of the EEC were Italy, Germany, Netherlands, France, Luxembourg and Belgium.

(hereinafter called the 'countries and territories') are listed in Annex IV to this Treaty.

The purpose of association shall be to promote the economic and social development of the countries and territories and to establish close economic relations between them and the Community as a whole.

In accordance with the principles set out in the Preamble to this Treaty, association shall 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.²²

The Treaty in its Article 3 provided for more trade and promotion of economic and social development for the Overseas Countries and Territories²³ (OCT) associations as one of the activities of the EEC. This formed the basis of the preferential trade access that was granted to OCT nations at the expense of other colonies and territories that are not named under the Annex VI above. Most notable of them were the British colonies, as Britain was not a member of the EEC as at then. Mutual obligations and concession was granted by EEC to OCT under Part IV of the Treaty of Rome.

This Treaty of Rome laid the foundation of what is now known as the EU-ACP partnership. It should be noted that Treaty was signed when all the nations under the said Annex VI were still colonies of some European nations.²⁴

This Treaty led to the establishment of the first European Development Fund (EDF) in 1958 (with the sum of \$581.25m as the initial disbursement²⁵) to sponsor social and economic developmental projects in the OCTs especially, the French territories in Africa.²⁶

Article 136 of the Treaty set the implementation Convention for this arrangement for the OCTs at five years duration. Reasons for this short life span of the concession as posited by Bartels²⁷ was the uncertainty of the political future of many of the OCTs as some were due for independence while some were under trusteeship of the UN; secondly, "it was also unrealistic to expect continuing development aid commitments; and the entirely experimental nature of the system suggested that there should be a sunset clause on the proposed arrangements."²⁸

3. Analysis and Result

3.1 Post-Colonial Era (1960-Date)

²² Bartels op. cit. p. 720

²³ "Annex IV to the EEC Treaty lists these as: French West Africa (eight territories: Senegal, French Sudan (now Mali), French Guinea (now Guinea), Ivory Coast, Dahomey (now Benin), Mauritania, Niger and Upper Volta (now Burkina Faso)); French Equatorial Africa (four territories: Middle Congo, Ubangui-Sari, Chad and Gabon); French Togoland; Belgian dependent territories (two territories: Belgian Congo, Rwanda-Burundi); Italian territory (Somaliland); Netherlands dependent territory (New Guinea); other French dependencies (St Pierre and Miquelon, the Comoros Archipelago, Madagascar and dependencies, French Somaliland, New Caledonia and dependencies, French settlements in Oceania, Southern and Antarctic Territories)". Culled from Bartels Ibid

²⁴ That is to say that they were yet to gain their independence.

²⁵ "In 1958 units of account equalled the US dollar. This was worth \$3.9bn in 2005 dollars; which compares to € 13.5bn under the current arrangements in the Cotonou Agreement: see the conversion table at http://oregonstate.edu/Dept/pol_sci/fac/sahr/cv2005.pdf . Germany and France each contributed \$200m to a \$581.25m fund of which around 90% went to French territories, and while the others received the remainder of the funds for their territories, this fell short of their contributions. The others also made a loss: Belgium contributed \$70m for a return of \$30m; the Netherlands \$70m for a return of \$35m; Italy \$40m for a return of \$5m and Luxembourg \$1.5m for a return of zero: Arts 1 and 3 and Annexes A and B of the Implementing Convention to the EEC Treaty." Culled from Bartels op. cit p. 726

²⁶ Stephen Karingi et al 'The Economic and Welfare Impact of the EU- Africa Economic Partnership Agreements.' *ATPC, Economic Commission for Africa*. 2005, p. 8.

²⁷ Bartels (2007) op. cit

²⁸ Ibid

a. The Yaoundé Agreements

The concession under the Treaty of Rome officially ended in 1962 pursuant to its article 136. However, at this time all the countries under the OCT association had gained their political independence from their former EEC colonial masters.²⁹ Looking at the new independent status of these former colonies, Alaro B.B.³⁰ posited that “Europe sought to strengthen its relations with the former colonies and to bolster their development process and, as a result, some African countries negotiated with the EEC for the continuation of their preferential economic relations.”

b. Yaoundé I Agreement

This agreement was signed by the independence Europe African colonies³¹ with the EEC in 1963 at Yaoundé (the Cameroonian capital, from where it derived its name), which was fashioned after Part IV of the Treaty of Rome that provided for FTA between EEC and OCTs in addition to the provision of financial aids to the new independent territories so as to boost their social and economic development. According to Alaro: “the Convention contained provisions on a reciprocal and non-discriminatory trade preferences and financial aid with the trade provisions pursuing the trade arrangement of pre-independence time by specially giving a high profile to agricultural development as its peculiar nature.”³²

ECC covenanted under Article 11 (1) of the Yaoundé I Agreement ‘to take the interests of the Associated States into consideration.’ This Yaounde I Agreement was made to last for five years.

Cosgrove³³ contended that the Yaoundé I was a mere extension of Part IV of the Treaty of Rome; while Bartels³⁴ also in the same light posited that the only different between the Part IV of the Treaty of Rome and the Yaoundé I and II was the creation of institutions (such as an Association Council, an Association Committee, a Parliamentary Conference and a Court of Arbitration) under the Yaoundé regimes which was absent under Part IV of the Treaty of Rome. However, he was quick to note that “these institutions was more cosmetic than real”.³⁵ Aina attempted to defend the OCTs (now Associate states under the Yaounde regime) for conceding to this lopsided agreement in favour of the EEC on the grounds that they just acquired independence and were not yet skilled with the art of diplomacy and trade negotiations; secondly, that they were already addicted to the concessions under Part IV of the Treaty of Rome. He therefore, concluded that the Yaounde regime “was not a negotiated agreement”.³⁶

c. Yaoundé II Agreement

Upon the expiration of Yaoundé I Agreement, in May, 1969, the parties agreed on a fresh five year deal with little or no difference from the Yaoundé I Agreement, save for the fact that the Yaoundé II regime provided for more technical and financial assistance for AASM. This second agreement is known as the Yaoundé II Agreement with an effective date of January, 1970. It suffered the same fate with the Yaoundé I Agreement as enunciated above because it treated the

²⁹ Safe for French Somali Coast

³⁰ Alaro B.B. The EU-ACP (African, Caribbean and Pacific) Economic Partnership Agreements and their Implications for Ethiopia. LL.M Thesis, Faculty of Law, Addis Ababa University. 2010, X+173 p. 14

³¹ “These countries (known as the African and Malagasy States) were Burundi (formerly part of Rwanda- Burundi), Cameroon, Central African Republic, Chad, Democratic Republic of Congo, Congo (Brazzaville), Dahomey (now Benin), Gabon, Ivory Coast, Madagascar, Mali (formerly part of French Sudan), Mauritania (formerly part of French Sudan), Niger, Rwanda, Senegal, Somalia, Togo, Upper Volta (now Burkina Faso). Mauritius joined Yaoundé II in 1973” culled from Bartels op. cit p.722. These 18 nations formed the Association of African States and Madagascar (AASM) with the French acronym of EAMA.

³² Alaro op. cit p.15

³³ Cosgrove C 1969. The Common Market and Its Colonial Heritage”*Journal of Contemporary History* 80

³⁴ Bartels Op. cit p. 722

³⁵ Ibid

³⁶ Aina Aina T.P. A critical overview of the impact of Economic Partnership Agreement with European Union on trade and economic development in the West African region. MPhil Thesis, Faculty of Law, University of the Western Cape. 2012, Xi-89 15

parties as equals. Ehinfun noted that “the absence of preferential treatment for some important products and the fact that the convention was based on the reciprocity principle led to its criticism.”³⁷ He noted that the demise of the Yaoundé regimes could be attributed to the fragile nature of the AASM economies and the protectionist approach adopted by them coupled with the fact that the agreement did not cover some crucial commodities of the AASM as of then like cotton, oil seed and rubber.³⁸

However, one significant occurrence within the tenure of the regime was the ascension of Britain to the EEC in 1973. This meant that former British colonies would form part of any subsequent trade agreement between the EEC and AASM.

3.2 The Lomé Agreements

Following the ascension of Britain to EEC (now EU) the former British colonies (comprising of territories in Africa, the Caribbean and the Pacific)³⁹ joined forces the AASM to form a more formidable bloc which will foster solidarity and seek for the common good of its member. This was consummated by the signing of the Georgetown Agreement by 46 nations which established the Africa, the Caribbean and the Pacific (ACP),⁴⁰ so as to give the group a legal capacity. The ACP is presently comprised of 79 nations: 48, 16, and 15 countries from Sub-Saharan Africa (SSA), the Caribbean and the Pacific respectively.⁴¹

Based on the foregoing, the Lome Agreement was negotiated by the EEC and ACP (at Lome a commercial city in the Togolese Republic from whence it derived its name) on the basis of non-reciprocity and unilateral preference in favour of the ACP as against the reciprocal nature of its predecessor (the Yaoundé regimes). The radical change of the face of the agreement has been attributed to the unity that existed among the ACP all through the negotiation of the Lome I regime,⁴² while others attributed it to the existence of the Cold war (as EEC was eager not to lose its third world allies so, it chose to concede to the terms of the ACP).⁴³ On his part, Bartels⁴⁴ attributed the change of EEC trade policy from reciprocity to non-reciprocity to the emergence of United Nations Conference on Trade and Development (UNCTAD). It should be noted that EEC did not lose entirely as they were also able to infuse the rule of origin and protectionist principles in the agreement.

The Lome I, II and III agreements had a lifespan of 5 years each (that is 1975-1980; 1981-1985; and 1986-1990 respectively), while the Lome IV had a lifespan of 10 years (that is 1991-2000).

³⁷Ehinfun O.M. The Implications of the Economic Partnership Agreement on the Development of African Caribbean and Pacific Countries. LL.M Thesis, Faculty of Law, University of Leeds, 2012, 1-88 at p. 15

³⁸Lecomte, H.S. *Effectiveness of Developing Country Participation in ACP-EU Negotiations* (Overseas Development Institute London, 2001) 8. Retrieved June, 1, 2017 from <http://www.odi.org.uk/resources/docs/4742.pdf>

³⁹ It should be noted that this the first time the Caribbean and the Pacific shall be joining in a trade negotiation with EU.

⁴⁰ The objectives of the ACP Group, as defined by the Georgetown Agreement, were to: Promote a new, fairer and more equitable world order; Promote and strengthen solidarity among ACP States, and understanding between ACP peoples and governments; Contribute to the development of important and close economic, social and cultural relations among developing countries and develop cooperation among ACP States in the areas of Trade, Science and Technology, Industry, Transport, Education, Training and Research, Information and Communication, the Environment, Demography and Human Resources; Contribute to the promotion of regional, inter-regional, and effective intra-ACP cooperation among ACP States, generally among developing countries, and strengthen the regional organisations of which they are members; Define common positions of ACP States vis-à-vis the EEC in areas covered by the Lome Convention and on relevant issues debated in international fora, which may influence the implementation of the Lome Convention; Ensure achievement of the objectives of the Lome Convention; and Coordinate the activities of ACP States in the framework of the application of the Lome Convention. See Secretariat of the African, Caribbean and Pacific Group of States, Retrieved June, 1, 2017 from http://www.acpsec.org/en/about_us.htm

⁴¹ See note 2 above the names of these countries.

⁴² See Kolbeck B., *Legal Analysis on the Relationship between the AU / AEC and RECs: Africa Lost in a “Spaghetti Bowl” of Legal Relations?* LL.M Thesis, School for Advanced Legal Studies, University of Cape Town. 2014, Vi+79 p.14

⁴³Babarinde O. & Faber G. *From Lome to Cotonou: Business as Usual? Being a paper prepared for the Eight Biennial Conference of the European Union Students Association, 27-29 March, 2003, Hilton Suites, Nashville, Tennessee.* Retrieved May, 20, 2017 from core.ac.uk/download/pdf/5075928.

⁴⁴ Bartels Op. cit p. 733

According to Ehinfun “The underlying feature of the Lome convention was a direct consequence of the demands of Developing countries, through the New International Economic Order (NIEO). The major concern of the NIEO was that assistance given to Developing countries should be in the form of trade and not aid.”⁴⁵

a. Lome I

Lome I like the rest of the Lome Conventions has Objectives and Principles, and four pillars on which they were anchored which are trade cooperation, industrial cooperation, STABEX system and financial cooperation. We shall approach this Lome I agreement under the above sub-headings.

Objectives and Principles

Article 1 of this convention provides that:

The object of this convention is to promote trade between the contracting parties, taking account of their respective levels of development and in particular, of the need to secure additional benefits for the trade of ACP states, in order to accelerate the rate of growth of their trade and improve conditions of access of their products to the market of the European Economic Community.

Article 2 (1) exempted the ACP nations from non-tariffs barriers to imports into EEC on a non-reciprocal basis and also accorded the ACP nations a duty free entry into the EEC. However, this above incentive is conditioned on the principle of originality otherwise, called the rule of origin as enunciated under Title I of Protocol No. 1 annexed to the regime; which is to the effect the goods sought to be exported into EEC must wholly originate from that ACP nation, and/or part of the product or machine used for the processing of the product emanating from an EEC nation. This above clause was quite stringent for the ACP nations, as it kind of shot off from any trade relations by ACP with a third party, thereby boxing them into trading with EEC mainly.⁴⁶ In the same light, Article 4 also granted the EEC power to invoke protection on exports from ACP on the grounds of “public morality, public policy or public security; the protection of health and life of humans, animals and plants; the protection of national treasures possessing artistic, historic or archaeological value or the protection of industrial and commercial property which will be implemented in a manner which doesn’t constitute a means of arbitrary discrimination or a disguised restriction on trade.”

Industrial Cooperation

Under this pillar of the agreement, EEC enlarged the scope of EDF for more financial assistance to the ACP nations in order to trigger industrial revolution in ACP. This pillar established Industrial Development Centre with Industrial Development Committee as the administering body.⁴⁷

Some scholars have wondered why the Industrial sectors of these ACP nations have failed to advance despite the above innovations; rather, they got worse, that even the industries that were put in place during the colonial rule had turned moribund or are functioning below capacity.⁴⁸

Financial Cooperation

⁴⁵Ehinfun Op. cit p.19

⁴⁶Alaro Op. cit p.19

⁴⁷ See Article 36

⁴⁸ Ibid p.28. See also Kapunda, M.S., 2005 African Industrial Development -Beyond Impasse: the case of Botswana, Tanzania and Zambia, Paper for 11th CODESTRIA General Assembly, Maputo, Mozambique, December, 2005 http://www.codesria.org/Links/conferences/general_assembly11/papers/kapunda.pdf (Last visited on June 15, 2017)

Financial aid to the ACP states was increased greatly under the Lome I. This is far higher than what was obtainable under the Yaoundé Conventions.⁴⁹

Trade Cooperation

The most exciting provision of this regime for the ACP nations happens to be with Article 7 which recognized the inequality of the trading partners despite the fact that the preamble assumed that the parties are equal, when it provided that "...the ACP States shall not be required, for the duration of this Convention, to assume, in respect of imports of products originating in the Community, obligations corresponding to the commitments entered into by the Community in respect of imports of the products originating in the ACP States."

This above innovation was greeted with a lot of criticisms from both developed and developing nations alike, basically on the ground of its GATT compatibility.

STABEX System

Though fluctuation in prices of demand export commodities of many ACP nations which were mainly agricultural products in the late 60s and early 70, that resulted to unstable earning record and consequent fiscal implications for the ACP states; the ACP states became hesitant of entering into any further trade relationship that would not grantee them of a stable export earning deal. This agent formed part of their negotiation terms during the Lome I negotiation period. Lome I finally incorporated same by introducing STABEX (stabilization of export earnings) system, for agricultural products. Article 16 provided that STABEX was invented "to compensate ACP countries for the shortfall in export earnings due to fluctuation in the prices or supply of commodities."

STABEX as lofty and laudable as it seems, was laden with so much conditionality which made it to have little or no impact in saving the ACP states agricultural products to export price fluctuations. According to a scholar, "the STABEX objectives were not apt to check the drop in commodity prices, but to spread out their impacts over time."⁵⁰

b. Lome II (1980-1984)

Negotiation for this convention was concluded and signed on 31st of October, 1979, and it took effect from January, 1980. This convention followed the same partner, format and content with its predecessor (Lome I) mutatis mutandis. It had more ACP partners, as their number increased to Fifty eight members, while the EEC remained nine.

The most significant innovation of Lome II convention was the introduction of Stabilization of Export Earnings from Mining Products System (SYSMIN) which Alaro apt captured thus:

"With respect to mineral commodities, the stabilization mechanism for export revenues was reinforced by the establishment under Lomé II of the system known as SYSMIN, literally meaning System of Stabilization of Export Earnings from Mining Products. This fulfills the same role in respect of mineral commodities as STABEX does for agricultural commodities."

Therefore, it could be safe to say that while Lome I laid emphasis on export price stabilization for agricultural products, Lome II laid emphasis on export price stabilization for mining products. Lome II convention also provided more aids and loans for the ACP states. It also made provision for encourage of non-discriminatory trade policy, as the EEC had noted during the negotiation for this convention that fear of naturalization and expropriation has been the greatest hindrance of EEC industries from investing in ACP states.

⁴⁹Alaro op. cit p.26

⁵⁰ A. Emmanuel, La stabilization, alibi de l'exploitation internationale, Third World Review, Vol. XVII, April-June 1976 Cited in Stephen Karingi et al, Assessment of the impact of the Economic Partnership Agreement between the ECOWAS countries and the European Union, ATPC, Economic Commission of Africa, December 2000, p.9

c. Lome III (1985-1989)

This agreement once more witnessed an expansion of the partners that signed the agreement as the ACP states increased to sixty-five members, while the EEC had a single addition which brought its number to ten. This agreement adopted all the principles of the earlier conventions but introduced a new but radical dimension to the ACP-EEC partnership by introduction a political dimension to the agreement which was lacking in its predecessors. According to David⁵¹ the Lome III convention “coincided with an in-depth review of the effectiveness of aid and the emergence of a political dimension.”

The agreement focused on self-reliance and internally driven development based on the individual ACP state’s culture and social values as against industrial development and agricultural development that were the focus of the two successive regimes before it.⁵² This focus/objective was succinctly captured in its Article 5 that provided that “[t]o attain[] more balanced and more self-reliant economic development in the ACP States, special efforts shall be made under this Convention to promote . . . food security for the people ...”

d. Lome IV (1990-1999)

This agreement was signed by on 15th of December, 1989 with sixty-eight ACP states and Twelve EEC states, and it became operational from January, 1990 to last for a ten year period as against its predecessors, which for five years period. The agreement had a mid-term review in 1995⁵³. The essential elements of this convention were stated to be “the promotion of human rights, democracy, and good governance; strengthening of the position of women; the protection of the environment; decentralized cooperation; diversification of ACP economies; the promotion of the private sector; and increasing regional cooperation.”⁵⁴ This regime in its Article 5 introduced human rights clause for the first in EU-ACP relationship.

This requirement of human rights, democracy, and good governance was viewed by some analyst as “conditionality” rather than a mutual provision.⁵⁵

It should also be noted that this Lome IV placed a demand on ACP states to adopt SAP. This particular move was greatly criticized by scholar such Edgar Pisani who stated that “Lomé would no longer be Lomé if there was to be a commitment along with the path of adjustments, and that Lomé was pro-development instrument.”⁵⁶

3.3 WTO Compatibility of the Lome Conventions

The world in a bid to push globalization and liberation launched multi trade negotiations in Punta del Este, Uruguay sometime in September, 1986 which was known as the Uruguay Rounds. This negotiation lasted for 8 years with several rounds before it was concluded in 1994. By way of implementation of the terms and principles of this Uruguay Round, World Trade Organization (WTO) was founded pursuant to Marrakesh Agreement of 1995, which introduced a global multilateral trade system.

The EU-ACP Lome convention has been attacked by both developed and developing nations alike for flouting the WTO/GATT which even cumulated to litigations at the Dispute Settlement Board established under WTO. The first case was filed by some Latin American countries (Colombia, Costa Rica, Guatemala, Nicaragua and Venezuela) and USA at the GATT

⁵¹David D, *40 Years of Europe-ACP Relationship*, ACP-EU COURIER, Sept. 2000, at p13 cited in Udombana N.J., Back to Basics: The ACP-EU Cotonou Trade Agreement and Challenges for the African Union. *Text International Law Journal* , 2004, 40.1: 59-122 at pp.70-71. p.66

⁵²Sungura Op. cit p.44

⁵³ David posited that this review was necessitated as response to the end of the cold war. See David supra p.11. this revision covered fifteen EU states and seventy ACP states.

⁵⁴Udombana op. cit.

⁵⁵Sungura B, Implication of EU-ACP Economic Partnership Agreements on the realization of socio-economic rights in Kenya. LL.M Thesis, Faculty of Law, University of Nairobi. 2012, vii+112 p.47

⁵⁶Alaro op. cit p.31

Panel in 1993 challenging EEC Regulation No 404/93 which among other provisions allowed ACP nations to import banana duty free into EU, while non-ACP nations were made to pay high tariffs; stating that it contravenes Articles 1(1) and 10 of GATT. This regulation particularly affected Chiquita Group (a USA company based in Latin America which is world largest exporter of banana).⁵⁷ EU on its path contended that the regulation was in line with the enabling clause and articles XXXVI (8) and XXIV (8) of GATT which deals on SDT. The panel decided that the regulation was in contravention of GATT as it discriminated among the developing nations and was also not reciprocal in nature. EU quickly blocked the report of this GATT panel.⁵⁸

However, with emergence of WTO with its Dispute Settlement Board (DSB) whose report is automatically adopted and cannot be blocked like GATT panel's report; Latin America countries (Ecuador, Guatemala, Honduras, Mexico) and USA in 1996 filed the same complaint before DSB which helped that the regulation and Lome convention were not WTO compatible. EU-ACP therefore sought for WTO waiver till the end of the Lome IV convention.

that will succeed the Lome IV convention which would be elapsing by February, 2000.

3.4 ACP Performance under the Lome Conventions

After 25 years of un-interrupted EU-ACP partnership under the Lome conventions, scholars have been divided as to its impact in development of the ACP states. Some scholars like Karl is of the opinion that the partnership has been of immense benefit to ACP in the areas of "economic and social infrastructures, technical and financial aid programmes in various sectors, access to the European market for some of their produce, assistance in implementing effective macro-economic policies, [and] backing for structural adjustment[]." ⁵⁹

The external factors are the fact that the ACPs traded mainly on raw agricultural materials/products which were faced with a lot of conditionality based on EU Common Agricultural Policy (CAP); as against EU exports that were mainly finished products. Another reason was the fact that "the Lome conventions did not encourage ACP countries to diversify their exports. The STABEX and SYSMIN schemes were also considered to be defeatist as they rewarded failure rather than success"⁶⁰. On the internal factors, ACP states that benefited from the STABEX and SYSMIN schemes diverted the aids meant for agricultural and industrial developments respectively to funding of its government budgets and elephants projects.

3.5 Current EU trading Options for ACP states

CPA⁶¹ was signed by 77 ACP⁶² states and 25 EU⁶³ nations on 23rd June, 2000 at Cotonou, a commercial city of Benin Republic after a long negotiation period that commenced in 1998 in the same city. This agreement is divided into six parts with 100 articles aside the annexure, and it's expected to last for 20 years (i.e. 2000-2020)⁶⁴. This agreement is meant to foster the parties' "commitment to work together towards the achievement of the objectives of poverty

⁵⁷ This company was the highest importer of Banana into Germany (the world highest consumer of the commodity) as the Germans preferred their cheap product to ACP banana. However, with the coming of EEC regulation No 404/93 this preference was lost, as Germany unsuccessfully appealed against at EU.

⁵⁸ Panel report on the EEC-Member states' import regimes for bananas DS32/R 93-0864, 82 Retrieved June, 15, 2015 from <http://www.worldtradelaw.net/reports/gattpanels/eecbananas.pdf>

⁵⁹ See Karl, K., *From Georgetown to Cotonou: The ACP Group Faces Up to New Challenges*, ACPEU COURIER, 2000, at 20, 21 cited in Udombana (2004) Op. cit., p. 67

⁶⁰ Ehinfun Op. cit., p. 20

⁶¹ Cotonou Partnership Agreement 2000 and 2005 revised version are Retrieved June, 6, 2017 from www.europarl.europa.eu/intcoop/acp/03_01/pdf/cotonou_2006_en.pdf.

⁶² Africa, Caribbean and the Pacific

⁶³ European Union

⁶⁴ Article 95 (1)

eradication, sustainable development and the gradual integration of the ACP countries into the world economy.”⁶⁵

This agreement extended the non-reciprocal trade preference in the Lome convention (though in a modified form) to December, 2007.⁶⁶ The agreement also provided that negotiations for an EPA⁶⁷ that is reciprocal in nature be made by the parties within the transition period of 2000-2007, after which, a reciprocal FTA⁶⁸ EPA will be implemented between the parties starting from the year 2008. The following are the trading options between the EU and ACP states under the CPA:

a. Most Favoured Nations (MFN)

This trade arrangement is pursuant to Article 1 of WTO⁶⁹ which is to the effect that any trade privilege that any WTO member accords to any nation, should also be extended to all the WTO member countries. Brown explained the purport of this clause to that “countries cannot discriminate between their trading partners, i.e., an advantage granted to a WTO Member automatically inures to the benefit of all WTO Members. For example, if a country grants one trading partner a lower customs duty for a particular product, this must also be granted to all other members of the WTO.”⁷⁰

b. Generalised System of Preference (GSP)

Because of the inequalities that were attendant to MFN above and the agitation of developing Countries questioning its rationality because of the untold economic hardship that it bequeathed to them; GATT⁷¹ enabling clause titled “Decision on Differential and more favourable treatment, reciprocity and fuller participation of Developing countries” before permits developed nations to give the developing nations a Special and Differential Treatment (SDT) in trades which is also the purport of Article XXXVI (8) GATT.⁷² Based on this, EU introduced GSP through which it gave all the developing states preference to EU. This arrangement is WTO compatible as the trade preference was extended to all developing states and not just to the ACP states. However, the EU also introduced GSP+ for developing nations that ratifies some selected 27 human rights treaties. Nigeria has been trading with the EU under the GSP which is open to all developing states. Nigeria application for graduation from GSP to GSP+ between the years 2009 to 2011 was not successful. EU cited lack of ratification of the

⁶⁵ CPA preamble Para. 2

⁶⁶ haven secured a World Trade Organisation waiver for that.

⁶⁷ Economic Partnership Agreement

⁶⁸ Free Trade Area

⁶⁹ World Trade Organisation

⁷⁰ Brown M., *Economic Partnership Agreement*. Advocates for International Development, 2012, p. 14.

⁷¹ General Agreement on Tariff and Trade

⁷² Some provisions of the Enabling clause are as follows:

“1. Notwithstanding the provisions of Article I of the General Agreement, contracting parties may accord differential and more favourable treatment to developing countries, without according such treatment to other contracting parties;
2(c) Regional or global arrangements entered into amongst less-developed contracting parties for the mutual reduction or elimination of tariffs and, in accordance with criteria or conditions which may be prescribed by the CONTRACTING PARTIES, for the mutual reduction or elimination of non-tariff measures, on products imported from one another;
5) The developed countries do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of developing countries, i.e., the developed countries do not expect the developing countries, in the course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs. Developed contracting parties shall therefore not seek, neither shall less-developed contracting parties be required to make, concessions that are inconsistent with the latter's development, financial and trade needs;

6. Having regard to the special economic difficulties and the particular development, financial and trade needs of the least-developed countries, the developed countries shall exercise the utmost restraint in seeking any concessions or contributions for commitments made by them to reduce or remove tariffs and other barriers to the trade of such countries, and the least-developed countries shall not be expected to make concessions or contributions that are inconsistent with the recognition of their particular

situation and problems.” See Differential and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries’ Decision of GATT 1979 (L /4903). Culled from Ehinfun op. Cit p. 23

Convention on Prevention and Punishment of the Crime of Genocide (Genocide Convention) as the reason for the failure of the application. Stakeholders in Nigeria have insisted that the refusal of the EU to upgrade Nigeria is political and was made *malafide*.⁷³ Nigeria officially endorsed the said convention on the 27th of July 2009.⁷⁴ Cape Verde is the only ECOWAS state that has been granted the GSP+ by the EU; this was done in December, 2011.

c. Everything but Arms (EBA)

The EU had covenanted under CPA to make SDT for LDCs; this it did by introducing EBA under the GSP system which gave LDCs QFDF⁷⁵ access into EU market but for arms and ammunitions.⁷⁶ EBA made all the LDCs in ECOWAS not to bother initialing an EPA with the EU as they were already enjoying QFDF access to EU market.

However, we agree with Ukpe that:

...the GSP scheme that incorporates the EBA consists of non-binding, unilateral measures. Accordingly, the EU has the right to withdraw or modify its concessions at any time. This makes the measures highly insecure. Furthermore, the EU as the donor determines the eligibility of recipients and products as well as the rules and exceptions of the scheme. Moreover, the GSP includes very strict and costly rules of origin that the beneficiary countries have to manage.⁷⁷

3.6 Recommendations for EU-ACP Trade Relationship (Alternatives to EPA)

If EU is indeed serious with assisting ACP States towards all round development, we recommend that EU-ACP may adopt any of the following options:

1. Reciprocity should be Based on Achievement of Human Centered Socio-Economic Indicators in ACP States: EU should liberalize fully for ACP States without demanding for reciprocity and making it WTO-compatible by securing a WTO-waiver to this effect. EU had granted this form of preference to Syria under the EU-Syria FTA.⁷⁸ EU should therefore consider the ACP region (especially the SSA which is the world poorest continent, and also houses most of her former colonies) by granting them all a QFDF access to the EU market. Reciprocity shall be based on achievement of socio-economic objective indicators and not on percentage of traded goods or capricious timeframes.
2. Adoption of AU proposal for Common and Enhanced Trade Preference System (CETPS) for LDCs and LICs: under this system, the discrepancy that exist the treatment of LDCs and LIC will be abolished for regions where more than half of the countries that make it are LDCs so that all the countries within the region can be treated as LDCs. This will shore up regional integration in such regions which a strong key for economic development. CETPS can be made WTO compatible by securing a WTO waiver to this effect, or by extending the GSP+ to all ACP LICs.

4. Conclusion

This article succinctly traced the history of economic relationship between the ACP states (in this case ECOWAS region) and EU from Pre-1500 to the Cotonou agreement and the proposed economic partnership agreement. We discovered that the relationship started on a parity basis

⁷³ NANTS position on the EPA and the EU's rejection of Nigeria's GSP+ application, Press release, 19 December 2008, http://www.acp-eu-trade.org/library/files/Ukaoha_EN_191208_NANTS_NANTS-position-on-the-EPA.pdf

⁷⁴ Parties to Convention on the Prevention and Punishment of the Crime of Genocide, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-1&chapter=4&lang=en

⁷⁵ Quota Free and Duty Free

⁷⁶ See: <http://ec.europa.eu/trade/policy/countries-and-regions/development/generalised-scheme-of-preferences>

⁷⁷ Ukpe, A. I., Will EPAs Foster the Integration of Africa Into World Trade? *Journal of African Law*. 2010, 54(02):215.

⁷⁸ 'The EU-Syria FTA has been notified in the WTO as a regional trade agreement under GATT Article XXIV even though the EU liberalises fully and Syria does not.' See Ibid.

before the affairs changed during the slave trade era as trade shifted from the products to the producers. Since then, Africa is yet to find its bearing on international trade. We also established contrary to the views of some earlier writers that Europe, slave trade and colonialism are not entirely responsible for African economic woes as the atrocity is double-faceted because it has both internal and external factors, being that the Europeans never went to the hinterlands to capture slaves. Africans captured fellow Africans and handed them over to Europeans as slaves irrespective of whatsoever justification (if any) that they might come up with.

We also established that the Treaty of Rome introduced a reciprocal trade relationship between Africa and EU, but Lome regimes reverse it to a non-reciprocal affair. However, Cotonou regimes are laid the foundation for a reciprocal trade relationship between EU and ACP in the name of EPA. We posit that EPA holds some lofty ambitions but is totally premature and we definite product similar result like her predecessors. It is based on the foregoing that we humbly view our recommendations to be beneficial to the both parties same being WTO-compatible.

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