



*Routledge Research in International Economic Law*

# **ASYMMETRIC POWER RELATIONS AND INTERNATIONAL TRADE LAW**

**A LEGAL ANALYSIS OF ECONOMIC  
PARTNERSHIP AGREEMENTS**

Inebu C Agbo-Ejeh



ROUTLEDGE



# Asymmetric Power Relations and International Trade Law

The book offers an analysis of the contradictions between theory and practice in the trading system. It contextualises the colonial legal structure and its impact on the peripheral countries and their participation and gain in the multilateral trading system.

The book's core argument effectively situates Economic Partnership Agreements in the 'systemic' asymmetry, which characterises the relationship between developed and developing countries in global trade. It applies the idea of asymmetry to the relationship between the core countries—the EU/USA and the peripheral countries (ACP)—in the GATT, multilaterally and in the EU-ACP trade relationship, bilaterally. The book identifies that core provisions in the WTO regime such as the special and differential treatment as well as GATT Article XXIV have not lived up to expectations. Underscoring the asymmetrical participation and dominant role of former colonial powers, the book demonstrates how, although trade is generally considered a catalyst for economic growth, developed countries have safeguarded their domestic markets while exerting pressure on developing countries to liberalise and compete. The European Union has taken measures to address the development concerns of African, Caribbean, and Pacific countries through the Lomé Conventions and Cotonou Agreement; however, these relationships still retain and reinforce colonial paternalism, evidenced by recent trade agreements. An alternative possibility—multipolarity—holds promise for African countries, especially intra-African trade and critical engagement with China.

The book is an invaluable resource for scholars, postgraduate students, government officials, and policymakers, as it offers a comprehensive understanding of the complexities of trade negotiations and agreements.

**Inebu C Agbo-Ejeh** obtained her PhD in commercial law from the University of Cape Town. She holds a master of laws in international economic law from the University of Warwick (UK) and a bachelor of laws degree from the University of Jos. Dr Inebu is an advocate and solicitor of the Supreme Court of Nigeria. She has taught law at the undergraduate and postgraduate levels at Baze University, the American University of Nigeria, and the University of Seychelles. In 2019, she was awarded a UNDP-supported Centre for Trade and Regional Industrialization (CTRI) Fellowship, administered through the Centre for Comparative Law in Africa (CCLA). Her research interests primarily focus on international economic law; international trade law and investment law; and business and human rights law. She has held various administrative positions, including coordinating postgraduate and undergraduate research.

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# **Asymmetric Power Relations and International Trade Law**

A Legal Analysis of Economic  
Partnership Agreements

**Inebu C Agbo-Ejeh**

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**To my dear mother, Onyelu, Nathaniel, Arome-Adole,  
Ebokonde and Okopi.**



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# Preface and Acknowledgement

This book provides a scholarly examination of trade within the framework of power asymmetry. The motivation behind delving into the trade dynamics between the European Union and African nations, as well as their involvement in the multilateral trading system, stems from a quest to comprehend the underlying causes that render peripheral countries at a disadvantaged position and devoid of influence during trade talks and subsequent agreements. The aim is to delve deeper and elucidate the factors contributing to this unequal partnership.

The book study employs both empirical and doctrinal methodology to suggest that the systemic asymmetry in trade relations between African, Caribbean, and Pacific (ACP) countries and their traditional trade ‘partners,’ the EU and USA, as well as their limited participation in the multilateral system, can be traced back to colonialism. The recent Economic Partnership Agreements between the European Union and ACP countries, with a specific focus on Ghana and Nigeria, are used as a case study to analyse the nature of power asymmetry that exists between these ‘partners.’

The book explores why the rhetoric of every negotiation revolves around the development concerns of ACP countries, yet the actual content of the agreements represents the interests of the core countries. These agreements, although filled with exceptions, are inaccessible to developing countries. Furthermore, the book explores the growing relationship between Africa and China. It is argued that the relationship holds promise because China and Africa do not have a history of colonialism, and China focuses on doing business on the continent without interfering in African countries’ domestic affairs. However, the book does not suggest that the relationship is a solution to Africa’s challenges. Nevertheless, multipolarity offers great potential for African countries.

The book is call on peripheral countries’ leaders to break away from the catastrophic incompetence that has become ingrained in their domestic, continental, and international relations and to critically evaluate every term in an agreement. Therefore, caution must be exercised to ensure that the African Continental Free Trade Area does not become overshadowed by the interests of advanced countries, but rather serves as a platform for Africa to strategically reshape its trade and economic policies. The book focuses on immediate concerns relevant to the topic, condensing its vast subject matter. Blame for the lack of capacity and corruption

among African leaders was not discussed. The book does not delve into interactions between the Africa Continental Free Trade Area and other trade agreements signed by African countries and countries external to it, despite these topics being worthy of investigation. Instead, the focus is on Article XXIV of the GATT/WTO, which allows parties to deviate from multilateral obligations for bilateral arrangement—and examines the contradictions in theory and practice.

Most of the research for this book was conducted at the University of Cape Town in South Africa and at Economic Community of West Africa States (ECOWAS) in Nigeria. Information from the archives and records of the ECOWAS Commission informs the book, along with interviews conducted with various experts involved in the Economic Partnership Agreements (EPAs) negotiations in ECOWAS. Additional interviews were held with individuals from the Ministry of Trade and Investment and civil society organisations in Nigeria. Both physical visits and telephone calls were made to the Ministry of Trade and Investment in Ghana and the African Continental Free Trade Agreement (AfCFTA) Secretariat. The ECOWAS Commission provided crucial materials, and special thanks are given to Mr. Jerome Boa, the Director of External Relations, for facilitating access to these materials and connecting me with key actors during the EPAs negotiations. The officers at the Federal Ministry of Trade, Industry, and Investment in Nigeria are also acknowledged for their support. Dr Ken Ukaoha, the Director of the National Association of Nigerian Traders, deserves special recognition for his willingness to answer calls, meet in person, and provide relevant materials for the study. The Manufacturing Association of Nigeria (MAN) also engaged in an hour-long discussion, and their participation is sincerely appreciated.

Particular thanks must go to the supervisors for their guidance and expertise. Professor Ismail Faizel's insightful comments, constructive criticism, and extensive knowledge and practical experience in world trade law, regional trade, and integration greatly influenced the development of this work. Thanks are given to Professor Ada Ordor for her unwavering support, encouragement, and guidance throughout the entire process. I would like to acknowledge the valuable contributions of the external examiners, Professor Joost Pawelyn, Professor Desta Melaku, and Professor Olabisi Akinkugbe, for their insightful comments. A special mention goes to Professor Akinkugbe, who went beyond the role of an external examiner and provided constructive feedback that greatly added to this book.

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x *Preface and Acknowledgement*

Family has been a pillar of strength throughout the journey. I am eternally grateful to my husband and children for their steady and resolute support, love, and patience. I am indebted to my sister, Felicia, for taking care of the children while I was away. In memory of my beloved mother, whose profound influence has greatly shaped this endeavour, I am deeply grateful for your invaluable guidance and generous support that continue to direct me. To my late dad, Christopher Agbo, thank you. Immense appreciation to Adakole Agbo for paving the way for me.

Inebu C Agbo-Ejeh

# 1 Asymmetry and Legal Construct

## 1.1 Introduction

This book adopts a multidisciplinary approach. The theoretical framework and analysis draw on insights and concepts from legal scholarship, economic theory, critical theory, and political economy to analyse the trade relations between Africa and developed countries. Blending insights from multiple perspectives on the global trade phenomenon is essential,<sup>1</sup> as the book explores treaties that empowered colonialists and trade before, during, and after colonialism in Africa. Petersmann notes that international economic law (IEL) has become highly complex with the steady rise in regional trade agreements (RTAs) and the increasing number of World Trade Organization (WTO) cases; thus, he recommended an integrative approach for evaluating legal analysis and contradictions between theory and practice.<sup>2</sup>

The current narrative is that colonialism and its influence are past events.<sup>3</sup> However, a number of scholars believe that the present ‘economic inequality’ in all its ramifications is steeped in colonial construct.<sup>4</sup> Nonetheless, not all agree with the aforementioned position; for instance, some argue that the multilateral system is structured for the participation and benefit of all. John Ruggie conceptualised the multilateral trading system as being an adequate balance between domestic policy and the international system, an idea he referred to as ‘embedded liberalism.’<sup>5</sup> Ruggie borrowed and brought into vogue the idea of ‘embedded

1 Jeffrey L Dunoff, ‘Rethinking International Trade’ (1998) *University of Pennsylvania Journal of International Law* vol 19 (2) p 34

2 Ernst-Ulrich Petersmann, ‘Narrating International Economic Law’ (2014) 787. *Constitutional Limit* Max Planck Institute für Ausländisches öffentliches Recht [www.zaoerv.de](http://www.zaoerv.de) accessed 10 May 2018

3 Uma Kothari, ‘From Colonialism to Development: Reflection of Former Colonial Officers’ (2006) *Commonwealth & Comparative Politics* vol 44 (1) pp 118–36

4 Daron Acemoglu and James A Robinson, ‘The Economic Impact of Colonialism’ in Stelios Michalopoulos and Elias Papaioannou (eds), *The Long Economic and Political Shadow of History* (CEPR Press, 2017) 81–5; Olabisi O Akinkugbe and Clair Gammage, ‘Doing Development Differently: Reorienting Sino-African Trade and Investment Relations After Pandemic’ (2021) *Asia Europe Journal* [www.papers.ssrn](http://www.papers.ssrn) accessed 24 April 2024 p 2

5 John Gerard Ruggie, ‘International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order’ (1982) *International Organisation* vol 36 (2) pp 379–415 at 398, 388

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liberalism.<sup>6</sup> The term ‘embeddedness’ was first used by Karl Polanyi in his work, *The Great Transformation: The Political Origins of Our Time*.<sup>7</sup> Embedded liberalism as conceptualised by Ruggie offers grounds for confidence in the multilateral trading system.<sup>8</sup> However, a critical examination reveals that the peripheral countries are not able to afford such balancing.<sup>9</sup> Andrew Lang refused to share in the enthusiasm of those who promoted the ideas of embedded liberalism. According to his standpoint, Ruggie did not highlight the *peripheral* group in the multilateral trading system,<sup>10</sup> and who, on account of their lack of skill and poor infrastructure, have not taken advantage of the exceptions provided in the General Agreement on Tariffs and Trade/World Trade Organization (GATT/WTO) law.<sup>11</sup> The GATT was an international treaty with an interim application, whereas the WTO is a permanent body, whose authority is recognised by many member nations. It is a global trading rule like the GATT but more extensive in its coverage. Cox argued that the free trade compromise has instead given rise to aggressive economic imbalances between the poor and the rich countries.<sup>12</sup>

The principal focus of this book is to interrogate how the colonial legal construct influences Africa’s poor participation and the minimal gain in the multilateral system and bilateral agreements. The colonial treaties in the past did not only promote the interest of the European powers but continue to influence Africa’s relations with advanced countries to date.<sup>13</sup> As the colonies obtained independence, their main focus was to take charge of the economic and political affairs and influence the international regime to their benefit.<sup>14</sup> The independent states continue to face the challenges of the universality of norms, which is not as much about various cultural interests as a steady rise in dominating the conflicting interests, while the interests of the developed countries trump all else.<sup>15</sup> The inability to reconcile interests has been a problem between the European Union (EU) and African Caribbean and Pacific (ACP) countries’ trade relations.

6 John Gerard Ruggie, ‘International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order’ (1982) *International Organisation* vol 36 (2) pp 379–415 at 398, 388

7 Karl Polanyi, *The Great Transformation: The Political Origin of Origin of Our Time* (Beacon Press, 1944) xxiii

8 Ruggie (n 5)

9 Yilmaz Akyuz, ‘Multilateral Disciplines and the Question of Policy Space’ in Julio Faundez and Celine Tan (eds), *International Economic Law, Globalisation and Developing Countries* (Edward Elgar, 2012) 34–7

10 Andrew Lang, ‘Reconstructing Embedded Liberalism: John Ruggie and Constructivist Approaches to the Study of the International Trade Regime’ (2006) *Journal of International Law* vol 9 (1) p 84

11 Andrew Lang, ‘Reconstructing Embedded Liberalism: John Ruggie and Constructivist Approaches to the Study of the International Trade Regime’ (2006) *Journal of International Law* vol 9 (1) p 84

12 Robert Cox, ‘Critical Theory’ in Thomas G Weiss and Rorden Wilkinson (eds), *International Organisation and Global Governance* (Routledge, 2014) 164–5

13 Richard Falk, *The New States and International Legal Order vol 118 of Recueil de Cours* (A.W. Sijthoff, 1968) 186

14 Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (CUP, 2004) 198

15 Falk (n 13) at 38; R P Anand, ‘Attitudes of the Asian-African States Toward Certain Problems of International Law’ (1966) *International and Comparative Law Quarterly* vol 15 p 55 at 72

The EU-ACP's Economic Partnership Agreements are used as a case study. Although, it has been argued that the EU through Lomé Convention to Cotonou Agreements, contributed to the development of African countries.<sup>16</sup> However, colonial influence gave rise to 'systemic' asymmetry, which has characterised the relations, just as it had been between the developed and developing countries in global trade. The idea of asymmetry can be applied to the relationship between the core countries (the EU/USA) and the periphery countries (ACP)—in the multilateral trading system (GATT) and in the EU-ACP countries' bilateral trade relationship. Adebajo Adekeye and Kaye Whiteman argued that<sup>17</sup> the EU deepens asymmetry between it and the ACP countries by subverting any significance the latter have left. This was done by weakening the unanimity that existed among the group during the Economic Partnership Agreements.<sup>18</sup>

Woolcock argued that African countries are severely restricted by economic deficiency and have not been able to shape outcomes in the multilateral trading system and regional trade arrangement.<sup>19</sup> However, this does not necessarily determine that the result of the interaction between the peripheral and core will always favour the latter as demonstrated in this book.<sup>20</sup> The question is, would the approach of donor-client adopted by the EU to African development decline as China injected itself into the economic climate of the continent? The Chinese stratagem to African development seemed to be embraced, although with some trepidation; this deserves some investigation. For instance, Western countries continue to impose human rights, the rule of law and democracy, and other conditionalities in their partnership agreement, but China distances itself from the internal affairs of African countries. It focuses on investing in Africa for political objectives, and this alternative seems like a welcome development in Africa because it treats the African partners as equal and provides tangible infrastructure in exchange for raw materials.

To explore asymmetry in the multilateral arrangement, the book examines the EU and ACP countries' agreement in 2000 to negotiate Economic Partnership Agreements (EPAs) following Article 36 (1) of the Cotonou Agreement. The

16 I William Zartman, 'European and Africa Decolonization or Dependency' (1976) *International Affairs* vol 54 (2) pp 326–43; Majories Lister, 'European Development Policy: Globalisation and the Post-Lomé World' in Andrew Mold (ed), *EU Development Policy in a Changing World: Challenges for the 21st Century* (Amsterdam University Press, 2007) 69–70, 72

17 Adebajo Adekeye and White Kaye, *The EU and Africa: From Eurafrique to Afro-Europa* (Hurt & Company Ltd, 2012)

18 Adebajo Adekeye and Kaye Whiteman, *The EU and Africa: From Eurafrique to Afro-Europa* (Hurt & Company Ltd, 2012)

19 Stephen Woolcock, 'The Scope for Asymmetry in the World Trade Organisation (WTO)' in Sanoussi Bilal, Philippe De Lombaerde and Diana Tussie (eds), *Asymmetric Trade Negotiations* (Routledge, 2016) 29; Melaku Geboue Desta and Moshie Hirsch, 'African Countries in the World Trading System: International Trade, Domestic Institutions and the Role of International Law' (2005) *ICLQ* vol 61 pp 127–70

20 Drahos Peter, 'When the Weak Bargain With the Strong: Negotiations in the World Trade Organisation' (2003) *International Negotiations* 8 pp 79–109; J P Singh, 'Wiggle Room: New Issues and North-South Negotiations During Uruguay Round' Prepared for the conference on Developing Countries and the Trade Negotiation Process UNCTAD (Geneva 6–7 November 2003)

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arrangement was aimed at deepening free trade and fair competition following Article XXIV of the WTO law.<sup>21</sup> The EU demonstrated its concerns about ACP countries through Director of Trade Peter Mandelson, who declared, ‘developing countries have every right to exploit the legitimate comparative advantages that they have.’<sup>22</sup> He further stated that the EPAs would, inevitably, be the harbinger of the end to the colonial ideological construct of the previous trading system and usher in mutually beneficial economic development.<sup>23</sup> Similar to Mandelson’s view, other writers have called for African countries to break the connection with the colonial past.<sup>24</sup> In his book *Africa Must Unite*, the foremost Ghanaian president, Kwame Nkrumah, argued, ‘if the gap is ever to be narrowed, not to say closed, it can only be done by a complete break with the present “patron-client relationship.”’<sup>25</sup> Nkrumah doubted whether there would be an economic and trade arrangement between Africa and former colonialists devoid of the colonial elements.<sup>26</sup>

In his contribution in a book titled *International Economic Law, Globalization and Developing Countries*, Yilmaz Akyus argued that the global economic system is defined by power asymmetries between developed and developing countries.<sup>27</sup> Akyus’s standpoint is that the WTO rule imposed constraints on national policies, which is more problematic for developing countries.<sup>28</sup> The author maintained that the WTO law made provisions for equality of all members, ‘yet effective constraints they impose over national policies are much tighter for developing than for industrial countries.’ However, according to the famous economist and free trade advocate Jagdish Bhagwati, criticism of the multilateral trading system results from a faulty logic of how the system works.<sup>29</sup> Bhagwati has consistently emphasised that the onslaught of criticism of ‘double standards’ levelled against the WTO is nothing more than ‘hypocrisy,’ because industrial protection is higher in developing countries than in advanced countries.<sup>30</sup> To the conformist, the multilateral trading system has made adequate provision for all members to coexist.

21 Cotonou Agreement Article 37 (1)

22 Peter Mandelson, ‘Open Markets, Open Trade: Europe’s Global Challenge’ (European Parliament, Brussels 19 September 2005) 3

23 Peter Mandelson, ‘Open Markets, Open Trade: Europe’s Global Challenge’ (European Parliament, Brussels 19 September 2005) 3

24 Sabelo J Ndlovu-Gatsheni, ‘Decoloniality as the Future of Africa’ (2015) *History Compass* vol 13 (10) pp 485–96 at 488–9; Walter Rodney, *How Europe Underdeveloped Africa* (Bogle-L’Overture, 1973) 157

25 Kwame Nkrumah, *Africa Must Unite* (Praeger, 1963) 176

26 Kwame Nkrumah, *Africa Must Unite* (Praeger, 1963) 176

27 Yilmaz Akyus, ‘Multilateral Disciplines and the Question of Policy Space’ in Julio Faundez and Celine Tan *International Economic Law, Globalization and Developing Countries* (Edward Elgar, 2012) 34–7

28 Yilmaz Akyus, ‘Multilateral Disciplines and the Question of Policy Space’ in Julio Faundez and Celine Tan *International Economic Law, Globalization and Developing Countries* (Edward Elgar, 2012) 34–7

29 Jagdish Bhagwati, ‘Reshaping the WTO’ (2005) *Far Eastern Economic Review* vol 168 (2) p 24 at 2

30 Jagdish Bhagwati, *In Defense of Globalisation* (Oxford University Press, 2004) 5; Jagdish Bhagwati, *Free Trade Today* (OUP, 2002) 6, 9

Some have praised the allowances created by the trading system. The former director-general of GATT, Eric Wyndham-White, described the non-discrimination principle as the GATT's 'cornerstone.'<sup>31</sup> This was the post-war GATT norm. This convention of unconditional most favoured nation (MFN) is found in Article 1:1, and non-discrimination is provided in Article III of the GATT. It requires that goods, when legally imported, will be treated the same as domestic goods. Notwithstanding this essential element of the norm, several shifts from it were allowed.<sup>32</sup> The most significant of these exceptions are the customs union, free trade area, and 'interim' agreement to permit a transition period.<sup>33</sup> It was believed at the time that the exceptions would expand the trading system by complying with the requirement of 'substantially all the trade.'<sup>34</sup> In other words, the parties who wish to adopt this form of integration shall eliminate tariffs and other restrictions on the free flow of trade.

However, scholars have argued that from the inception of GATT, member states have found it difficult to comply with GATT Article XXIV in practice, except when compliance will favour the core countries.<sup>35</sup> Similarly, to Lester and Mercurio, the WTO members could not agree on the right interpretation and compliance for 'political and theoretical reasons.'<sup>36</sup> In the same vein, Jürgen Huber argued that from an economic perspective, advanced countries believed a fair chance should be given to developing countries. Nonetheless, politically due to tension between developing and developed countries, the latter not only tolerated but showed genuine interest in the affairs of the former. Also, core countries such as the United States and the EU needed to continue their influence in these countries; as such, many agreements did not meet the requirement of Article XXIV.<sup>37</sup>

Instructively, the Appellate Body has restricted flexibility in the application of GATT Article XXIV.<sup>38</sup> The Appellate Body held that Article XXIV:8 established a standard that must be complied with to satisfy the meaning of a customs union. Also, the Panel Report on Automotive Industry<sup>39</sup> indicated that GATT Article

31 Erick Wyndham-White, 'Negotiations in Prospect' in C Fred Bergsten (ed), *Toward a New World Trade Organisation Policy: The Maidenhead Paper* (Lexington Books, 1975) 321 cited in Jock A Finlayson and Mark W Zacher, 'The GATT and the Regulation of Trade Barriers: Regime Dynamics and Functions' (1981) *International Organisation* vol 35 (4) pp 561–602 at 566

32 Erick Wyndham-White, 'Negotiations in Prospect' in C Fred Bergsten (ed), *Toward a New World Trade Organisation Policy: The Maidenhead Paper* (Lexington Books, 1975) 321 cited in Jock A Finlayson and Mark W Zacher, 'The GATT and the Regulation of Trade Barriers: Regime Dynamics and Functions' (1981) *International Organisation* vol 35 (4) pp 561–602 at 566

33 General Agreement on Tariffs and Trade, October, 30, 1947 A-11, 55 U.N.T.S 194 (hereinafter, GATT) Article 7: (a)

34 GATT Article XXIV:8 (a) (i)

35 Finlayson and Zacher (n 31)

36 Simon Lester and Bryan Mercurio, *World Trade Law: Text, Materials and Commentary* (Hart, 2008) 353

37 Jürgen Huber, 'The Practice of GATT in Examining Regional Arrangements Under Article XXIV' (1981) *Journal of Common Market Studies* vol xix (3) at 295

38 Turkey—Restrictions on Imports of Textile and Clothing Products WT/DA34/AB/R 22 October 1999 (Adopted the Dispute Settlement Body on 19 November 1999) paras 48 and 58

39 Canada—Certain Measures Affecting the Automotive Industry, WT/DS139/12WT/DS142/12/R. (4 October 2000) (Adopted 19 June 2000) 10.55-56

XXIV did not provide a reason for a breach or promote inconsistency with the MFN principle of the WTO.<sup>40</sup> There is no doubt that the aforementioned cases show that the adjudicating bodies will not make it easy for any country under GATT Article XXIV to undertake a measure inconsistent with the WTO. However, it would be inaccurate to state that GATT Article XXIV has not succeeded in ensuring compliance with free trade agreements (FTA); this is demonstrated in subsequent chapters. It has been argued that some core countries can ignore the requirements of Article XXIV when it is not convenient for them to comply. This is discussed later in this book.

In this book, specific terms are clarified to understand the context in which they are used. The phrases *core* and *peripheral* countries are used here to depict the unequal trade relationship between the EU and African countries. The terms ‘centre’ and ‘peripheral’ were originally coined by Raul Prebisch, the renowned Argentine economist.<sup>41</sup> He employed the prior terminology to elucidate the robust economic and political framework prevalent in Europe and the UK, in stark contrast to the feeble economy of Argentina. Consequently, it becomes evident that the application of a single theory of economic or political governance cannot be extended to both Argentina and Europe. Immanuel Wallerstein took the terminologies a step further<sup>42</sup> to develop a three-tier hierarchical structure of the world system—the *core*, *periphery*, and *semi-periphery*. *Core* countries are dominant capitalist nations, which use the labour and raw materials from the peripheral countries to good advantage. The latter classification relies extensively on the *core* countries for capital, usually categorised as underdeveloped nations. *Semi-periphery* shares the quality of the *core* and the *periphery*. For this research, the focus is on the *core-periphery*. The term *core* refers to developed countries in this research: mainly Western Europe, the United States, and other advanced countries. The term *core* is used interchangeably with other terms to refer to developed countries. *Peripheral* countries mean developing countries in the ACP countries. It will not include Brazil, India, China, and South Africa, as those will be referred to as advanced developing countries.

The concept of the core and periphery thus best describes the West–developing countries’ relationship, although the broader relationship between the developed and developing countries has undergone some significant changes, since the first writings of Immanuel Wallerstein, with the rise of China and other emerging developing countries. As later explored in this book, the EU is advanced politically and economically, while the majority of ACP member states are categorised as least developed countries (LDC). Also, it is important to note that Eastern Europe did not colonise Africa, but for ease, the book would refer to the EU when it discusses asymmetry between the regions.

40 Canada—Certain Measures Affecting the Automotive Industry, WT/DS139/12WT/DS142/12/R. (4 October 2000) (Adopted 19 June 2000) 10.55-56

41 Edgar Dosman, *The Life and Times of Raul Prebisch 1901–1986* (McGill-Queen’s University Press, 2008) 38

42 Immanuel Wallerstein, *World Systems Analysis: An Introduction* (Duke University Press, 2004) 28–31

Another term that needs clarification is ‘systemic.’ The word is borrowed from ‘systemic racism’ developed by sociologist Joe Feagin. The theory is a well-received way of explaining within the social sciences and humanities the importance of race and racism both historically and in today’s world. Feagin describes the ideas and realities in his books.<sup>43</sup> He conceptualises ‘systemic’ racism as the kernel of racist realities, which permeate through the United States society—‘the economy, politics, education, religion, the family, etc.—reflects the fundamental reality of systemic racism.’<sup>44</sup> There have been some positive reforms of the Europe–Africa relationship since the Lomé Conventions—different from the colonial period. Some positive elements in the Lomé and Cotonou Agreements are built to advance the interests of the African countries. However, in line with the aforementioned concept of systemic racism, ‘systemic’ power asymmetry is still embedded in the global trade and trade relationship between the EU and African countries—beginning from the colonial trade era.

This book is situated around the influence of colonial legal constructs on multi-lateral trading systems and bilateral agreements. It specifically links the current trading system between advanced countries and Africa to the colonial structure by using the EPAs as a case study. It does not just make a sweeping assertion about colonialism but instead explores colonial treaties and multilateral and bilateral agreements to demonstrate the similarities between the colonial and current trade asymmetries. This book expands the discussion on African countries’ asymmetrical trade relations with the EU and other advanced countries. While there is a plethora of excellent current scholarship on the trade relationship between the EU and ACP countries,<sup>45</sup> there

43 Joe R Feagin, *Racist America: Roots, Current Realities, and Future Reparations* (Routledge New, 2001); Joe R Feagin, *Systemic Racism: A Theory of Oppression* (Routledge, 2006)

44 Joe R Feagin, *Racist America: Roots, Current Realities, and Future Reparations* (Routledge New, 2001); Joe R Feagin, *Systemic Racism: A Theory of Oppression* (Routledge, 2006) at 6

45 Christopher Stevens, Sanoussi Bilal, Francesco Rampa, et al. ‘The New EPAs: Comparative Analysis of their Content and Challenges for 2008’, Overseas Development Institute and the European Centre for Development Policy Management (2008) [www.odi.org/sites/odi.org.uk/files/odi-assets/pu...xiv](http://www.odi.org/sites/odi.org.uk/files/odi-assets/pu...xiv) accessed 22 January 2021; Dan Lui & Sanoussi Bilal, ‘Contentious Issues in the Interim EPAs: Potential Flexibility in the Negotiations’ (2009) <https://ecdpm.org/WP-content/uploads/2013/11/DP-89-contentious-issues-Interim-EPAs-Flexibility-Negotiationd-2009.pdf> accessed 14 December 2020 at 3; S Bilal and V Roza, ‘Addressing the Fiscal Effects of an EPA’ (Study With Support of Irish Aid, Department of Foreign Affairs, 2007) [www.ecdpm.org/bilal](http://www.ecdpm.org/bilal) accessed 18 February 2020; Sanoussi Bilal and Christopher Stevens, ‘The Interim Economic Partnership Agreements Between the EU and African States: Contents, Challenges and Prospects’ (2009) [www.ecdpm.or/pmr17](http://www.ecdpm.or/pmr17) 126 accessed 01 July 2020; Cosmas M Obote Ochieng, ‘The EU—ACP Economic Partnership Agreements and “Development Questions”: Constraints and Opportunities Posed by Article XXIV and Special and Differential Treatment Provisions of The WTO’ (2007) *JIEL* vol 10 (2) pp 363–95; Cosmas Milton Obote Ochieng, ‘Legal and Systemic Issues in the Interim Economic Partnership Agreements: Which Way Now?’ (2009) Issue Paper No 2; Stephen Hurt, ‘The EU-SADC Economic Partnership Agreement Negotiations: Locking in the Neoliberal Development Model in Southern Africa’ (2012) *Third World Quarterly* vol 499 [www.tandfonline.com/loi/ctwq20](http://www.tandfonline.com/loi/ctwq20) accessed 24 May 2020; Samuel O Oloruntoba, *Regionalism and Integration in Africa: EU-ACP Economic Partnership Agreements and Euro-Nigeria Relations* (2016); Angelos Sepos, ‘Imperial Power Europe? The EU’S Relations With the ACP Countries’ (2010); Tony Heron, ‘Asymmetric

is marginal research focusing on extensive analysis of how the negotiations and agreements were influenced by ‘systemic’ asymmetry with its origin in colonialism.

In 1962, Touré cautioned that trade relations between Africa and the newfound organisation, the European Economic Community (EEC), would perpetuate African countries’ marginal place as ‘hewers of wood and drawers of water.’<sup>46</sup> This unvarnished prognosis about the perpetuation of the colonial ideological construct of the trading system merits investigation of the EU and Africa EPA as a case study. Thus, the use of ‘systemic’ best describes the relationship between the EU and ACP countries, as demonstrated later in the chapters.

Chapter 1 of this book establishes the parameters of the subject matter, the uneven trade relations between core countries and peripheral countries. Specifically, it discusses the trade relations between the core and the ACP countries, delving into the nuances of Article XXIV of the GATT/WTO and drawing connections between the contradictions in multilateral and bilateral trade relations and the influence of colonialism.

Chapter 2 provides a theoretical framework for the analysis presented in this book. It examines Article XXIV of the GATT within the context of the EPAs between ACP countries and the EU. The discussion considers the ideological frameworks of neo-liberalism and asymmetry, as well as the constructivist school of thought regarding the role of ideas. John Ruggie’s analysis of the global trading system as embedded liberalism is crucial in illuminating the contradictions inherent in the trading system.

Chapter 3 traces the history of power asymmetry back to the Berlin Conference of West Africa. It explores various articles of the General Act and other treaties between European powers and indigenous peoples of Africa. While some argue against the significance of the Berlin Conference, this chapter contends that the General Act legitimised the partitioning of Africa and weakened the African trading system. Understanding the General Act and subsequent treaties between European powers and Africa is essential for comprehending trade dynamics between Africa and advanced countries.

Chapter 4 examines a series of trade agreements between Europe and ACP countries prior to and after independence. It provides an overview of trade relations between ACP countries and the EU from the late 1950s and 1960s until the present day. The analysis scrutinises trade activities between these regions and evaluates the asymmetrical power dynamics between core and peripheral countries.

Chapter 5 focuses on Ghana’s negotiations and agreement on EPAs with the EU as a case study. It explores the key articles of the agreement and highlights Ghana’s insufficient capacity to fulfil its obligations. While certain provisions for special and differential treatment were offered, the agreement remains asymmetrical as it primarily reflects the interests and norms of the dominant core.

Chapter 6 delves into the EPA negotiations and examines whether Nigeria effectively addressed the power imbalance that favoured the EU. The chapter specifically

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Bargaining and Development Trade-offs in the CARIFORUM-European Union Economic Partnership Agreement’ (2011) *Review of International Political Economy* vol 18 (3) pp 328–57, [www.tandfonline.com/action/journalInformation?journalCode=rrip20](http://www.tandfonline.com/action/journalInformation?journalCode=rrip20)

46 Sekou Toure, ‘Africa’s Future and the World’ (1962) *Foreign Affairs* vol 41 (1) 141–151

focuses on Nigeria's interpretation of Article XXIV of the GATT. These inquiries are answered through extensive interviews conducted in Nigeria and the examination of archival documents obtained from Nigerian governmental organisations and agencies. The chapter concludes that Nigeria declined to sign the agreement due to its heavy reliance on tax-free oil exports to the EU and its plans to negotiate a new agreement with the UK after Brexit. In February 2024, the two countries signed a memorandum of understanding (MOU), which the chapter investigates while highlighting the controversies surrounding it.

Chapter 7 expands on the discourse surrounding Africa and delves deeper into the concept of multipolarity. It showcases the potential for fruitful collaboration and advantages that exist between China and Africa. Africa's leaders widely commend China's approach towards addressing the continent's developmental requirements. In contrast to Western investors, who often adopt a dominant post-colonial stance, China has adeptly comprehended and confronted the challenges confronting Africa. While Europe and the United States prioritise democracy, the rule of law, and good governance as prerequisites for offering assistance, China adheres to a policy of non-interventionism. This chapter comprehensively examines China's potential encroachment upon the sovereignty of African nations, with particular attention placed on China's interactions with Kenya. These concerns are subsequently tackled.

Chapter 8 concludes the book by emphasising the contradicting nature of the theories that underlie the trading system. It underscores the imperative for African countries to wholeheartedly embrace multipolarity in their trade relationships. The chapter accentuates the possibility of African countries establishing a patron-client style of trade relationship with China and underscores the significance of remaining watchful and discerning.

## **1.2 Conclusion**

The book demonstrates with evidence that the current multilateral regime, of which Africa is part, according to Mandelson is based on a colonial ideological construct.<sup>47</sup> Thus, a genuine structure to make trade between Africa and the EU beneficial to the continent of Africa would deviate from the antiquated ideology of patron-client relations and treat African countries as equal.<sup>48</sup> Notwithstanding the rhetoric of the previous, the colonial relics still permeate the relations of Africa with the West, although modified and refined.

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47 Mandelson (n 19)

48 Mandelson (n 19)

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