

**UNIVERSITY OF CAPE TOWN**  
**FACULTY OF LAW**  
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**ASYMMETRICAL POWER RELATIONS: A LEGAL ANALYSIS OF THE  
EUROPEAN UNION AND ECONOMIC COMMUNITY OF WEST AFRICAN  
STATES ECONOMIC PARTNERSHIP AGREEMENT**

**PhD**  
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## ABSTRACT

Preparatory to the Economic Partnership Agreements (EPAs) negotiation, the former European Union Trade Commissioner, Peter Mandelson, declares that African countries have the right to benefit from their own comparative advantage. He further stated that the EPAs would, inevitably, herald the end of the colonial ideological construct of the previous trading system and usher in mutually beneficial economic development. However, as negotiated between the EU and ECOWAS, the EPA reflects a ‘systemic’ asymmetry originating in colonialism to a certain extent. This thesis argued that just as the GATT advanced a structure of trade liberalisation and trade laws that perpetuate asymmetry in favour of the developed countries, the EU-African Caribbean and Pacific (ACP) countries EPAs, which promote free trade, are likely to continue the asymmetry between the EU-ACP countries and the EU-ECOWAS in particular.

In order to gather in-depth insights into the EU-ECOWAS Economic Partnership Agreement, empirical evidence was used to triangulate between primary and secondary sources, mainly in chapters five to seven of this thesis for analysis. This method involved interviews in ECOWA with Commission, Ministries in Ghana, Nigeria and archival documents obtained from organisations. The approach offers an effective means to gain insights into the real issues canvassed by the opponents of the EPA and the current impasse in the trade relationship between the two regions.

Ghana and Nigeria are employed as case studies for the EU’s trade relations with West Africa. The study finds that the special and differential treatment provisions in the EU-Ghana EPA text are insufficient to support the economic development of Ghana. Although power asymmetry permeates relations between Nigeria and the EU, it does not necessarily determine that the outcome of these interactions will always favour the EU. It also finds that Nigeria is not as dependent as Ghana on the EU for its trade and investment relations because the former exports oil to the EU tax free. Moreover, Nigeria’s trade and economic strategies are to strengthen its bilateral trade and investment relationship with the United Kingdom post-Brexit. The thesis concludes that notwithstanding that the proponents of the EPAs stated that the objective of the EPAs would be to promote free trade and economic development of the ACP countries; the conduct of the EU in the negotiations, the textual interpretation of GATT Article XXIV and the text of the agreements indicate that the EU-ECOWAS EPA is likely to reinforce asymmetry in the trade relationship between it and countries that signed the agreements.

DECLARATION

I, Christiana Inebu Agbo-Ejeh hereby declare that the work on which this thesis is based is my original work except where acknowledgements indicate otherwise and that neither the whole work nor any part of it has been, is being, or is to be submitted for another degree in this or any other university. I authorise the University to reproduce for research either the whole or any portion of the contents in any manner whatsoever.

10 February 2022

Signature.....

Signed by candidate
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..... Date.....

## DEDICATION

To my husband, Nathaniel and our lovely children: Arome, Ebo and Okopi and my mama, Regina.

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## ABBREVIATIONS

ACP	Africa, Caribbean and Pacific
AFCFTA	Africa Continental Free Trade Area
AfDB	Africa Development Bank
AGOA	Africa Growth and Opportunity Act
AIDS	Acquired Immunodeficiency Syndrome
ANSA	Alternatives to Neo-liberalism in Southern Africa
AoA	Agreement on Agriculture
ASCM	Agreement on Subsidies and Countervailing Measures
ATC	Agreement on Textiles and Clothing
AU	African Union
BPE	Bureau for Public Enterprise
BRICS	Brazil, Russia, India, China, and South Africa
BUSAC	Business Advocacy Challenge Fund
CAP	Common Agricultural Policy
CEMAC	Central Africa Economic and Monetary Community
CEPA	Centre for Policy Analysis
CET	Common External Tariff
DDA	Doha Development Agenda
DFQFA	Duty-Free Quota-Free Access
DS	Dispute Settlement
DSB	Dispute Settlement Body
DSM	Dispute Settlement Mechanism
DSU	Dispute Settlement Understanding
DTI	Department of Trade and Industry
EAC	East African Community
EAGGF	European Commission's Agricultural Guidance and Guarantee Fund
EBA	Everything but Arm
EC	European Community
ECOWAS	Economic Community of West African States

ECSC	European Coal and Steel Community
EDF	European Development Fund
EEC	European Economic Community
EFTA	European Free Trade Association
EPA	Economic Partnership Agreement
EPADP	Economic Partnership Agreement Development Programme
ERGP	Economic Recovery & Growth Plan
ERP	Economic Recovery Programme
ESA	Eastern and Southern Africa
EU	European Union
FAGE	Federation of Associations of Ghanaian Exporters
FAO	Food and Agriculture Organisation
FASDEP	Food and Agriculture Sector Development Plan
FASDEP	Food and Agriculture Sector Development Policy
FDA	Food and Drugs Authority
FMITI	Federal Ministry of Industry, Trade and Investment
FTA	Free Trade Agreement
GAERC	European General Affairs and External Relations Council
GATS	General Agreement on Trade in Service
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GEPA	Ghana Export Promotion Agency
GH	Ghanaian Cedi
GNP	Gross National Product
GSA	Ghana Standard Authority
GSB	Ghana Standard Board
GSP	Generalised Scheme of Preferences
GVCs	Global Value Chains
HIV	Human Immunodeficiency Virus
IEL	International Economic Law
IEPA	interim Economic Partnership Agreement

IIPA	International Intellectual Property Alliance
IMF	International Monetary Fund
IPR	Intellectual Property Right
ITC	International Trade Centre
ITO	International Trade Organisation
LCCI	Lagos Chamber of Commerce and Industry
LDC	Least Developed Country
LSC	London School of Economics
MAN	Manufacturers Association of Nigeria
MDGs	Millennium Development Goals
MEP	Member of the European Parliament
MERCOSUR	South American Economic Organisation
METASIP	Medium Term Agricultural Sector Investment Plan
MFN	Most-Favoured-Nation
MMC	Ministerial Monitoring Committee
MoFA	Ministry for Food and Agriculture
MoTI	Ministries of Trade and Industry
MOU	Memorandum of Understanding
MTN	Multilateral Trade Negotiation
NAFTA	North American Free Trade Agreement
NANTS	National Association of Nigeria Traders
NBSSI	National Board for Small Scale Industries
NCP	National Council on Privatisation
NDP	National Development Plan
NEEDS	National Economic Empowerment and Development Strategy
NEPAD	Nigeria Endorsed an Act on Nigeria of Enterprises Decree
NGOs	Non-Government Organisations
NIEO	New International Economic Order
NIIMP	National Integrated Infrastructure Master Plan
NIRP	Nigeria Industrial Revolution Plan
NTB	Non-Tariff Barrier

OAU	Organisation of Africa Union
OCTs	Overseas Countries and Territories
OECD	Organisation for Economic Cooperation and Development
OEEC	Organisation for European Economic Co-operation
PhRMA	Pharmaceutical Research and Manufacturers of America
PMA	Pharmaceutical Manufacturing of America
RoO	Rule of Origin
ROPPA	Network of Peasant Organisation and Agricultural Producers in West Africa
RTA	Regional Trade Agreement
SACU	Southern African Customs Union
SADC	Southern African Development Community
SAP	Structural Adjustment Programme
SAPS	Single Area Payment Scheme
SDT	Special and Differential Treatment
SOEs	State-owned Enterprises
SPS	Sanitary and Phyto-Sanitary
SSA	sub-Saharan Africa
SSEPA	Stepping Stone Economic Partnership Agreement
STABEX	Stabilisation of Export Earnings System
TBT	Technical Barriers to Trade
TDCA	Trade Development and Cooperation Agreement
TLS	Trade Liberalisation Scheme
TNCs	Transnational Corporation
TPR	Trade Policy Review
TRIMs	Trade Related Investment Measures
TRIPS	Trade Related Aspect of Intellectual Properties
TRIST	Tariff Reform Impact Simulation Tool
TWN	Third World Network
UEMOA	West African Economic and Monetary Union
UK	United Kingdom

UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNCTE	United Nations Conference on Trade and Employment
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
US	United States
USA	United States of America
USD	United States Dollars
USSR	Union of Soviet Socialist Republic
USTR	United States Trade Representatives
VAT	Value Added Tax
WA	West Africa
WEF	World Economic Forum
WIPO	World Intellectual Property Organisation
WTO	World Trade Organisation

## CHAPTER ONE: INTRODUCTION

### I BACKGROUND

The European and Africa, Caribbean and Pacific (ACP) countries entered into an agreement in 2000 to negotiate EPAs in accordance with article 36 (1) of the Cotonou Agreement with the aim to design a trade arrangement that aligns with Article XXIV of the World Trade Organisation (WTO) law by gradually removing barriers to trade between the parties and to improve cooperation in all aspect of trade. In essence, the negotiations of the EPAs heralded the end of the non-reciprocal trade preference that ACP countries benefitted from the EU. The preferences ended as the most favoured nation deviation allowed by the WTO expired at the end of 2007, in line with the provision of Article 37 (1) of the Cotonou Agreement. Preparations were made by parties to meet the deadline.

Preparatory to the Economic Partnership Agreements (EPAs) negotiation, the former European Union (EU) Trade Commissioner, Peter Mandelson, declares that ‘developing countries have every right to exploit the legitimate comparative advantages that they have.’<sup>1</sup> He further stated that the EPAs would, inevitably, herald the end to the colonial ideological construct of the previous trading system and usher in mutually beneficial economic development.<sup>2</sup> Similar to Mandelson’s view, other writers have called for African countries to break the connection with the colonial past because it has become a matrix structure fostering the peremptory design of the former colonial powers.<sup>3</sup> However, in his book ‘Africa Must Unite’, the foremost Ghanaian president, Kwame Nkrumah, argued that ‘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>4</sup> Nkrumah doubted whether there would be an economic and trade arrangement between Africa and former colonialists devoid of the colonial elements.<sup>5</sup>

This thesis argued that although the Lome convention based on preferential trade arrangements contributed to the development of African countries. Nevertheless, ‘systemic’

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<sup>1</sup> Peter Mandelson, ‘Open Markets, Open Trade: Europe’s Global Challenge’ (European Parliament, Brussels 19 September 2005) 3

<sup>2</sup> Ibid (emphasis added)

<sup>3</sup> Sabelo J Ndlovu-Gatsheni, ‘Decoloniality as the Future of Africa’ (2015) *History Compass* 13 (10) pp 485-496 at 488-9 10.1111/hic3.12264; Walter Rodney *How Europe Underdeveloped Africa*, (1973) 157

<sup>4</sup> Kwame Nkrumah *Africa Must Unite* (1963) 176

<sup>5</sup> *ibid*

asymmetry had characterised the relationship between the developed and developing countries in global trade. This 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-Africa, Caribbean, and Pacific (ACP) countries' bilateral trade relationship. Adebajo Adekeye and Whiteman Kaye argued that<sup>6</sup> the EU deepens asymmetry between it and the ACP Countries by subverting any significance the latter have left. This it did by weakening the unanimity that exists among the group.<sup>7</sup> Woolcock argued that the 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>8</sup> However, this does not necessarily determine the result of the interaction between the peripheral countries, and the core countries will always favour the latter as demonstrated in the case of Nigeria. Recently, observers have begun to notice some changes to traditional methods characterising the relationship between the core and peripheral countries.<sup>9</sup>

The former Director-General of GATT, Eric Wyndham-White, described the non-discrimination principle as the GATT's 'cornerstone'.<sup>10</sup> This was the post-War GATT norm. This convention of 'unconditional most favour nation (MFN) is found in Article 1:1 of the GATT. Notwithstanding this essential element of the norm, several deviations from it were allowed.<sup>11</sup> The most significant of these exceptions are the customs union, free trade area and 'interim' agreement to permit a transition period.<sup>12</sup> It was believed at a time that the exceptions would expand the trading system by complying with the requirement of 'substantially all the trade'.<sup>13</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

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<sup>6</sup> Adebajo Adekeye, White Kaye, *The EU and Africa: From Eurafrique to Afro-Europa*, (2012)

<sup>7</sup> *ibid*

<sup>8</sup> 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* (2016) 29

<sup>9</sup> Drahoš Peter, 'When the Weak Bargain with the Strong: Negotiations in the World Trade Organisation,' (2003) 8 *International Negotiations* 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 Nov 2003)

<sup>10</sup> Eric Wyndham-White, 'Negotiations in Prospect' in C Fred Bergsten, (ed), *Toward A New World Trade Organisation Policy: The Maidenhead Paper* (1975) 321 cited in Jock A Finlayson & Mark W Zacher, 'The GATT and the Regulation of Trade Barriers: Regime Dynamics and Functions' (1981) 35 (4) pp 561-602 at 566

<sup>11</sup> *ibid* Finlayson at 566

<sup>12</sup> General Agreement on Tariffs and Trade, Oct, 30, 1947 A-11, 55 U.N.T.S 194 (hereinafter, GATT) Article 7: (a)

<sup>13</sup> GATT Article XXIV:8 (a) (i)

compliance will favour the core countries.<sup>14</sup> However, according to Lester and Mercurio, the WTO members could not agree on the right interpretation and compliance due to ‘political and theoretical reasons’.<sup>15</sup> Similarly, Jurgen Huber argued that from an economic perspective, advanced countries believed a fair chance should be given to developing countries. However, politically due to tension between developing and developed countries, the latter did not only tolerate 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>16</sup>

Instructively, the Appellate Body has restricted flexibility in the application of GATT Article XXIV.<sup>17</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.<sup>18</sup> Also, the Panel report on Automotive Industry<sup>19</sup> indicated that GATT Article XXIV did not provide a reason for a breach or promote inconsistency with the MFN principle of the WTO.<sup>20</sup> There is no doubt that the above-mentioned 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. It is key development. However, it will be inaccurate to state that GATT Article XXIV has not succeeded in ensuring compliance with FTA; this is demonstrated in subsequent chapters. It has been argued that some core countries are able to ignore the requirements of Article XXIV when it is not convenient for them to comply. This is demonstrated later in this thesis.

In his work, 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>21</sup> Akyus’s standpoint is that the WTO rule imposed constraints on national policies, which is more problematic for developing

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<sup>14</sup>Finlayson & Zacher op cit note 10 (emphasis added)

<sup>15</sup>Simon Lest & Bryan Mercurio, *World Trade Law: Text, Materials and Commentary* (2008) 353

<sup>16</sup> Jurgen Huber, ‘The Practice of GATT in Examining Regional Arrangements Under Article XXIV, (1981) *Journal of Common Market Studies* xix (3) at 295

<sup>17</sup>Turkey’s Restriction on Imports of Textile and Clothing Products WT/DA34/AB/R 22 October 1999 (Adopted the Dispute Settlement Body on 19 November 1999)

<sup>18</sup> ibid at paras 58 and 48

<sup>19</sup> Canada-Certain Measures Affecting the Automotive Industry, WT/DS139/12WT/DS142/12/R. (4 October 2000) (Adopted 19 June 2000)

<sup>20</sup> ibid at paras, 10.55-56

<sup>21</sup>Yilmaz Akyus, ‘Multilateral Disciplines and the Question of Policy Space’ in Julio Faundez & Celine Tan *International Economic Law, Globalisation and Developing Countries* (2012) 34-7

countries.<sup>22</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 Bhagwati Jagdish, criticism of the multilateral trading system as resulting from a faulty logic of how the system works.<sup>23</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>24</sup>

(a) *The Research Agenda*

Before discussing the overview for this thesis, 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 trade relationship between the EU and West African countries. Immanuel Wallerstein first used the term<sup>25</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 and the United States, which comes up occasionally. *Peripheral* countries mean developing countries in the ECOWAS region and other 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 EU-ACP 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 thesis, the EU is advanced politically and economically, while 12 out of the 15 member states in the ECOWAS region are categorised as least developed countries (LDC). Also, it is important to note that Eastern Europe

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<sup>22</sup> *ibid*

<sup>23</sup> Jagdish Bhagwati, ‘Reshaping the WTO’, (2005) 168 (2) *Far Eastern Economic Review* p 24 at 2

<sup>24</sup> Jagdish Bhagwati, *In Defense of Globalisation* (2004) 5; Jagdish Bhagwati, *Free Trade Today* (2002) 6, 9

<sup>25</sup> Immanuel Wallerstein, *World Systems Analysis: An Introduction* (2004) 28-31

did not colonise Africa, but for ease, the research would refer to the EU when it discusses asymmetry between the regions.

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 idea and realities in his books.<sup>26</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>27</sup> In line with this concept of ‘systemic’, the thesis argued that, although 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 interest of the African countries. However, the relationship is still asymmetrical, and ‘systemic’ power asymmetry is still embedded in the trade relationship between the EU and West African countries—beginning from the colonial trade era.

In 1962, Toure cautioned that trade relations between Africa and the newfound organisation, European Economic Community (EEC), would perpetuate African countries’ marginal place as ‘hewers of wood and drawers of water’.<sup>28</sup> This unvarnished prognosis about the perpetuation of the colonial ideological construct of the trading system merit investigation in the context of the EPA between the EU and ECOWAS. Thus, the use of ‘systemic’ best describes the relationship between the EU-ACP countries, as demonstrated in chapters two, three and six of this work.

At the end of eighteen months of negotiations, the 77 ACP Countries and the EU ratified a new Partnership Agreement in Cotonou, the capital of the Republic of Benin, on 23 June 2000. The agreement covered a period of twenty years (2000-2020).<sup>29</sup> The Cotonou Agreement took the place of the Lomé Convention, which since 1975, regulated the trade relationship between the two Parties. Its key objective and principle, as provided in Article 34, is to construct a new partnership

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<sup>26</sup> Joe R Feagin, *Racist America: Roots, Current Realities, and Future Reparations* (Routledge New York and London, 2001); Joe R Feagin, *Systemic Racism: A Theory of Oppression* (Routledge New York and London 2006)

<sup>27</sup> *ibid* at 6

<sup>28</sup> *ibid*

<sup>29</sup> Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one Part, and the European Community and its Member States, of the other Part, (23 June 2000) (hereinafter Cotonou Agreement) Article 95 (1)

between the EU-ACP countries, with the intention to assist the ACP Countries, meet the challenges of globalisation, and with cooperation, ACP countries would attain economic development.<sup>30</sup> In other words, according to Thuo Gathii, the Cotonou Agreement did not include the right to development substantively but made hortatory declarations.<sup>31</sup>

In September 2002, the EU and ACP countries commenced negotiations on Economic Partnership Agreement, as envisaged by the Cotonou Agreement. The new trade arrangement is expected to lead to:

- i. gradual elimination of barriers to trade between the EU and ACP Countries;<sup>32</sup>
- ii. promote cooperation in aspects, dealing with trade;
- iii. trading in conformity with the rules of WTO;<sup>33</sup>
- iv. the level of development and capacity of the ACP Countries should be taken into account in the course of negotiation;<sup>34</sup>

Notwithstanding the assurance provided by some EU leaders that the EU objective in the EPAs is to support the principles of cohesive ‘partnership’, sustainable development, and making ACP countries viable players in the world economy,<sup>35</sup> many observers are sceptical about the viability of the EU-ACP EPA as development instrument.<sup>36</sup> The main concerns among the countries in ECOWAS are affordable imported products from the EU, flooding the Western African market in sectors such as poultry, agro-processing industries, cotton-textile, and carpet manufacturing.<sup>37</sup> According to Bagooro, the prior liberalisation of the market during the high point of the Structural Adjustment Programme brought about an import surge, weakening domestic

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<sup>30</sup> Cotonou Agreement Article 34 (2), Cotonou Agreement

<sup>31</sup> James Thuo Gathii ‘The Cotonou Agreement And Economic Partnership Agreements’

<sup>32</sup> Cotonou Agreement Article 36 (1)

<sup>33</sup> Cotonou Agreement Article 34 (4) and Article 2; Smith N, ‘The European Commissioner for Trade’s Speech to Civil Society Dialogue Group in Brussels’ The Guardian 20 January 2005, available at [www.theguardian.com/politics/2005/jan/development.internationalaidanddevelopment](http://www.theguardian.com/politics/2005/jan/development.internationalaidanddevelopment) accessed: 28 May 2018

<sup>34</sup> Cotonou Agreement Article 36 (1) and 37 (7).

<sup>35</sup> Peter Mandelson. Statement to the Development Committee of the European Union Parliament, (March, 2005)

<sup>36</sup> Stephen R Hurt, ‘Co-operation and Coercion? The Cotonou Agreement between the European Union and ACP States and the End of the Lomé Convention’, (2003) 24 (1) pp *Third World Quarterly* 161-176; Farrell Mary, ‘A Triumph of Realism Over Idealism? Cooperation Between the European Union and Africa,’ (2005)29 (3) *European Integration* 265; Frank J Garcia, ‘Trade and Inequality: Economic Justice and the Developing World’, (2000) 21 (4) *Mich J Int’l L* 975-1050 at 977

<sup>37</sup> Mark Langan & Sophia Price, Extraversion and the West African EPA Development Programme: Realising the Development Dimension of ACP-au trade? (2015) 53 (3) *The Journal of Modern African Studies* 263-287 at 270

production, resulting ultimately in job losses and social destitution and retrenchment in response to economic difficulty.<sup>38</sup> Instructively, the EU-ECOWAS EPA made provisions for special and differential treatment—what Ruggie referred to as ‘embedded liberalism’.

John Ruggie conceptualises 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>39</sup> Ruggie borrowed and brought into vogue the idea of ‘embedded liberalism.’<sup>40</sup> The term ‘embeddedness’ was first used by Karl Polanyi in his work, ‘The Great Transformation: The Political Origins of our Time.’<sup>41</sup> Embedded liberalism as conceptualised by Ruggie offers grounds for confidence in the multilateral trading system.<sup>42</sup> However, a critical examination reveals that the peripheral countries are not able to afford such balancing.<sup>43</sup>

For the purpose of the argument mentioned above, two schools of thought have been identified: the conformist and revisionist views. The conformist—led by John Gerard Ruggie, John Ikenberry, Bhagwati Jagdish and Kenneth Abbott, known to acclaim the importance of free trade and the global order that the United States championed since 1945. In the view of Ikenberry, the multilateral system promoted liberalised trade and economic growth, ensuring full employment and economic stabilisation.<sup>44</sup> According to Bhagwati Jagdish, those who opposed the idea of free trade are the ‘chaff’ and should not be associated with ‘the wheat’ of common sense.<sup>45</sup> According to Abbott, surveillance of the national policies by the GATT and strengthening of its rule should be enhanced.<sup>46</sup>

A substantial body of academic literature adopts a divergent view to that of the neo-liberal writers mentioned above. These include Robert Cox, Rorden Wilkinson, Mark Mazower, and Gardner Patterson. These authors argue that the multilateral trading system is asymmetrical. It is

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<sup>38</sup> Bagooro S ‘Report of the National Civil Society Forum on the EPA, Accra: Third World Network-Africa (25 August 2011); ActionAid, Trade Traps: Why EU-ACP Economic Partnership Agreement (EPAs) Pose a Threat to Africa’s Development, (2004)

<sup>39</sup> John Gerard Ruggie, International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order (1982) 36 (2) *International Organisation* pp 379-415 at 398, 388

<sup>40</sup> *ibid*

<sup>41</sup> Karl Polanyi, *The Great Transformation: The Political Origin of Origin of our Time* (1944) xxiii

<sup>42</sup> Ruggie *op cit* note 39

<sup>43</sup> Akyus *op cit* note 21

<sup>44</sup> John G Ikenberry, A World Economy Restored: Experts Consensus and the Anglo-American Postwar Settlement, (1992)46 (1) *International Organisation* pp 289-321 at 290

<sup>45</sup> Jagdish Bhagwati *op cit* note 24 cited in Wilkinson Rorden Wilkinson, *What’s Wrong with the WTO and How to Fix it* (2014) 79

<sup>46</sup> Kenneth W Abbott, ‘GATT as a Public Institution: The Uruguay Round and Beyond Brooklyn’ (1992)XVIII: CV1 *Journal of International Law* 66 at 85

promoted by the dominant *core*, led by the United States, to serve its interests. Cox argues that the ‘dominant side are the theorists of globalisation who envisage American-Style capitalism absorbing the rest of the world into a single global political economy.’<sup>47</sup> Referring to the comment of Bhagwati about separating the ‘chaff’ from the ‘wheat’<sup>48</sup> above, Wilkinson argues that members of the multilateral system have become so accustomed to the manner of talking deployed by supporters of free trade that this has constrained most scholars and WTO members from critically subjecting such discourse to proper examination.<sup>49</sup> According to Immanuel Wallerstein, a particular manner of speaking is common among some dominant *core* (developed) countries.<sup>50</sup> He argued, that the aim is to impede subjecting such discourse to critical questioning.<sup>51</sup> Wallerstein further notes that this method of discourse is adopted to promote developed countries’ mercantilist interests. Excavating the history of the GATT, Patterson revealed the contradictions between rules and practice in the GATT, particularly the incongruousness inherent in the idea of ‘embedded liberalism’ of John Ruggie. Mazower states that the WTO was essentially a club of the *core* countries. Its Green Room excluded the participation of the peripheral countries.<sup>52</sup>

Andrew Lang refused to share in the enthusiasm of those who promoted the ideas of embedded liberalism as conceptualised by Ruggie. According to his standpoint, Ruggie did not highlight the *peripheral* group in the multilateral trading system,<sup>53</sup> and who, on account of their lack of skill and poor infrastructure, have not taken advantage of the exceptions provided in the GATT/WTO.<sup>54</sup> Cox argues that the free trade compromise has instead given rise to aggressive economic imbalances between the poor and the rich countries.<sup>55</sup>

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<sup>47</sup>Robert Cox, ‘Critical Theory’ in: Thomas G Weiss and Rorden Wilkinson, *International Organisation and Global Governance*, (2014) 164-5

<sup>48</sup>Wilkinson (2014) *op cit note 45* at 79

<sup>49</sup> *ibid*; Jonathan Luckhurst, ‘The G20 and ad hoc Embedded Liberalism: Economic Governance Amid Crisis and Dissensus’ (2012) 40 (5) *Politics and Policy* 740-782 at 752

<sup>50</sup>Wallerstein Immanuel, *The Modern World System* (1974); Wallerstein Immanuel, *The Capitalist World-Economy* (1979) 9

<sup>51</sup> *ibid*; Wilkinson, *op cit note 45* at 20, 79; Rorden Wilkinson, *Of Butchery and Bicycles: ‘The WTO and the ‘Death’ of the Doha Development Agenda’*, (2012) 83 (2) *The Political Quarterly* 396-97; James Scott & Rorden Wilkinson, ‘Reglobalising Trade: Progressive Global Governance in an Age of Uncertainty’. (2021) 18 (1) *Globalisation* 55-69; Robert W Cox, *The Political Economy of a Plural World: Critical Reflections on Power, Morals and Civilisation* (2002) 90

<sup>52</sup> Mark Mazower, *Governing the World: The History of an Idea* (2012) 410

<sup>53</sup>Andrew Lang, *Reconstructing Embedded Liberalism: John Ruggie and Constructivist Approaches to the Study of the International Trade Regime*, (2006) 9 (1) *Journal of International Law* 84

<sup>54</sup> *Ibid*

<sup>55</sup> Cox, *op cit note 51*

(b) *Argument and The Analytical Perspective*

The EPAs are, to a large extent, disputatious and have remained a source of tension between the EU and ACP countries for more than a decade.<sup>56</sup> This is also the case between the EU and ECOWAS region. At the launch of EPA in the EU green paper,<sup>57</sup> the EU claimed that the primary reason for the transformation from the existing non-reciprocal trade preferences set in the Cotonou Agreement to the reciprocal free trade arrangement put forward in the EPA was owing to the need for the EU-ACP trade relationship to be in accord with Article XXIV of the GATT/WTO.<sup>58</sup> Several academic observers have criticised this assertion on many grounds, including that the EU and the core countries can be accused of double standards and have to a large extent, utilised their asymmetrical economic power to assert an interpretation of Article XXIV that promotes their interests in both in the GATT and in regional and bilateral trading relationships.<sup>59</sup>

The argument put forward in this thesis is that ‘asymmetry’ has characterised the relationship between the developing countries in global trade. This idea of asymmetry can be applied to the relationship between the core countries (the EU/USA) and the periphery countries (ACP)—in the GATT (multilaterally) and in the EU-ACP trade relationship (bilaterally).

While the GATT ratified the idea of the Most Favoured Nation or MFN to demonstrate the principle of equality among the countries, this principle was faulted by developing countries as it failed to exhibit their different and lesser levels of development.<sup>60</sup> It took the GATT members over a decade to acknowledge the different development levels between developed and developing countries.<sup>61</sup> The idea was incorporated into the GATT in 1964.<sup>62</sup> Thus, the idea of special and differential treatment in the GATT was to be applied in favour of developing countries to take into account their development needs.<sup>63</sup> Three types of Special and Differential Treatment were

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<sup>56</sup>Ramdoon I, and Bilal S, ‘EPA Negotiations: The Honey Moon is Over’ Briefing Note 31 (2011) p 3 [www.ecdpm.org/publications/](http://www.ecdpm.org/publications/) accessed: 29/5/18)

<sup>57</sup>Commission of the European Communities, ‘Green Paper on Relations between the European Union and the ACP Countries on the Eve of the 21st Century: Challenges and Options for a New Partnership’ 20 November 1996, COM(96) (570 Final.) iii, <https://eu-lex.europa.eu/legal-content/EN/TXT/pdf/?uri=CEL...> Accessed: 26/6/2020

<sup>58</sup> Smith N, ‘The European Commissioner for Trade’s Speech to Civil Society Dialogue Group in Brussels’ *The Guardian* 20 January 2005

<sup>59</sup> William Brown, *The European union and Africa: the restructuring of North-South relations*, (2002) P 368; Charlotte Bretherton and John Vogler, *The EU as a Global Actor* (2006)

<sup>60</sup> Faizel Ismail *Reforming the World Trade Organization: Developing Countries in the Doha Round* (2009) 11-12

<sup>61</sup> *ibid*

<sup>62</sup>General Agreement on Tariffs and Trade, Oct, 30, 1947 A-11, 55 U.N.T.S 194 (hereinafter, GATT)Articles XXXVI, XXXVII, XXXVIII and XXXVI:8

<sup>63</sup> James Bacchus and Inu Manak, *The Development Dimension: Special and Differential Treatment in Trade* (2021) 25-6

provided for; first, reduced liberalisation commitments (or asymmetrical tariff liberalisation commitments);<sup>64</sup> secondly, more flexible implementation of GATT rules (this meant more time was given to developing countries for implementation)<sup>65</sup> and finally, promises to grant development assistance or aid.<sup>66</sup>

This concept can be applied to the bilateral relationship between the EU and the ACP countries. Even though the EU-ACP trade relationship was founded on non-reciprocity, or preferential trade until the Cotonou Agreement, the economic and political relationship between the two regions reflects their vastly different levels of economic development and out of proportion political power of the EU over the ACP countries. Therefore, it can be argued that the trade relationship between the EU and the ACP or the EU and ECOWAS is asymmetrical.

The EU assured to address the present trade and economic arrangement asymmetry between the EU and the ACP countries.<sup>67</sup> It offered to apply some level of special and differential provisions such as asymmetry in trade liberalisation commitments and development support to cope with readjustment costs that could emanate in ACP countries as a result of the implementation of the reciprocal EPA free trade agreement.

This thesis argues that just as the GATT promoted a system of trade liberalisation and trade rules that perpetuated asymmetry in favour of the developed countries, the EU EPA agreement – which supports free trade – is likely to continue the asymmetry between the EU and the ACP countries and the EU and ECOWAS more particularly. In the same way, core countries utilised the interpretation of Article XXIV in different stages in the history of GATT to support and promote their interests.

Similarly, it is argued that while some proponents of the EPAs, such as Peter Mandelson, sought to reassure that the primary aim of the EPAs is to promote free trade and economic development of the ACP countries, the actions of the EU in the negotiations and the text of the EPA agreements indicate that the EU-ECOWAS EPA, will strengthen asymmetry of the existing trade and economic relationship.

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<sup>64</sup> GATT Article XXXVII: 1 (a)

<sup>65</sup> GATT Article XXXVII: 3 (C)

<sup>66</sup> GATT Article XXXVIII: 2

<sup>67</sup> Peter Mandelson European Commissioner for Trade, 'Economic Partnership Agreements: progressive trade policy into practice' SPEECH/05/241 ACP – EU Joint Parliamentary Assembly Bamako, Mali, 19 April 2005, 5 available at [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_05\\_241](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_05_241) accessed 27 October 2021

It will be argued that the Special and Differential Treatment provisions in the EU-Ghana EPA are inadequate to support Ghana's economic development.

It will also be argued that while the EU-Nigeria trade and economic relationship shows asymmetry in favour of the EU, Nigeria is not as dependent as Ghana on the EU for its trade and investment relations. Nigeria's trade and economic strategy is to boost its bilateral trade and investment relationship with the UK in the post-Brexit period, as the UK is its leading European trade and investment partner. The EU used the interpretation of Article XXIV in a manner that demonstrates asymmetric power—determined to adopt a strict interpretation in the case of Ghana and ECOWAS and ACP countries more generally while adopting a more flexible approach in other instances in which its interest required this.

This thesis explores the following three key questions:

- i. Is the EU Trade Relationship with the ECOWAS region based on 'systemic' asymmetry just like the GATT?
- ii. Is special and differential treatment in the text of the EU-Ghana Economic Partnership Agreement sufficient to bring about economic development?
- iii. Why was Nigeria not influenced by the 'systemic' power asymmetry between it and the EU to sign the agreement?

The three questions are explored in the context of the argument in this thesis that the trading system established after the Second World War is unequal and reflects the differences in power.

Some observers connected the EU and ACP Countries' relationship to the predicament faced by peripheral countries in the multilateral institution.<sup>68</sup> Due to this interconnectedness, ACP countries, including ECOWAS, remained apprehensive of the EPA, fearing the EPA could lead to de-industrialisation and create significant adjustment costs, which would destabilise the little progress made.<sup>69</sup> However, Mandelson commented that he is acutely aware of the ACP countries' fears—anxieties and concerns; these, he stated, must be addressed. He states: 'we must indeed

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<sup>68</sup>Woolcock, *op cit* note 8 at 27

<sup>69</sup> ACP Council of Ministers, 'Declaration of the ACP Council of Ministers at its 86<sup>th</sup> Session Expressing Serious Concern on the Status of the Negotiations of the Economic Partnership Agreements', December 2007; Paul Goodison, 'EU Trade Policy and the Future of Africa's Trade Relationship with the EU' (2007) 34 (112) *Review of African Political Economy*, 247-266; Hurt *op cit* note 29; Actionaid *op cit* note 31 at 29

ensure that the EPAs are designed to complement and not contradict the wider, poverty-based strategy spelt out.<sup>70</sup>

However, according to a government official interviewed in the course of the fieldwork (see Appendix 1), while the EU assures the West African countries of EPA-development oriented and committed to flexibility as stipulated in the Cotonou Agreement,<sup>71</sup> the EU, it was claimed blocks ACP countries, including ECOWAS, from critically negotiating the agreement or having any input as to the deadline, which the EU unilaterally set. Kabuleeta and Hanson opine that, during the negotiations, the EU ignored the aim and purpose of the EPAs but protected its interests.<sup>72</sup>

This chapter has provided the main argument to be advanced in this thesis. The chapter has drawn heavily from many academic authors' perceptions and interviewees to reach its current argument. The following section now explains the methodology adopted and an outline of the thesis.

(c) *The Research Method*

The study adopts a multidisciplinary approach. The theoretical framework and analysis draw on insights and concepts from economic theory, critical theory, international relations, and legal scholarship to analyse the trade relationship between the EU-ACP countries. Blending insights from multiple perspectives on the global trade phenomenon is essential.<sup>73</sup> On the relevance of blending different theories, Petersmann notes that International Economic Law (IEL) has become so complex with a steady rise in Regional Trade Agreement (RTA) and the increasing number of WTO cases. Thus, it is vital to adopt the integrative approach for evaluating legal analysis and contradictions between theory and practice.<sup>74</sup>

The study reviews relevant academic literature, interviews and primary sources. The empirically orientated research examines the following three issues: first, whether the EU trade relations with the ECOWAS region is based on 'systemic' asymmetry with its origin in the colonial

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<sup>70</sup>Peter Mandelson European Commissioner for Trade, 'Economic Partnership Agreements: progressive trade policy into practice' SPEECH/05/241 ACP – EU Joint Parliamentary Assembly Bamako, Mali, 19 April 2005, 5 available at [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_05\\_241](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_05_241) accessed 27 October 2021

<sup>71</sup> Cotonou Agreement Article 37 (4)

<sup>72</sup> Patricia Kabuleeta & Victoria Hanson, Good from Afar but Far from Good, Trade Negotiation Insights vol (8) (2007 & 2008), available at [www.ictsd.org/sites/files/downloads/tni/tni\\_e26.pdf](http://www.ictsd.org/sites/files/downloads/tni/tni_e26.pdf) accessed 25 May 2018.

<sup>73</sup> Jeffrey L Dunoff, Rethinking International Trade (1998) 19 (2) *U Pa J Int'l Econ L* 34

<sup>74</sup> Ernst-Ulrich Petersman 'Narrating International Economic Law' (2014) 787. Constitutional Limit' Max Planck Institute fur Auslandsches offenthiches Recht <http://www.zaoerv.de> accessed 10 May 2018

context and the GATT system. Secondly, it examined whether the exceptions provided in the EU-Ghana EPA are sufficient to promote Ghana's development.<sup>75</sup> Ghana signed the EPA to obtain access to the EU market, while the LDC signed the EPA because of their interest in intraregional trade or to receive additional aid for development from the EU. Like the rest of ECOWAS member states, Ghana does not have the capacity to take Nigeria's position toward the EU, nor does it have the power to make Nigeria sign the agreement. According to Omo-Ogbehor and Sanusi, Nigeria is the most influential regional power, and ECOWAS member states depend on Nigeria for its contribution to ECOWAS. Also, Nigeria is the region's military powerhouse and contributes enormously to peacekeeping operations in the region.<sup>76</sup> Therefore, Nigeria is strong economically in the region and Africa. However, the crucial reason why Nigeria declined to sign is that the country's main export to the EU is crude oil, which is not a tax. Thus, the country was not under any pressure and do not suffer asymmetry like Ghana. There is no doubt, that economic power asymmetry exists between Nigeria and the EU but it was not strong enough to put pressure on Nigeria to sign. Contrastingly, Ghana signed because it needed access to the EU market, even though the terms of the agreement are claimed not to accommodate the realities of the level of development in Ghana. A senior trade official of the ECOWAS Commission related to this research that in 2020, Ghana met with the EU regarding the broad scope of trade liberalisation; according to the Ghana delegates, the country cannot be expected to subject its economy to strict jurisdiction of GATT Article XXIV.<sup>77</sup>

The third examines why Nigeria was not coerced or pressured by the power asymmetry. In the circumstances where EU interest evidently exercises control over the agenda, some inconsistency exists. In actual fact, by shifting attention to the analysis of the separate state, instead of the whole Africa or ACP group, it is perceptible that some countries such as Nigeria have exemplified not only the capacity to negotiate with the EU but, more importantly, on certain occasion could ignore the promise of aid or assistance not supported with legal commitment, and unless their demands are met, or they look to another viable partner. Nevertheless, fundamentally, the relationship between the EU and Nigeria is still asymmetrical but not strong enough to put

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<sup>75</sup> Interview with MoTI official (Ghana, 2020)

<sup>76</sup>Omo-Ogbehor, O Denis & Hajj A Sanusi 'Asymmetry of ECOWAS Integration Process: Contribution of Regional Hegemon and Small Country' (2017) 17 (1) 17 *Vestnik Rudn International Relations*: 59-73 <https://journals.rudn.ru/international-relations/article/download/15877/14408> accessed: 5 July 2022

<sup>77</sup> Interview with an official of ECOWAS Commission (Abuja, 2020)

pressure on Nigeria to sign. Nigeria and Ghana are taken as case studies to interrogate this more significant relationship between the EU and ECOWAS. Despite the fact that power asymmetry and marginalisation characterise the relations with the EU, they have differing levels of success and failure in trying to attain their preferences in negotiations and relations with the EU. Nigeria could only withstand the ‘systemic’ asymmetry in favour of the EU because the country could still benefit from exporting crude oil into the EU market without duties.<sup>78</sup> Also, according to an interviewee, Nigeria has positioned herself to negotiate trade terms with the United Kingdom (UK) upon a successful Brexit. At the time of writing this thesis, Nigeria has signed a Memorandum of Understanding (MoU) with Britain. According to the Director of the National Association of Nigeria Traders (NANTS), Nigeria exports 80 per cent of non-oil products to the UK. However, relatively minimal of its goods access the EU market.

In order to address the questions raised in this thesis, a qualitative approach was used. Before commencing the empirical research, ethical clearance was sought and obtained from the Ethics Clearance Committee at the University of Cape Town. Most of the interviews were conducted by telephone after respondents granted consent through email correspondence. This was due to COVID19, which practically paralysed the world in 2020. Organisations restricted physical access to their building. This was a serious challenge, as calls have to be made several times before getting through due to poor network—a prevalent situation in some countries in West Africa.

In order to gather an in-depth analysis of EU-ECOWAS EPA, ten officials were interviewed in the ECOWAS and UMEOA Commissions. Some were the most senior trade officials who participated in the EPA negotiation. Some senior officials and Commissioners were retired at the time of the interview, and some were still in active service. In order to examine the case study of Nigeria, nine interviews were conducted in Nigeria in the following organisations: two officials from the Federal Ministry of Trade and Investment, three officials were interviewed in the private sector (Ken Ukaoha and his team), National Association of Nigerian Traders (NANTS). 2 interviews were conducted at the Manufacturing Association of Nigeria (MAN). The former Minister of State, Ministry of Commerce, Trade and Investment of Nigeria, was interviewed, and also a professor from Ahmadu Bello University was interviewed.

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<sup>78</sup> Interview with official of NANTS (Abuja, 2020)

<sup>78</sup> See Appendix 1

Five interviews were conducted to gain insight into the Ghana-EU EPA. Michael Osborn, the Director of the Ministry of Trade and Investment in Ghana, was interviewed. Three Ghanaians in the ECOWAS Commission, who requested anonymity, were interviewed. Senior trade officer Peter Joy Sewornoo, currently representing ECOWAS at Africa Continental Free Trade Area (AfCFTA) Secretariat in Ghana, was interviewed. He actively participated in the negotiation of the EU-ECOWAS EPA. Also, follow-up information and archival documents were gathered through electronic correspondence with some participants.

Insights gained from the multilateral trade conformist and revisionist standpoint, the legal provisions and interviews conducted are used to triangulate the argument canvassed in this thesis. Although the research has made a serious effort to discuss the EU and ECOWAS trade relations documents, the reader should be mindful of the research's subjectivity as a citizen of ECOWAS. Notwithstanding, the research is cognizant of the tendency to lean toward a particular point of view. Nevertheless, the research made an effort to ensure the analysis of the documents was balanced and dispassionate.

*(d) Contributions*

By situating its cases in West Africa—using Ghana and Nigeria as case studies, this thesis aims to close a gap in the academic literature by expanding the discussion on African countries' asymmetrical trade relations with the EU. While there is a plethora of excellent current scholarship on the trade relationship between the EU-ACP countries Stevens Bilal<sup>79</sup> Obote Ochieng,<sup>80</sup> Stephen

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<sup>79</sup>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) <https://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: 14/12/2020 at3; Bilal S and Roza V, 'Addressing the Fiscal Effects of an EPA (Study with Support of Irish Aid, Department of Foreign Affairs)' (2007) available at [www.ecdpm.org/bilal](http://www.ecdpm.org/bilal)(accessed: 18/2/2020); Sanoussi Bilal & Christopher Stevens, The Interim Economic Partnership Agreements between the EU and African States: Contents, Challenges and Prospects (2009) available at [www.ecdpm.org/pmr17](http://www.ecdpm.org/pmr17) 126 accessed: 01 July 2020

<sup>80</sup>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' Vol (2007) 10 (2) *JIEL* 363-395; Cosmas Milton Obote Ochieng, Legal and Systemic Issues in the Interim Economic Partnership Agreements: Which Way Now? Issue Paper No 2 (2009)

Hurt<sup>81</sup>, Samuel Oloruntoba,<sup>82</sup> Mary Farrell,<sup>83</sup> Angelos Sepos,<sup>84</sup> Stephen Woolcock,<sup>85</sup> and Tony Heron<sup>86</sup>), to name just a few, there has been relatively little research focusing on West Africa—particularly, Ghana and Nigeria EPA. There is marginal research focusing on extensive analysis of how the negotiations were influenced by ‘systemic’ asymmetry in Ghana and Nigeria—this thesis makes it a focus of the research.

The EPAs are, to a large extent, controversial and have persistently become a provenance of tension between the EU and the ACP countries for more than a decade. This is also similar to the case between the EU and the ECOWAS regions. When the proposal for the controversial EPA was set in motion in the EU green paper, the EU claimed that the reasons for the transition from preferential trade embedded in the Cotonou Agreement were mainly twofold: first, compliance with Article XXIV of the World Trade Organisation (WTO) rules,<sup>87</sup> and secondly, sustainable development and active participation of the peripheral countries in the world trading system. Academic observers have criticised this claim.<sup>88</sup> However, there has been a paucity of in-depth empirical analyses of the EU-ECOWAS EPAs. This thesis attempts to fill this gap and make three key contributions to the academic literature;

1. It offers a critical analysis of GATT Article XXIV in the context of the debate on ‘asymmetry’ based on the academic literature
2. The use of two case studies of Ghana and Nigeria in the context of ECOWAS provides insights into the political economy of the negotiations and implementation of the EPAs

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<sup>81</sup>Stephen Hurt, ‘The EU-SADC Economic Partnership Agreement Negotiations: Locking in the Neoliberal Development Model in Southern Africa, 2012*Third World Quarterly* 499, available at <https://www.tandfonline.com/loi/ctwq20> accessed 24 May 2020; Hurt, op cit note 29

<sup>82</sup> Samuel O Oloruntoba, *Regionalism and Integration in Africa: EU-ACP Economic Partnership Agreements and Euro-Nigeria Relations* (2016)

<sup>83</sup>Farrell op cit note 36

<sup>84</sup> Angelos Sepos, ‘Imperial Power Europe? The EU’S Relations with the ACP Countries’(2010)

<sup>85</sup>Woolcock, op cit note 8

<sup>86</sup>Tony Heron, Asymmetric Bargaining and Development Trade-offs in the CARIFORUM-European Union Economic Partnership Agreement, (2011)18 (3), *Review of International Political Economy*328-357 <https://www.tandfonline.com/action/journalInformation?journalCode=rrip20>

<sup>87</sup> Smith N, ‘The European Commissioner for Trade’s Speech to Civil Society Dialogue Group in Brussels’ The Guardian 20 January 2005 available [www.theguardian.com/politics/2005/jan/development.internationalaidanddevelopment](http://www.theguardian.com/politics/2005/jan/development.internationalaidanddevelopment) accessed: 28 May 2018

<sup>88</sup> Hurt op cit note 36

3. The empirical case studies explore several of the most significant technical and legal negotiating issues in the EPAs, such as the controversial MFN clause

Based on the above analysis, the thesis makes some recommendations to both the EU and ECOWAS negotiators. The subject of this thesis is of relevance to all countries in the ACP and the EU. In addition, the insights on the core legal issues discussed in the thesis, such as Article XXIV, are relevant to all members of the multilateral trading system, and the recommendations based on this could contribute to a more just and fair trading system.

## II CHAPTER OUTLINE

Following the introductory chapter, the rest of the thesis consists of seven chapters.

**Chapter 2** explores the theoretical framework used to aid explanation and contribute to the detailed examination of Article XXIV of GATT in the context of the EPA between ECOWAS and the EU. The discussion considers the ideological frameworks of neoliberalism, asymmetry and the constructivist school of thought views on the role of ideas; John Ruggie's analysis of the global trading system as embedded liberalism is critical in this regard.

**Chapter 3** provides an overview of trade relations between ACP countries and the EU before independence and the latter part of the 1950s and 1960s, when most countries in sub-Saharan Africa secured their independence from colonial rule to the present time. The analysis contextualises trade between these regions and provides a general assessment of the theoretical framework of asymmetrical power between *core* and *peripheral* countries.

**Chapter 4** explores Ghana's trade policy from 1957 to 2001 to further interrogate the theoretical framework. At a general level, Ghana's economic development and trade policy are investigated in terms of the relationship between *core* and *peripheral* countries and assessed for the impacts of, firstly, vestiges of colonialism and, secondly, the neoliberal doctrine of liberalisation.

**Chapter 5** focuses more narrowly on Ghana's EPA negotiations with the EU. It concludes by arguing that the interim EPA signed will negatively impact Ghana's trade and industrial policy because the agreement reflects more of the dominant core's interests, norms, and values.

**Chapter 6** lays out Nigeria's trade and economic policy from independence in 1960. The chapter argues that Nigeria cannot compete with the EU in economic capacity. Subjecting its nascent industries to foreign competition will be detrimental to its building capacity and mustering

economic development policy.

**Chapter 7** explores the details of the EPA negotiation and whether Nigeria withstood ‘systemic’ asymmetry favouring the EU. The chapter focuses on Nigeria’s concerns with interpreting Article XXIV—the agreement’s liberalisation Article. These questions are answered with reliance on extensive interviews conducted in Nigeria and archival documents obtained from these organisations and agencies of the Nigerian government. (Appendix 1 of the thesis)

**Chapter 8** presents conclusions from the research and discusses validating the theoretical framework adopted in this thesis and key findings and recommendations.

## CHAPTER TWO: THEORETICAL FRAMEWORK OF CORE AND PERIPHERAL COUNTRIES IN THE TRADING SYSTEM

### I INTRODUCTION

The early part of 2000 heralded a fundamental policy change to the preferential non-reciprocal trade arrangement between the Economic Community of West African States (ECOWAS)<sup>89</sup> and the European Union (EU).<sup>90</sup> The reasons put forward by the European Union for the controversial<sup>91</sup> Economic Partnership Agreements (EPAs) are mainly twofold: (i) compliance with Article XXIV of the World Trade Organisation (WTO) rules,<sup>92</sup> and (ii) sustainable development and active participation of the *peripheral* countries in the world trading system. Like the rest of the African Caribbean Pacific (ACP) countries, ECOWAS has a long history of development cooperation with the EU.<sup>93</sup> Brown argued that the circumstances that inform the relationship between West Africa and the EU could only be critically understood from the point of view of cooperation between *peripheral* countries in Africa and the *core* (developed) countries.<sup>94</sup>

This chapter explores a theoretical framework from the perspective of free trade conformist<sup>95</sup> and revisionist.<sup>96</sup> It explained the dynamics observed in the multilateral trade negotiations and agreements between developed or core countries on the one side and underdeveloped or peripheral countries on the other. To achieve this objective will require tracing an interrelated set of historical forces and ideologies that, together, influence global events.

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<sup>89</sup> Economic Community of West African States (ECOWAS) available at [www.ecowas.int/members-states/](http://www.ecowas.int/members-states/) accessed: 17 June 2018

<sup>90</sup> European Commission, Economic Partnership Agreements (EPAs), New ACP-EU Trade Partnerships (July, 2010), <http://europa.eu/trade/wider-agenda/development/economic-partnerships> accessed: 29 May 2018

<sup>91</sup> Ramdoo I, and Bilal S, 'EPA Negotiations: The Honey Moon is Over' Briefing Note 31 2011 p 3 [www.ecdpm.org/publications/](http://www.ecdpm.org/publications/) accessed: 29 May 2018

<sup>92</sup> Smith N, 'The European Commissioner for Trade's Speech to Civil Society Dialogue Group in Brussels' The Guardian 20 January 2005; Oxfam International, 'Unequal Partners: How EU-ACP Economic Partnership Agreements (EPAs) Could Harm the Development Prospects of Many of the World's Poorest Countries' Briefing Note, (September, 2006) p 13

<sup>93</sup> Frank Long, *The Political Economy of EEC Relations with African, Caribbean and Pacific States* (1980) P 3-10

<sup>94</sup> William Brown, *The European union and Africa: the restructuring of North-South relations*, (2002) P 368

<sup>95</sup> Ruggie, *op cit note 39*; Bhagwati, *op cit note 34*; Ikenberry, *op cit note 39*; Abbott, *op cit note 41* at XVIII: CV1

<sup>96</sup> Gardner Patterson, Discrimination in International Trade: The Policy Issues 1945-1965 (1996); Wilkinson, *op cit note 45*; Rorden Wilkinson eds, *Global Governance, Poverty and Inequality* (2010); Rorden Wilkinson, 'Language, Power and Multilateral Trade Negotiations', (2009) 16 (4) Review of International Political, doi:10.1080/09692290802587734; Lang, *op cit note 53*; Robert W Cox, Social Forces, States, and World Orders: Beyond International Relations Theory' *Millennium-Journal of International Studies* (1981) 10 (126); Cox, *op cit note 51*

In the typical narrative of the effects of free trade, as exemplified by the views of Ikenberry, the multilateral system harmonised liberalisation and trade growth, ensuring full employment and economic stabilisation.<sup>97</sup> However, in its report, the International Labour Organisation (ILO) states that one-third of the global workforce of three billion people is not employed.<sup>98</sup> Also, in advanced countries, the low employment rate ranges from 3 per cent to 25 per cent across countries. The unemployment situation in peripheral countries is gloomier, where ILO estimated that 1.3 billion people are not employed. Several of these people, according to the report, will not be employed in their lifetime.

This chapter aligns with critical international political economy scholars,<sup>99</sup> who deviate from the usual standard of neoliberal argument, to gain insight into the interpretation of ‘embedded liberalism’ as conceptualised by John Ruggie.<sup>100</sup>

The remaining sections are organised as follows: Section 2 explores ‘embedded liberalism’, constructivist and reflectivist standpoints on the role of ideas. It further examines ideas as a weapon in the hands of the dominant core. Section 3 investigates the systemic economic power asymmetry between the dominant core and peripheral countries. Section 4 discusses the various perspectives on trade liberalisation to understand the contradictions inherent in the multilateral trading system. Furthermore, it explores the various discourse employed by the dominant core to eclipse critical questioning of the proponents of the ideas of free trade. Section 5 concludes the chapter.

## II MULTILATERAL TRADING SYSTEM AND ‘EMBEDDED LIBERALISM’

The phenomena of the GATT system up to the point of the Uruguay Round represents two echelons, in which the core (developed) countries, directed initially by the United States, later by the OECD countries with the United States (US) and the European Union, pre-eminently set the agenda and fashioned policy outcomes.<sup>101</sup> On the other hand, the developing countries were under

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<sup>97</sup> Ikenberry, *op cit* note 44 at 290

<sup>98</sup> ILO World Employment Report *Life at Work in the Information Economy*, Geneva: International Labour Organisation, 2001 1, [https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_007830/lang--en/index.htm](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_007830/lang--en/index.htm)

<sup>99</sup> Cox, *op cit* note 43; James Scott & Rorden Wilkinson, *Reglobalising Trade: Progressive Global Governance in an Age of Uncertainty* (2021)18 (1) *Globalisation* 55-69 at 62 Jennifer Clapp and Rorden Wilkinson eds, *Global Governance, Poverty and Inequality* (2010); Wilkinson, *op cit* note 45

<sup>100</sup> Buch-Hansen, Hubert & Wigger Angela, *The Politics of European Competition Regulation: A Critical Political Economy Perspective* (2011) 7, 57-8; 72-4; Horn L, *Regulating Corporate Governance in the EU: Towards a Marketisation of Corporate Control* (2011) 22, 50

<sup>101</sup> Saxeba Sada Shanka, ‘The Uruguay Round: Expectations of Developing Countries, *Intereconomics*’ (1988)23 (6) *Verlag Weltarchiv, Hamburg* 269, available at <https://www.econstor.eu/bitstream/10419/140157/1/v23-i06-a04-BF02925124.PDF> accessed 28 October 2021

Part IV's jurisdiction to keep their obligations within bounds but did not influence how the GATT rules were shaped.<sup>102</sup>

Initially, the Uruguay Round ended Part IV of the GATT, replacing it with the Single Undertaking.<sup>103</sup> Consequently, all WTO member states were required to be WTO rules compliant, even if peripheral (developing) countries benefitted from special and differential treatment in other forms, for example, more extended periods to enforce WTO rules, commitments to grant technical assistance from the core countries.<sup>104</sup> Simultaneously, Pascal Lamy perceived the steady shift in power relationships in the multilateral trading system.<sup>105</sup> According to the observer, neither the USA nor the EU can shape agendas and policy outcomes without the contribution of advanced developing countries.<sup>106</sup> It is no more 'the world of the twentieth century dominated by the US pillar on one side and the European pillar on the other'.<sup>107</sup> Although, there can be no consensus in the WTO without the endorsement of the USA and the EU. Nevertheless, the rise of China and the expansion of economic ascendancy of India and countries like Brazil and South Africa have created a large heterogeneous power arrangement within the WTO system.<sup>108</sup> The endorsement of the Single undertaking has raised the supposition of peripheral countries that they can have a say in trade negotiations because they are legitimate members of the WTO.<sup>109</sup>

According to Woolcock, the degree to which the precursory asymmetric power relationship between the core and the peripheral countries in the multilateral trading system can be altered or remedied is contingent on the number of elements.<sup>110</sup> As noted, Lamy, in his lecture, argued that the advanced developing countries had increased their market power.<sup>111</sup> However, Woolcock observed that the African countries are severely restricted by the economic deficiency and have not been able to shape outcomes in the multilateral trading system and regional trade arrangement with the EU.<sup>112</sup>

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<sup>102</sup> *ibid* at 270

<sup>103</sup> WTO 'Part IV Negotiation', at 308-9 available at [https://www.wto.org/english/res\\_e/booksp\\_e/historywto\\_09\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/historywto_09_e.pdf), accessed 28 October 2021

<sup>104</sup> Woolcock, *op cit* note 8 at 29

<sup>105</sup> Pascal Lamy, 'Emerging Economies Have Shifted the Balance of power in world Trade' presenting the Richard Snape Lecture in Melbourne, Australia 26 November 2012, [https://www.wto.org/english/news\\_e/sppl\\_e/sppl258\\_e.htm](https://www.wto.org/english/news_e/sppl_e/sppl258_e.htm) accessed 28 October 2021

<sup>106</sup> Woolcock, *op cit* note 8

<sup>107</sup> Lamy *op cit* note 105

<sup>108</sup> *ibid*

<sup>109</sup> Woolcock *op cit* note 8

<sup>110</sup> *ibid*

<sup>111</sup> Lamy *op cit* note 105

<sup>112</sup> Woolcock *op cit* note 8

There has been a shift in the multilateral trading system from the late 1990s and early 2000s—a steady rise of the bilateral free trade agreement.<sup>113</sup> Viner observed that the multilateral trading system has never been devoid of bilateralism.<sup>114</sup> Bilateralism and regionalism in trade relations were present prior to the endorsement of GATT in 1948.<sup>115</sup> Even though Article I made provision for the multilateral system, the elements of the bilateral arrangement are present. For instance, principal suppliers negotiated tariff reductions first and subsequently multilateralised through the MFN clause.<sup>116</sup> The aim was to reduce the complexities of the process of negotiating tariff reduction prior to the introduction of general tariff formulae.<sup>117</sup> However, the consequence is that it can produce asymmetric bargaining relations between the dominant core and peripheral countries in the GATT system.<sup>118</sup>

As the challenges of making progress in the multilateral trading system mount, there has been a shift in focus toward bilateralism from the 2000s. The EU, since the beginning of 2000, has encouraged regional integration through a bilateral trade agreement. Whether the exceptions (embedded liberalism) provided in the EU and Africa’s bilateral arrangement suffice to balance domestic policy and international establishment; depend on how much the peripheral countries have taken advantage of the exceptions provided in the multilateral trading system.

(a) *Embedded Nature of the Global Trading System to Domestic Issues*

In its judgment, the Appellate Body in China-Raw Material declared that the whole WTO law embodies ‘balance...between trade and non-trade-related concerns’.<sup>119</sup> Besides the fundamental rules of the WTO, the law also made provisions that address incompatibility between trade liberalisation, values and interests. The laws are termed ‘exceptions’, and it permits WTO Members to vary the rules in specific circumstances in order to take into account domestic issues that are not in tandem with global trade.<sup>120</sup> The domestic economic concerns related to the protection of local industry from harm through a surge in imports, provisions of safeguard for the balance of payment, and regional economic integration. The deviations are found in Articles XII,

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<sup>113</sup> Heydon K & Woolcock S *The Rise of Bilateralism: Comparing American, European and Asian Approaches to Preferential Trade Agreements* (2009) 3-4, 187-189

<sup>114</sup> Jacob Viner, *The Customs Union Issue* edited by Paul Oslingston (2014)

<sup>115</sup> *ibid* at 4-21

<sup>116</sup> Patterson, *op cit note 91* at 7

<sup>117</sup> *ibid*

<sup>118</sup> Woolcock *op cit note 8*

<sup>119</sup> China-Measure Related to the Exportation of Various Raw Materials, WT/DS394/WT/DS395/WT/DS398 (2012) para 306

<sup>120</sup> Peter Van den Bossche & Werner Zdouc, *The Law and Policy of the World Trade Organisation: Text, Cases and Materials* 4ed (2017) 42

XIX, and XXIV of the GATT 1994, Articles V, X and XII of the GATS and provisions on safeguards.

Therefore, according to Ruggie, the regime created at Bretton Woods was premised on exigency, and leave, of state intervention into the market to ensure stability at the domestic level. In the manner now indicated, the goal has become a constituent part of the trading system established after the Second World War. In this sense, the cardinal vision of the trading regime has two main prongs: the first objective was to strategise a means to safeguard domestic stability without, secondly dismantling the international regime, as happened between 1918 and 1939.<sup>121</sup> While the trade regime's core principle is non-discrimination, it also necessitates the obligation to preserve stability at the national level.<sup>122</sup> Thus, some level of protection was permissible, so long as it is proportionate to 'external disturbance...'<sup>123</sup> This balancing between a national and international regime that Ruggie termed 'embedded liberalism'. As noted in chapter one, the idea of 'embedded liberalism' was first used by Karl Polanyi but borrowed and elaborated on by John Ruggie and other modern scholars.<sup>124</sup> In the Article, Ruggie's point centres on ideological contestations over the mainstream ideas on which the post-war international economic order was based. He argued that it was a balanced system—GATT's text contained different forms of 'safeguards, exemption, exceptions and restrictions'. For instance, the balance of payment, preferential trading agreements, and emergency safeguards are frameworks put in place to advance and protect national policies.<sup>125</sup>

Ruggie conceptualised embedded liberalism, magnetised reconceptualisation, questions, and scholars unveiled it from a different perspective. Rodrik argued that the compromise of embedded liberalism had served the global economy well because there has been no 'shift' from the welfare state.<sup>126</sup> Nevertheless, he advocated 'creative thinking' to energise the embedded liberalism compromise to meet the economic challenge of the current time.<sup>127</sup> According to Nye and Donahue, the compromise reached after the Second World War harmonised well between the domestic and the global arrangement.<sup>128</sup> However, the authors argued that some changes like

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<sup>121</sup>Ruggie, *op cit* note 39 at 202

<sup>122</sup> *ibid* at 209

<sup>123</sup> *ibid* at 221

<sup>124</sup> Mark Granovetter, 'Economic Action and Social Structure: The Problem of Embeddedness (1985) 91 *American Journal of Sociology*, 481-510; Peter Evans, *Embedded Autonomy: States and Industrial Transformation* (1995) cited in Polanyi, *op cit* note 41 at xxiv

<sup>125</sup> Ruggie *op cit* note 39 at 212

<sup>126</sup> Dani Rodrik, *Has Globalisation Gone Too Far* (Institute for International Economics, United States 1997) 65-6

<sup>127</sup> *ibid* at 67

<sup>128</sup> Joseph S Nye & John D Donahue, (eds) *Governance in a Globalising World*, (2000) 17-18

interdependence call for a re-examination of embedded liberalism. According to Hart and Prakash, the politico-economic order, which originated after World War II, was based on ‘embedded liberalism’—a connubiality of free trade with government intervention.<sup>129</sup> The authors maintained that the logic of embedded liberalism is to preserve the idea of free trade.<sup>130</sup> They interpreted government intervention as ‘side-payments to domestic actors hurt by the multilateral trading regime’, embedded liberalism from their perspective is ‘classical protectionism’.<sup>131</sup>

However, Helleiner’s reinterpretation of the history of the 1944 Bretton Woods Agreement made a different observation.<sup>132</sup> He argued against the conventional understanding that the agreement negotiated between 1942-44 by the United States and Britain focused mainly on the concerns of the *core* countries and sidelined the matters of interest to the poor countries.<sup>133</sup> He demonstrated that the embedded liberalism vision of Bretton Woods was put forward initially in the context of US-Latin American financial relations in 1938-42, and it was the experience that prompted its inclusion in the later Bretton Woods negotiation.<sup>134</sup>

Some key trade law figures have also contributed substantially to the ‘embedded liberalism’. Dunoff, in his interpretation of embedded liberalism, underscores the intricacies of the multifarious aims of the postwar trade system built to protect domestic policies.<sup>135</sup> The founders of the multilateral system were committed to both ‘international markets’ and ‘interventionist domestic policies’.<sup>136</sup> However, the author contended that as interdependence increases through globalisation, embedded liberalism is jeopardised, necessitating a worldwide reform economy.<sup>137</sup> Another trade lawyer, Robert Howse, argued that embedded liberalism had lost cohesion. According to him, the GATT embedded liberalism is no longer evident due to the system’s technocratic beliefs.<sup>138</sup> Howse is concerned that the present form of the trading system poses a

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<sup>129</sup> Jeffrey A Hart & Aseem Prakash ‘The Decline of ‘Embedded Liberalism’ and the Rearticulation of the Keynesian Welfare State’ (1997)2 (1) *New Political Economy* 65-78 at 65

<sup>130</sup> *ibid* at 73

<sup>131</sup> *ibid*

<sup>132</sup> Erick Helleiner, *Reinterpreting Bretton Woods: International Development and the Neglected Origins of Embedded Liberalism* (2006) 37 (5) *Development and Change* 943-967; Erick Helleiner, ‘The Life and Times of Embedded Liberalism: Legacies and Innovations Since Bretton Woods’ 2019 *Review of International Political Economy* DOI:10.1080/09692290.2019.1607767

<sup>133</sup> *ibid* (2006) 943-944, 46

<sup>134</sup> *ibid*

<sup>135</sup> Jeffrey L Dunoff ‘Does Globalisation Advance Human Rights’, (1999) XXV (1) *Brooklyn Journal of International Law* 125

<sup>136</sup> *ibid* at 131

<sup>137</sup> *ibid* at 136-7; Jeffrey L Dunoff, ‘The Death of the Trade Regime’ (1999) 10 (4) *EJIL* 733-762 at 738

<sup>138</sup> Robert L Howse & Kalypso Nicolaidis, ‘Legitimacy through ‘Higher Law’? Why Constitutionalising the WTO is a Step Too Far’, in Petros C Mavroidis & Thomas Cottier (eds), *The Role of the Judge in International Trade Regulation: Experience and Lesson for the WTO* (2003) 307

threat to domestic welfare, which at the beginning was held to form the essence of the system.<sup>139</sup> On his part, Steinberg discusses embedded liberalism in connection to the ‘object and purpose’ of the WTO agreements and refuses to entertain the argument that the trading system was purely liberal.<sup>140</sup> According to Pauwelyn, ‘embedded liberalism’, crafted by ‘technocratic elites’ of the WTO, has lost legitimacy because it ignored the call for adaptability, hence out of touch with societal needs.<sup>141</sup>

In Winikoff’s perspective, the sanitary and phytosanitary (SPS) measure should be interpreted to align with the trading system’s initial objective; referring to Ruggie, he argued that free trade could not be practised to the detriment of ‘important social goals’.<sup>142</sup> The approach adopted to solve challenges in a country should be accepted in the context of ‘embedded liberalism’.<sup>143</sup> Diebold points out that the trading system was far from rigid.<sup>144</sup> The founders called for state intervention to protect against harm associated with market liberalisation.<sup>145</sup> In his examination of South Africa’s participation in the GATT, Ismail questioned Ruggie’s interpretation of embedded liberalism. According to him, it failed to resolve the contradiction in trade theory and practice.<sup>146</sup> Lang argued that there is a hint of mysticism around the tribute paid to the trading system by the theory of embedded liberalism.<sup>147</sup> In view that it constrained further interrogation of why it peripheralised the concerns of the developing countries, who struggle with the systemic power asymmetry between it and the dominant core.<sup>148</sup> According to Dillion, the narrative of embedded liberalism did not take account of the impact of colonialism and the ‘exploitation’ of formal colonies.<sup>149</sup> According to Ismail, the past eight GATT rounds had not adequately given attention to matters of interest to developing countries.<sup>150</sup> However, the author notes that the GATT created an exception to the general principle of MFN and national treatment

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<sup>139</sup> *ibid*

<sup>140</sup> Richard H Steinberg, *Judicial Lawmaking at the WTO: Discursive, Constitutional, and Political Constraints*, (2004) 98 (2) *American Journal of International Law* 247 at 262

<sup>141</sup> Joost Pauwelyn, ‘The Transformation of World Trade’ (2005) 104 (1) *Michigan Law Review* at 6 and 13

<sup>142</sup> David Winikoff, Sheila Jasanoff, Lawrence Busch et al., ‘Adjusting the GM Food Wars: Science, Risk and Democracy in World Trade Law’ (2005) 30 *YJIL* 81 at 107

<sup>143</sup> *ibid* at 107, 122

<sup>144</sup> William Diebold Jr., ‘From the ITO to GATT—And Back?’ in Orin Kirshner ed, *The Bretton Woods—GATT System Retrospect and Prospect After Fifty Years* 152 (1996), 153 154, 160

<sup>145</sup> *ibid*

<sup>146</sup> Faizel Ismail, ‘Empirical Analysis of Apartheid South Africa's Ideas and Practices in the GATT: 1947 to 1994’ (A Thesis Submitted to the University of Manchester for the Degree of Ph.D. Politics, 2015) 28

<sup>147</sup> Lang, *op cit note* 53

<sup>148</sup> *ibid*

<sup>149</sup> Sara Dillion ‘A Farewell to ‘Linkage’: International Trade Law and Global Sustainability Indicators (2002) 55 (1) *Rutgers Law Review* 87 at 152

<sup>150</sup> Ismail *op cit note* 60 at 11

by enacting special and differential treatment provisions. Nevertheless, the clause is ineffective as it is drafted in best endeavour terms.<sup>151</sup>

Also, Lang noted that the development issue did not feature in the narrative of embedded liberalism and free trade.<sup>152</sup> According to him, embedded liberalism ‘purchase domestic stability in industrialised countries by externalising the adjustment cost to developing countries.’<sup>153</sup> According to Jackson, legal professionals look at the facts in the real world context.<sup>154</sup> He opined that ‘globalisation is the reality of that world’; the other reality is perhaps what globalisation had brought upon peripheral countries.<sup>155</sup> This thesis draws on the insights of Lang.

### III THE ROLE OF IDEAS IN USING IDEAS STRATEGICALLY

This section draws upon the constructivist theory to gain insight into the role of ideas in promoting free trade and how ideas and interests influence the EU-ACP trade relations. The mention of constructivism brings to mind a historical convention in international relations linked to the writings of John Ruggie.<sup>156</sup> It points to the relevant function ideas play in shaping social reality. Ruggie noted three ways by which ideas influence policy results: first is the presentation of a ‘road map,’ indicating how individuals determine what they prefer, the second centres on interests that ‘[i]deas can help individuals select one from among the set of viable outcomes.’<sup>157</sup> The third is ‘institutionalisation’; once ideas become assigned to an institution, they would consistently set out a policy that excludes new ideas.<sup>158</sup> Ruggie argued that a state identity could be altered by, for instance, the formulation of a new ideology.<sup>159</sup>

Drawing on their extensive research, several economists and political scientists such as Milgrom believe that ideas are inconsequential due to agents being able to expect the outcome of their actions accurately.<sup>160</sup> A more radical version of this argument posits that ideas are designed to catch people’s attention, as ‘competing elites seize on popular ideas to propagate and legitimise

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<sup>151</sup> *ibid* at 12; GATT Articles XXXVI, XXXVII, XXXVIII and XXXVI:8

<sup>152</sup> Lang *op cit* note 53 at 99-100

<sup>153</sup> *ibid* at 100

<sup>154</sup> John Jackson, *The World Trade Organization After Ten Years: The Role of the WTO in a Globalization* (2015)

<sup>155</sup> *ibid* at 428

<sup>156</sup> Ruggie *op cit* note 39 at 379-415

<sup>157</sup> *ibid*

<sup>158</sup> John G Ruggie, *Constructing the World Polity: Essays on International Institutionalization*, (1998) 17

<sup>159</sup> *ibid*

<sup>160</sup> Paul Milgrom, Douglas North, & Barry Weingast, ‘The Role of Institutional in the Revival of Trade: The Law Merchant, Private Judges, and the Champagne Fairs, (1990) 2, *Economics and Politics*’ 1-23, cited in Judith Goldstein & Robert O Keohane, *Ideas and Foreign Policy: An Analytical Framework* in Judith Goldstein & Robert O Keohane eds, *Ideas and Foreign Policy: Beliefs, Institutions, and Political Changes* (1993) 4

their interests, but ideas themselves do not play a causal role'.<sup>161</sup> To this rationalist view, interests come first and foremost and logically ahead of beliefs.<sup>162</sup>

There has been wide criticism of rationalistic views in international relations. According to the reflectivist view, Alexander Wendt explains that institutions result from the mental process of acquiring knowledge and understanding through thought and experience.<sup>163</sup> He states, 'institutions are fundamentally cognitive entities that do not exist apart from actor's ideas about how the world works.'<sup>164</sup> According to him, this does not translate to mean that institutions are not tangible; however, 'that they are nothing but beliefs.' It is from this point that Wendt constructs a connection between the realist-liberal and rationalist-reflectivist arguments.<sup>165</sup> According to Goldstein and Keohane, it will be an exercise in futility to refute the reflectivist argument.<sup>166</sup> The justification for this reasoning is that the argument demonstrates the strategies conceived to bring about interests and how preference is established and 'identities shaped.'<sup>167</sup> Commenting on ideas and interests, Sell and Prakash declined inflexible distinctions between ideas and interests.<sup>168</sup> Sell and Prakash maintained that to be able to make an impact in the process of policy 'lies not in claimed to the moral superiority of the agenda but in the networks of superior abilities to create and make the most of political opportunities by exploiting a crisis, constructing a problem, mobilising a coalition, and grafting its agenda into policy debates.'<sup>169</sup>

Goldstein and Keohane categorised ideas as global views, a set of beliefs, and causal beliefs. Ideas to them can be used to influence policy 'by acting as roadmaps to assist agents in managing the absence of symmetry, as such embedded in the institution for a long time.'<sup>170</sup> The authors state that the alteration of a policy arises through the power of ideas. As a new issue emerges, it calls for a fundamental reformulation of the existing ideas.<sup>171</sup> For instance, the European Commission states that as the economic situation worsens, it must focus on trade and

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<sup>161</sup>Kenneth Shepsle ed, *Comment in Regulatory Policy and the Social Sciences* (1985) 231-37; Goldstein & Keohane, *op cit note 155* at 4

<sup>162</sup> *ibid*

<sup>163</sup>Alexander Wendt, 'Anarchy is what States Make of it: The Social Construction of power politics' (1992) 46 (2) *International Organisation* 391-425 at 399, 392-96

<sup>164</sup> *ibid*

<sup>165</sup> *ibid* at 394

<sup>166</sup>Goldstein & Keohane, *op cit note 160*

<sup>167</sup>*ibid* at 5

<sup>168</sup>Susan K Sell & Aseem Prakash, 'Using Ideas Strategically: The Contest between Business and NGO Networks in Intellectual Property Rights', (2004) 48 (1) *International Studies Quarterly* 143-175 at 149

<sup>169</sup> *ibid*

<sup>170</sup>Goldstein and Keohane *op cit note 160* at 30

<sup>171</sup> *ibid*

not rely on ‘public finances.’<sup>172</sup> For example, Ikenberry cited the 1930s international economic breakdown, where the United States became focused on the liberalisation of the market, and the country’s elite quickly embraced the idea.<sup>173</sup>

Ikenberry narrated that as the United States became keenly interested in economic liberalisation, the think tank acknowledged this idea and made it a reality.<sup>174</sup> The breakdown of the international economy led the Germans and the Japanese to form an economic alliance.<sup>175</sup> This triggered the United States to engage with its intellectuals and politicians to explore the viability of a regional economic bloc instead of a global economic arrangement.<sup>176</sup> The climactic point of the debate gave rise to the academic work of Nicholas Spykman, who expressed what is now known as ‘conventional wisdom’. He highlights that the need for a westernised economic arrangement alone is inadequate to protect American interests in the world.<sup>177</sup> A post-war strategist was employed to consider the interests of the United States in worldwide terms.<sup>178</sup> The attack on Pearl Harbour further enforced the belief that the United States needed to team up with Great Britain to integrate the world.<sup>179</sup>

Goldstein and Keohane opine,<sup>180</sup> that when an idea is embedded in an institution, the effect of such ideas will be perpetuated for an extended period. Examples are found in the legal doctrine of GATT. They further argued that ‘administrative agencies, laws, norms, and operating procedure mediate between ideas and policy outcome.’ This is where ideas are institutionalised.<sup>181</sup>

This sub-section has given insights into the role ideas play in the agent’s effort to institutionalise its interests. Therefore, the following sub-section moves on to explore how ideas are promoted by agents and endorsed by the actors.

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<sup>172</sup>EU-Commission 2013 Trade: A Key Source of Growth and Jobs for the EU-Commission Contribution to the European Council of 7-8 February’ Brussels: European Commission. available at <http://eu2013.ie/media/eupresidency/content/documents/130207-Commission-Contribution-on-Trade-to-EC.pdf> accessed: 9 November 2021

<sup>173</sup>John G Ikenberry ‘Creating Yesterday’s New World Order: Keynesian ‘New Thinking’ and the Anglo-American Postwar Settlement’ in Goldstein and Keohane *op cit note* 160 at 63

<sup>174</sup> *ibid*

<sup>175</sup> *ibid*

<sup>176</sup> *ibid*

<sup>177</sup>Nicholas John Spykman, *American Strategy’s in the World: The United States and the Balance of Power*, (1942) xx

<sup>178</sup>Melvyn P Leffler, *A Preponderance of Power: National Security, The Truman Administration, and the Cold War*, (1992) 15-16, 193

<sup>179</sup>*ibid*; Goldstein & Keohane *op cit note* 160 at 63

<sup>180</sup>*ibid*

<sup>181</sup> *ibid* at 21

(a) *Making Ideas Work*

Mark Blyth's *Great Transformation: Economic Ideas and Institutional Change in the Twentieth Century* is the best clearly expressed theoretical and highly developed assertion of constructivism as an alternative form of institutionalism.<sup>182</sup> Some scholars have noted that the work has added reputation as 'an exponent and advocate of ideational explanation in comparative political economy.'<sup>183</sup> Blyth identifies five hypotheses. First is constructing a new institution;<sup>184</sup> second is that economic ideas bring about 'collective action .' The third is that ideas are weapons in the hands of agents whose aim is to 'delegitimize' a current institution. The fourth hypothesis argues that ideas are institutional blueprints; finally, once ideas are 'embedded' in the newly formed institution, they generate and 'coordinate expectations ... and stability'.<sup>185</sup> The third hypothesis speaks to the EU Green Paper, which extensively delegitimises preferential trade arrangements, supporting its point of the incompatibility of the Lomé convention with the WTO law.<sup>186</sup>

Observers have noted that the dominant core employs comprehensive strategies for an idea to become a reality.<sup>187</sup> Drake and Kalypso made four claims on how ideas are created and the interests it intends to promote. First, the government consults experts to find an appropriate idea that speaks to the challenges.<sup>188</sup> Secondly, the 'epistemic community' put 'both formal and informal' direct means to reach the elites, where information can quickly be disseminated to them. Thirdly, the 'epistemic community' can play a significant role in framing the issues and delimiting a range of defensible policy options. Finally, the influence of the direct 'epistemic community' often declines once ideas and interests are clarified.<sup>189</sup>

After OECD invented the word 'trade in service', the Trade Policy Research Centre in London published a volume that brilliantly connected services to trade principles.<sup>190</sup> This discourse was endorsed very quickly in the United States for the American-based Transnational Corporation (TNCs). It had a special appeal, and, at the domestic level, it created a bloc for firms from different backgrounds, emphasising their common problem and justifying their demands. In foreign countries, proponents armed them with a 'discursive weapon' to promote this demand coherently.

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<sup>182</sup>Mark Blyth, *Great Transformations: Economic Ideas and Institutional Change in the Twentieth Century* (2002)

<sup>183</sup>Colin Hay, 'Reviewed Work (s): Ideas, Interests, and Institutions in the Comparative Political Economy of Great Transformations' (2004) 11 (1) *Review of International Political Economy* 204-226 at 207

<sup>184</sup>Blyth op cit note 182 at 35

<sup>185</sup>ibid at 35-42

<sup>186</sup>Green Paper op cit note 57

<sup>187</sup>William J Drake & Kalypso Nicolaidis, 'Ideas, Interests, and Institutionalization: 'Trade in Service' and the Uruguay Round', (1992) 46 (1) *International Organisation* 37-100

<sup>188</sup>ibid

<sup>189</sup>ibid at 41

<sup>190</sup>Brian Griffiths, *Invisible Barriers to Invisible Trade* (1975) 31

Giving new meaning to industry-specific policies as ‘protectionism.’ The White House formed an Interagency Task Force on Services and the Multilateral Trade Negotiations. In no time, the Department of Commerce and United States Trade Representative (USTR) put in place an office of services industries to examine and investigate foreign trade barriers.

Another instance that demonstrates how the dominant core makes ideas work to protect its interests strategically are seen in Trade-Related Aspect of Intellectual Properties (TRIPS). In 1984, eight associations representing more than 1,500 copyright-based companies came together under the support of a lobbying group, the International Intellectual Property Alliance (IIPA). They campaigned for more robust protection and implementation in foreign countries of US-held copyrights. The IIPA encouraged revisions to the 1974 United States Trade and Tariff Act to make IPR breaches actionable by the USTR. The US government made the connection between IPR with international trade in 1984.

In 1986 the IIPA formed a coalition with patent protection groups, mainly the Pharmaceutical Manufacturing of America (PMA), currently referred to as the Pharmaceutical Research and Manufacturers of America (PhRMA).<sup>191</sup> With the joint forces, they campaigned against inadequate Intellectual Property Right (IPR) protection, which should be the reason for excluding trade preferences under an arrangement such as the Generalised System of Preference. According to Sell, the United States has not hesitated to threaten to impose sanctions unilaterally.<sup>192</sup>

The next section moves to explore Cox’s theory and Wilkinson’s view on narration and coercion. The theory will provide further insight from the revisionist perspective to demonstrate how the EU, like the multilateral trade conformist, finds a solution to identified problems within a structure, but fundamentally without a specific historical examination of the problem.<sup>193</sup>

#### IV CRITICAL THEORY: NARRATIVE AND COERCION

Robert Cox is a leading figure among writers who devoted their scholarship to reorienting historical accounts of international organisations and international law. These scholars are critical of the realist, functionalists, and liberals of international organisations.<sup>194</sup> For instance,

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<sup>191</sup>PhRMA ‘Global Partnerships’ April 2002b, [http://www.world.phrma.org\\_2001Book-let.pdf](http://www.world.phrma.org_2001Book-let.pdf).

PhrRM ‘Health Care in the Developing World’ 18 February available at <http://world.phrma.org/exec.summary.html> accessed: 14 May 2021

<sup>192</sup>Susan K Sell, *Private Power, Public Law: The Globalisation of Intellectual Property Rights*, (2003) 156

<sup>193</sup>Cox, *op cit note* 96 at 129

<sup>194</sup> Volker Rittberger Bernhard Zangl, *International Organisation: Polity, Politics and Policies* (trans) Antoinett Groom (2006) 14-22

commenting on modern global organisations, Anghie asserts that international organisations are evidence of intricacies and relics of colonialism bequeathed to the peripheral countries.<sup>195</sup>

In critical theory analysis, Cox created a theoretical premise that every theory typically arises from circumstances or beliefs, and this ‘theory is always for someone and for some purpose.’<sup>196</sup> In his detailed examination of the theory, he claimed that perception of the world might result from a determinable viewpoint.<sup>197</sup> A theory, according to Cox, must be connected to the point of view or perspective. Cox asserts that there is no such thing as a theory in itself. However, when a theory is considered separately from other things or a stance, exploring it as an ideology to unmask its perspective is preferable.<sup>198</sup> In this theory, Cox dichotomised critical theory and problem-solving theory.

Cox distinguished between problem-solving and critical theory and asserted that every theory is subjective. The positivist theory is configured for problem-solving. The formulation of the problem-solving theory is that nations do not go through fundamental changes. Instead, actions are expected to occur in a controlled and systematic way through sparse or series of changes. Cox argues that ‘it takes the world as it finds it,’ with the established social and power relationships, the structure around which such a system is arranged, as the essential supporting structure for action.<sup>199</sup> The strength of the problem-solving theory that Cox identified is that it can narrow down a specific problem to a ‘number of variables’ to be precisely investigated.<sup>200</sup>

On the other hand, the critical theory further ascertained the source and how the historical experience causes a marked change. The critical theory investigates the origin of the contradiction and disagreements in the ‘entities.’ It assesses the possibilities for transforming the system. Dissimilar to the problem-solving theory, whose main aim is to ‘smooth the functioning of the whole’,<sup>201</sup> critical theory is termed critical because it distances itself from the established norm of the world order and critically questions how the world originated in the first place.<sup>202</sup> Critical theory subjects the current world order to thorough questioning and how such an institution came

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<sup>195</sup>Antony Anghie, ‘Time Present and Time Past: Globalisation, International Financial Institutions and the Third World’ (2000) 32 *NYU Int’l L & Pol* at 244-5

<sup>196</sup>Cox 1981 *op cit note* 96 at 128; Cox, 2014 *op cit note* 42 at 158;

<sup>197</sup> *ibid*

<sup>198</sup> *ibid*

<sup>199</sup> *ibid*

<sup>200</sup> *ibid*

<sup>201</sup> *ibid* 1981 at 129

<sup>202</sup> *ibid*; Cox, 2014 *op cit note* 47 at 158

to be.<sup>203</sup> The thesis adopts the critical theory because it allows the research to dive into the history of the ACP countries' trade conventions with the EU and how slavery and colonialism shaped this relationship. The major drawback of the problem-solving approach is that it deals with specific problems without probing further into the origin of the problem.

Another theory of Cox explored next is the neo-Gramscian postulation. The dual (critical and neo-Grasmacia) theories provide significant insight into the trade relationship between the dominant and peripheral countries in the ECOWAS region.

## V COX NEO-GRAMSCIAN THEORY

Cox's work, 'Gramsci, Hegemony and International Relations: An Essay in Method', is based on Gramsci's Prison Notebook.<sup>204</sup> Cox illustrated how the dominant core perpetuates its power in peripheral countries.<sup>205</sup> In his analogy, Cox elucidated how the dominant core infiltrated into the peripheral countries. He states: 'The economic life of subordinate nations is penetrated by and intertwined with the powerful nations.' The situation becomes more complex if the countries or region is inhabited by people from different social and ethnic backgrounds and lack a uniform and coherent way of relating with 'external forces.'<sup>206</sup> To maintain its hold on the periphery, Cox maintains that the dominant core, which he refers to as the hegemon, must possess three fundamental qualities: 'a social structure, an economic structure, and a political structure; and it cannot be simply one of these things but must be all three.'<sup>207</sup>

For the institution of the dominant core to be effective, it has to operate within international organisations' walls. It helps the dominant core function through the following articulations:

1. they are the representation of rules that promote the development of 'hegemonic world order';
2. the creation of hegemonic world order;
3. they make use of ideas that legitimise the standards they set in world order;
4. they select the elites, likely to embrace their ideas and assimilate any group likely to question the hegemonic ideas.<sup>208</sup>

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<sup>203</sup> *ibid*

<sup>204</sup> Robert W Cox, Gramsci, 'Hegemony and International Relations: An Essay in Method' (1983) 12 *Millennium-Journal of International Studies* 163

<sup>205</sup> *ibid* (emphasis added)

<sup>206</sup> *ibid* at 169

<sup>207</sup> *ibid* at 171

<sup>208</sup> *ibid* at 172

International institutions, to Cox, represent rules which promote and advance powerful economic and social forces but simultaneously allow some form of accommodation of the secondary interests (peripheral countries) at no substantial cost to the dominant core.<sup>209</sup> In this instance, they allow deviation from the standard norm. Examples include GATT Articles 1 and II, exceptions the EU-ECOWAS Economic Partnership Agreement (EPA).<sup>210</sup>

In Cox's view, the dominant core does not leave 'elite talent' in peripheral countries behind; they are assimilated into the international institution, what Cox referred to as '*transformismo*.'<sup>211</sup> Similarly, according to Cox, '*transformismo*' also incorporates contrary ideas that pose a threat to the ideas of the dominant core and blend it with the 'hegemonic doctrine.'<sup>212</sup>

The following section now explores the contradictions inherent in the practice of free trade by core countries. This would aid the research to unpack the argument that expansive trade liberalisation may not be viable for peripheral countries.

## VI FREE TRADE

Britain renounced its 'deplorable agricultural protection' (the corn law) and other mercantilist protection requirements in 1846.<sup>213</sup> According to Chang, after abolishing the corn law,<sup>214</sup> it became a hegemon of the new economic order.<sup>215</sup> The liberalism endorsed by Britain was based on three pillars: first was the *laissez-faire* industrial policies at home; secondly, to reduce barriers to allow international movement of goods, capital, and labour; and thirdly, the principle of Gold standard and balanced budgets.<sup>216</sup> As a result of the turn of events caused by the First World War and the lack of stability in the world economy and politics, countries reverted to setting high barriers - occasioning the Smoot-Hawley Tariff, which Bhagwati referred to as 'the most visible and dramatic act of anti-trade folly.'<sup>217</sup>

The year 1932 saw the demise of free trade as promoted by Britain. High tariffs were resuscitated. The constriction and unpredictability in the world economy culminated in the Second

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<sup>209</sup> *ibid* at 120

<sup>210</sup> discussed in subsequent chapters

<sup>211</sup> Cox *op cit* note 1981 at 173

<sup>212</sup> *ibid*

<sup>213</sup> Ha-Joon Chang, 'Kicking Away the Ladder: the 'Real' History of Free Trade' in: Anwar Shaikh, *Globalisation and the Myths of Free trade: History, Theory, and Empirical Evidence* (2002)

<sup>214</sup> *ibid*

<sup>215</sup> *ibid* at 24

<sup>216</sup> *ibid*

<sup>217</sup> Jagdish Bhagwati, *Protectionism* (1985) 22

World War.<sup>218</sup> The by-product of the Second World War was liberalisation through the GATT institution.<sup>219</sup> Chang argued that the proponents of free trade believed that if the government abstained from intervening in the operation of the market, preferring neoliberalism instead, there would be economic growth.<sup>220</sup> As advocates of free trade pursue unbridled market operations, others warned of the danger of exposing peripheral countries to such policy.<sup>221</sup> Nevertheless, Mike Moore, the former Director-General of the World Trade Organisation (WTO), stated: ‘the surest way to do more to help the poor is to continue to open markets.’<sup>222</sup>

The 1987 *World Development Report* assessed the free market as the answer to the economic miseries that had become synonymous with developing countries.<sup>223</sup> Reflecting on the poor economic situation in the Middle East, the New York Times multiple award winner Thomas Friedman opined that unless these countries adjust themselves to a specific economic policy that he termed the ‘Golden Straitjacket,’ ‘countries in the olive-tree world will not be able to join the Lexus world.’<sup>224</sup> For this adjustment, it is required of a country to embrace the ‘golden rules’. These include privatisation of public businesses, reducing to the barest minimum government bureaucracy, liberalisation of trade, and removing regulation or restrictions in the industrial sectors.<sup>225</sup> However, Chang posits that Japan would have been rated as a substandard industrial nation if the government had put on Friedman’s Golden Straightjacket in his counter-argument.<sup>226</sup> Analysing the approach of developed countries ‘kicking away the ladder’ when they have reached the pinnacle of development, Chang posits that the moment the developed countries industrialised, they became unwavering in their commitments to free trade and free markets and

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<sup>218</sup> Charles P Kindleberger, ‘The Rise of Free Trade in Western Europe, 1820-1875’, (1975) vol 35 (1) *Journal of Economic History*

<sup>219</sup> Douglas A Irwin, Petros C Mavroid & Alan Sykes, *The Genesis of the GATT* (2008) 12, 98-100

<sup>220</sup> Chang *op cit* note 212 at 24

<sup>221</sup> Anwar Shaikh, ‘Globalisation and the Myth of Free Trade’ in: Anwar Shaikh, *Globalisation and the Myths of Free trade: History, Theory, and Empirical Evidence* (2007)

<sup>222</sup> Manuel R Agosin & Tussie Diana, ‘Trade and Growth: New Dilemmas in Trade Policy-An Overview’ Chapter 1 in *Trade and Growth: New Dilemmas in Trade Policy* (1993) 9

<sup>223</sup> World Development Report, ‘Barriers to Adjustment and Growth in the World Economy Industrialisation and Foreign Trade World Development Indicators’ (1987) 29

<sup>224</sup> Thomas Friedman, ‘The Lexus and the Olive Tree’ (2000) 49; Ha-Joon Chang, *Bad Samaritans: Rich Nations, Poor Policies and the Threat to the Developing World*, (2007) 42-44

<sup>225</sup> *ibid* Friedman at 130; Thomas F Dernburg, *Global Macroeconomics*, (1989) 3

<sup>226</sup> *ibid*; Rodrik Dani, ‘The Global Governance of Trade: As if Trade Mattered’ Background paper to the UNDP Project on Trade and Sustainable Human Development, New York: United Nations Development Programme (October 2001 UNDP) 5, 10 available at [https://wcfia.harvard.edu/files/wcfia/files/529\\_rodrik5.pdf](https://wcfia.harvard.edu/files/wcfia/files/529_rodrik5.pdf) accessed 8 July 2021

opposed intervention from the government.<sup>227</sup> For example, Korea's tremendous economic achievement came about due to a real stimulus and government intervention.<sup>228</sup> The nationalists have argued that Britain only adopted free trade after utilising protectionism to grow its infant industry.<sup>229</sup> Germany also developed its nascent industries through protectionism.<sup>230</sup>

Similarly, Cox provides an in-depth analysis of the political economy of a pluralistic world, asserting that there is an 'alternative for the human future, all countries of the world must not compete in the global market to have a 'homogenised society that is styled after America.'<sup>231</sup> Koffi Annan emphasised the danger of exposing developing countries to complete liberalisation.<sup>232</sup> This evidence supports the argument that Ruggie's embedded liberalism did not consider the special circumstances of developing countries.

Another argument by the proponents of free trade is that unbridle liberalisation will ensure full employment in countries with a competitive market. Isard expressed a contrary view to that assertion.<sup>233</sup> In its report, the International Labour Organisation (ILO) states that one-third of the global workforce of three billion people is not employed.<sup>234</sup> Also, in advanced countries, the low employment rate ranges from 3 per cent to 25 per cent across countries. The unemployment situation in peripheral countries is more despondent.<sup>235</sup>

Reactions have trailed the theory of free trade: all free traders will become 'equally competitive, regardless of the difference in their levels of development or technology.'<sup>236</sup> However, Chang's historical record gives a different account.<sup>237</sup> For instance, the United Kingdom and the United States used trade protection and subsidies in their development time.<sup>238</sup> In the fourteenth and fifteenth centuries, Britain and United States championed industry protection and got involved in producing woollen goods through heavy taxation of exports of other

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<sup>227</sup> Chang *op cit* note 213 at 125-29; 41-2

<sup>228</sup> *ibid*

<sup>229</sup> Robert Gilpin *The Political Economy of International Relations* (1987) 184

<sup>230</sup> Friedrich List, *The National System of Political Economy* (Trans: by Sampson S Lloyd) August 6 1789-November

<sup>231</sup> Cox, *op cit* note 51 at 90

<sup>232</sup> Koffi Annan, *The Realization of Economic, Social and Cultural Rights: Globalization and its Impact on the Full Enjoyment of Human Rights*, Preliminary Report Submitted by Joseph Oloka-Onyango and Deepika Udagama in accordance with Sub-Commission Resolution [hereinafter U.N. Report] 1999/8 U.N. Commission on Human Rights, 52d Sess., Provisional Agenda Item 4, 15 U.N. D.v. E/CN.4/Sub.2/2000/13, (2000)

<sup>233</sup> Peter Isard, *Exchange Rate Economics*, (1995) 95

<sup>234</sup> ILO *World Employment Report Life at Work in the Information Economy*, (Geneva: International Labour Organisation, 2001) 1, [https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_007830/lang--en/index.htm](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_007830/lang--en/index.htm)

<sup>235</sup> *ibid*

<sup>236</sup> Isard *op cit* note 233; Sven W Arnt, & David J Richardson (eds) *Real-Financial Linkages Among Open Economies*, (1987) 12

<sup>237</sup> Chang, *op cit* note 213

<sup>238</sup> *ibid* at 4

competitors.<sup>239</sup> In 1699, the Wool Act banned exports of woollen goods from the colonies.<sup>240</sup> According to Chang, Britain and the United States, which promote free trade, were the champions of protectionism.<sup>241</sup> Likewise, Japan and Korea used protectionism to shield their industries in the latter part of the nineteenth and twentieth centuries.<sup>242</sup> Britain became a promoter of free trade when it completed strengthening its manufacturing industries.<sup>243</sup> As Britain promoted free trade, the United States was described as an ardent protectionist country globally.<sup>244</sup>

Some observers have noted issues besides protectionism, which deepen power asymmetry between the dominant core and peripheral countries. In Milanovic's account of the past, before the advent of worldwide free trade, aside from the issue of protectionism and government intervention (which advanced the economic development of developed countries), there was the situation of colonisation, use of brutal force, pillage, slavery, mass murder of indigenous people and calculated wiping out of industries that are perceived (East India Company) as competitors.<sup>245</sup> Gunboat diplomacy of the West was vital in dealing with Japan, Tunisia, Egypt, Zanzibar, China, and several others. Millions went through the agony of slavery on plantations worldwide, building the core countries' industries.<sup>246</sup> According to a recent approximation, from 1865 to 1930, the 'Dutch East Indies Company...Pillaged between 7.4% and 10.3% of Indonesia's national income per year.<sup>247</sup> Mazower noted that 'the door into other people's economies was soon being forced open by British diplomats, backed by gunboats, everywhere from West Africa to Istanbul and Peking.'<sup>248</sup> According to these writers, this caused power asymmetry to be instituted permanently and deteriorated industrial activity in the peripheral countries.<sup>249</sup> With these historical facts, the postulation of Ruggie's embedded liberalism is only structured for developed countries—meant to take advantage of it. For example, a respondent interviewed asserts that the exceptions provided in the Ghana-EU EPA text could not be taken advantage of due to low capacity. This point is further explored in this thesis.

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<sup>239</sup> *ibid* at 19-20

<sup>240</sup> *ibid* at 19

<sup>241</sup> *ibid* at 5

<sup>242</sup> *ibid* at 14, 48

<sup>243</sup> *ibid* at 1

<sup>244</sup> *ibid* at 61, 5

<sup>245</sup> Milanovic Banko, 'The Two Faces of Globalisation: Against Globalisation As We Know it' April 2002 available at <http://papers.ssrn.com>so13>papers> accessed: 11 June 2021 5-6

<sup>246</sup> *ibid* at 6

<sup>247</sup> *ibid*

<sup>248</sup> Mazower, *op cit note 52* at 97

<sup>249</sup> Banko *op cit note 245* at 7-8

According to Rodrik,<sup>250</sup> some countries believed they could take advantage of free trade, which created exceptions (embedded liberalism). They embraced this idea holistically while others were selective. For example, Japan, South Korea, and Taiwan were selective in the application of the Western prescription, while Chile (1974-79,) Mexico (1985-88), and Argentina (1991) endorsed complete liberalisation, which destroyed their nascent and robust industries. The same was the fate of Mexico. Argentina was hailed as a sound ‘globaliser’ by the World Bank in 2002.<sup>251</sup> Argentina deviated from the idea of free trade when it became engulfed in a financial crisis in the 2000s.<sup>252</sup> The deviation is discussed later in this chapter.

The following section explores contradictions in the idea of free trade and practised by the proponents of multilateralism, the GATT/WTO system.

(a) *The Free Trade Paradox*

The General Agreement on Tariffs and Trade (GATT), which was in force beginning from January 1948, was, according to Gardner, ‘a historical accident’.<sup>253</sup> Its operation was to continue until the United States Congress had approved the International Trade Organisation (ITO).<sup>254</sup> However, the United States Congress opposed it, and it effectively ended in 1950<sup>255</sup> when President Harry Truman stated that Congressional approval would no longer be pursued concerning the ITO Charter.<sup>256</sup>

Before establishing the GATT/WTO, the United States was famous for protecting its market against potential competitors.<sup>257</sup> After the formation of GATT, according to Gardner, the world was still plagued by protectionism.<sup>258</sup> Wilkinson referred to it as ‘covert and overt protectionism.’<sup>259</sup> Instructively, according to Goldstein’s account, the United States enacted the escape clause as a safeguard measure before establishing GATT.<sup>260</sup> According to the author, while

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<sup>250</sup>Rodrik *op cit* note 226 at 11; Agosin & Tussie *op cit* note 222 at 25

<sup>251</sup>World Bank 2002: 35 cited in Banko *op cit* note 183 at 30,

<sup>252</sup>Agosin & Tussie *op cit* note 222 at 26-7

<sup>253</sup>Richard N Gardner, *Sterling-Dollar Diplomacy: The Origins and the Prospects of Our International Economic Order* (1969) xxxiv

<sup>254</sup> *ibid*; Melvyn P Leffler, *A Preponderance of Power: National Security, The Truman Administration, and the Cold War*, (1992) at 193

<sup>255</sup> *ibid*; Gardner *op cit* note 253 at 369-379; Rorden Wilkinson, *Multilateralism and the World Trade Organisation: The Architecture and Extension of International Trade Regulation* (2000) 17

<sup>256</sup>*ibid* Gardner at 253 – 378

<sup>257</sup>Chang 2002 *op cit* note 208 at 44; Chang 2007 *op cit* note 219 at 5

<sup>258</sup> Gardner *op cit* note 253 at xviii, xxxviii

<sup>259</sup> Wilkinson 2014 *op cit* note 45 at 24; Enzo Grill & Enrico Sassoon (eds) *The New Protectionist Wave* (1990)

<sup>260</sup>Judith Goldstein, ‘Ideas, Institutions, and American Trade Policy’, (1988) 42 (1) *International Organisation* pp 179-217

the United States and its allies pursued the idea of worldwide liberalisation, they made laws to protect their national industries. Goldstein argued that the United States' Protectionism has three-part: first, the United States has a constructive view of free trade ideology but ensures a legitimate 'claim to protectionism.' Secondly, the United States believes that its market, after the civil war in 1934, should be inaccessible to a large extent, and yet seek that foreign countries open their markets. Thirdly, United States policymakers ensure indemnification for sectors that cannot compete and assist them to adjust due to foreign competition.<sup>261</sup> Thus, embedded liberalism is included for flexibility in the interests of the dominant core.

The United States Treasury Secretary Alexander Hamilton pioneered tariffs to protect infant industries.<sup>262</sup> Similarly, the Founding Father James Madison.<sup>263</sup> Abraham Lincoln formulated the policy of economic nationalism. In his biography by Donald, Lincoln asserted in 1844: 'give us a protective tariff, and we will have the greatest nation on earth.'<sup>264</sup> In the same vein, William McKinley posits that America had to engage in active protectionism to be great.<sup>265</sup> Theodore Roosevelt extolled the virtue of tariffs because, to him, it is what makes America powerful.<sup>266</sup> In the 1950s, however, Dwight Eisenhower persuaded people to accept free trade to unite the West against communism to promote globalisation.<sup>267</sup> On his part, Ronald Reagan increased tariffs on Japanese motorcycles.<sup>268</sup> George W Bush targeted steel imports but relented after WTO threatened to sanction the USA. According to observers, American Presidents over the years have been suspicious of the multilateral trading system.<sup>269</sup>

Donald Trump echoed his predecessors' voice that he is not fearful of trade wars by raising tariffs in recent times. In his view, 'Trade wars are good and easy to win.'<sup>270</sup> The former president did not hesitate to increase tariffs on billions of dollars' worth of goods worldwide, especially in China. Trump's plan for the profit from the tariff was that \$100 billion would be used to buy USA

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<sup>261</sup>ibid at 181

<sup>262</sup> Ron Chernow, *Alexander Hamilton* (2004) 901, 703-4

<sup>263</sup>Noah Feldman, *James Madison Would Like a Few Words on Trade Wars* (March 5 2018) available at [www.bloomerg.com](http://www.bloomerg.com) accessed: 11 June 2021

<sup>264</sup> Doanld T Phillips, *Lincoln Leadership for Today: Abraham Lincoln Approach to Twenty-First-Century Issues* (2017) 43

<sup>265</sup> Jude Sheerin, What Trump has in Common with Abe Lincoln and Ferries Bueller BBC News, Washington, 8 March 2018 available at [www.bbc.com](http://www.bbc.com) (11 June 2021)

<sup>266</sup>A Roosevelt Tariff Article (ehistory, the Ohio State University) available at <http://ehistory.osu.edu/exhibitions/1912/tariffs/roosevel> accessed: 11 June 2021

<sup>267</sup>Sheerin *op cit* note 265

<sup>268</sup> ibid

<sup>269</sup> ibid

<sup>270</sup> Thomas Franck, Trump Doubles Down: 'Trade Wars are Goods and Easy to Win' (CNBC, March 2 2018) available at <http://www.cnbc.com>2018/03/02>trump-trade-war...> accessed: 11 June 2021

Agricultural products and send to ‘poor and starving countries.’<sup>271</sup> America was a driving force behind the formation of GATT and WTO, and it has undermined its rules extensively over the years.<sup>272</sup>

Prioritising developed countries’ concerns, Goldstein explained that for the newfound interests in liberalism to be realised, decision-makers became enthralled about liberalism and blamed the Smoot-Hawley Tariff Act of 1929-30 for the Great Depression.<sup>273</sup> Goldstein argued that the Great Depression was the reason for accepting liberalism, ‘but not sufficient cause, for liberalism to take on an ideological character.’<sup>274</sup> According to her, liberalism gathered steam because it provided for the interests of the United States.<sup>275</sup> This idea of liberalism, according to her, was chiefly influenced by 19<sup>th</sup>-century British thought and 18<sup>th</sup>-century American political philosophy.<sup>276</sup>

Even though the United States extolled the benefit of free trade, it put laws in place that effectively protect domestic producers.<sup>277</sup> According to Goldstein’s account, the escape clause was enacted based on the executive order of 1947 and a 1951 statute. The United States never failed to include safeguard measures in trade treaties and laws. The escape clause aims to allow an industry that has suffered an injury due to imports, to be free from the obligation under the United States trade agreement to reduce its tariff.<sup>278</sup> The United States policymakers agreed to include an escape clause provision, precisely as found in domestic law in the GATT (GATT Article XIX). Nevertheless, President Truman deplored the inclusion of Article XIX as ‘an embarrassment to be avoided in the interest of maintaining an image of American leadership and dependability in the world and foreign affairs.’<sup>279</sup> However, the US has invoked the provision several times, interpreting the Article in the most flexible manner.<sup>280</sup>

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<sup>271</sup> BBC News, Trade Wars, Trump Tariffs and Protectionism Explained (May 10 2019) available at [www.bbc.com](http://www.bbc.com) accessed: April 22 2021

<sup>272</sup> BBC News, Trade Wars, Trump Tariffs and Protectionism Explained (May 10 2019) available at [www.bbc.com](http://www.bbc.com) (accessed: April 22 2021); BBC News, US Steel and Aluminium Import Face Big Tariffs, Trump says (March 1 2018), available at [www.bbc.com](http://www.bbc.com) accessed: 22 April 2021; Trump Puts 25% Tariff on Chinese Goods (June 15 2018), available at [www.bbc.com](http://www.bbc.com) accessed: 22 April 2021; Markets Edgy on US-China Trade War Fears (March 23 2018), available at [www.bbc.com](http://www.bbc.com) accessed: 22 April 2021

<sup>273</sup> Goldstein *op cit* note 260

<sup>274</sup> *ibid* 182; Robert Pastor, *Congress and the Politics of US Foreign Economic Policy: 1929-1976* (1980);

<sup>275</sup> Goldstein *op cit* note 260 at 183

<sup>276</sup> *ibid* at 187

<sup>277</sup> *ibid*

<sup>278</sup> Ernest Preeg, *Trades and Diplomats: An Analysis of the Kennedy Round Negotiations Under the General Agreement on Tariff and Trade* (1973)

<sup>279</sup> William Ris, ‘Escape Clause Relief Under the Trade Act of 1974: New Standards, Same Results’ *Columbia Journal of Transnational Law* 16 (1977) 300

<sup>280</sup> Goldstein *op cit* note 260 at 189

According to Patterson, post-war interim arrangements was for Europe not to commit to the GATT fully until it became economically stable.<sup>281</sup> At the formation of GATT, the European countries as contracting parties could negotiate low tariff rates.<sup>282</sup> In coexistence with the ‘regional payment arrangements’, a strategy was adopted for quantitative restriction on intra-European trade.<sup>283</sup> All these arrangements were to ensure that the challenges in Europe at the time were solved.<sup>284</sup> Patterson noted, however, that the strategies were discriminatory.<sup>285</sup>

Ismail notes a similar orientation.<sup>286</sup> In his examination of over 800 archival documents regarding South Africa’s participation in the GATT treaty of 1947. South Africa set a limit on its use of tariffs, and it used ‘import licensing and quantitative control to develop its infant industries.’ When India argued for the prohibition of trade between any country and South Africa due to its discriminatory policies towards its indigenous people, GATT ‘styled itself’ as neutral.<sup>287</sup> However, this neutrality stance employed by GATT members gave way as the United States used Article XXXV, now provided under Article XIII of the WTO, to ban trade with Armenia, Moldova, Georgia, the Kyrgyz Republic, and Mongolia.<sup>288</sup> These differences in ideas and practice can be deciphered from the viewpoint of Cox, who states that an idea becomes common sense when the hegemonic power promotes it.<sup>289</sup>

In his seminal work on critical theory, Cox remains convinced that ‘theory is always for someone and some purpose.’<sup>290</sup> Some authors have argued that the United States and its allies proliferated the idea of a multilateral trading system to promote its interests.<sup>291</sup> According to these observers, embedded liberalism (exceptions in the GATT) was grafted for the interests of the dominant core<sup>292</sup> and to institutionalise the ‘double standard’.<sup>293</sup>

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<sup>281</sup> *ibid*

<sup>282</sup> *ibid* at 79

<sup>283</sup> *ibid*

<sup>284</sup> *ibid* at 80

<sup>285</sup> *ibid*

<sup>286</sup> Ismail, *op cit note* 146 at 69

<sup>287</sup> Patterson *op cit note* 96 at 85-6

<sup>288</sup> *ibid* at 86; Hoekman B and Mavroidis, P, ‘WTO Dispute Settlement, Transparency and Surveillance’, (2000)23 (4) *The World Economy* 9

<sup>289</sup> Cox 2002 *op cit note* 51 at 84

<sup>290</sup> Cox, *op cit note* 47 at 158; Cox, *op cit note* 96 at 128

<sup>291</sup> Gardner *op cit note* 253 at xviii, xxxviii; Wilkinson 2014 *op cit note* 45 at 139

<sup>292</sup> Lang *op cit note* 53; Dunoff, 1998 *op cit note* 73

<sup>293</sup> Patterson *op cit note* 96 at 187

Drawing on an extensive range of sources, Charles Mutasa set out different ways the EU had engaged in actively protecting its agricultural sector.<sup>294</sup> Chapter 39 of the 1957 Treaty of Rome enumerated five cardinal points of the Common Agricultural Policy (CAP).<sup>295</sup> Some EU Member States, such as Sweden and Britain, have called upon the EU to cut down on budget and subsidies for CAP.<sup>296</sup> However, according to Mutasa and Secchi, the European Union CAP remains strongly funded.<sup>297</sup> Both the peripheral and advanced developing countries are well acquainted with the EU CAP for its lack of restraint in export subsidies and its repercussions, especially in peripheral countries such as the ECOWAS region.<sup>298</sup> According to Mutasa, in 2008, Washington paid \$20 billion to farmers. The rationale for this enormous amount was never clearly revealed.<sup>299</sup> Mutasa further argued that by promoting excessive production of agricultural products in the EU, the excess from the products is exported to Africa, undermining farmers and ‘threatening African agriculture structure in Sub-Saharan Africa.’<sup>300</sup>

*(b) Language/Narrative and Coercion*

Robert Cox has expressed the view that the West arrogated to itself the superior civilisation status,<sup>301</sup> saying that ‘Western scholarship, assuming a position of universal objectivity, has defined the characteristics of dominated civilisation and has had the power to transmit to the dominated this knowledge about themselves.’<sup>302</sup> To blend the uncivilised into the superior universal knowledge, he suggests that ‘the elites of the dominated could thus become absorbed into alien universalism.’ Using the analogy of ‘orientalism,’ Cox explicates that the world ruling class propounds and spreads globalisation, projected as ‘American-Style capitalism’, which assimilates the rest of the world into a single global political economy.<sup>303</sup> He further argued that the dominant core strategy is to see that others (the secondary state) would be thoroughly organised in politics and ‘social and intellectual habits’ compatible with the global ruling class economic system.<sup>304</sup>

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<sup>294</sup> Charles Mutasa, A Critique of the EU’s Common Agricultural Policy in: Adekeye Adebajo and Kaye White (eds), *The EU and Africa from Eurafrique to Afro-Europa* (C Hurst & Co Publishers Ltd, UK, 2012)

<sup>295</sup> *ibid* at 239

<sup>296</sup> *ibid*

<sup>297</sup> *ibid*; Carlo Secchi, ‘Protectionism, Internal Market Completion, and Foreign Trade Policy in the European Community’ in Grill & Sassoon *op cit* note 215 at 56

<sup>298</sup> *ibid* 244; *Ibid* Secchi at 39-40

<sup>299</sup> Mutasa *op cit* note 294 at 244

<sup>300</sup> *ibid*

<sup>301</sup> Cox 2002 *op cit* note 51 at 167

<sup>302</sup> Cox 2014 *op cit* note 47

<sup>303</sup> *ibid* at 165

<sup>304</sup> *ibid*

Matthew Watson and Colin Hay postulate that even though globalisation has been unmasked and revealed as a myth, 'political rhetoric' continues to have a powerful effect.<sup>305</sup> This metaphor represents an extensive structure of social practices that explains how people understand themselves and their conduct.<sup>306</sup> Jim George considers that a discourse generates the different classes of connotations to shape reality, for a discourse makes 'real' that which is prescribed as meaningful.<sup>307</sup> Accordingly, examining the metaphor in the context of discourse has become a social construction centred on the link between power and knowledge. Cox's framework emphasises the point that power is applied for the effectiveness of the global market metaphor.<sup>308</sup> The argument is that notwithstanding whether political opponents have assimilated a specific set of ideas, it 'can prove critical to success in political contests', while 'leaving their opponents without access to the rhetorical materials needed to craft a socially sustainable rebuttal.'<sup>309</sup> 'Rhetorical coercion' is present when opponents are prevailed to support a position they would ordinarily reject.<sup>310</sup>

Susan Strange maintained that protectionism is no threat or harm to the world's trading system.<sup>311</sup> She identified three widely held beliefs promoted by liberal economists and unmasked the ideology as a 'myth.' First, the main Article of faith of liberal economics, as far as international trade is concerned, is to minimise the government involvement, prevent anything that 'obstruct the flow of trade.'<sup>312</sup> The second myth observed by Strange is the conviction of liberal economists that the 'individual pursuit of private gain, tallies with society's overall well-being, as 'the hidden hand of the market ensures producers make what the consumers want at the lowest price.'<sup>313</sup> The third myth examined deals with the exegesis drawn by liberal economists from twentieth-century economic evolution.<sup>314</sup> The liberal economists attributed the Great Depression of the 1930s to the indiscriminate tariff increase that led to protectionism by countries.<sup>315</sup> The idea prevalent among

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<sup>305</sup>Matthew Watson & Colin Hay, 'The Discourse of Globalisation and the Logic of No Alternative Rendering the Contingent Necessary in the Political Economy of New Labour' (2004) 30 (4) *Policy and Politics* 289-305 at 304

<sup>306</sup> Jim George, *Discourses of Global Politics: A Critical (Re) Introduction to International Relations* (1994) 29-30

<sup>307</sup> *ibid*

<sup>308</sup>Cox 2002 *op cit* note 51 at 76

<sup>309</sup> Ronald R Krebs & Patrick Thaddeus Jackson, 'Twisting Tongues and Twisting Arms: The Power of Political Rhetoric', (2007) 13 (1) 35-66 *European Journal of International Relations* at 36.

<sup>310</sup> *ibid*

<sup>311</sup>Susan Strange, 'Protectionism and World Politics', *International Organisation*, vol 39 (2) (Spring, 1985) 233-259 at 233

<sup>312</sup> *ibid* at 235

<sup>313</sup> *ibid* at 238

<sup>314</sup> *ibid* at 239

<sup>315</sup> *ibid*

liberal economists remains that the Great Depression of 1929 and the 1930s was not caused by trade protectionism totally but unquestionably aggravated by it as most nations promoted ‘beggar-thy-neighbour policies.’<sup>316</sup> This is the conventional argument.

Nevertheless, Strange posits that the fall of world trade and the rise of protectionism was instead a sign of a global economic breakdown.<sup>317</sup> She cited several development economists such as Arthur Lewis<sup>318</sup> and Kindleberger<sup>319</sup> of the realist school of thought. Both authors posit that tariffs made a ‘minimal effect on the volume of world trade or its direction.’ Another widely held ideology that Strange examined and challenged was what she termed, the ‘bicycle theory’, namely, the ideology that if the trade liberalisation impetus were not maintained, it would be disastrous to economic growth.<sup>320</sup>

This manner of discourse in the world trading system has been recently criticised in detail by Wilkinson.<sup>321</sup> Jagdish claims that adversaries of free trade are ‘the chaff’ that has to be removed from the ‘wheat’ of good sense. Wilkinson argued that the manner of talking and tacitly consenting to an insult without questioning had enabled core countries to bring about ‘asymmetrical outcomes’ in the system through the GATT and other bilateral arrangements.<sup>322</sup> Like Strange bicycle theory, Wilkinson couched the phrase ‘crisis discourse’. According to him, the core countries would argue that the trading system will break down if actions are not taken against protectionism immediately.<sup>323</sup> Wilkinson maintained that two things are envisaged when free trade proponents use metaphorical discourse, first synchronically pressurising to ensure particular conduct and secondly ‘safeguarding that logic’ from a thorough investigation.<sup>324</sup>

Argentina questioned the logic of free trade. Citing the economic crisis in Argentina in the 2000s, Grudgel and Ruggirozzi<sup>325</sup> conclude that neoliberalism failed to deliver stable and equitable growth. As a result, Argentina introduced some significant import restrictions because it needs to export its products to achieve some level of growth as a developing country. In a speech during

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<sup>316</sup> *ibid* at 239-41

<sup>317</sup> *ibid*

<sup>318</sup> W Authur Lewis, *Economic Survey, 1919-1930* (1949, 1970) cited in Susan Strange, ‘Protectionism and World Politics’, (1985) 39 (2) *International Organisation* 233-259 at 240

<sup>319</sup> Kindleberger, *op cit note* 218 at 240-1

<sup>320</sup> Strange *op cit note* 311 at 239-42

<sup>321</sup> Wilkinson, *op cit note* 45

<sup>322</sup> *ibid* at 53

<sup>323</sup> Rorden Wilkinson, *The WTO: Crisis and the Governance of Global Trade*, (2006) 597

<sup>324</sup> Wilkinson, *op cit note* 45; Wilkinson *op cit note* 96, at 1-7

<sup>325</sup> Grugel Jean and Ruggirozzi Pia ‘The Return of the State in Argentina’, 83 (1) (2007) *International Affairs* 87-107 at 87, 95

the MERCOSUR summit in Brasilia in December 2012, Fernandez de Kirchner refused to accept the narrative of the deleterious impact of protectionism. Instead, she pointed out the imbalances in the worldwide trading system and how it tried to find workable alternative solutions. The president asserted that for many decades, ‘terms of trade between our region and developed countries were stacked against us,’ but through sound policies, it achieved some growth level and deserted the Washington consensus’s neoliberal prescription enforced on the South American region.<sup>326</sup> Christopher Wyde<sup>327</sup> termed the dramatic rejection of the neoliberal ideology as ‘developmentalist ideology’.<sup>328</sup> It is believed that the new ideology making its round in Argentina ‘facilitated impressive post-crisis growth through a judicious mix of domestic policy and international circumstance’.<sup>329</sup> However, in 2014, the WTO panel ruling overwhelmingly supported the USA, the EU and Japan, which had separately challenged the Argentine import restrictive measures in 2012.<sup>330</sup>

Considering the contradictions in Ruggie’s conventional embedded liberalism in the idea of neoliberalism, this chapter draws attention to and agrees with the revisionist standpoint, which has advocated an alternative pluralistic approach to the wide-ranging global trade discourse.

## VII CONCLUSION

This chapter considers in broad brushstrokes the relationship, both economic and social, between more developed and less developed countries, typically former colonial powers and former colonies, focusing on the specific dimension of multilateral trade and placing the relationships in historical context.

The dual discourse explained above, the crisis discourse and the bicycle theory is essential for this thesis, in the context of the EU-ECOWAS EPA, The EU extensively employed the strategies wherein the ACP countries would lose favourable market access if agreements were not signed on time. Secondly, the WTO rules had to be complied with before ACP countries could obtain viable gain from trade. The EPA is the only way to develop. To prevent scrutiny of the EU discourse, as Wilkinson pointed out, an interviewee asserts that the EU prevented Nigeria and the rest of

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<sup>326</sup>Ban Cornel and Blyth Mark, ‘The BRICS and the Washington Consensus: An Introduction’, (2013) 20 (2) *Review of International Political Economy* 241-55 at 241-2, 245

<sup>327</sup>Christopher Wylde, ‘The Developmental State is Dead Long Live the Developmental Regime! Interpreting Nestor Kirchner’s Argentina 2003-2007’ (2013) *Journal of International Relations and Development*, 1-29 at 1  
doi:10.1057/jird.2012.32

<sup>328</sup>Jean & Pia *op cit* note 320 at 92-4

<sup>329</sup>Wyde *op cit* note 322

<sup>330</sup>ICTSD, Argentina Pledges to Appeal WTO Ruling on Import Restrictions’ Bridges Weekly trade New Digest, 16 (30) (September 10 2014), <http://ictsd.org/i/news/bridgesweekly/> accessed: 30 July 2020

ECOWAS from thoroughly negotiating the text of the EPA. During the campaign for the importance of EPA to ECOWAS, Mandelson maintained that protectionism policies are a ‘dead end’, as they would stall the trade benefits of the region.<sup>331</sup>

The chapter explored the conformist and revisionist perspectives to analyse trade relations—to understand their structure, the behaviour of agents and actors within these contexts and the set of outcomes over time—and which integrated into a theoretical framework of asymmetrical economic power relations, can be used to understand the EU-ECOWAS negotiations.

The following chapter now turns to a general analysis of the EU-ECOWAS trade relationship—pre and post-Lomé conventions.

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<sup>331</sup>Peter Mandelson, Sustainable Trade Observations on Trade and Protectionism EU Trade Commissioner Speech/06/187, Brussels, 21 March 2006 at 2

## CHAPTER THREE: CONTEXTUALISING HISTORICAL TRADE RELATIONS BETWEEN THE EU-ACP

### I INTRODUCTION

This chapter explores the historical account of the trade relationship between the EU and the ACP Countries. In order to gain insight into the nature of the relationship and the extent of past colonial influence on the current arrangement, the chapter draws on critical theory propounded by Cox<sup>332</sup> and the neo-colonialism argument by Nkrumah.<sup>333</sup> According to Cox, questioning the state of a relationship, for instance, between the EU and ACP countries, should not be taken at face value, but the past and present must be investigated.<sup>334</sup> Regarding management of the absence of symmetry, insight is drawn from Goldstein and Keohane<sup>335</sup> and Blyth.<sup>336</sup> This chapter reveals the intricate economic mutation in Africa since the ‘insertion’ of some colonies into the Treaty of Rome, the question of African countries attaining development through participation in the regional and multilateral trading system has been a subject of a series of non-reciprocal arrangement. However, according to Lang, Ruggie’s ‘embedded liberalism’ and subsequent narrative around the concept, the colonial complexities and issues dealing with development were mysteriously sidelined from the debate.<sup>337</sup>

The principal aim of this chapter is to provide context for the analysis of power asymmetry. It argued that the discourse of ‘no alternative’ to EPA employed by the EU in the ECOWAS would likely deepen asymmetry in the EU-ECOWAS relationship.<sup>338</sup> Also, the chapter explores the rationale for the strict application of Article XXIV to the EU-ECOWAS EPA because the EU defaulted on several occasions, as discussed later in this chapter, to comply with it. In discussing power asymmetry in the historical context from 1957 to the current EPA regime between EU-ECOWAS, the chapter asks the following questions: (a) Can Economic Partnership Agreements (EPA) delinked the EU and ACP Countries’ relationship from the colonial past? (b) Why did the

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<sup>332</sup> Cox, *op cit* note 47

<sup>333</sup> Nkrumah *op cit* note 4 at 176

<sup>334</sup> Cox, *op cit* note 47 at 128

<sup>335</sup> Goldstein & Keohane, *op cit* note 160 at 30

<sup>336</sup> Blyth, *op cit* note 182

<sup>337</sup> Lang, *op cit* note 53

<sup>338</sup> Wilkinson *op cit* note 45 at 1-7; Robert O Koehane & Joseph S Nye, World Politics and the International Economic System in: Fred C Berdsten, *The Future of the International Economic Order: An Agenda for Research* (1941) 122,

EU insist on the strict interpretation of Article XXIV when the USA granted preference to Sub-Saharan Africa (SSA) through African Growth Opportunity Act (AGOA)? The main reason for the EU not continuing non-reciprocal preferences to the ACP countries was that when the former composition changed from 15 to 28 members, East European countries have no colonial relationship, and as such are not responsible to the ACP countries. Accordingly, if preferential treatment is granted to the ACP countries, Eastern Europe would have required to be compensated by the core members of the EU. Therefore, the EU made an economic and political decision at the initial stage and subsequently decided to use the spurious reason of having to bring the ACP countries' relationship into compliance with Article XXIV. It should be noted that there is not much difference between the EPAs and AGOA as the Act called for countries to negotiate for substantially all the trade. A critical examination of the provision reveals that the conditions are based on reciprocity.<sup>339</sup> The 2015 and 2000 Act explicitly stated that the focus of the US is to 'seek to deepen and expand trade and investment ties between sub-Saharan Africa and the United States. It encouraged negotiation between individual states as well as Regional Economic Communities to ensure the observance of legal obligations provided in the WTO Agreement.'<sup>340</sup> The 2015 AGOA Act enlarged the extent of the objectives of AGOA to include 'the elimination of barriers to trade and investment in sub-Saharan Africa, high tariffs, forced localisation requirement on investment, and customs barrier.'<sup>341</sup> It demanded the enforcement of the agreement on Trade Facilitation of the WTO.<sup>342</sup>

Mandelson declared during the market access symposium in Brussels that the EU-APC Countries must do away with the relics of colonialism and donor beneficiaries; to adopt equality among partners, shared interests, and ECOWAS integration into the world economy.<sup>343</sup> A week to the conference in Lisbon between the 27 countries of the EU and 53 African countries, Louis Michel stated categorically, 'the European Union's relationship with Africa has to change and why that change is so crucial to both continents.'<sup>344</sup> However, Nkrumah doubts the possibility of a

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<sup>339</sup> Faizel Ismail 'The AGOA Extension and Enhancement Act Of 2015, The SA-US AGOA Negotiations and the Future Of AGOA (2017) 16 (3) 527-544 *World Trade Review*

<sup>340</sup> *ibid* at 523

<sup>341</sup> *ibid*; AGOA Extension and Enhancement Act of 2015, Section 102

<sup>342</sup> *ibid* section 102 (7)

<sup>343</sup> Mandelson *op cit note* 1 at 3; Louis Michel, Europe Africa: The Indispensable Partnership, Conference organised by the European Policy Centre Brussels November 30<sup>th</sup> 2007 (SPEECH/07/779) available at <https://appablog.wordpress.com/2007/11/30/louis-michel-europe-africa-the-indispensable-partnership/>. Accessed: June 20 2021

<sup>344</sup> *ibid*, Michel

complete break with neo-colonialism.<sup>345</sup>Whiteman maintained that EU-Africa trade relations have not ‘escaped from the burden of history.’<sup>346</sup> According to Raul Prebisch, free trade as promoted by the dominant core, is ‘post-colonial servitude.’<sup>347</sup> However, Addressing the UNCTAD Delegates in 1996, Ruggiero said, ‘We are writing the constitution of a single global economy’ for the benefit of all.<sup>348</sup> Nevertheless, Wilkinson noted that the ‘paradox’, is that the fanatical zeal for trade liberalisation and the benefit of free trade has constrained peripheral countries to the bottom of the spectrum,<sup>349</sup>

The remaining chapter is divided into the following sections: Section 2 provides context to the history of the EU-ACP trade relationship. Section 3 explored the launch of the reciprocal trade arrangement through the EU green paper. Section 4 focuses on the asymmetry in the EU-ACP trade relationship. Section 5 looks at the legal framework of the Cotonou Agreement. Section 6 examines the application of GATT Article XXIV. Section 7 concludes the chapter.

## II CONTEXTUALISING THE HISTORY OF THE EU-ACP TRADE RELATIONS: 1957-2000

The European Coal and Steel Community (ECSC) states met at a conference from 1-3 June 1955 in Italy, in Messina, Sicily.<sup>350</sup> The initiative for another meeting in Vienna in May 1956 and March 1957 was agreed upon. The 1957 conference led to the Treaty of Rome, establishing the European Economic Community (EEC).<sup>351</sup> At the 1956 conference in Vienna, a contentious subject was introduced during the negotiation of the Treaty of Rome.<sup>352</sup> The controversy was about the inclusion of some African countries into the Treaty of Rome.

Kotto reported that the history of the idea to include French and Belgian Africa in the Common Market was traceable to Pierre Moussa.<sup>353</sup> The former is a director of Economic Affairs at the Ministry of Overseas and an expert on the economy of the French Union.<sup>354</sup> Peo and Johnson

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<sup>345</sup> Nkrumah *op cit* note 4

<sup>346</sup> Adebajo & White *op cit* note 6 at 2

<sup>347</sup> Mazower, *op cit* note 47 at 344

<sup>348</sup> UNCTAD & WTO, ‘A Common Global Economy’ (TAD/INF/PR/9628, October 8 1996), [www.unctad.org](http://www.unctad.org) accessed: 31 August 2020; *ibid* Mazower at 362

<sup>349</sup> Wilkinson, *op cit* note 40 at 20

<sup>350</sup> M Camps, ‘Britain and the European Community, 1955-1963’ (1964) cited in, Patterson, *op cit* note 282 at 139

<sup>351</sup> *ibid*

<sup>352</sup> J.J. Van Der Lee, ‘Association Relations between the European Economic Community and African States’, (1967) 66 (264) *African Affairs* 197-212

<sup>353</sup> Laura Kottos, ‘A European Commonwealth’: Britain, the European League for Economic Co-operation, and European Debates on Empire, 1947-1957’ (2012) 20 (4) *Journal of Contemporary European Studies* 497-515

<sup>354</sup> *ibid*

assert that Moussa asked his Minister Gaston Defferre to indicate the significance of discussing the colonial matter in the scheduled negotiations.<sup>355</sup>

On 17 May 1956, Defferre presented a document to Guy Mollet, demanding that the French not participate in the Common Market if the colonies were not included.<sup>356</sup> In his note to Mollet, Defferre pointed out that the overseas territories be integrated into the Eurafrikan common market. The Overseas Countries and Territories (OCTs) enter into this common market while benefitting from special clauses, which justify their state of development.<sup>357</sup> Explaining the proceedings of the Venice Conference the next day, *Le Figaro* reported to its readers that ‘the Eurafrikan idea, long considered to be a myth, will inscribe itself on African soil.’<sup>358</sup> For Peo and Johnson, the argument influenced by geopolitical factors was the usual ‘Eurafrikan dictum of a common colonial market that offered Europe an opportunity to regain its geopolitical position’ against the Union of Soviet Socialist Republic (USSR) and the United States of America (USA).<sup>359</sup>

Throughout the negotiation, France refused to be persuaded against Eurafrikan. Instead, France encouraged the other countries to view it as a ‘collective’ undertaking: first to protect the general interests of Europe, which hung on the ‘interdependence’ between the states; secondly, it was a great ‘historical opportunity’, and an ‘offer’ made not only to the European parties but also to Africans.<sup>360</sup>

Following France’s astute and compelling argument, the six succumbed to the proposal.<sup>361</sup> It unanimously agreed to associate the French and Belgian dependent territories in Africa and Madagascar, Italian Somaliland, and Netherlands’ New Guinea with the Common Market.<sup>362</sup> After endorsement of the French proposal, terms and conditions were provided in the Treaty of Rome.

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<sup>355</sup> *ibid*

<sup>356</sup> Gaston Defferre, ‘Letter a Guy Mollet’ 17 May 1956 in Gerard Bossuat ed *D’Alger a Rome 1943-1957: Choix de documents* (Louvain-la-Neuve: Ciaco, 1989) 167-77 cited in Hansen, Peo and Stefan Johnson, ‘The Eurafrikan Relaunch: The Treaty of Rome Negotiations 1955-1957’ *Eurafrikan: The Untold History of European Integration and Colonialism* Bloomsbury Academic, 2014. 147-238. Bloomsbury Collection, <http://dx.doi.org/10.5040/9781472544506.ch-oo4> accessed: 27 February 2021

<sup>357</sup> *ibid*

<sup>358</sup> ‘L’Europ sans L’Afrique’, *Le Figaro*, 31 May 1956. Cited: *ibid* Hansen & Johnson,

<sup>359</sup> *ibid* Peo & Johnson at 156

<sup>360</sup> *ibid*; Theresa Hayter, French Aid (1966) 9-12, Treaty Establishing the European Economic Community (adopted 25 March 1957, Article 131-136; Conrad Rein, ‘The European Union and the African Union: A strategic Partnership?’ (2015) 20 (4) *European Foreign Affairs Review* at 553; Martin H Dedman, *The Origins and Development of the European Union 1945-2008: A History of European Integration* 2 ed (1996) 55; Carol Ann Cosgrove, ‘The Common Market and Its Colonial Heritage’, (1969) 4 (1) *Journal of Contemporary History* 73-87 at 76

<sup>361</sup> *ibid* Hayter

<sup>362</sup> *ibid* at 77; Van Der Lee, *op cit note* 352

Part IV of the Treaty of Rome, Article 131 provides: ‘the Community had an obligation to promote the economic and social development of the associates’ countries and territories and to establish close economic relations between them and the Community as a whole.’<sup>363</sup> Also, Article 132 (3) requires that ‘members shall contribute to the investment required for these countries’ progressive development of the territories.’<sup>364</sup>

The provision paints the picture of African interests as being of vital importance. Van der Lee, the former Honorary Director-General of the Commission of the European Economic Community, maintained that the system of association as provided in the treaty of Rome was to assist the associate countries to trade preferentially and develop social and economic infrastructure through investment aid from the Community.<sup>365</sup> Connecting this Community’s beneficence to Cox’s Neo-Gramsci Theory, he opined that the core countries would make specific allowance for peripheral countries in its established order, although at no substantial cost to the former.<sup>366</sup> Regarding the Parties, Guy maintained that the associates were unequal and fundamentally exploitative through the economic policies implemented by the metropolises in their African territories.<sup>367</sup>

Several nations under colonial rule secured independence in the 1960s. Consequently, the Associates’ arrangement was transformed into Yaoundé I and II Conventions.<sup>368</sup> The Convention preceded the Lomé Conventions. The first Lomé Convention was concluded in Togo in 1975.<sup>369</sup> The second Lomé Convention came into effect in January 1981, and the third came into force in March 1985 for trade provisions and in May 1986 for aid. The fourth Lomé, unlike the previous Lomé, had a ten-year tenure and was signed in December 1989. The Trade provision was in effect on 1 May 1990, and the rest of the provisions came into effect in September 1991.<sup>370</sup> Commenting

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<sup>363</sup>Treaty of Rome, Part IV, Association of the Overseas Countries and Territories 1957, (hereinafter Rome Treaty) Article 131 available at <http://www.consilium.europa.eu/media/29665/archives-enlargement-1.pdf> accessed: 20 June 2020

<sup>364</sup> Rome Treaty Article 132 (2) Part IV

<sup>365</sup> Van Der Lee *op cit note 352*

<sup>366</sup> Cox, *op cit note 96* at 172

<sup>367</sup> Guy Martin, Africa and the Ideology of Eurafica: Neo-Colonialism or Pan-Africanism, (1982) 20 (2) *The Journal of Modern African Studies* 226

<sup>368</sup> John Ravenhill, ‘Asymmetrical Interdependence: Renegotiating the Lomé Convention’, (1979/1980) 35 (1) *International Journal* 150-169 at 152

<sup>369</sup> Directorate-General for Development Commission of the European Community, ‘Ten Years of Lomé. A Record of EEC-ACP Partnership, 1974-1984, Com (84) 398 Final, 17 July 1984, p 12

<sup>370</sup> Reginald Herbold Green, ‘The Lomé Convention: Updated Dependence or Departure Toward Collective Self Reliance?’ 43 available at <http://journals.co.za/docserver/fulltext/afre/6/1/182.pdf?expires=1592744502&id=id> accessed: 21 June 2020

on the strength of IV Lomé Conventions, the EU Council President, Mr Solana, stated that the EU and ACP cooperation represents what the Caribbean Poet Derek Walcott calls, ‘bread that lasts when systems have decayed.’<sup>371</sup> However, the ACP Council President, Moi Awei, counter-argued that the cooperation provides no bread but hastens the system’s decay.<sup>372</sup>

The Cotonou Agreement succeeded the Lomé Convention, which heralded the EPAs.<sup>373</sup> After most overseas territories gained independence in 1960, Guy<sup>374</sup> notes that it became imperative to renegotiate the ‘Associate Status’ between the six EEC and 18 African Associate and the Malagasy States. The first Yaoundé Convention of June 1964 to March 1969 replicated Article IV without substantial improvement.<sup>375</sup> The second Yaoundé Convention from January 1971 to March 1975 brought some minor improvements.<sup>376</sup> However, it maintained the fundamental structure of the earliest agreement.<sup>377</sup> The series of the trade arrangement has its background in the European post-colonial settlement, after World War II, what Minta referred to as an ‘unbroken historical continuum.’<sup>378</sup> However, there has been reconditioning of the Europe-Africa relationship since Lomé conventions—different from colonial period. Fundamentally, the relationship is still asymmetrical, but as will be discussed later in this chapter, there are some positive elements in the Lomé and Cotonou Agreements which are put in place to promote the interest of the African countries.

Contrary to Yaoundé Convention, the Lomé Agreement granted preference based on non-reciprocity.<sup>379</sup> According to the ACP-EU Courier, under Lomé Conventions, several protocols produced a significant profit by allowing export products such as bananas, beef, rum, and sugar into the EU market.<sup>380</sup> Another point evident in the spirit of the New International Economic

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<sup>371</sup> ‘The Finest and Most Complete Instrument of Cooperation Ever’, The ACP-EU Countries NO 55, January-February 1996, Special Issue on the Revised Lomé Convention 3-4

<sup>372</sup> *ibid*

<sup>373</sup> Ravenhill *op cit note* 368

<sup>374</sup> Guy *op cit note* 367

<sup>375</sup> Reginald *op cit note* 370

<sup>376</sup> Kenneth J Twichett, ‘Yaoundé Association and the Enlargement European Community’, (1974) 30 (2) *The World to Day* 51-63

<sup>377</sup> *ibid*

<sup>378</sup> Dr I.K. Minta, ‘The Lomé Convention and The New International Economic Order’ (1980) 27, *Howard L J* 953

<sup>379</sup> of Convention of Association between the European Economic Community and the African and Malagasy States Associated with that Community and Annexed Documents (herein after Convention of Association), Article 3 (3) (May 1970) 9 (3) *International Legal Materials* 484-506

<sup>380</sup> The ACP-EU Courier, Special Issue on the Revised Lomé Convention, No 155- (January-February 1996) 6

Order (NIEO) was aid, which formed a substantial component of the Lomé Convention, funded through the European Development Fund (EDF).<sup>381</sup> Also, a mechanism provided indemnity for countries that had experienced loss due to fluctuation of raw materials through the Stabilisation of Commodity-export earnings (STABEX).<sup>382</sup> Similarly, the Convention provided security for manufacturing certain minerals through stabilising Mineral Exports earnings (SYSMIN or MINEX).<sup>383</sup> According to Elgstrom, this ‘insurance scheme’ was put in place to cushion the effect of short term drops in ACP export earnings.<sup>384</sup> The scheme was celebrated as ground-breaking; it was perceived as a solution to the challenges of raw materials produced by the Least Developed Countries (LDCs).

Nevertheless, Dedman viewed that the provision of aid only created unhealthy dependency.<sup>385</sup> According to Nkrumah, the provision of assistance is used as a ‘guise’ to perpetuate neo-colonialism.<sup>386</sup> Lister maintained that the SYSMIN did not succeed, as only 35 per cent of the fund voted for SYSTMIN were used on mineral projects.<sup>387</sup> Many of the projects failed. For example, the SYSMIN projects in Togo and Papua New Guinea were abandoned.<sup>388</sup>

It is argued that the EU-ACP countries’ trade relationship has dual defects: first, according to Bretherton and Vogler; ‘The Community effectively created the ACP group to facilitate its interaction with a large and diverse group of former colonies ... the majority of which are economically weak’.<sup>389</sup> Secondly, to Ravenhill, the vast differences in power asymmetry show that ACP Countries played the role of a ‘demandeur’.<sup>390</sup> In the Author’s view, the ACP countries had

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<sup>381</sup> The Lomé Convention, <http://www.acp.int>, accessed: 5 April 2021; Charlotte Bretherton and John Vogler, *The European Union as a Global Actor*, (2006) 116

<sup>382</sup>The Second Lomé ACP-EEC Lomé Convention, Articles 23 (1) and (2) and 24, No L 347/2 Official Journal of the European Communities (31 October 1979); [http://www.evce.eu/obj/the\\_second\\_acp\\_eec\\_lome\\_convention\\_31october\\_1979-en-416ece3a-4e44-44771-8c0e-52a754f2e007.html](http://www.evce.eu/obj/the_second_acp_eec_lome_convention_31october_1979-en-416ece3a-4e44-44771-8c0e-52a754f2e007.html) accessed: 21/6/2020

<sup>383</sup>The Second Lomé ACP-EEC Lomé Convention Articles 49 and 50, No L 347/2 *Official Journal of the European Communities* 31October 1979, [http://www.evce.eu/obj/the\\_second\\_acp\\_eec\\_lome\\_convention\\_31october\\_1979-en-416ece3a-4e44-44771-8c0e-52a754f2e007.html](http://www.evce.eu/obj/the_second_acp_eec_lome_convention_31october_1979-en-416ece3a-4e44-44771-8c0e-52a754f2e007.html) accessed: 21 June 2020

<sup>384</sup>Ole Elgstrom, ‘Lomé and Post-Lomé: Asymmetric Negotiation and the Impact of Norms’ (2000) 5 *European Foreign Affairs Review* 175-195 at 177

<sup>385</sup> Martin *op cit* note 360 at 182

<sup>386</sup>Nkrumah *op cit* note 4 at 176

<sup>387</sup> Majorities Lister, *The European Union and the South: Relations with Developing Countries* (1997) 128

<sup>388</sup> *ibid*

<sup>389</sup>Bretherton & Vogler, *op cit* note 59 at 126,

<sup>390</sup>John Ravenhill, ‘Back to the Nest? Europe’s Relationship with the African, Caribbean and Pacific Group of Countries’ (Working Paper PEIF-9, December 2000) 7-8, <http://www.researchgate.net/publication/238105746> accessed: 24 June 2020

little or no meaningful bargaining power over the EU.<sup>391</sup> As an alternative, the ACP falls back on what Ravenhill refers to as ‘collective clientelism.’<sup>392</sup> Ravenhill described the ACP group as the ‘embodiment of economic weakness’; hence, ‘equal partnership’ is illusory.<sup>393</sup> Similarly, according to Lang, these complex problems faced by ACP countries never found an outline in the multilateral trading system, believed to be ‘embedded’.<sup>394</sup> In his discussion on European Universalism, Wallerstein maintained that the global value promoted by the powerful is ‘partial and distorted universalism’.<sup>395</sup>

The thesis next explores how the EU dramatically changed its views on the Cotonou Agreement to meet the requirement of Article XXIV through its Green Paper.

### III THE EUROPEAN COMMUNITY’S GREEN PAPER

This section draws on Goldstein, Keohane, and Blyth to gain insight into ideas' role in protecting the dominant core's interest. According to Goldstein and Keohane, ideas are used to govern such an arrangement if a relationship is not symmetrical.<sup>396</sup> According to Blyth, ideas are used to ‘delegitimate’ the currently existing structure if it no longer serves the interest of the core.<sup>397</sup> In 1996, the EC published its Green Paper, which examined the trade relationship between the EU and the ACP countries.<sup>398</sup> It declared that the Lomé Convention has unequivocally failed to realise its primary objectives.<sup>399</sup> The ‘partnership enshrined in the Lomé Convention has diminished substantially and has not been fully realised’.<sup>400</sup> Although the EU green paper did not deny the value of the Lomé Convention, it posits that ‘the value of the Lomé trade preferences has declined and stands to suffer further erosion.’<sup>401</sup>

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<sup>391</sup> *ibid*

<sup>392</sup> John Ravenhill, *Collective Clientelism: The Lomé Conventions and North-South Relations* (1985) 4, 221

<sup>393</sup> *ibid*

<sup>394</sup> Lang, *op cit note* 53 at 99-100

<sup>395</sup> Immanuel Wallerstein, *European Universalism: The Rhetoric of Power* (2004) xiv

<sup>396</sup> Goldstein & Keohane *op cit note* 160 at 30

<sup>397</sup> Blyth *op cit note* 182 at 35-42

<sup>398</sup> Commission of the European Communities, ‘Green Paper on Relations between the European Union and the ACP Countries on the Eve of the 21st Century: Challenges and Options for a New Partnership’ (Brussel, 20/11/1996, COM) (96) (570 Final.) iii, <https://eu-lex.europa.eu/legal-content/EN/TXT/pdf/?uri=CEL...> Accessed: 26 June 2020

<sup>399</sup> *ibid*

<sup>400</sup> *ibid*

<sup>401</sup> *ibid*; European Commission, Guideline for Negotiation of New Cooperation Agreements with the Africa, Caribbean and Pacific, (Office for the Official Publications of the European Communities, L-2985, Luxembourg (COM (97) 29.10.1997 C), available at <https://eur-lex.europa.eu/legal-content...s> accessed: 26 June 2020

Another element that forms part of the rationale to end the Lomé Convention was that the numerical strength of the EU increased.<sup>402</sup> It is claimed that, as the number increased, it insidiously weakened the considerable relevance of the ACP countries.<sup>403</sup> According to Elgstrom, for instance, as Spain and Portugal acceded to the EU, attention was shifted to Latin America in the EU.<sup>404</sup> According to Lister, upon the appointment of Spaniard Manuel Marin as Development Commissioner in 1988, the focus became more on the Community's relationship with Central and South America.<sup>405</sup> The grant of stabilisation of the export earnings system (STABEX) in 1987 to Bangladesh, Bhutan, Haiti, Laos, the Maldives, Nepal, the Yemen Arab Republic and the People's Republic of Yemen widened the scope of the Community's engagement and interests.<sup>406</sup> Another element that contributed to the marginalisation of the interests of the ACP countries was the fall of the Soviet Union. According to Lister's account, during the ACP-EU Joint Assembly meeting in 1989, ACP Countries requested funds, but the EU declined. At the beginning of 1990 EU substantially established the East European Bank for Reconstruction and Development and made available extensive European Investment Bank loans to Eastern Europe. However, in October 1991, the European Council of foreign ministers declined to forgive €3 billion of ACP Countries' debt but endorsed during the period of €2 billion of aid for the post-Soviet Union.<sup>407</sup> It became crystal clear, according to Lister, that the ACP Countries were no longer part of the EU priority.<sup>408</sup>

Another factor cited numerous times was the unfavourable ruling against the EU's banana protocol under GATT and World Trade Organisation (WTO). The WTO has been blamed for the demise of the Lomé Convention.<sup>409</sup> However, the original banana case that arose before the dispute settlement panel was not due to the Lomé convention but the Single banana market in 1992,<sup>410</sup> which was an aspect of implementing the Single European Act.<sup>411</sup> In 1994 however, the GATT

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<sup>402</sup>Faizel Ismail, 'The Changing Global Trade Architecture: Implications for Africa's Regional Integration and Development' (2017) 51 (1) *Journal of World Trade* at 7,

<sup>403</sup>Ole Elgstrom, 'The Cotonou Agreement: Asymmetric Negotiations and the Impact of Norms', in Ole Elgstrom and C Jonsson, (eds), *European Union Negotiations* (2005) 186

<sup>404</sup> *ibid*

<sup>405</sup> Lister *op cit* note 387 at 146

<sup>406</sup> *ibid*

<sup>407</sup> *ibid*

<sup>408</sup> *ibid*

<sup>409</sup>Treaty of Rome; Alter, K.J and Meunier, S, 'Nested and Overlapping Regimes in the Transatlantic Banana Trade Dispute', (2006) 13 (3) *Journal of European Public Policy* 362-82 at 366

<sup>410</sup>Council Regulation (EEC) No. 1858/93, Articles 12, 15 and 17, 13 February, 1993, on Common organization of the market in bananas' *Official Journal of the European Communities*, Brussels June 12, 1993;

<sup>411</sup> *ibid*

panel judged that Lomé convention does not comply<sup>412</sup> with Most Favoured Nations (MFN) because it was neither a free trade area nor a customs union, as there was no reciprocity.<sup>413</sup> It does not also comply with the 1979 Enabling Clause because it discriminates against other developing countries.<sup>414</sup>

According to Ravenhill<sup>415</sup> and Dickson,<sup>416</sup> the EU cannot ignore the decisions of the WTO dispute or continue to weaken the fundamental principle of the trading system by sustaining a waiver, as the EU is well-positioned to play a vital role in promoting its interests in the multilateral trading system.<sup>417</sup> Many observers believed that the banana dispute was the only useful disguise to back up the majority's argument within the EU.<sup>418</sup> According to Blyth, the 'weapon' agent use idea to 'delegitimate' an existing structure.<sup>419</sup> As the EU carefully delegitimises the structure of its relationship with the ACP countries, it sought an arrangement more WTO compatible, hence the EPA through the EU Green Paper.<sup>420</sup>

The EPAs were negotiated among six regions: the Caribbean, Pacific, West Africa, Central, Eastern and Southern Africa (ESA), and Southern Africa (SADC-minus) - identified by the Commission.<sup>421</sup> In order to allow the ACP countries adequate time to prepare for the EPA negotiations, the EU applied for an extension to the WTO for a waiver, which was granted during the 2002 Doha Ministerial Meeting in Qatar.<sup>422</sup> The negotiation started in September 2002 and ended in 2007. The Cotonou Agreement made special provisions for least developed countries

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<sup>412</sup>Eliza Patterson, The US-EU Banana Dispute, (2000) 6 (4) *American Society of International Law*, June [https://www.wto.org/english/res/e/booksp\\_e/dispu\\_settlement\\_e.pdf](https://www.wto.org/english/res/e/booksp_e/dispu_settlement_e.pdf) accessed:29 2020

<sup>413</sup>The Appellate Body, European Communities-Regime for the Importation, sale and Distribution of Bananas, WT/DS27/AB/R, adopted 25 September, 1997

<sup>414</sup>The Appellate Body, European Communities-Regime for the Importation, sale and Distribution of Bananas, WT/DS27/AB/R, adopted 25 September, 1997

<sup>415</sup> Ravenhill *op cit note* 381

<sup>416</sup> Anna K Dickson 'The Importance of Trade Preferences' in Karin Arts and Anna K Dickson (eds) *EU Development Cooperation--From model to Symbol* (2004) 42-59

<sup>417</sup> *ibid*

<sup>418</sup> Ravenhill *op cit note* 390

<sup>419</sup> Blyth *op cit note* 177

<sup>420</sup>Commission of the European Communities, Green Paper on Relations between the European Union and the ACP Countries on the Eve of the 21st Century: Challenges and Options for a New Partnership (COM (96) 570 final, Brussels, 20/11/1996) xiii

<sup>421</sup>Cotonou Agreement Article 37 (1), Declaration XV Cotonou Agreement, also Declaration II, Joint Declaration on Cotonou Agreement Article 68 of the

<sup>422</sup>EU, European Parliament's recommendations to the Commission concerning the negotiation of Economic Partnership Agreements with the ACP countries and regions (Thursday, 26 September 2002 – Strasbourg),<https://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P5-TA-2002-0453+0+DOC+XML+V0//EN>, accessed: 31 October 2021;

(LDCs), similar to Lomé (duty and quota) free preferences under what is now known as the Everything but Arm (EBA) Agreement of 2001.<sup>423</sup> The EBA met the requirement of WTO compatibility as the regime was in line with the 1979 Enabling Clause.<sup>424</sup>

(a) *The Structure of the Economic Partnership Agreements*

As noted above, the Parties agreed to extensively alter the structure of the Lomé Convention in 2000 to solve the incompatibility issues with the multilateral trade rules.<sup>425</sup> According to Hurt, the EU's interpretation of the GATT Article XXIV was rigid, therefore, not disposed toward flexibility.<sup>426</sup> Gibb maintained that the EU premeditated to put WTO compatibility ahead and thus presented the change to the Lomé convention as the only alternative.<sup>427</sup> However, as noted above, The Lomé Convention did not come under any categories listed exceptions permitted by WTO law.<sup>428</sup> Therefore, the EU asked other WTO members for a waiver of Article I, which was granted.<sup>429</sup>

The WTO members need concessions as a trade-off for allowing the waiver. Protecting the interests of the ACP Countries had its price, which the EU could not continue to pay much longer.<sup>430</sup> As a result, the WTO granted the EU leave to allow the operation of the preference to be extended only for another seven years, giving the parties time to negotiate a WTO compatible agreement, EPA (2002-2007).<sup>431</sup> Instructively, the United States still grants preferential trade to Sub-Sahara Africa through AGOA because it recognised the economic power asymmetry between the two regions.<sup>432</sup> Nevertheless, an interviewee observed that AGOA would be replaced with reciprocal trade arrangements shortly. Therefore, ECOWAS should begin to comply with bilateral trade arrangements as specified under WTO law.<sup>433</sup>

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<sup>423</sup> EU, Regulation No 978/2012 Article 1 (2) (c) Official Journal of the European Union

<sup>424</sup> Officially called the 'Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries', adopted under GATT 1979

<sup>425</sup> Hurt, *op cit note* 36 at 174

<sup>426</sup> *ibid*

<sup>427</sup> Richard Gibb Post Lomé: The European Union and the South (2000) 21 (3) *Third World Quarterly* 457-481 at p 477 available at <https://doi.org/10.1080/713701046> accessed: 6 May 2021

<sup>428</sup> Achille Bassilekin, 'Possibility of obtaining a new ACP-EC waiver at the WTO' (ECDPM March 2007) 1-2 available at <https://ecdpm.org/wp-content/uploads/2013/11/DP-71-New-ACP-EC-Waiver-WTO-2007.pdf>, accessed 31 October 2021

<sup>429</sup> *ibid*

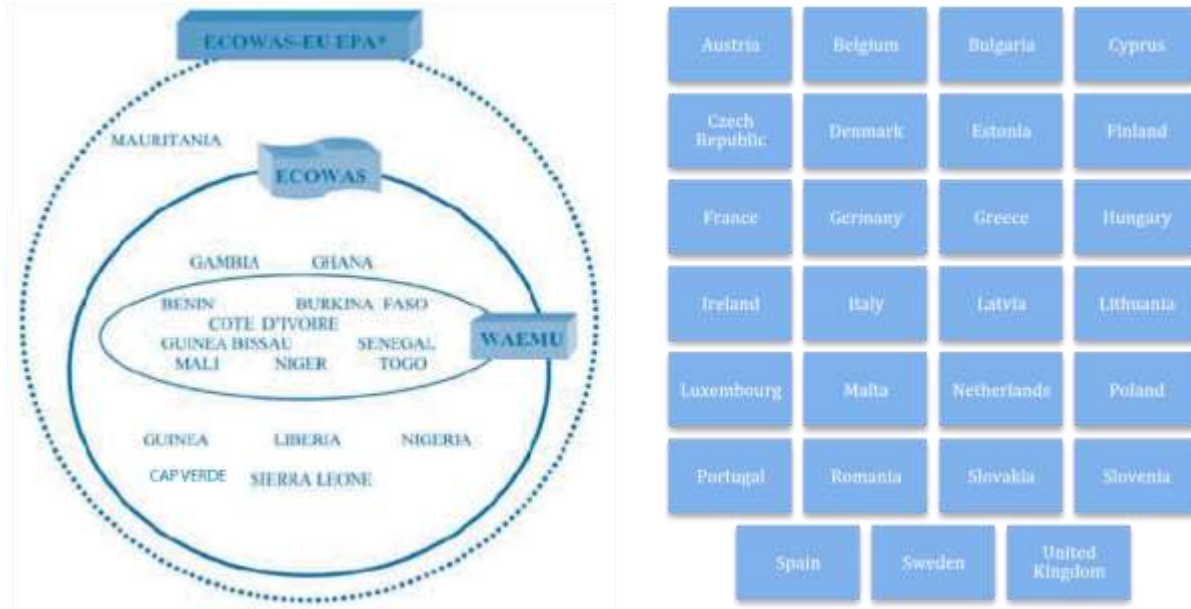
<sup>430</sup> *ibid*

<sup>431</sup> *ibid*; Hurt, *op cit note* 36 at 166

<sup>432</sup> Africa Growth and Opportunity Act (AGOA as amended), World Trade Organization for Trade in Goods, G/C/W/713 (16 July 2015) available at <https://agoa.info/images/documents/wtowaiveragoa2015.pdf>, accessed: 6/5/2019

<sup>433</sup> (Appendix)

(b) *The Negotiation: Ecowas Plus Mauritania-EU EPA*  
 Figure 1: West Africa and the European Union Member States<sup>434</sup>



West Africa: ECOWAS and UEMOA

The Economic Community of West Africa States (ECOWAS) was founded on 28 May 1975, through the treaty of Lagos.<sup>435</sup> Its main objective was economic integration and cooperation among the members. ECOWAS comprised 16 member states, but in 2000, the Islamic Republic of Mauritania withdrew to join the Maghreb Union, consisting of Libya, Morocco and Algeria.<sup>436</sup> However, for ease of EU-ECOWAS Economic Partnership negotiation, Mauritania joined West Africa—ECOWAS Member States. The ultimate aim of ECOWAS was to create an economic and monetary union to include free movement of persons, goods, capital, and services and common commercial policy and common external customs tariffs. In 1993, deeper cooperation on peace and security issues were made a part of the directive and objective. The West African Economic

<sup>434</sup>Understanding the West Africa European Union-Economic Partnership Agreement: Key Facts and Issues (ECOWAS Commission, UEMOA Commission and the European Centre for Development Policy Management (ECDPM), archival document, Abuja, 2012) 8

<sup>435</sup> Economic Community of West Africa States (ECOWAS): Basic Information, available at [www.ecowas.int](http://www.ecowas.int) accessed: 6 May 2021

<sup>436</sup> ‘Mauritania pulls out of ECOWAS, 28 December 2000, <https://www.thenewhumanitarian.org/news/2000/12/28/Mauritania-pulls-out-ecowas>, accessed: 31 October 2021; Michael Oduor, Mauritania Signed Partnership Agreement with ECOWAS (African news, 8 May 2017), <https://www.africanews.com/2017/05/08/mauritania-signs-partnership-agreement-with-ecowas/>, accessed: 31 October 2021

and Monetary Union (WAEMU or UEMOA)<sup>437</sup>, established in 1994, is a sub-regional arrangement to respond to the devaluation of the CFA Franc relative to the French Franc. It is a customs union and currency union. ECOWAS and UEMOA are far gone in the steps toward a West African Single market.<sup>438</sup> The focus has been on trade liberalisation and the harmonisation of macroeconomic policies.<sup>439</sup>

(c) *The European Union*

The European Union was established after the Second World War.<sup>440</sup> In the beginning, the aim was to advance and encourage economic cooperation and interdependence and through the process, minimise situations that would lead to violence, conflict and war. After this initial step, the EU project has broadened more rapidly to include institutional, political and cultural integration. The EU Single Market was formed in 1993 with a single currency.<sup>441</sup> Bretherton and Vogler succinctly describe the economic power status of the EU in the world.<sup>442</sup>

#### IV THE TRADE RELATIONSHIP BETWEEN WEST AFRICA AND THE EU

According to the document obtained from the ECOWAS archive,<sup>443</sup> trade between ECOWAS and the EU accounts for nearly 40 per cent of the total EU-ACP countries' trade, and therefore substantial for the economic relations between the EU-ACP countries. Nevertheless, ECOWAS' share of EU's total trade remains small at 1.2 per cent of EU imports originating from ECOWAS.<sup>444</sup> Meanwhile, 1.3 per cent of the EU's total export is directed to the ECOWAS region.<sup>445</sup> According to the ECOWAS report, the trade is mainly concentrated within a few countries in the region. The three non-LDCs, Nigeria, Ghana, and Cote d'Ivoire, account for almost all the exports to the EU. Nigeria alone accounts for 65 per cent of ECOWAS exports to the EU –

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<sup>437</sup> UEMOA is an abbreviation of its more common French name '*Union Economique et Monetaire Quest Africaine*'.

<sup>438</sup> Interview with official of ECOWAS (2020)

<sup>439</sup> *ibid*

<sup>440</sup> Dedman, *op cit note 360* at 51-81

<sup>441</sup> *ibid* at 136

<sup>442</sup> Bretherton & Vogler, *op cit note 59* at 59

<sup>443</sup> ECOWAS, Negotiation of the Economic Partnership Agreement: West Africa-European Community, Report on the Reference Framework of the Economic Partnership Agreement (EPA) Between the West Africa Region and the European Community (hereinafter ECOWAS report) (Final) 11

<sup>444</sup> *ibid*

<sup>445</sup> *ibid*

mainly Crude Oil and Minerals.<sup>446</sup> Apart from Oil, the EU also imports agricultural products from the region, while it exports mainly finished products and vehicles.<sup>447</sup> Trade between the regions has reduced in the past decade, but the EU continues to provide development aid to ECOWAS. For instance, in the 8<sup>th</sup> EDF (1996-2001), West Africa was granted €219m, while the 10<sup>th</sup> EDF (2008-2013) amounted to €645m for the West African region.<sup>448</sup>

Nevertheless, according to the ECOWAS report<sup>449</sup> examined, almost all the member states are preoccupied daily with the scourge of poverty. The HIV/AIDS pandemic, malaria, illiteracy, and conflicts have had an enormous ‘impact on the region’s governance, growth and stability.’ The report states that the ECOWAS region is the poorest of zones in the world. Besides Cape Verde and Ghana, all other states are considered low-level human development by the United Nations Development Programme (UNDP). The report mentioned above further states that social indicators remain unsatisfactory. An average of 50% of the total population lives below the poverty level. For zero to one year, the infant mortality rate is approximated at 109% against 92% for Sub-Saharan Africa. Primary and secondary school registration levitate around 65% and 15%, against 77% and 27% for Sub-Saharan Africa. Life expectancy is far from 50 years. The report further asserts that in the area of infrastructure, the ECOWAS region is impoverished. It is to a great degree behind other regions in the world in quantity, quality, cost and equality of access to infrastructure and basic amenities. As a consequence, the economies are uncompetitive. For example, the movement of goods and services is, to a large extent, strenuous, coupled with poor economic growth, which has impeded poverty alleviation.

According to the report, the key sectors of the economy are agriculture, livestock, forestry and fisheries. Agriculture represents between 30% and 60% of GDP in the region. It also employs the leading workforce ranging between 30% and 90%. The report further noted that in terms of industrialisation, the region is behind. With the production of 1.7 billion dollars, Cote d’Ivoire led West African manufacturing in 2000. Nigeria makes up 59% of the total manufacturing production of the region. The share increases to 80% when Senegal and Ghana are included. According to an

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<sup>446</sup> *ibid*

<sup>447</sup> Anyidoho E, ECOWAS-EPA Negotiations: State of Play, Seminar Tradecom/FEWACCI, 25-27 August 2010 Accra Ghana, [www.fewacci.org/index.php?option=com\\_eventlist&view=details&id=2%Aseminar+Tradecom%2FFEWACCI&Itemid=20&lang=en](http://www.fewacci.org/index.php?option=com_eventlist&view=details&id=2%Aseminar+Tradecom%2FFEWACCI&Itemid=20&lang=en) accessed: 7 May 2021

<sup>448</sup> *Ibid*

<sup>449</sup> ECOWAS, report at 7

interviewee, the economic gap between the EU and West Africa is too wide for the region to engage in such an all-encompassing opening of markets.<sup>450</sup> This is what Lang alluded to when he stated that the issue of development never featured in ‘embedded liberalism.’<sup>451</sup> In other words, Ruggie’s embedded liberalism did not consider those whose concerns are eclipsed in the multilateral trading system. Similarly, the bilateral and regional peripheral countries lack the capacity to negotiate favourable trade terms with core countries.<sup>452</sup> However, the EU assured the ACP countries of compliance with the Cotonou agreement on flexibility and gradual liberalization through special and differential treatment.<sup>453</sup>

(a) *Flexibility in the Legal Framework of the Cotonou Agreement*

The Cotonou Partnership Agreement was signed in 2000.<sup>454</sup> It contains the fundamental principles guiding the EU and 79 ACP countries.<sup>455</sup> The EU-ACP redefines their trade relationship to comply with the WTO rules by general agreement. Article 1 states the general aims of the agreement, while Article 19 (1) explicitly provides the main objective of the agreement between the EU-ACP Countries as ‘cooperation in poverty reduction and ultimately its eradication; sustainable development; and progressive integration of the ACP countries into the world economy.’<sup>456</sup> Paragraph 2 of Article 34 states: ‘The ultimate objective of economic and trade cooperation is to enable the ACP countries to play a full part in international trade.’ The basis for the provision in the sub-paragraph is for ACP Countries to become active participants in trade negotiations in the multilateral trading system.

However, observers have questioned the intentionality of the Cotonou Agreement. Weller interviewed ACP countries and EPA negotiators and found that the EU did not stand by

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<sup>450</sup> Interview with official of Manufacturing Association of Nigeria (MAN, 2020)

<sup>451</sup> Lang, *op cit note 48* at 99-100

<sup>452</sup> Akyuz, *op cit note 17* at 36; Woolcock, *op cit note 8* at 27

<sup>453</sup> Peter Mandelson The ACP-EU Relationship in the Global Economy Speech/04/505, ACP-EU Ministerial, Brussels, 1 December 2004) 2-3

<sup>454</sup> Cotonou Agreement, signed in Cotonou on 23 June 2000, Revised in Luxembourg on 25 June 2005, Revised in Ouagadougou on 22 June 2010

<sup>455</sup> Cotonou Agreement Articles 1 and 2; Geert Laporte, ‘The Cotonou Partnership Agreement: What Role in a Changing World? Reflection on the Future of ACP-EU Relations’ (European Centre for Development Policy Management, November, 2007) <https://ecdpm.org/wp-content/uploads/2013/10/PMR-13-coto...> (accessed: 30/6/2020)

<sup>456</sup> Cotonou Agreement Article 34

development rhetoric. ‘The EU portrays itself as the ally of developing countries-sensitive to their concerns and looking out for shared interests as a partner.’ Nevertheless, the outcome of negotiations revealed the contrary.<sup>457</sup> According to Oxfam, the trade agreement between the EU and the ACP States is a ‘classic free trade.’<sup>458</sup> There is not much between it and the EU-Chile and EU-Mexico trade agreement.<sup>459</sup> Observers raised concerns that the agreement could be detrimental to ACP countries’ development.<sup>460</sup> Weller and Ulmer<sup>461</sup> view the EPAs as another effort by developed countries (the EU) to impose an obsolete style of development founded on a neo-classical prescription that does not consider lessons from the historical development of advanced countries.<sup>462</sup>

There was a consensus on the EU-ECOWAS + Mauritania ‘Road Map’<sup>463</sup> that there should be sufficient time to allow capacity building in ACP countries’ public and private sectors.<sup>464</sup> Article 37 states that capacity-building shall be provided by the provisions of Title I and Article 35 to ACP countries’ public and private sectors during the negotiations of the Economic Partnership Agreements. The ‘capacity building’ is to improve the competitiveness and strengthen regional organisations, fiscal reform, improve and rehabilitate infrastructure.<sup>465</sup> The agreement’s aim was to ‘foster the smooth and gradual integration of the ACP States into the world economy, with due regard to their political choice and development priorities.’<sup>466</sup>

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<sup>457</sup>Christina Wellers, Dialogue of the Deaf: An Assessment of Europe's Developmental Approach to Trade Negotiations, (ICCO, 2008) 5 Available at <http://www.bibalex.org/baifa/Attachment/Documents/116861.pdf> accessed: 1 June 2020

<sup>458</sup>Oxfam, ‘Partnership or Power Play? How Europe Should Bring Development into its Trade Deals with African, Caribbean, and Pacific Countries’, (2008) 6 Available at: [http://www.oxfam.org/en/policy/bp110\\_EPAs\\_europe\\_trade\\_deals\\_with\\_acp\\_countries\\_0804](http://www.oxfam.org/en/policy/bp110_EPAs_europe_trade_deals_with_acp_countries_0804) (2008)

<sup>459</sup> *ibid*

<sup>460</sup> *ibid*

<sup>461</sup> Christina Weller & Ulmer K, Trade and Governance: Does Governance Matter for Trade? (2008) available at [www.aprodev.net/trade/files/Events/Trade-and-gov.pdf](http://www.aprodev.net/trade/files/Events/Trade-and-gov.pdf) Cited in Sanoussi Bilal, ‘Asymmetric Trade Negotiations for Development: What Does the Experience from the ACP-EU Economic Partnership Agreement Tell Us?’ in: Sanoussi Bilal, Philippe De Lombarde and Diana Tussie (eds) *Asymmetric Trade Negotiations* (2011) 57

<sup>462</sup> *ibid*; Reinert Erik S, *How Rich Countries Got Rich and Why Poor Countries Stay Poor* (2007)

<sup>463</sup> ECOWAS-EU, Joint ECOWAS-EC Technical Meeting on Negotiations of an Economic Partnership Agreement (Approved Road Map for Negotiation of the Economic Partnership Agreement between West Africa and the European Community) (Abuja 11-12 March 2004, document obtained from the ECOWAS archive)

<sup>464</sup> Cotonou Agreement Articles 30 (a), and 35

<sup>465</sup> Cotonou Agreement Article 37 (1)

<sup>466</sup> *ibid*

Some observers such as Reinert<sup>467</sup> have likened the contradictions to what Williamson called the ‘Washington consensus.’<sup>468</sup> For Rodrik, the Washington consensus is held as the core of ‘conventional understanding of a desirable policy framework for economic growth.’ Rodrik calls for the Washington Consensus reform because it has obstructive outcomes on others.<sup>469</sup> Stiglitz and Serra hold that recent experiences in aiding developing countries through the Washington consensus revealed that it failed because it is outdated.<sup>470</sup>

Perhaps, to distance itself from the Washington Consensus, the EU made provision for flexibility in the Cotonou Agreement. Article 7 provides that the economic impact of the trade measures to be adopted must allow the ACP countries to adjust to the process of liberalization. Thus, flexibility should be the keyword.<sup>471</sup>

However, the extent of special and differential Treatment proposals in the EU-ACP countries’ EPA became the key controversial topic during the negotiation of the EPA. A respondent interviewed stated that the EU declined to negotiate the key provisions and claimed it had passed that stage.<sup>472</sup> Several times, the ACP countries asked for flexibility but were refused. For instance, the Central Africans (CEMAC) proposed a liberalisation of 60 per cent spread for over 25 years. The EU remained adamant and continues to rely on the textual reading of the WTO rules. An interviewee commented that the EU ‘intentionally declined to pay attention to its obligation towards ECOWAS as provided under the Cotonou Agreement.’ In Mandelson’s own words, ‘as I have said over again, limiting trade opening to 60 per cent will not survive WTO scrutiny, and I would not consider signing an agreement I could not successfully defend in Geneva. I believe that your development objectives are best served by going far beyond 80 per cent.’<sup>473</sup>

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<sup>467</sup> Reinert *op cit note* 462

<sup>468</sup> John Williamson, ‘What Washinton Mean by Policy Reform’ in John Williamson (ed) *Latin American Adjustment: How Much Has Happen?* (DC: Institute for International Economics, 1990) cited in Dani Rodrik, *One Economics, Many Recipes: globalization, Institutions, and Economic Growth* (2007) 16

<sup>469</sup> *ibid* Rodrik at 57

<sup>470</sup> Serra Narcis and Joseph E Stiglitz (eds) *The Washington Consensus Reconsidered: Towards a New Global Governance* (2008) 42-7

<sup>471</sup> The Cotonou Agreement Article 37 (4)

<sup>472</sup> Oluwatoyin Durojaiye Director, MAN (Abuja, 2020)

<sup>473</sup> EPA Ministerial Meeting with Central Africa, Introduction Statement by Peter Mandelson (Brussels, 29 October, 2007) cited in Wellers, *op cit note* 457 at 14

Mandelson insisted that substantially all the trade is more than 60 per cent, and development needs are best served with strict application of GATT Article XXIV.<sup>474</sup>

## V ARTICLE XXIV OF GATT/WTO AND EU-ECOWAS EPA

The GATT was drafted in 1947. It was the aspiration of founding members to promote free trade to the most significant extent possible.<sup>475</sup> In order to achieve this objective, Article 1 (1) made provision for the most favoured nation (MFN) clause, which requires that any advantage or privilege extended by any member on any product originating in other member states shall be accorded immediately and unconditionally to all like product of all other members.<sup>476</sup>

However, as GATT contracting parties could not agree on MFN treatment without exception, Article XXIV permitted a deviation from Article 1 (1) GATT for customs unions and free trade areas if the conditions as set forth in the clause are met.<sup>477</sup> According to Hilpold, Article XXIV stopped MFN from functioning stringently.<sup>478</sup> The focus in this thesis is Article XXIV:8 and XXIV:5. The provision of ‘substantially all the trade.’ requires that in the establishment of a customs union and free trade area, duties and restrictive trade regulations should be eliminated between the members.<sup>479</sup> The application of Article XXIV has not been without controversy. The provision is believed to suffer ambiguity, as the research discussed below.

According to Jacob Viner, Article XXIV of GATT has become a veritable nuisance to scholars who have attempted to decipher its content. While agreeing to the reality that to some extent, bilateral trade can reduce the barriers to trade with some economic gain, Viner, a devotee of classical liberalism, a fierce defender of the MFN principle, argued that ‘customs union are not important, and are unlikely to yield more economic benefit than harm.’<sup>480</sup> The world has reverted

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<sup>474</sup>EPA Ministerial Meeting with Central Africa, Introduction Statement by Peter Mandelson (Brussels, 29 October, 2007) cited in: Wellers, *op cit note* 448

<sup>475</sup> Huber, *op cit note* 16 at 281

<sup>476</sup> Peter Van den Bossche and Werner Zdouc, *The Law and Policy of the World Trade Organization: Text, Cases and Materials* (fourth edition) (2017) 306-7

<sup>477</sup> *ibid* 680-1

<sup>478</sup> Peter Hilpold ‘Regional Integration According to Article XXIV GATT—Between Law and Politics’ (2007) 7 *Max Planck Yearbook of United Nations Law*, 219-260 at 232

<sup>479</sup> GATT Article XXIV

<sup>480</sup>Jacob Viner & Paul Oslington (eds) *The Customs Union* (2014) xiv and xviii, Professor Paul Oslington in his introduction to the work of Viner described him as an astute believer of classical liberalism protector of the MFN principle.

to the 1930 'from which all sensible men and women had recoiled due to the rapid increase in Preferential Trade Agreement (PTA).'<sup>481</sup>

In Bhagwati's words, 'PTA is a pandemic and a pox on the world trading system'.<sup>482</sup> Panagariya *et al.* stated that PTA is 'a stumbling block to multilateral liberalisation', 'developed countries prefer it because it is more advantageous to them as they can utilise their power to the maximum to make smaller countries accept meagre offers.' In a dissenting opinion, the WTO Panel in the case of Turkey made the pronouncement that PTA is 'a means of increasing freedom of trade'.<sup>483</sup> Article XXIV:4 provides that the contracting Parties recognised the 'desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries, parties to such agreement'.<sup>484</sup> Bhagwati further questioned the policy underlying the creation of Article XXIV. He believes that it is not only 'an intellectual failure' to believe that PTA would free trade, but the strict conditions provided in XXIV have been weakened due to a lack of compliance.<sup>485</sup>

Several reasons have been given as to Why the GATT deviates from the MFN principle. According to Patterson, the Benelux countries delegation proposed that the non-discriminatory regulation be amended to allow OEEC countries to carry on discrimination among the members at the GATT meeting held in 1954.<sup>486</sup> The Benelux argument was that it would allow for closer economic integration.<sup>487</sup> The Canadian Minister of Trade, supported by several members, argued that no doubt, the OEEC-European Payment Union (EPU) deal assisted its members to advance their economies. Nevertheless, according to the Minister, regional grouping is 'a notoriously weak and unstable basis for trade'.<sup>488</sup> It is only in exceptional situations that it can be formed for a short

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<sup>481</sup> Jagdish Bhagwati, *Termite in the Trading System: How Preferential Agreements Undermine Free Trade* (2008) 14

<sup>482</sup> *ibid* at 15

<sup>483</sup> Report of the Panel, Turkey Restrictionists on Imports of Textile and Clothing Products, WTO Doc. WT/DS34/R, para. 2.2 (31 May, 1999) [hereinafter, Panel Report on Turkey's Restrictions on Textile].

<sup>484</sup> Article XXIV:4, WTO Analytical Index, GATT 1994-Article XXIV (Jurisprudence) [http://www.wto.org/english/res-e/publications-e/ai17\\_e/gatt19](http://www.wto.org/english/res-e/publications-e/ai17_e/gatt19). accessed: 3/7/2020; John Jackson, *The Jurisprudence of GATT & the WTO: Insight on Treaty Law and Economic Relations* (2000) 64

<sup>485</sup> Jagdish *op cit note* 472

<sup>486</sup> Patterson, *op cit note* 282 at 105

<sup>487</sup> *ibid* 105-6

<sup>488</sup> *ibid*

time and where unusual circumstances exist.<sup>489</sup> However, Patterson notes that the OEEC had become a stumbling block to multilateral progress, whether short or long term.<sup>490</sup>

As mentioned above, the method of interpretation of GATT Article XXIV has been a subject of controversy.<sup>491</sup> According to Obote Ochieng, applying a literal interpretation to Article XXIV would be problematic for the ACP Countries.<sup>492</sup> Even under domestic laws, judges are observed to be wary of textual interpretations. For example, Ramnath thinks that the criticisms against the literal rule are twofold: first, ‘logical defects which constitute ambiguity, inconsistency and incompleteness, and second, is absurdity or irrationality’.<sup>493</sup> Article XXIV seems to suffer from the defects enumerated by Ramnath. The focus here is not to debate how rules are interpreted under the domestic legal system but to show that rules are interpreted in such a way that it would avoid substantial injustice—especially when it is couched in an ambiguous term. For example, Article XXIV, according to Haight, the EU finds it vastly adaptable, while smaller countries consider it ‘complex’, ‘ambiguous’ and ‘vague’.<sup>494</sup> Angulo and Ito have called for the provision to be redrafted to give it clarity.<sup>495</sup> Criticising the defectively drafted Article XXIV, Hilpold expresses that it is hard to ‘discover an underlying settled economic theory’ and how the GATT/WTO law<sup>496</sup> should faithfully implement it. An observer argued that an accurate description of the Article is a challenge.<sup>497</sup> According to Dam, Article XXIV is ‘deceptive.’<sup>498</sup> On its face, the Article gives the impression of one well-thought-out, but it ‘makes little economic sense.’ The most discouraging aspect of the law is that no FTA has complied with Article XXIV since its promulgation.<sup>499</sup> Nevertheless, the FTA agreements are implicitly or explicitly approved.<sup>500</sup>

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<sup>489</sup> *ibid*

<sup>490</sup> *ibid*

<sup>491</sup> Huber, *op cit note 16* at 282

<sup>492</sup> 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’ Vol (2007) 10 (2)) *JIEL* 363-395 at 364

<sup>493</sup> Aiyer P Ramnathan, *Law Lexicon* 2ed (2002) p 1134

<sup>494</sup> F.A. Haight, ‘Customs Unions and Free Trade Areas Under GATT: A Reappraisal’, 6 *Journal of World Trade Law* (1972) 391 (emphasis added)

<sup>495</sup> Bonapas Ongulo & Ito Taisuke, ‘In Defence of the ACP Submission on Special and Differential Treatment in GATT Article XXIV’, ECDPM Discussion Paper 67, ECDPM, Maastricht (2005)

<sup>496</sup> Hilpold *op cit note 469*

<sup>497</sup> Kenneth W Dam, ‘Regional Economic Arrangements and the GATT: The Legacy of a Misconception’ (1963)30 (4) *The University Law Review* 615-616 at 619

<sup>498</sup> *ibid*

<sup>499</sup> *ibid*

<sup>500</sup> *ibid*

(a) *Examples Of Non-Compliance with Article XXIV of GATT*

As noted above, no FTA agreement has squared up to the provision of Article XXIV.<sup>501</sup> Nevertheless, such an agreement had been tacitly or explicitly approved in the past.<sup>502</sup> For example, The Southern Rhodesia and Union of South Africa was the first customs union presented before the Contracting Parties in 1948. It came into force on 1 April 1949<sup>503</sup> and was an interim agreement.<sup>504</sup> Although it was intended that restrictions on other forms of internal trade would be removed and common tariffs adopted subsequently, there was no scheduling in the agreement stipulating a specific date for eliminating the tariff and adopting a common tariff.<sup>505</sup> The interim agreement violated Article XXIV of the GATT/WTO because of the failure to include a timetable of the customs union.<sup>506</sup>

The fundamental principle of the trade relationships between Southern Rhodesia and Southern African countries and the Interim Agreement was to eliminate quantitative restrictions in Articles 10, 11 and 12.<sup>507</sup> The restrictions were listed in Annexure D<sup>508</sup> and only provided for review from time to time, without specific dates.<sup>509</sup> The two governments were allowed to extend preferential treatment to each other regarding products that were not particularly competitive but were permitted to delay for five years before deciding on products, where eliminating tariffs would bring about fierce competition.<sup>510</sup> The parties to the customs union (CU) remedied the deficiency by taking responsibility. Another point argued was whether the ten-year period allowed for the parties to bring the customs union into compliance was in excess. The Working Party agreed not to focus on the ten years because of the guarantee from the parties. The period provided was not ‘a reasonable time’ as envisaged by Article XXIV.<sup>511</sup> Nevertheless, the Working Party endorsed the interim agreement as modified by the parties. Subsequently, the Contracting Parties issued a

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<sup>501</sup> Huber, *op cit* note 16 at 296

<sup>502</sup> *ibid*

<sup>503</sup> General Agreement on Tariffs and Trade, Report of Working Party 4 on South Africa-Southern Rhodesia Customs Union (Report to the Contracting Parties, Contracting Parties Third Session, 14 May 1949), (hereinafter, GATT/CP3/24) 9, <https://docs.wto.org/gattdocs/q/GG/GATTCP3/24.PDF> accessed: 18 May 2021; Dam, *op cit* note 163 at 619

<sup>504</sup> *ibid* at 9

<sup>505</sup> *ibid* at 5-6

<sup>506</sup> Dam, *op cit* note 497 at 635

<sup>507</sup> GATT/CP3/24

<sup>508</sup> *ibid*

<sup>509</sup> *ibid*

<sup>510</sup> Dam, *op cit* note 497 at 636

<sup>511</sup> GATT/CP3/24 at 7

declaration that Rhodesia and the Union of South Africa were entitled to claim the benefits of the provisions of GATT under Article XXIV.<sup>512</sup>

Another instance was the case of El Salvador and Nicaragua. In 1951, they signed a free trade agreement that was not in compliance with the provision of XXIV on two grounds:<sup>513</sup> first, the ground was technical. El Salvador was not a signatory to GATT. as such, it contradicted paragraph Article XXIV:5 since free trade areas must be ‘between the territories of contracting parties.’ The second ground was ‘substantially all the trade’ as provided under Article XXIV:8 (b). The agreement allowed quantitative restrictions between the members in some situations.<sup>514</sup> The Contracting Parties granted a waiver under the provisions of paragraph 10 of Article XXIV that the government of Nicaragua was entitled to benefit from the provisions of Article XXIV. However, Contracting Parties decided to review the decision based on the report furnished to it by the government of Nicaragua.<sup>515</sup>

The European Coal and Steel Community (ECSC) represents a classic example of a lack of compliance with GATT Article XXIV: First, according to Dam, there was a complete departure from the framework of Article XXIV. In his view, it is ‘impossible to pretend that the article’s requirements were met.’<sup>516</sup> ECSC did not meet the description of a customs union (CU) or free trade area (FTA) within the context of Article XXIV; second, only coal and steel were covered. It is, thus, far from ‘substantially all the trade’ between the constituent territories in products originating in the ECSC member countries.<sup>517</sup> Assuming the two issues could be ignored because ECSC was new and tested for the first time on compliance with Article XXIV, according to Dam, some provisions could not be overlooked because they were not in agreement with Article XXIV or the general provisions of GATT.<sup>518</sup> For example, as a high-cost manufacturer, Italy was to maintain barriers against other ECSC Members. The Benelux countries were allowed to increase some duties to ‘facilitate harmonisation of ECSC external tariffs.’<sup>519</sup> None was extended to other

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<sup>512</sup> *ibid* at 9

<sup>513</sup> GATT, Item 23: Nicaragua—El Salvador Free Trade Area (GATT, Contracting Parties, Sixth Session, GATT/CP.6/24/Add.1, 22, October 1952) available at <https://docs.wto.org/gattdocs/q/GG/GATTCP6/24A1.PDF> (19 May 2021)

<sup>514</sup> GATT/CP.6/24/Add.1, 3-4

<sup>515</sup> GATT/CP.6/24/Add.1, 3-4; *op cit note* 201 at 637

<sup>516</sup> Dam, *op cit note* 497 at 138

<sup>517</sup> GATT Article XXIV (8) (a) (i)

<sup>518</sup> Dam *op cit note* 497 at 138

<sup>519</sup> *ibid*; Patterson, *op cit note* 97 at 106, 190

contracting Parties as GATT requires.<sup>520</sup> Belgium was given an allowance to continue quantitative restrictions on coal for seven years. This was to enable it to protect weak collieries.<sup>521</sup>

Notwithstanding the apparent departure from the provisions of Article XXIV, the contracting parties instantly and unanimously granted a waiver.<sup>522</sup> According to Dam, overwhelming support for the Six could either be political, based on extreme faith in the economic assurance of the ECSC, or the absence of confidence in the GATT.<sup>523</sup> However, the main reason for non-compliance with the agreement is because, as noted in chapter one, the members disagreed on the right interpretation due to economic and political reasons.<sup>524</sup>

ECSC extended its coverage to other economies by forming the European Economic Community. The Customs union and free trade area had to pass the Article XXIV test. In order to examine the Treaty of Rome and ensure its compliance with Article XXIV, four sub-Groups were set up. Sub-Group A was to examine the Common External Tariff (CET). Sub-Group B had the task of examining Quantitative restrictions. Sub-Group C was to examine Agriculture. The Treaty of Rome calls for the systematic elimination of internal restrictions.<sup>525</sup>

According to Dam's account, the Working Party could not arrive at any concrete resolution on the legal issues raised after examining the provision.<sup>526</sup> The Working Party did not give due attention to the consequences of discrimination between members and those the quantitative restrictions were imposed.<sup>527</sup> The provision in the Treaty of Rome on Agriculture poses some unusual challenges.<sup>528</sup> Even though agricultural commodities regulation comes under GATT, overproduction and protectionism were the norm in industrialised countries.<sup>529</sup> Dam states that the Six confidently declared that agriculture could not flow freely in the Community.<sup>530</sup>

The sub-group believed that there was a compelling supposition that the agricultural provision would increase external barriers. The majority decided that it is not practicable to

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<sup>520</sup>Mead, Liesner, & Christina Wells, Case Studies in European Economic Union 1962, 408-09) cite in Dam, *op cit* note 488 at 368

<sup>521</sup> *ibid*

<sup>522</sup>Patterson, *op cit* note 96 at 128

<sup>523</sup>The Report of the Working Party, GATT, Basic Instruments, 1st Supp., at 85 (1952); ECSC Treaty and the General Agreement GATT, Basic Instruments, 1st Supp., at 17-19 (1952), cited in Dam *op cit* note 207 at 368

<sup>524</sup> Huber *op cit* note 16 at 295

<sup>525</sup>Treaty of Rome, article 30-37, 104-09 (1957)

<sup>526</sup> Dam *op cit* note 497 at 644

<sup>527</sup> *ibid* at 644

<sup>528</sup>Treaty of Rome, Articles 38-47

<sup>529</sup> Mutasa, *op cit* note 294 at 138

<sup>530</sup> Dam *op cit* note 497 at 644

ascertain whether the provision is compatible with GATT agricultural provisions or their implementation in the future. The majority asked the Six to create liaison machinery with the Contracting Parties regarding the enforcement of the agricultural provisions, but the Six declined.<sup>531</sup>

Sub-Group D examined the Association of Overseas Territories. As mentioned above, France, Belgium, and the Netherlands negotiated several preferential commercial arrangements with some colonies under the Rome Treaty.<sup>532</sup> According to Dam, the EEC made an effort to explain that the creation of the association was a free trade area and that it satisfied paragraph 8 (b) of Article XXIV.<sup>533</sup> This position from the EEC Member states generated rancorous arguments among other Contracting Parties. For the sub-Group D, the EEC arrangement with the associated territories was an extension of a subsisting preferential commercial agreement with no breach of the MFN principle. The Six remained inflexible on all the legal issues raised and contended that no obligation could be imposed on the Six until provisions dealing with ‘substantially all’ had been adequately defined.<sup>534</sup> During the Thirteenth Session of October and November of 1958, the Working Party recommended that ‘it would be more fruitful, if attention could be directed to specific and practical problems, leaving aside for the time being questions of law and debates about the compatibility of the Rome Treaty with Article XXIV.’<sup>535</sup>

These contradictions and various interpretations of Article XXIV of GATT were evident in the recently negotiated EPA between the EU and ECOWAS.

*(b) Interpretation of GATT Article XXIV*

As mentioned above, the interpretation of the provisions of Article XXIV generated heated arguments between the EU and ACP groups.<sup>536</sup> From the disagreement over the right interpretation of the Article, the West African trade coalition commissioned a study to be carried out on Article XXIV.<sup>537</sup> The result of the research eventually formed part of the negotiating process. The EPA negotiating process in West Africa made use of non-state actors extensively. The 15 ECOWAS

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<sup>531</sup> *ibid* at 647

<sup>532</sup> *ibid*

<sup>533</sup> *ibid*

<sup>534</sup> *ibid* at 648

<sup>535</sup> GATT, BASIC INSTRUMENTS, 7TH SUPP., AT 70, 1958 cited in Dam, *op cit* note 163 at 651

<sup>536</sup> Obote Ochieng *op cit* note 80 at 364; Aniekan Ukpe & Ken Ukaoha, West Africa’s EPA: Defining a Pro-Poor Market Access Offer, (2009) *Trade Policy Monitor* 2 (4) 6-7

<sup>537</sup> Interview Conducted by Silke Trommer with Representatives Bathie Ciss & Cheikh Tidiane Dieye, (16 and 28 July 2009, Dakar)

Member States + Mauritania negotiating team was made up of public officials, ‘private sectors representatives’ and ‘civil society representatives.’<sup>538</sup> There were four organisations: national civil society platforms representing farmers’ associations, Non-Government Organisations (NGOs), trade unions and women’s rights groups. The eight-member organisations are African development and global justice NGOs and two other trade unions—the National Association of Nigeria Traders (NANTs) and private sector representatives.<sup>539</sup> The coalition was made of 11 out of 16 negotiating countries with a civil and not well-organised on-trade policy in Cape Verde, Guinea-Bissau, Liberia, Mauritania, and Sierra Leone. Few members of the coalition enjoy international visibility, such as ENDA Third World (Senegal), Third World Network (Ghana), and National Association of Nigerian Traders (Nigeria). These three are no strangers to international trade campaign in Africa and at the global level.<sup>540</sup> According to an interviewee, these organisations made the point that asymmetry, as provided in the agreement’s text, is insufficient to promote the interests of the ACP Countries, ECOWAS inclusive.<sup>541</sup>

The EU is convinced that the asymmetrical provision of 80 per cent liberalisation by the West African<sup>542</sup> countries and 100 per cent by the EU in the negotiated IEPA are balanced and take care of asymmetry between the two regions.<sup>543</sup> Therefore, 100 per cent was proposed and agreed upon for markets opening for the ACP producers in return for 80 per cent liberalisation on the ACP countries. This interpretation of Article XXIV by the EU ensures legal certainty. According to the EU, a contrary meaning will not be acceptable by the WTO law.<sup>544</sup> Obote Ochieng argued that 80 per cent liberalisation would jeopardise the economy of West Africa.<sup>545</sup>

The West African Peasants’ movement ROPPA observed in 2006 that ECOWAS could only afford to liberalise 50 per cent with the EU to ensure food security.<sup>546</sup> The National

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<sup>538</sup>ibid

<sup>539</sup>POSCAO, Negotiation of an EPA between West Africa AND THE European Community: Capacity Building Programme, Regional Strategic Planning Seminar (ENDA, Dakar, 2004)

<sup>540</sup>Silke Trommer *op cit note 597*

<sup>541</sup> Interview with MAN official Abuja, 2020

<sup>542</sup> Evita Schmieg, ‘EU Economic Partnership Agreement in Sub-Saharan Africa’ (German Institute for International and Security Affairs, January 2014) 3

<sup>543</sup>Oxfam, ‘Breaking the Spirit of Cotonou-A Critique of the EC’s Approach to the Economic Partnership Agreement Negotiations with ACP Countries, Background’ Briefing (2007)3  
<https://news.peacefonline.com/news/200909/27912.php>

<sup>544</sup> Obote Ochieng *op cit note 80* at 95

<sup>545</sup> ibid

<sup>546</sup>ROPPA, *proposition du ROPPA pour la mise en oeuvre et la defense de la politique agricole de la CEDEAO* (ECOWAP, Ouagadougou: ROPPA, 2007)

Association of Nigeria Traders (NANTS), a Nigerian based organisation, for instance, did forecast that the large-scale trade liberalisation proposed by the EU can only bring about ‘loss of government revenue, an influx of goods and import surge, capital flight, de-industrialisation, labour dislocation and job losses, insecurity and poverty escalation.’<sup>547</sup> The West African trade coalition that canvassed with ROPPA disapproved of the arrangement because of its impact on economic development if the proposed liberalisation was followed.<sup>548</sup> On the other hand, the EU argued that the extent of the market liberalisation was not on political grounds but in compliance with Article XXIV of the GATT.

Although the EU tried hard to make the ACP countries see the advantages of signing the EPAs, the coalition members did not believe the ‘substantial all the trade’ clause was in their economic interests.<sup>549</sup> The coalition representative questioned the textual reading of Article XXIV of the GATT and subsequently explored other ways of interpreting the GATT provision. El Hadi Diouf, the head of the EPA programme at the International Centre for Trade and Sustainable Development in Geneva, was commissioned by the coalition to examine Article XXIV’s content critically.<sup>550</sup> Diouf dissected the many parts of the provisions in his study. The chief concern in his study was ‘substantially all the trade’. In the presentation of ‘substantially all the trade’, Diouf posited that there is no benchmark for interpreting ‘substantially all the trade’ evident in international trade law.<sup>551</sup>

Contrary to the EU’s view, jurisprudence and state practice allow flexibility if a textual interpretation of a law will work hardship. The WTO Dispute Settlement Body (DSB) recognised that the rule of interpretation in the Vienna Convention on the Laws Treaties (VCLT) is applied in international jurisprudence.<sup>552</sup> This means that states’ practice and judicial interpretation can be used for interpretation, as shown in legislative preparatory works.<sup>553</sup> In the Turkey-Textile case, the DSB Panel stated that the wordings of Article XXIV are of sub-optimal clarity and have been

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<sup>547</sup>Ukaoha K, ‘Reasons Why Nigeria Could Not Sign the EPA’ Trade Policy Monitor, 1 (2), 1-11, UN-OHRLLS and UN-NGLS (2008), cited in Trommer, *op cit note 528*

<sup>548</sup> *ibid*

<sup>549</sup> Goodison Paul, ‘EU Trade Policy and the Future of Africa’s Trade Relationship with the EU’ (2007) 34 (112) *Review of Africa Political Economy* 247-266 at 141; Hurt *op cit note 31*

<sup>550</sup> Interview with coalition representative Cheikh Tidiane Dieye, 27 April 2009, Geneva (2009) Trommer *op cit note 528*

<sup>551</sup> *ibid*

<sup>552</sup> Appellate Body Report on United States - Standard for Reformulated and Conventional Gasoline, WT/DS2/AB/R, adopted 29 April 1996

<sup>553</sup> Obote Ochieng *op cit note 80*

the object of various, sometimes opposing views among individual contracting parties and Members, as well as academic literature.<sup>554</sup> The GATT Contracting Parties and WTO members have not agreed on the correct meaning of ‘substantially all the trade’.<sup>555</sup> In his expert opinion, Diouf says the provision does not in any way impose 80 to 90 per cent liberalisation.<sup>556</sup>

## VI CONCLUSION

The chapter applied Cox’s critical theory to understand that the power posturing employed by the EU to protect its interests in GATT was exported into its negotiations and trade relations with ECOWAS states.<sup>557</sup> The insight gained from critical theory assists the research in understanding the interests underlying the EU-ECOWAS EPA. While the EU posits that the relationship is among equal partners, several observers doubt the genuineness of such partnerships between the parties because the economic power is asymmetrical.<sup>558</sup> Negotiations among unequal parties can only produce favourable results for industrialised countries.

Following the historical trace of the ACP trade relationship with the EU using the theoretical framework as an analytical tool, the following chapters turn to explore individual ECOWAS countries’ experiences in the EPA negotiations. This will assist in unpacking the questions posed by the adopted view of the thesis, of whether the agreements complement the developing country’s interests as they purport to do and what forces compel the actors to behave in the way they do.

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<sup>554</sup>Panel Report on Turkey -Restrictions on Imports of Textile and Clothing, WT/DS34/R, adopted 31 May 1999

<sup>555</sup>Appellate Body Report on Turkey - Restrictions on Imports of Textiles and Clothing, WT/DS34/AB/R, adopted 22 October 1999

<sup>556</sup> Trommer *op cit note* 597

<sup>557</sup> Cox *op cit note* 204 at 128

<sup>558</sup> Rob de Vos, ‘Europe, Africa and Aid: Towards a Genuine Partnership in: Adekeye Adebajo and Kaye White (eds), *The EU and Africa from Eurafrique to Afro-Europa* (2012) 105; Guy *op cit note* 367 at 226

## CHAPTER FOUR: HISTORICAL TO PRESENT-DAY TRADE IN GHANA

### I INTRODUCTION

Sekou Toure wrote in 1962 that for the challenges of Africa to be adequately discerned, examined, and a solution found; one must take into account ‘historical, economic, social, moral and cultural conditions which shape African’s particular identity in the world—elements of the African evolution’.<sup>559</sup> Similarly, in the critical theory enunciated by Cox, he opined that critical theory is termed critical because it distances itself from the established norm of the world order and critically questions how the world originated in the first place.<sup>560</sup> Cox holds that several factors heightened the economic asymmetry between the African countries and the EU.<sup>561</sup> According to his perspective, the structure bequeathed by the colonial system forged no close link with the people. The share of economic products in Africa is fought over to be divided between the external investors and the power that controls the state.<sup>562</sup> In the above context, this chapter explores the state of Ghana’s level of development since 1957, when it gained independence from Britain.

This chapter argues that the special and differential treatment provided in the text of the EU-Ghana Economic Partnership Agreement (EPA) is insufficient to meet the economic development aspiration of Ghana. This is explored against the backdrop of economic policy and economic development level in Ghana to ascertain whether the country can compete at a reciprocal level with the EU. In order to gain insight, the chapter explores the economic strategy adopted when Kwame Nkrumah became the first President in 1957.

The remaining part of this chapter proceeds with section 2, discusses Ghana’s move toward liberalisation and programme formulated to eradicate poverty. Section 3 explores the strategy adopted to boost agriculture and its role in the economy. Section 4 examined the state of infrastructure to determine whether the country can compete and take advantage of the exceptions in the EPA text. Section 5 discusses the EU’s strategic use of the idea to obtain the EU-Ghana EPA. Section 6 concludes the chapter.

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<sup>559</sup> Sékou Touré Africa's Future and the World Foreign Affairs, Oct., 1962, Vol. 41, No. 1 (Oct., 1962), pp. 141-151 at 142

<sup>560</sup>Cox, *op cit note 47* at 158

<sup>561</sup>Cox, *op cit note 51* at 113

<sup>562</sup> *ibid* at 113-114

## II GROWTH THROUGH LIBERALISATION

Ghana obtained independence from ex-colonialist Britain in 1957.<sup>563</sup> Kwame Nkrumah's regime adopted and promoted inward-directed economic policies. Upon his overthrow from power, the country adopted various policies for economic growth. According to Ackah and Baah-Boateng, the strategies were characterised, for the most part, by abysmal economic performance and military coup d'état extending through to the 1980s.<sup>564</sup> The authors maintained that Ghana's economic policies lacked market principles, marked by incessant price and income controls. There was the scenario of a disordered economy, low productivity, excessive and unpredictable prices, overvalued currency, and overpriced interest rates. In such adverse, according to the authors, investment conditions, investors, and government officials found it highly profitable to manipulate economic conditions to increase profits and other corrupt practices instead of engaging in growth improvement activities.<sup>565</sup>

Nevertheless, the restoration of multi-party democracy and constitutional rule in the 1990s stimulated economic and political stabilisation.<sup>566</sup> The country adopted a standard market policy focused on stabilisation, which encouraged investor confidence, and provided an enabling environment for the private sectors to thrive.<sup>567</sup> Ghana was used as an example of economic success in Africa by the International Monetary Fund (IMF) standards. However, according to Killick, a significant part of the workforce was involved in vulnerable employment, characterised by the informal labour market. It was gathered that more than a quarter of all households were plunged into abject poverty.<sup>568</sup> Killick argued that the economy was swamped with vulnerable employment and a steady rise in poverty.<sup>569</sup> Huq and Tribe noted that Ghana's economy declined due to extensive economic mismanagement and adverse external economic factors.<sup>570</sup> Consequently, some economic reform was carried out in the early 1980s.<sup>571</sup>

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<sup>563</sup> S A de Smith, 'The Independence of Ghana' (July 1957) 20 (4) *The Modern Law Review* pp 347-363 at 350, 1-2

<sup>564</sup> Charles Akah & William Baah-Boateng, 'Trends in Growth, Employment and Poverty in Ghana' in Charles Ackah & Ernest Aryeetey (eds), *Globalisation, Trade and Poverty in Ghana* (2012) 33

<sup>565</sup> *ibid* at 33-49

<sup>566</sup> Sergio Pereira Leite, Anthony Pellechio, Luisa Zanforlin, et al *Ghana: Economic Development in a Democratic Environment* (2000) 1

<sup>567</sup> *ibid*

<sup>568</sup> Toney Killick, *Development Economic in Action: A Study of Economic Policies in Ghana* 2 ed (2010) 457

<sup>569</sup> *ibid* at 433

<sup>570</sup> Mozammel Huq and Michael Tribe, *The Economy of Ghana: 50 Years of Economic Development* (2018)11-19

<sup>571</sup> *ibid*

In reaction to the economic crisis of the 1980s, the Ghanaian government signed the Structural Adjustment Programme (SAP), drawn up by the International Monetary Fund (IMF) and the World Bank.<sup>572</sup> The policy's emphasis was on removing price controls, privatisation of industries, eliminating subsidies, adopting free trade, and conventional economic liberalisation. The government of Ghana began to implement these policies conscientiously in 1983. SAP aimed to improve the standard of living by means of intervening targets to ensure growth and maintain stability in the economy. The conditions mentioned above are to improve efficiency in the management of the economy.<sup>573</sup>

(a) *Ghana's Economic Recovery Programme: 1983-1989*

The Provisional National Defence Council in 1982 put forward a recovery plan. The plan's purpose was to prevent Ghana's crumbling economy caused by mismanagement and extensive government interference in the economy.<sup>574</sup> One of the main characteristics of the programme was its supervision by the IMF and World Bank. It was believed, that supervision by the institutions would 'rectify the economic imbalance and distortions that contributed to the stagnation and decline of the economy in the 1970s and the early 1980s'.<sup>575</sup> The first phase commenced in 1983-1986. The four-period was devoted to stabilisation and consolidation to prepare for the launch of a three-year medium-term, 1984-1986. The phase outlined the following policy measure to be embarked upon. First, to establish a practical exchange rate; secondly, the government proposed a fiscal policy to remove the high deficit in the government budget plan. Thirdly to address the challenges associated with production.<sup>576</sup>

The second phase covered the period between 1987-1989; the reform included selling off government assets through privatisation and drastic foreign exchange reforms, which involved the devaluation of the cedi. According to Laryea and Akuoni, the period witnessed a complete focus

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<sup>572</sup> Ho-Won Jeong 'Liberal Economic Reform in Ghana: A Contested Political Agenda (1995) 42 (4) *Africa Today* pp 82-104

<sup>573</sup> Frahad Noorbakhsh and Shadan Noorbokhsh, 'The Effects of Compliance with Structural Adjustment Programmes on Human Development in Sub-Saharan Africa' in Alberto Paloni and Maurizio Zanardi, *The IMF, World Bank and Policy Reform* (2006) 138

<sup>574</sup> IMF Ghana—Enhanced Structural Adjustment Facility, *Economic and Financial Policy Framework Paper, 1998-2000* (1998)

<sup>575</sup> Charles Ackah, Ernst Aryeetey & Opoku K 'Wage and Employment Effects of Trade Liberalisation: The Case of Ghana Manufacturing in Ackah & Aryeetey *op cit note* 564 at 52

<sup>576</sup> Huq & Tribe, *op cit note* 570 at 20

‘towards more liberal market-oriented and outward-oriented policies.’<sup>577</sup> According to Berry, the essential aspect of the ERP was to minimise Ghana’s debts and advance its position in the world economy.<sup>578</sup> The programme was aimed at reinitialising productivity in the economic sector at the lowest cost to the state government.

*(b) The Trade Liberalisation Regime in Ghana*

Ghana started its move towards trade liberalisation in 1989. However, Ackah et al. state that ‘the stabilisation and adjustment policies were generally maintained in the 1990s’.<sup>579</sup> The state did not waver in its quest for comprehensive economic reforms and trade policies geared toward transforming the economy by minimising government control of the market.<sup>580</sup> In other words, the inward-looking policies of Nkrumah were abandoned entirely in the 1990s. The reforms consisted of structural reforms in various sectors of the economy.<sup>581</sup> Trade and investment liberalisation were fundamental aspects of the reforms. As a result, the liberalisation of imports and exports increases steadily but with imports overtaking, to a large extent, exports.<sup>582</sup>

In the 1990s, the public expenditure on social and development programmes for poverty alleviation was at 2.0 per cent and 2.8 per cent of GDP.<sup>583</sup> The spending was much smaller than in other African countries, which also curtailed the menace of poverty. The first programme formulated by the government was Ghana Poverty Reduction Strategy 2003-2006 (GPRSI) in the context of the general economic crisis, as key macroeconomic measures were deteriorating without adequate solutions.<sup>584</sup> Eradication of poverty has been at the centre of development plans, as proved by the series of Poverty Reduction Strategy Papers (PRSPs) and the Millennium Development Goals (MDGs), established by the United Nations to halve world poverty by

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<sup>577</sup> Laryea A & Akuoni S, ‘An Overview of Trade Policies and Developments in Ghana’ in Ackah & Aryeetey, *op cit note 555* at 13

<sup>578</sup> Berry LaVerle Berry Bennette (ed) Ghana: A Country Study, 3 ed (1994) 144

<sup>579</sup> *ibid* at 53

<sup>580</sup> Huq & Tribe, *op cit note 570* at 21

<sup>581</sup> Charles Ackah & Aryeeteh E & Opoku Kwadwo Wage and Employment Effects of Trade Liberalization: The Case of Ghana Manufacturing’ in Ackah & Aryeeteh *op cit note 564* at 53

<sup>582</sup> *ibid*

<sup>583</sup> Huq & Tribe, *op cit note 570*

<sup>584</sup> Ghana Poverty Reduction Strategy 2003-2005: An Agenda for Growth and Prosperity, vol 1, Analysis and Policy Statement (February 19 2003), [www.planipolis.iiep.unesco.org](http://www.planipolis.iiep.unesco.org) accessed: 2 September 2020; Ghana: Poverty Reduction Strategy Paper-2006, Annual Progress Report (IMF Country Report No. 09/237, Washington DC, July 2009)

2015.<sup>585</sup>The Growth and Poverty Reduction Strategy (GPRS II) (2006-2009)<sup>586</sup> provide the key points of government policies, it emphasis was on the best measure to adopt to change the structure of the economy through the advancement of the private sector, the diversification of export base, and increase agricultural productivity.<sup>587</sup> The GPRS II is firmly situated on four pillars: first, continued macroeconomic stability, secondly, accelerated private sector-led growth; thirdly, vigorous human resource development and fourthly, good governance and civic responsibility.<sup>588</sup> The realisation of macroeconomic stability will only come through well-judged policy management, efficacious monetary policy, guiding debt and the international trade system cautiously.<sup>589</sup> The overarching aim of the GRPS is to achieve middle-income status in the year 2015.<sup>590</sup>

Several theories have been put forward, giving compelling reasons why economic growth encourages poverty eradication. Jenkin made a cogent argument when he said that globalisation brings about accelerated economic growth and benefits the poor.<sup>591</sup> It is argued that faster economic growth policies are not contradictory to the poverty alleviation goal; it leads to poor income distribution.<sup>592</sup> Aryeeteh and McKay agreed that the 1990s experienced some modest growth, which alleviated poverty. However, the faster growth increased inequality due to ‘geographical and sectoral variation’.<sup>593</sup>

In their work, Jagdish and Sirivasan used the examples of China and India to support the argument that accelerated growth alleviates poverty. This is only possible through abandoning

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<sup>585</sup> ‘In September 2015, the United Nations General Assembly adopted the 2030 Agenda for Sustainable Development Goals’ available at <https://www.un.org/development/desa/disabilities> accessed: 23 May 2021

<sup>586</sup>Republic of Ghana, Growth and Poverty Reduction Strategy (GPRSII, 2006-2009) (National Development Planning Commission, Ghana, November, 2005) 6-7

<sup>587</sup> Ghana Poverty Reduction Strategy 2003-2005: An Agenda for Growth and Prosperity, vol 1, Analysis and Policy Statement (February 19 2003), [www.planipolis.iiep.unesco.org](http://www.planipolis.iiep.unesco.org) (accessed: 2/9/2020); Ghana: Poverty Reduction Strategy Paper-2006, Annual Progress Report (IMF Country Report No. 09/237, Washington DC, July 2009)

<sup>588</sup>Republic of Ghana, Growth and Poverty Reduction Strategy (GPRSII, 2006-2009) (National Development Planning Commission, Ghana, November, 2005) 6-7

<sup>589</sup> Huq & Tribe, op cit note 570 at 65-6

<sup>590</sup>Republic of Ghana, Growth and Poverty Reduction Strategy (GPRSII, 2006-2009) (National Development Planning Commission, Ghana, November, 2005) 5

<sup>591</sup>Jenkins Rhys ‘Globalisation and Poverty, Production, Employment and Poverty: Debates and Evidence’ (2004) *16 Journal of International Development* 1-12

<sup>592</sup>Klause Deininger & Lyn Squire, New Ways of Looking at Old Issues: Inequality and Growth (1998) *57 Journal of Development Economics* 259-287 at 280

<sup>593</sup>Ernest Aryeeteh & Andrew McKay, ‘Ghana: The Challenge of Translating Sustained Growth into Poverty Reduction’ in Timothy Besley & Louis J Cord, *Delivering on the Promise of Pro-Poor Growth; Insights and Lessons from Country Experiences* (2007) 148

inward-looking policies for integration into the global economy.<sup>594</sup> An advocate of trade liberalisation argued that those who engage in labour-intensive would be the significant beneficiary of trade liberalisation in developing countries, based on the theory of international trade by Stolper-Samuelson.<sup>595</sup> The reasoning of this argument is cogent and widely supported by the examples of recently industrialised countries of East Asia.<sup>596</sup> However, Wistbrot and Baker are of the standpoint that the prosperity forecast for developing countries that applied trade liberalisation was not utilised in most advanced developing countries.<sup>597</sup> The authors argue that while there are reasons to agree that an increase in trade can lead to growth in developing countries, it is not feasible that liberalisation of trade alone would improve peripheral countries' challenges.<sup>598</sup>

Rodriguez and Rodrik, in their extensive empirical research, disagree with absolute protectionism. However, there is evidentiary support to the point that after 1945, trade barriers 'are systematically associated with higher growth rates.'<sup>599</sup> Baiman sees free trade as promoted by conformists, being 'mathematically infeasible' but protecting the interests of the dominant core.<sup>600</sup> According to Prasch, no core country has ever engaged in trade liberalisation without building its domestic market effectively.<sup>601</sup> Easterly notes that the circumstances of several developing countries, mainly in sub-Saharan Africa (SSA), are nothing but disappointing in many respects as poverty has been on the steady rise since the inception of multilateral institutions.<sup>602</sup> The next section explores the strategy adopted in Ghana for agricultural advancement.

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<sup>594</sup> Bhagwati Jagdish & Srinivasan 'Trade and Poverty in the Poor Countries', (2002) 92 (2) *American Economic Review Papers and Proceedings* pp 180-183 at 181

<sup>595</sup> Davis Don and Prachi Mishra 'Stolper-Samuelson is Dead and Other Crimes of Both Theory and Data' in Ann Harrison (ed), *Globalisation and Poverty*, (2004) cited in: Charles Ackah, Ernest Aryeetey and Kwadwo Opoku, *Wage and Employment Effects of Trade Liberalisation: The Case of Ghanaian Manufacturing in: Charles Ackah and Ernest Aryeetey, Globalisation, Trade and Poverty in Ghana eds (Sub-Saharan Publishers, Ghana 2012) 60*

<sup>596</sup> Jagdish & Srinivasan *op cit note* 594 at 181

<sup>597</sup> Mark Weistbrot & Dean Baker, 'The Relative Impact of Trade Liberalisation on Developing Countries' (244) (2003) 63 *Investigacion Economica*, 15-55 at 16,

<sup>598</sup> *ibid* at 15,

<sup>599</sup> Francisco Rodriguez & Dani Rodrik, *Trade Policy and Economic Growth: A Septic's Guide to the Cross-National Evidence* (2001)15 *NBER Macroeconomics Annual chapter pages in books* 261-338 available at <https://www.nber.org/system/files/chapters/c11058/c22058.pdf> accessed: 23 June 2021 at 317

<sup>600</sup> Ron Baiman, *The Global Free Trade Error: The Infeasibility of Ricardo's Comparative Advantage Theory* (2017) 5; Robert E Prasch, *Reassessing the Theory of Comparative Advantage* (1996) 8 (1) *Review of Political Economy* 39-56

<sup>601</sup> Robert E Prasch, *Reassessing the Theory of Comparative Advantage* (1996) 8 (1) *Review of Political Economy* 39-56 at 50

<sup>602</sup> Easterly William, *The Elusive Question from Growth* (2001)8-9, 110

### III GHANA STRATEGY ON THE AGRICULTURAL SECTOR

Agriculture was relatively sizable in the Ghana economic setting but was overshadowed by the service sector in 1987.<sup>603</sup> It further shifted to the third position of the economy, overtaken this time by the industrial sector, and it continued to decrease agriculture's contribution to Ghana's Gross Domestic Product. According to the report, from 2006, it spiralled down from 40.77 per cent in 1965 to 32.03 per cent in 1990. It plunged to 29.06 per cent in 2000, 26.77 per cent in 2010, and further deteriorated to 21.66 per cent in 2017.<sup>604</sup> Nevertheless, agriculture provides more employment opportunities. According to a report, in 2010, agriculture employed 42 per cent of the whole labour force, moderately smaller than the service sector, where the percentage was 43 but was higher than the industries sector to a large extent, which was only 15 per cent.<sup>605</sup>

In the rural areas, 76.1 per cent was gainfully employed in the agriculture sector.<sup>606</sup> In 1996, Ghana had a series of agricultural development policies and plans, such as the Food and Agriculture Sector Development Policy (FASDEP) 2002-2006<sup>607</sup> and FASDEP II (2006-2009) and the Comprehensive African Plan (METASIP).<sup>608</sup> According to Oxfam, these policies reflect Ghana's consistent development and protection of the agricultural sector and poverty alleviation.<sup>609</sup> Commenting on the pre-eminence of agriculture in Ghana, Huq posits that Ghana's economy is still in the initial stage of development, a process that every country passes through.<sup>610</sup> In the past few years, the government of Ghana renewed its commitment to advancing the agricultural sector by establishing the Ministry for Food and Agriculture (MoFA), charged with the management and efficiency of the sector.<sup>611</sup>

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<sup>603</sup> Kwame Asiedu-Saforo, 'Economic Reform Programmes and Agricultural Development: Macro Policy Sequencing in Ghana, 1983-88' (1988) 25 (1) *Finance and Development* p33 at 361-2

<sup>604</sup> MoFA, *Agriculture in Ghana, Facts and Figures, 2012*, Accra, Government of Ghana (2013) available at [www.agrihomegh.com](http://www.agrihomegh.com) accessed: 5/8/2020 8-10

<sup>605</sup> *ibid*

<sup>606</sup> *ibid*

<sup>607</sup> Ministry of Food and Agriculture, *Food and Agriculture Sector Development Policy (FASDEP)* (Government of Ghana, MoFA, Ghana, September, 2002), <https://extranet.who.int/nutrition/gina/sites/default/filesstore/GHA%202002%20Food%20and%20agriculture%20sector%20development%20policy1.pdf> accessed: 25 May 2021

<sup>608</sup> *Medium Term Agriculture Sector Investment Plan (METASIP), 2011-2015* (MoFA, Ghana, September 2010), [www.extwprlegs1.fao.org/docs/pdf/gha144958.pdf](http://www.extwprlegs1.fao.org/docs/pdf/gha144958.pdf), accessed: 25 May 2021; Oxfam International, *Ghana Under Interim Economic Partnership Agreement with the European Union: Implications on Socio-Economic Development*, Oxfam Policy Brief, July 2013

<sup>609</sup> *ibid*, Oxfam International

<sup>610</sup> Huq & Tribe, *op cit note 570* at 83-4

<sup>611</sup> *ibid* at 84

In line with the vision, it was noted by the Food and Agriculture Organisation (FAO) that ‘all government strategic frameworks and plans identify infrastructure development, agricultural research and extension as focus areas of policy intervention to archive greater agricultural productivity for improved livelihood.’<sup>612</sup> The primary aim of the Food and Agriculture Sector Development Economic Policy (FASDEP) comprises food security, growth in incomes, competitiveness, improved integration in the domestic and international markets, conserving an ecological balance in the use of land and environment, applying science to the production of food and agricultural advancement, and enhancing the organisation of institutions.<sup>613</sup> Ghana is among the countries that ratified the Maputo Declaration on Agriculture and Food Security, signed in 2003. Thus, Ghana agreed to assign at least 10 per cent of its optional budget expenditure to agriculture and rural development within five years.<sup>614</sup>

#### IV STATE OF INFRASTRUCTURE IN GHANA AND ITS EFFECTS ON THE ECONOMIC DEVELOPMENT

According to Stewart *et al.*,<sup>615</sup> investment in infrastructures like energy, transportation, water, and communication is pivotal in advancing economic growth and reducing poverty.<sup>616</sup> Sahoo<sup>617</sup> recognised that a proficient infrastructure could minimise transaction costs and facilitate trade and foreign direct investment.<sup>618</sup> In the same way, it promotes intra-regional trade and encourages investment, creating a regional market and efficient market. In other words, infrastructure has the potential to advance growth and alleviate poverty.<sup>619</sup> In the whole of the African continent, according to the World Bank, the infrastructure provided 99 per cent basis points to per capita

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<sup>612</sup>Food and Agriculture Organization of the United States, Country Fact Sheet on Food and Agriculture Policy Trends (2015) [www.fao.org](http://www.fao.org) 2 accessed: 5/5/202

<sup>613</sup>Ministry of Food and Agriculture, Food Agriculture Sector Development Policy (FASDEP II) (August, 2007) available at [www.grain.org](http://www.grain.org) 22 accessed: 5/8/2020

<sup>614</sup>Food and Agriculture Organization of the United States, Country Fact Sheet on Food and Agriculture Policy Trends (2015) available at [www.fao.org](http://www.fao.org) 2-3 accessed: 5/5/202; Huq & Tribe, *op cit note* 561 at 85

<sup>615</sup>Stewart James, The UK National Infrastructure Plan 2010, European Investment Bank Paper; Public and private Financing of infrastructure (2010)

<sup>616</sup>Harold Coulombe, ‘Ghana Census-Based Poverty Map: District & Sub-District Level Results’ in Ernest Aryeeteh and Ravi Kanbur (eds), *The Economy of Ghana: Analytical Perspectives on Stability, Growth and Poverty* (2008) 224

<sup>617</sup>Pravakar Sahoo & Ranja Dash. ‘Economic Growth in India: Role of Physical and Human Infrastructure’ (2010)13 (4) *Journal of Economic Policy Reforms* 409-29

<sup>618</sup> Torsten Ehlers, ‘Understanding the Challenges for Infrastructure Finance’, (Bank for International Settlements Working Papers No. 454, 2014

<sup>619</sup>Coulombe *op cit note* 616 at 224; Rizwannul Islam & Jean Majeres, ‘Employment-Intensive Growth for Poverty Reduction: What Can Labour-Based Technology in Infrastructure Contribute?’ (2001) 12 3 *Urban Forum* 279-96

economic growth than structural policies in the period between 1990 and 2005.<sup>620</sup> However, several African countries fall far behind in infrastructure development when juxtaposed with other developing countries, such as Latin America. It is further approximated that about 2 per cent of the continent's yearly growth suffers from poor infrastructure. If there is adequate quality infrastructure in Africa, it will boost the continent's productivity, according to the Africa Development Bank (AfDB) 2013.<sup>621</sup>

Ryan<sup>622</sup> discussed with sharecroppers, migrants, and families on whose shoulder 'the world chocolate industry rest' in Cote d'Ivoire and Ghana. Ryan paints a vivid picture of the abject condition of farmers in those countries. The villages have no 'electricity, water and decent schools.' According to those he interviewed, the farming and harvesting of cocoa is 'back-breaking and hard, carried out with nothing more sophisticated than a matchet.' The World Economic Forum reported in 2020 that chocolate is a globally \$130 billion industry, mainly dependent on cocoa. However, cocoa farmers in Cote d'Ivoire and Ghana earn less than \$1 a day.<sup>623</sup> Oxfam quoted a farmer in Ghana, Tetteh Hormeku, who lamented that the EPA represents a crippling situation that generates excruciating discontentment, he states:

I come from a small fishing village in Ghana. Members of my family fished for their livelihood, but fishing has become impossible since larger European fishing vessels came and fished our seas empty. The same happened with poultry. EU imports of frozen chicken wings destroyed the local market...EPAs are free to trade agreements, and as such, they will bring poverty to Africa. - Tetteh Hormeku, Third World Network, Accra, Ghana.<sup>624</sup>

The African competitive Report 2013 rated Ghana 86th in evaluating the general standard in the country's infrastructure, with a total of 3.7 out of 7.<sup>625</sup> Further dissection of the assessment

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<sup>620</sup> Vivien Foster & Cecilia Briceño-Garmendia, (eds) World Bank African Infrastructure: A Time for Transportation (World Bank, Washington DC. 2010)

<sup>621</sup> AfDb 'The Africa Infrastructure Development Index (AIDI, 2013) African Development Bank, [https://www.icafrica.org/fileadmin/documents/Knowledge/AFDB/Economic\\_Brief\\_-\\_The\\_Africa\\_Infrastructure\\_Development\\_Index\\_01.pdf](https://www.icafrica.org/fileadmin/documents/Knowledge/AFDB/Economic_Brief_-_The_Africa_Infrastructure_Development_Index_01.pdf) accessed: 9 November 2021

<sup>622</sup> Orla Ryan, 'Chocolate is a Treat but Leaves a Sour Taste in Cocoa Farmers' Mouths' Financial Times, December, 2020, [www.ft.com](http://www.ft.com) 25 December 2020

<sup>623</sup> Covind Bhutada, 'Cocoa's Bittersweet Supply Chain in one Virtualization' (World Economic Forum, 04 November, 2020), available at [www.weforum.org](http://www.weforum.org) accessed: 26 May 2021

<sup>624</sup> Quoted in, OXFAM, 'Unequal Partners: How EU-ACP Economic Partnership Agreements (EPAs) could Harm the Development Prospects of Many of the World's Poorest Countries (September 2006)

<sup>625</sup> Cathy Jabara, Michael Ferrantino, Isaac Wohl, et al 'Sub Saharan Africa: Effects of Infrastructure Condition on export Competitiveness', Third Annual Report, United States International Trade Commission, 2009, available at <https://www.usitc.gov/publications/332/pub4071.pdf> accessed 9 November 2021

revealed that Ghana's railway infrastructure was rated at 1.7, and the standard of roads, ports, and airport infrastructure was rated 3.5, 4.0, and 4.1 in the order mentioned. However, considerable growth has been witnessed in the infrastructure when placed side-by-side with low-income countries, but Ghana lagged behind in juxtaposition with other middle-income countries in Africa.<sup>626</sup> The government of Ghana has acknowledged the enormous positive impact that quality and adequate infrastructure could have on their economic development.<sup>627</sup> Therefore, it gave priority to enlarged infrastructure, mainly in oil and gas, roads and ports, ostensibly to encourage economic development.<sup>628</sup> This acknowledgement led the government to set up the Ghana Infrastructure Fund. According to Oxfam, the policies adopted by Ghana for economic development<sup>629</sup> reflect the same level of consistency. The following section briefly explores how the EU-Ghana EPA was obtained.

The next section explored the rhetoric coercion employed by the EU to obtain the signature of Ghana, notwithstanding the low level of development of the country.

## V LEGITIMISING IDEAS THROUGH RHETORICAL COERCION

In Gramsci's Prison Notebook analogy, Cox elucidated how the dominant core infiltrated the peripheral countries. According to him, one of the articulations the core countries function through is by using ideas that legitimise the standards they set in the world order.<sup>630</sup> This element, described by Cox, is demonstrated in the analysis below.

According to Mamadou Cissokho the President of the Network of the Peasant Organisation and Producers in West Africa (ROPPA), the negotiations between the EU and the ACP countries are not negotiations.<sup>631</sup> He argues that the ACP governments 'are not negotiating, they are simply reacting to proposals put to us by Europe ... European Union documents have been taken as the basis of our negotiations.' He adds that 'all negotiation meetings have been funded by the EU'.<sup>632</sup> Commenting on reacting to the EU's proposal, an interviewee posits that the ECOWAS region had

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Coulombe *op cit* note 616 at 225

<sup>627</sup>Budget Statement, Budget Statement and Economic Policy of the Government of Ghana for the 2015 Financial Year, Ministry of Finance, Accra 2014, 10

<sup>628</sup> *ibid*

<sup>629</sup>Oxfam International, 'Ghana Under Interim Economic Partnership Agreement with the European Union: Implications on Socio-Economic Development', Oxfam Policy Brief, July 2013

<sup>630</sup>Cox, *op cit* note 91 at 172

<sup>631</sup> Quoted in African Agenda Issue 'EU Tying Africa with EPAs' (2010) 10 (4) *African Agenda* p 5

<sup>632</sup> *ibid* at 5; Interview with MAN official (2020)

no template ‘we followed the EU’s negotiation template until 2007.’<sup>633</sup> Timothy Kondo of the trade union umbrella group, Alternatives to Neo-liberalism in Southern Africa (ANSA), has argued that African countries did not participate in the negotiations but were spectators. They contend that African countries ‘have not been involved in what we trade unionists call collective bargaining. They have been involved in collective begging.’ In his view, the ‘blame’ does not lie with the African governments or the ‘weak’, but because the level of power asymmetry between African countries and the EU is vast.<sup>634</sup> During the negotiation sessions, it became clear to the EU that the ACP countries, including Ghana, were likely to reject the EPA. The EU, according to observers, thus changed its approach, engaging in divide and rule,<sup>635</sup> asking the ACP countries to sign a partial or interim EPA to ensure market access, with an obligation to negotiate a complete EPA in 2008.<sup>636</sup> This was followed by a threat to ACP countries facing unfavourable tariffs at the start of 2008.<sup>637</sup>

Faced with the imminent danger of losing market access to the EU countries, some African countries became alarmed at the end of 2007 and acquiesced to the EU ultimatum to sign the interim EPA under pressure.<sup>638</sup> Furthermore, the EU delegates relentlessly pressured the African governments with all kinds of promises and bilateral deals, threatening to break the EU’s commitment if the IEPA was not signed in its current form.<sup>639</sup> Letters were written to presidents, chief negotiators, and others to ensure that the IEPA was signed. This claim was supported by the Head of the National Association of Nigerian Traders (2020).<sup>640</sup> In a letter to both Mohammed Ibn Chambas, former President of the ECOWAS Commission, and Soumaila Cisse of WAEMU (the West African Economic and Monetary Union), the EU Commissioner of Trade warned:

To avoid any trade disruption to West African economies, we could envisage negotiating a legally binding international agreement containing, at minimum, market access in goods, and which would have to be in place on 1 January 2008. However, this would have to be a

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<sup>633</sup> Interview with NANTs official (2020)

<sup>634</sup> *ibid*

<sup>635</sup> Interview with MAN officials (2020)

<sup>636</sup> *ibid*

<sup>637</sup> African Agenda Issue *op cit note 622*

<sup>638</sup> ACP Council of Ministers, ‘Declaration of the ACP Council of Ministers at its 86<sup>th</sup> Session Expressing Serious Concern on the Status of the Negotiations of the Economic Partnership Agreements’, Brussels (December 2007); Goodison Paul, ‘EU Trade Policy and the Future of Africa’s Trade Relationship with the EU’ (2007) 34 (112) *Review of African Political Economy* 247-266; Hurt *op cit note 31*

<sup>639</sup> African Agenda *op cit note 622* at 5

<sup>640</sup> Interview with official of NANTS (2020)

stepping stone toward a full EPA, over which negotiations would continue for a short while in 2008.

The EU discarded any mention of a viable alternative to the EPA as not being beneficial.<sup>641</sup> For instance, the EU refused a proposal to resort to GSP+ because GSP+ would have no advantages to bestow or safeguard preferences that would benefit the ACP countries<sup>642</sup> as it did under the Cotonou Agreement. On another occasion, the EU stated that ECOWAS does not satisfy the appropriate conditions to merit GSP+ status. However, Tetteh Hormeku, programme head of the Third World Network Africa, a Pan-African research and advocacy group, contends that all the ECOWAS member states needed to affix their signature to one or more of the 27 conventions.<sup>643</sup> Even so, the countries would have a just claim to a three-year moratorium, as was the case with Guatemala and El Salvador.<sup>644</sup> He further argued that it is a juridical necessity for the EU to extend the GSP + to Ghana.<sup>645</sup> As noted later in this thesis, Nigeria applied to come under the GSP+, but the EU declined the application.<sup>646</sup>

Furthermore, the EU indirectly threatened a president of a West African country that the country would lose market access to the EU should it opt for GSP instead of EPAs on 1 January 2008.<sup>647</sup> The note emphasised that an interim IEPA is the ‘most pragmatic solution’, and to ensure that it is working, the EU is in ‘need of a WTO-compatible market access offer from you quickly.’<sup>648</sup> Not long after this letter was received, and faced with possible loss of revenue from Banana, Pineapple, and Cocoa paste exports, Cote d’Ivoire resolved to sign the IEPA.<sup>649</sup> At this point, Ghana was yet to consent to the EU, but it also faced pressure to sign from an exporter group, namely, Sea-Freight Pineapple Exporters of Ghana. Simultaneously, the Horticulturist Association of Ghana held a press conference asking the government to sign, reasoning that if the

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<sup>641</sup>Hurt, *op cit* note 36 at 163

<sup>642</sup> Interview with FMTI officials (Abuja 2020)

<sup>643</sup> Regulation (EU) No 978/2012 of the European Parliament and the Council of 25 October 2012 Article 2 (e) Annex III Official Journal of the European Union 31 October 2012

<sup>644</sup>Elfriede Bierbrauer & Willem DE Goede, ‘EU-Central America Association Agreement for Free Trade Chapter’ (Policy Briefing, Directorate-General for External Policies of the Union Policy Department, May/2011), [https://www.europarl.europa.eu/meetdocs/2009\\_2014/documents/dcam/dv/10\\_2\\_policycentralamerica\\_/10\\_2\\_policycentralamerica\\_en.pdf](https://www.europarl.europa.eu/meetdocs/2009_2014/documents/dcam/dv/10_2_policycentralamerica_/10_2_policycentralamerica_en.pdf) accessed: 4 February 2022

<sup>645</sup> Table GSP+ As an Alternative to EPAs, (Modern Ghana, 13-11-2007), [www.modernghana.com](http://www.modernghana.com) (accessed: 10-1-2020)

<sup>646</sup> Interview with NANTs officials (2020)

<sup>647</sup> African Agenda Issue *op cit* note 622

<sup>648</sup> *ibid*

<sup>649</sup> *ibid*

action were not taken, it would lose 40-million-euro export earnings beginning in 2008.<sup>650</sup> Some observers<sup>651</sup> became suspicious of the aid received during the weeks and months before the end of 2007. In Ghana, for example, €8 million were injected into the cocoa sector and public service.<sup>652</sup>

According to the EU, EPA is the only way to provide the legal framework to preserve European trade preferences for ACP exports, even after it expired in 2007.<sup>653</sup> Besides, the EU has assured that the EPA would be an engine for growth and development. Rules of origin are specially negotiated to cater to the ACP countries' development needs, and with the EPA, the ACP states would attract investment. The EPA end preference dependence as 'waivers and exclusions from the multilateral system that help lock them into essential commodity trade [for] more than thirty years.'<sup>654</sup> With the liberalisation of all trade, the EU would remove all restrictions from its imports from ACP countries, with transitional arrangements for rice and sugar.<sup>655</sup>

According to some observers,<sup>656</sup> the EPA provisions would impede Ghana's government from implementing development policies. For example, Article 36 further states that 'the Parties' are committed to improving 'public health in Ghana' by reinforcing capacities to ascertain those products that lack standards.<sup>657</sup> However, the provision did not state how Ghana would be assisted to meet this obligation. Regulations and requirements such as those provided in Article 36 are, according to Murina and Nicita,<sup>658</sup> vital to developing countries like Ghana for two reasons. The first reason is that measures such as sanitary and phytosanitary (SPS) 'disproportionately' lower the sectors these countries rely on, such as agriculture. Secondly, adherence to the SPS measures is 'asymmetrical' because it requires technical know-how. Manufacturing facilities and

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<sup>650</sup> 'Fresh Produce Exporters Asked Government to Sign EPA Light (Ghana Web, 26 November, 2007), [www.ghanaweb.com](http://www.ghanaweb.com) accessed: 11 January 2021; Julius Gatun, Mitchis Chapman-Kodam, Kwesi Korboe, et al, 'Analysis of Trade Impacts, on the Fresh Pineapple Sector in Ghana' (FAO and Trade Policy Research Working Paper NO. 41, 26 November 2007) available at [www.fao.org/3/a-ar708e.pdf](http://www.fao.org/3/a-ar708e.pdf) 30-1 accessed: 11 January 2021

<sup>651</sup> African Agenda Issue *op cit* note 622

<sup>652</sup> EU-Ghana: Four Decades of Development Cooperation, 2 ed (European Union & Republic of Ghana), [www.eeas.europa.eu/archives/delegations/ghana/documents/more\\_info/general.pdf](http://www.eeas.europa.eu/archives/delegations/ghana/documents/more_info/general.pdf) accessed: 11 January 2021

<sup>653</sup> Lonel Zamfir, An Overview of the EU-ACP Countries' Economic Partnership Agreements: Building a New Trade Relationship (European Parliament, Briefing, July, 2018) [www.europarl.europa.eu/thinktank](http://www.europarl.europa.eu/thinktank) Update: Economic Partnership Agreements (MEMO/08/15), Brussels, 11 January 2008

<sup>654</sup> Update: Economic Partnership Agreements MEMO/08/15, (Brussels, 11 January 2008) 7

<sup>655</sup> Annex 1, Customs Duties on Products Originating in Ghana, Official Journal of the European Union, L 287/39

<sup>656</sup> African Agenda *op cit* note 104 at 11

<sup>657</sup> EU-Ghana EPA Article 36

<sup>658</sup> Marina Murina & Alessandro Nicita, 'Trading with Conditions: The Effect of Sanitary and Phytosanitary Measures on Lower Income Countries Agricultural Exports' (JEL, International Trade in Goods, Services and Commodities. Palaise des Nations CH-1211) available at [https://www.unescap.org/sites/default/files/Tradidng%20with%20conditions\\_Marina%20Murina%20and%20AlessandroNicita.pdf](https://www.unescap.org/sites/default/files/Tradidng%20with%20conditions_Marina%20Murina%20and%20AlessandroNicita.pdf) 2 accessed: 24 June 2021

infrastructure are advanced in developed countries, but low-income countries need such facilities.<sup>659</sup>

Based on this extensive asymmetry, some observers have questioned and viewed some clauses in the text of the EU-Ghana IEPA as problematic. For example, the MFN and the dispute settlement mechanism provision of the EPA are explored to demonstrate inflexibility on the part of the EU and the development discourse used to secure the signing of the EU-Ghana EPA.

## VI CONCLUSION

This chapter has reviewed economic development and its relationship to trade in Ghana from a broad and historical perspective. There is ample evidence that Ghana, as a former colony and developing country, has struggled to develop its various nascent industries and has fared poorly, post-colonial rule and then into the modern neoliberal era. This chapter explored the state of Ghana's level of development since independence in 1957. It is argued that the asymmetrical power relations favouring the core or developed countries are a common feature of both historic and modern reality. The liberalisation doctrine characterising neoliberalism has produced the opposite effect on economic development in this peripheral country, contrary to the stated intentions and ideological basis.

The next chapter examines these economic dynamics in more detail in the specific context of the Ghana-EU EPA, considering the legal aspects of the agreement within the analytical context of the theoretical framework discussed in chapter two.

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<sup>659</sup> *ibid*

## CHAPTER FIVE: THE GHANA-EU ECONOMIC PARTNERSHIP AGREEMENT

### I INTRODUCTION

This chapter focuses on the text from Ghana-European Union (EU) Economic Partnership Agreement (EPA). It seeks to interrogate the theoretical framework borrowed from the revisionist perspective on the WTO. Chapter two identified several contradictions inherent in the neoliberal paradigm. According to Chang, the dominant core advocates the economic doctrine of liberalisation, contending that it is critical to bring about development, but recoils from applying this doctrine to its own economy if it does not suit its interests.<sup>660</sup> Ismail's perspective is that developing countries have argued that developed countries should consider their particular situation and interests. However, such demands for more market access for products of 'export interest to them, like agricultural products and textiles, were to a large extent ignored.'<sup>661</sup> Stephen Woolcock claims that peripheral countries have not succeeded in influencing beneficial outcomes both at the multilateral and regional levels as the developed countries have marginalised their concerns.<sup>662</sup>

This chapter examines the following questions: first, why did Ghana sign the agreement despite its low level of development? Secondly, do the exceptions provided in the agreement's text sufficient to address Ghana's low level of development? It is argued that the Special and Differential Treatment provisions in the EU-Ghana EPA are inadequate to support Ghana's economic development.

In order to gain in-depth insight into EU-Ghana EPA, five interviews were conducted. Michael Osborn, the Director of the Ministry of Trade and Investment in Ghana, was interviewed. Three Ghanaians in the ECOWAS Commission asked to be anonymised were interviewed. A senior trade officer Peter Joy Sewornoo, currently representing ECOWAS at Africa Continental Free Trade Area (AfCFTA) Secretariat in Ghana, was interviewed. He actively participated in the negotiation of the EU-ECOWAS EPA. It is important to note that the challenge faced by this research was that the researcher could not travel to Ghana due to COVID19 restrictions. The interview was conducted by telephone, and some experts agreed to be interviewed but eventually,

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<sup>660</sup> Chang, *op cit* note 213 at 125-29

<sup>661</sup> Ismail *op cit* note 60 at 11

<sup>662</sup> Woolcock, *op cit* note 8 at 27

the researcher could not reach them on the phone. The chapter also relies on the interviews conducted in ECOWAS with some experts who participated in the EU-ECOWAS negotiation. Also, primary documents and secondary sources are relied on for analysis.

The rest of the outline of the chapter is set out as follows: Section 2 explores the EU-Ghana EPA, the justification for signing the EPA and to opposition mounted against it. Section 3 discusses the conclusion of the EPA. Section 4 explored ‘substantially all the trade’ as provided in the text of the EPA. Section 5 analyse some key provisions in the EPA. Section 6 examined the convergence between the EPA and development. Section 7 concludes the chapter.

## II GHANA-EU ECONOMIC PARTNERSHIP AGREEMENT

The negotiation of an interim Economic Partnership Agreement (IEPA) was consented to by the European Parliament, based on the provisions in its Treaty on the Functioning of the European Union.<sup>663</sup> Ghana initiated the interim EPA on 12 December 2007, six days after Cote d’Ivoire signed.<sup>664</sup> Cote d’Ivoire and Ghana’s signing of the EPA signified an open resistance to the resolve of ECOWAS, that had written to the EU, in October 2007, indicating that its members were not ready to enter into an interim agreement with the EU, and asked for extra time to conclude negotiations in respect of the EPA.<sup>665</sup>

The main characteristics of the EPA text include: first, duty and quota-free access into the EU for all imports originating in Ghana beginning from 1st January 2008. Secondly, Ghana was granted a transition period until 2010 for rice and 2015 for sugar. Thirdly, Ghana committed to liberalising 80 per cent of imports from the EU within the next 15 years. Fourthly, trade defence is provided in the agreement to allow both Parties to introduce duties or quotas if imports threaten their economy. It provides for Technical Barriers to Trade (TBT) and Sanitary and Phyto-Sanitary (SPS) measures and voluntary compliance terms to assist the Ghanaian exporters to comply with

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<sup>663</sup>Consolidated Version of the Treaty on the Functioning of the European Union, Articles 207 (3), (4), 209 (2) and 218 (6) (a) *Official Journal of the European Union* C 326/47, <https://eur-lex.europa.eu/LexUriServe.do?uri=CELEX:12012E/TXT:en:pdf> accessed: 7-1-2021

<sup>664</sup>Rapporteur: Christofer Fjellner, Draft European Parliament Legislative Resolution, on the Proposal for a Council Concluding the stepping stone Economic Partnership Agreement between the European Community and its Member States, of the one part, and Ghana, on the other part (COM (2008) 0441 – C8-0000/2016 – 2008/0137 (NLE); ActionAid, Ghana Under the Interim Economic Partnership Agreement with the European Union: Implication on Socio-Economic Development (Policy Brief, July 2013) 1

<sup>665</sup> Interview with Ken Ukaoha, Director General of NANTs (2020); ‘Economic Partnership Agreements-The Case of Ghana’ Global Network 8

the EU requirements.<sup>666</sup> However, in Appendix II subparagraph (a) provides that Parties shall be responsible for ensuring compliance notwithstanding the lack of capacity on the side of West Africa.<sup>667</sup>

The following section will now examine the text of the EPA that presents serious concerns to observers in Ghana. However, first, arguments put forward by both proponents and opponents of the EPA merit examination.

*(a) EU'S View of the Economic Partnership Agreement*

According to the EU, developing economies must participate in the process of globalisation through trade liberalisation.<sup>668</sup> In order to boost trade exchanges and become an active player in the worldwide market, and advance its production.<sup>669</sup> In order to achieve this aim, the economies of ECOWAS and its member states should not depend on the commodities they export: for instance, oil, cocoa, wood or bananas, but commence the exportation of finished goods with added value, made locally.<sup>670</sup> According to the EU, the ECOWAS-EU Economic Partnership Agreement is better positioned to address these issues.

Notwithstanding the above mentioned benefits of trade liberalization, in December 2012, the ACP Heads of State and Government declared in Sipopo, Equitorial Guinea, that the EPA failed to address the rapid increase of the 'EU regulations and legislation on non-tariff measures'.<sup>671</sup> The former ACP Secretary Dr Mohammed Ibn Chambas called for the EU to shift 'their hardline position' in respect of market Access Regulation 1528/2007.<sup>672</sup> According to Alhaji Muhammad Mumuni, ACP Secretary-General, the 'deadline' set by the EU harms the countries

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<sup>666</sup>Annex D: Appendices to Chapter 3 Concerning Technical Barriers to Trade, and Sanitary and Phytosanitary Measures (Appendix I) of the Stepping Stone Economic Partnership Agreement between Ghana of the one Part and the European Community and its Member States, of the other part (Brussels 28 July 2016)

<sup>667</sup> *ibid*

<sup>668</sup>Cecilia Malmstrom, High Level Roundtable: Putting Partnership into Practice (European Commission, Speech at the Borschette Congree Centre, Brussels, 20 October 2017)

<sup>669</sup> Interim Economic Partnership Agreement Between Ghana and the European Union-Factsheet- (European Commission, 2017) 2 available at <http://ec.europa.eu/trade/policy/countries-and-regions/regions/west-africa/>; Theo Acheampng, Michael Omane-Achamfuor & Nii Annan Tawiah, 'The Economic Partnership Agreement Between Ghana and the European Union: A Development Game Changer?' (Ghana Growth and Development Platform, working Paper 2, July, 29 2014) available at [https://mpr.ub.uni-muenchen.de/66232/1/MPRA\\_paper\\_66232.pdf](https://mpr.ub.uni-muenchen.de/66232/1/MPRA_paper_66232.pdf) 3 accessed: 24 June 2021

<sup>670</sup>Malmstrom *op cit* note 668

<sup>671</sup>European Parliament, 'African, Caribbean and Pacific (ACP) Countries Position on Economic Partnership Agreements (EPAs), Directorate-General for External Policies of the Union, Policy Department, Expo/ B/Deve/2012 (April 2014) (Retrieved from ECOWAS Commission, 2020) 15

<sup>672</sup> *ibid* at 16

who negotiated the EPA.<sup>673</sup> The Africa Union (AU) trade ministerial meeting of 2011 in Accra argued that non-LDCs are at the same stage of development as LDCs. They also argued that the Everything But Arms (EBA) trade preference scheme should be extended to all the countries in Africa.<sup>674</sup> According to ITUC-Africa, the EPA will worsen the low employment in Africa.<sup>675</sup> An NGO expert Paul Goodison,<sup>676</sup> stated that the EU approach was a call for unbridled liberalisation in the context of promoting its internal policy. Mandelson confirmed Goodison's argument when he stated: 'if our economic strength is built on trade, then our prosperity is directly linked to the openness of the markets we try to sell to'.<sup>677</sup>

*(b) Justification for the Signing the EPA: Perception In Ghana*

The discussions on Ghana's ratification of the EPA generated active debate in Ghana. During the negotiation process and the subsequent ratification, the advocates of the EPA were mainly government agencies such as the Ministry of Trade and Industry (MoTI), and Finance. Others are exporters and investment promotion authorities, different business groups, and industrial labour unions, which were convinced that Ghana would be harmed economically if the EPA was not signed. A study by MoTI and the World Bank provides very useful insights for this study on the effect of the EPA taken as key documents concerning the assessment of and insight regarding the effect of EPA on Ghana's economy. In the above study by MacLeod, Von Uexkull and Shui,<sup>678</sup> the authors contend that the economic impact of the EPA will be quite minimal

However, an interviewee stated that it is good that Ghana signed, but he doubts Ghana will benefit because the country does not have what it takes to gain from such a trade agreement with

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<sup>673</sup>EU Pressure Botswana to Sign Trade Agreement' Sunday Standard, 5 May 2013, available at <https://www.sundaystandard.info/eu-pressures-botswana-to-sign-trade-agreement/> accessed: 15 November 2021

<sup>674</sup> AU Conference of Ministers of Trade, 7<sup>th</sup> Ordinary Session, 29 November-3 December 2011, Accra cited in European Parliament, 'African, Caribbean and Pacific (ACP) Countries Position on Economic Partnership Agreements (EPAs), Directorate-General for External Policies of the Union, Policy Department, Expo/ B/Deve/2012 (April 2014) (Retrieved from ECOWAS Commission, 2020)

<sup>675</sup>Africa: Trade Liberalisation a Downturn to Economy, Says Unions, Daily Nations (Kenya), 7 October 2008 <http://allfrica.com/stories/200810070814.html> cited in European Parliament op cit note 16

<sup>676</sup>Paul Goodison, The Future of Africa's Trade with Europe: New EU's Trade Policy (2007) 34 (111) *Review of African Political Economy*, pp 139-151 at 144

<sup>677</sup> *ibid*; EC Staff Working Document, 'Global Europe: Competing in the World Economy: A Contribution to the EU'S Growth and Jobs Strategy' Brussels, 4 October 2006, SEC (2006) 1230; <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0567:FIN:en:PDF> 3-5 accessed: 24 June 2021

<sup>678</sup> World Bank Group, Assessing the Economic Impact of the ECOWAS CET and Economic Partnership Agreement on Ghana. World Bank, Washington, DC. World Bank. <https://openknowledge.worldbank.org/handle/10986/23242> License: CC BY 3.0 IGOk, accessed: 12 November 2021

a developed region.<sup>679</sup> Gbenga, the former ECOWAS Director Trade, Ghana, was still negotiating with the EU as of 2020—that the level of liberalisation is beyond what the country can cope with, given its stage of development.<sup>680</sup>

The Federation of Associations of Ghanaian Exporters (FAGE), comprised of over 2,500 members in the agricultural and manufacturing sectors, extensively advocated for the EPA. Supporters of the EPA pointed out that there are more disadvantages in the Generalised Scheme of Preferences (GSP) than advantages. The Tuna, Cocoa, and fruit processing industries and Yam, Shea-butter, and fruit (Banana and Pineapple) sectors would be the worst hit if they were subjected to GSP tariffs in Ghana.<sup>681</sup> The biggest processor, the Pioneer Food Cannery (Thai Union Group), employing about 1,800 employees, explicitly warned that it would withdraw from Ghana if the EPA were not signed. It was also reported that the Cocoa sector would have been a worse hit, as its primary market is the EU.

Another report by the EU development cooperation programme TRAQUE (Trade Related Assistance and Quality Enabling Programme)<sup>682</sup> asserted that different fruit and fruit processing industries exporting under the GSP tariff would have been forced to reduce exports or close down without an EPA (for instance, Golden Exotics, Volta River Estates, Pioneer Quality Farms). This would have contributed directly or indirectly to job losses.<sup>683</sup>

### III OPPOSITION TO GHANA-EU EPA

Those opposed to the EPA are from the academia and national and international Non-Governmental Organisation (NGOs) such as the Third World Network (TWN).<sup>684</sup> Others were farmer organisations, local and regional business associations (for instance, the Private Enterprise Foundation and some sections of the Associations of Ghanaian Industries), and labour unions. These groups emphasise the anti-developmental nature of EPAs arising from policy space

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<sup>679</sup> Interview with official of ECOWAS, (2020)

<sup>680</sup> Interview with Gbenga Obidiye former ECOWAS Director of Trade (2020)

<sup>681</sup> Eurostat, Statistical Database (2016), <http://ec.europa.eu/eurostat>; FAGE, 'How is the Economic Partnership Agreement Benefitting Ghana's Economy' (Brochure published by the Federation of Association of Ghanaian Exporters with the support of the Related Assistance and Quality Enabling Programme, 2016), <http://eurboghana.eu/ebo/wp-content/uplo...> accessed: 24 January 2021

<sup>682</sup> *ibid* FAGE,

<sup>683</sup> *ibid*

<sup>684</sup> Third Work Network, Ghana Should Not Sign the Interim Economic Partnership Agreement, Summary of Briefing to Ministerial Advisory Board of the Ministry of Trade and Industry, 16 October 2013

restrictions due to the inclusion of WTO requirements such as the level of market liberalisation, the Most-Favoured-Nation clause (MFN), the standstill clause, and export taxes. According to Ken Ukaoha, the safeguard measures inserted in the agreement's text were not negotiated by the ECOWAS; the EU deemed fit to include it in the agreement.

Third World Network (TWN) was the most active of the NGOs opposed to implementing the EPAs in general and in Ghana specifically. In 2013, TWN argued that the price of signing the EPA would amount to disruption in various industries.<sup>685</sup> Another challenge would be the cost of crowding-out or hindering future development of domestically oriented businesses as in case of the EPA (e.g., businesses in the plywood, veneer, and pharmaceutical sectors) on the one hand, or of regionally oriented businesses in the case of ECOWAS-EPA (e.g., businesses producing pharmaceutical, wood, wire, weavers, plastic, pasta, and other products) on the other. The loss of tariff revenue would be three to seven times larger than the total GSP tariff reduction on the export side during that time. On these grounds, they argued that it would be in the best interest of Ghana not to sign the EPA.

Nonetheless, others argued that imports subject to liberalisation from the EU are essential goods that are not manufactured domestically and include materials used by local industries such as agricultural inputs, equipment, and machinery.<sup>686</sup> Also, the EU gave assurance that eliminating duties will be done gradually and systematically over many years to ensure that the inceptive revenue loss was retained at a lower level to reduce its impact over several years.<sup>687</sup> However, Borrmann and Busse argued that the EU failed to address how a significant institution can be put in place for Ghana to gain from the EPA.<sup>688</sup>

Besides the exceptions, to benefit from the EPA, Ghana and the EU would create favourable conditions for entrepreneurs in Ghana by providing support to some organisations. One of such is the Ghana Standard Authority (GSA), mandated to encourage standardisation and improve the quality of goods, services, and good management practices in Ghana.<sup>689</sup> Another organisation the EU is sustaining is the National Board for Small Scale Industries (NBSSI), which

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<sup>685</sup>FAGE, *op cit note 672*

<sup>686</sup>Acheampong, Omane-Achamfuor & Tawiah, *op cit note 660*

<sup>687</sup>Mareike Meyn, *Economic Partnership Agreements: A 'Historic Step' Towards a 'Partnership of Equals'?* (Overseas Development Institute, London, 2008) 10

<sup>688</sup>A Borrmann & M Busse, 'The Institutional Challenge of the ACP/EU Economic Partnership Agreements' HWWI Research Paper, [http://www.hwwi.org/uploads/tx\\_wilpubdb/HWWI\\_Research\\_Paper\\_2-3.pdf](http://www.hwwi.org/uploads/tx_wilpubdb/HWWI_Research_Paper_2-3.pdf)

<sup>689</sup> Ghana Standard Authority, [www.gsa.gov.gh](http://www.gsa.gov.gh) accessed: 24 June 2021

advances ‘micro and small businesses’ growth and development and makes business development services available.<sup>690</sup> The Business Advocacy Challenge Fund (BUSAC) aims to assist businesses at all levels.<sup>691</sup> Another EU- earmarked organisation to sustain Ghanaian enterprises is the Ghana Export Promotion Agency (GEPA), which aims to develop and encourage non-traditional Ghanaian exports.<sup>692</sup> Finally, the Food and Drugs Authority (FDA) is mandated to control and manage product safety and ensure quality and adherence to international standards and regulations.<sup>693</sup> Despite these advantages and the support the EU pledges to Ghana, the EU’s tactic to secure the endorsement of the EPA has been heavily criticised.<sup>694</sup>

#### IV CONCLUSION OF THE ECONOMIC PARTNERSHIP AGREEMENT BETWEEN THE EU AND GHANA

In 2007, it was communicated to the Council, and the European Parliament declared that a stepping stone EPA had been agreed upon with Ghana. According to the report, it is appropriate to prevent interruption of trade between Ghana and the European Community at the expiration of 31st December 2007. This complied with Annex V of the Cotonou Agreement and the WTO waiver while anticipating a comprehensive EPA with all the countries in West Africa.<sup>695</sup> The Council Regulation founded the trade regime (EC) No. 1528/2007, which was decided on 20th December 2007. Cote d’Ivoire was also added to those who initialled the EPA, except for Nigeria and Cape Verde. The rest of the countries in West Africa are covered under the Every But Arm (EBA) framework commencing 1st January 2008. The EBA grants duty-free quota-free access on all products except arms to the EC market. Cape Verde progressed from LDC status on 1st January 2008 but was given a three-year grace period to gain from EBA, which ended in 2011.<sup>696</sup>

On 28 November 2019, a Joint Communiqué was made between Ghana and the EU in the Charlemagne Building in Brussels. At the ceremonial opening, the Hon. Alan Kyerematen, Ghana’s Minister of Trade and Industry, emphasised that Ghana and the EU were signing ‘into a

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<sup>690</sup> National Board for Small Scale Industries, [www.nbssi.org](http://www.nbssi.org) accessed: 24 June 2021

<sup>691</sup> BUSAC Fund, Advocacy for the private Sector, [www.busac.org](http://www.busac.org) accessed: 24 June 2021

<sup>692</sup> Ghana Export Promotion Authority, [www.gepaghana.org](http://www.gepaghana.org) accessed: 24 June 2021

<sup>693</sup> Food and Drugs Authority, [www.fdaghana.gov.gh](http://www.fdaghana.gov.gh) accessed: 24 June 2021

<sup>694</sup> Hurt, *op cit note 36*; Stephen Hurt, ‘The EU-SADC Economic Partnership Agreement Negotiations: Locking in the Neoliberal Development Model in Southern Africa, *Third World Quarterly* (2012) 499, available at <https://www.tandfonline.com/loi/ctwq20> accessed 24 May 2020; Goodison *op cit note 667*

<sup>695</sup> Commission of The European Communities Brussels 10. 7 2008 COM (2008)) 441 FINAL, 2008/0137 (AVC), Proposal for Decision Accessed: 25/1/2020

<sup>696</sup> EC Council Regulation No 980/2005 of 25 June 2005

new phase of their partnership, with the start of liberalisation under the EPA in Ghana'. Deputy Director-General of Trade at the European Commission, Helena König,<sup>697</sup> expressed satisfaction that the EPA's implementation was now picking up steam and that Parties were making good progress. However, this 'new phase of partnership' has been questioned and doubted by stakeholders, civil society, and Non-Governmental organisations. Oxfam<sup>698</sup> observed that 'European's mercantilist interests have taken precedence over the ACP's development and regional interest.' Whiteman pointed out that the term 'treaty between equal partners' is nothing but 'hypocritical for comfort'<sup>699</sup> as the partnership steadily deepens asymmetry.<sup>700</sup> Commenting on the deepening of asymmetry, Hurt asserts that 'the history of Lomé Convention and beyond reflects the increasing dominance of neoliberal ideas in the relationship.'<sup>701</sup> On their part, the ACP Countries were hopeful of receiving substantial expansion in their economy by exporting duty-free to the EEC markets.

The specific provisions that will pave the way for the above-mentioned overarching liberalisation will now be explored.

## V TRADE LIBERALISATION AND 'SUBSTANTIALLY ALL THE TRADE'

The preferential arrangement between the EU-ACP countries, including Ghana, has discriminatory effects on other developing countries.<sup>702</sup> According to the EU, compatibility with the WTO rules is fundamental to its trade relationship with the ACP Countries going forward.<sup>703</sup> In order to prevent legal uncertainty, and address the concerns enumerated by the EU, Article 17 (5) of the EU-Ghana EPA provides that a 'free trade agreement' means substantially liberalisation of trade and eliminating all forms of restriction. This could be at the entry into force of the agreement or based on a reasonable time frame. Regarding the 'reasonable length of time' when liberalisation

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<sup>697</sup>Commission of The European Communities Brussels 10. 7 2008 COM (2008)) 441 FINAL, 2008/0137 (AVC), Proposal for Decision, accessed: 25 January 2020

<sup>698</sup>Oxfam International, Briefing Paper, Partnership or Power Play?: How Europe Should Bring Development into its Trade Deals with African, Caribbean, and Pacific Countries' (21, April, 2008) 2

<sup>699</sup>Kaye Whiteman, Africa, the ACP and Europe: The Lessons of 25 Years (1998) 16 *Development Policy Review* 29-37 at 32

<sup>700</sup> *ibid* at 33

<sup>701</sup>Hurst, *op cit note* 36 at 162

<sup>702</sup>Lonel Zamfir, 'An Overview of the EU-ACP Countries' Economic Partnership Agreements: Building a New Trade Relationship (European Parliamentary Research Service, July 2018) available at [www.europarl.europa.eu](http://www.europarl.europa.eu) accessed: 25 February 2020

<sup>703</sup> *ibid*

should commence, the EU posited that, while the tariff on ‘the bulk’ of liberalised goods should come to zero within ten years, ‘exceptional cases’ require some level of flexibility in the EPAs, particularly, for smaller countries.<sup>704</sup> At the start of the negotiations of the EPA, ACP countries, Ghana inclusive advocated for flexibility on tariff liberalisation and interpretation of the text of GATT Article XXIV.<sup>705</sup>

Babula and Baltzer<sup>706</sup> admitted that the general approval of ‘nation-specific gains’ ascribed to EPA should be taken with caution. The authors maintained that EPAs with the Sub-Saharan African and ACP countries might significantly reduce regional government revenue.<sup>707</sup> However, there is a qualification to these revenue loss issues, as Hinkle *et al.* argued that the revenue loss might be exaggerated for some reasons. First, tariff exemptions among the SSA could alleviate the impact of revenue loss. Secondly, the SSA has the allowance to exempt those imports that increase tariff revenue from the EPA. Thirdly, some ACP groups could reduce revenue loss by imposing value-added tax (VAT) taxes. Fourthly, some SSA ACP groups are given 15 to 20 years to implement their obligations under the EPAs. Nevertheless, Bilal and Roza noted that it is not often easy to increase VAT and collect inland revenue due to a lack of infrastructure to access the collection of revenues. Also, Ghana does not have competitive industries that will match the EU.<sup>708</sup>

It is a strenuous task to evaluate whether one FTA is more or less beneficial than another due to the dissimilarities in coverage of goods, services and ‘Singapore issues’, sectors that are not included and a reasonable length of time. However, 80 per cent liberalisation of the ACP Countries’ trade within a time frame of 15 years is more or less beneficial than the implied definition of substantially all the trade and reasonable period as shown in the following bilateral arrangement. Thailand-Australia had 20 years, Thailand-New Zealand, 20 years, US-Australia 18, Canada-Chile 18 years, Korea-Chile 16, Canada-Costa Rica 15, EU-Morocco 12, EU-South Africa 12, US-Bahrain 10, US-Singapore 10, and US-Morocco 9. The US-Morocco is the shortest time

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<sup>704</sup> *ibid*

<sup>705</sup> Interview with Ken Ukaoha Director, NANTs official (2020)

<sup>706</sup> Ronald A Babula and Kenneth Baltzer, Overview of Quantitative analyzes of Economic Partnership Agreements: Market and Revenue Effects of Liberalization of ACP Barriers and Enhanced EU Market Access (Institute of Food and Resource Economics, Copenhagen, 2007) 38-9 [https://www.researchgate.net/publication/24255887\\_Overview\\_Of\\_Quantitative\\_analyzes\\_of\\_Economic\\_Part\\_nersh\\_ip\\_Agreements\\_Market\\_And\\_Revenue\\_Effects\\_of\\_Liberalization\\_of\\_ACP\\_Barriers\\_and\\_Ehanced\\_EU\\_Market\\_Access](https://www.researchgate.net/publication/24255887_Overview_Of_Quantitative_analyzes_of_Economic_Part_nersh_ip_Agreements_Market_And_Revenue_Effects_of_Liberalization_of_ACP_Barriers_and_Ehanced_EU_Market_Access) accessed: 18 February 2020

<sup>707</sup> *ibid*

<sup>708</sup> Bonapas Onguglo and Taisuke Ito, ‘In Defence of the ACP Submission on Special and Differential Treatment in GATT Article XXIV’ Discussion Paper No. 67, (ECDPM October, 2005)

in North-South FTAs.<sup>709</sup> However, product coverage is minimal; it was not a deep commitment to liberalisation as provided by Article XXIV. This means exclusionary rule barring certain goods is a significant factor in determining the scope of liberalisation.

With the exclusion of the United States, bilateral agreements with Mexico and Chile, all other bilateral arrangements entered into by the United States failed to meet full liberalisation for the parties involved. Some Goods were excluded or gradually eliminated over more than 20 years in most of the agreement.<sup>710</sup>

Although the United States FTAs try to comply with substantially all the trade, according to Obote, it consistently ensures it excludes agriculture entirely from the coverage. For example, the USA-Canada FTA, named North-American Free Trade Agreement (NAFTA), would ensure a prolonged period before it phases out sensitive agricultural products such as USA-Australia FTA. This practice, according to the author, undermines substantially all the trade as provided in Article XXIV GATT. The EU, on the other hand, would exclude specific products instead of a whole sector. In its FTAs, such as the Trade Development and Cooperation Agreement (TDCA), EU-Chile, EU-Czech Republic, EU-Lithuania and EU-Morocco, the EU committed to tariff reduction and not tariff removal and failed to commit to certain products, such as fish, cheese and specific wines. These contradictory practices subvert the provision of Article XXIV. According to the evaluation of interpretation of Article XXIV by Scollay and Grynberg of 15 FTAs—that is, North-South and North-North, it revealed that there are different interpretations of substantially all the trade and reasonable length of time—compatibility with GATT Article XXIV differs.<sup>711</sup>

Comparative analysis to other FTAs demonstrated that Ghana, like other ACP Countries, EPAs seemed to commit to extensive liberalisation, even though it allowed for 15 years' transition period. For instance, acknowledging power asymmetry between European Free Trade Association-Chile, the arrangement permitted unspecified phase-out periods for many products.<sup>712</sup> In the same vein, the United States, apart from FTA with Chile and Mexico, declined to eliminate agricultural

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<sup>709</sup>Gary Clyde Hufbauer & Richard Baldwin 'The Shape of a Free Trade Agreement between Switzerland and the United States, Report by the Institute for International Economic, (27 September 2005 Washington DC) available at: <https://www.pii.com/publications/papers/hufbauer-Swiss-us-pdf> 21 accessed: 23 June 2021

<sup>710</sup> *ibid*

<sup>711</sup> Robert Scollay & Grynberg R 'Substantially all Trade: Which Definitions are Fulfilled in Practice? An Empirical Investigation' A Report for the Commonwealth Secretariat, 15 August 2005' cited in Cosmas Milton Obote Ochieng, Legal and Systematic Issues in the Interim Economic Partnership Agreements: Which Way Now? (Issue Paper No 2 International Centre for Trade and Sustainable Development, 2009), available at <http://www.ictsd.org> 10

<sup>712</sup>Hufbauer & Baldwin *op cit note* 709

barriers fully. For the US-Canada FTA, specific agricultural products are indefinitely subject to reduced tariff rates. Also, reduced tariffs remain on around 220 lines for dairy products and peanuts in the US-Israel FTA.<sup>713</sup>

The next section explores the Economic Partnership Agreement text to analyse how the provisions support Ghana's development and trade interests. The provisions that will pave the way for overarching liberalisation and perhaps advance economic development are now examined.

## VI ANALYSIS OF SOME PROVISIONS OF THE ARTICLES OF EPA

Article 2 (e) of the Ghana-EU EPA provides for compatibility with GATT Article XXIV. Under the GATT/WTO, the provision prescribes that regional trade agreements must remove duties on 'substantially all the trade' within a 'reasonable length of time.' One significant deviation from the Cotonou Agreement in the EPA is the provision for a reciprocal liberalisation obligation. The Understanding on the Interpretation of Article XXIV of GATT 1994 was that a reasonable length of time should not be more than ten years, only in 'exceptional cases,'<sup>714</sup> but the term is not clarified. Therefore, the negotiations of the EPAs were fraught with divergent interpretations of Article XXIV.

The Cotonou Agreement, however, contains directions on how WTO compatibility can be achieved. For example, Article 37 provides that in the negotiation of the EPA, the peripheral countries should be equipped. Article 37 provides that measures shall be put in place to 'enhance competitiveness.' Article 38 (4) of the Cotonou agreement provides that 'Negotiations will therefore be as flexible as possible in establishing the duration of a sufficient transitional period and the final product coverage, taking into account sensitive sectors and the degree of asymmetry in terms of the timetable for tariff dismantlement while remaining in conformity with WTO rules.

### (a) *Standstill Provision*

Article 15 of the Ghana-EU EPA provides that 'notwithstanding Article 23 and 24, no new customs duty on imports shall be introduced on trade between the Parties and those currently applied on trade between the Parties shall not be increased as from the date of entry into force of this Agreement.' The text of the final version of the EPA published on the Council's website does not reflect any significant change from the first version. However, a few changes to the standstill

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<sup>713</sup> *ibid* at 2

<sup>714</sup> GATT Article XXIV: 5 (C)

provision include the revision of the Common External Tariff in connection with regional agreements.<sup>715</sup> Section 15 of Ghana-EU EPA means, ‘tariffs would therefore be bound at the applied rate’, which is not so under the WTO, where tariff rates are lower in the WTO.<sup>716</sup> All the EPAs across ACP countries have standstill obligations, but the clauses are not the same. For example, in CARIFORUM,<sup>717</sup> SADC,<sup>718</sup> and Pacific EPA,<sup>719</sup> standstill provisions specifically apply to products listed to be subjected to the liberalisation scheme. However, the standstill provision in other regions such as the East African Community (EAC),<sup>720</sup> ESA,<sup>721</sup> and Ghana<sup>722</sup> covers the omitted products from liberalisation.

According to Bilal and Steven, perhaps the argument for the standstill provision on the part of the EU is that the primary purpose of EPAs is a liberalisation of trade. In order to allow for flexibility for the tariff to be increased after signing the agreement, it would defeat the whole essence of the EPAs. Also, EU exporters would not want tariffs to be increased during the transition phase. However, Goodison<sup>723</sup> believes that strictly applying the provision that fixes duties at a level in force immediately upon entering into force of the EPA may bring about the freezing of meagre import duties. With the provision of the WTO on compatibility, Bartels

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<sup>715</sup> Bilal & Stevens, *op cit note 79*

<sup>716</sup> Obote Ochieng, *op cit note 716* at 16

<sup>717</sup> CARIFORUM-EU EPA Article 16 and Annex III; ‘The Signatory CARIFORUM States shall not be required to begin a phased elimination of the customs duties other than those listed in Annex III’. See, the Schedule of tariff liberalization of the CARIFORUM States Appendix I Annex III

<sup>718</sup> Economic Partnership Agreement between the European Union and its Member States, of the one part, and the SADC EPA States, of the other (hereinafter SADC-EU EPA) Article 23 (2016) *Official Journal of the European Union* L 250/3 available at [https://trade.ec.europa.eu/doclib/docs/2015/october/tradoc\\_153915.pdf](https://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153915.pdf) accessed: 23 June 2021

<sup>719</sup> Interim Partnership Agreement between the European Community, of the part, and the Pacific States, of the other part (hereinafter Pacific-EU EPA) Article 14 (2009) *Official Journal of the European Union* available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?u...> Accessed: 23 June 2021

<sup>720</sup> Economic Partnership Agreement between the East African Community Partners States, of the one part, and the European Union and its members on the other part (hereinafter EAC-EU EPA) Article 13 available at <https://trade.ec.europa.eu/doclib/docs/2015/october/tr...> Accessed: 23 June 2021

<sup>721</sup> ESA-EU EPA Article 14 (2012) *Official Journal of the European Union* available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2012:111:FULL&...> Accessed: 23 June 2021

<sup>722</sup> Stepping Stone Economic Partnership Agreement between Ghana, of the one part, and the European Community and its Member States, of the other part (hereinafter Ghana-EU EPA) Article 15 (2016) *Official Journal of the European Union* L/287/3

<sup>723</sup> Paul Goodison, Remarks at the ACP-EU Joint Parliamentary Assembly Committee on Economic Development, Finance and Trade Meeting Brussels, Belgium, 10 September 2008 cited in Bilal & Stevens, *op cit note 79*

observed that the lowest level of requirement for free trade in goods is what the WTO law prescribed.<sup>724</sup> It does not extend to liberalisation such as MFN and standstill clauses.<sup>725</sup>

Article 18 of Ghana's EPA provides that 'notwithstanding Articles 23, 24 and 25, all prohibitions or restriction on import or export between Parties, other than customs duties, taxes, fees and other charges provided for under Article 11, whether made effective through quotas, import or export licenses or other measures, shall be eliminated upon the entry into force of this agreement. Ghana imposes duties and charges on some goods for a good number of reasons. In ACP countries, export taxes and restrictions are imposed on agricultural and fishery products, mineral and metal products, and leather and skin products.<sup>726</sup> 'while most attention is focused on export duties, the restriction can also include export license and quotas.' The WTO does not proscribe the use of export taxes, but Article XI:1 of GATT provides a general ban on the usage of other types of export restrictions.

The EU argued in the circumstances of the EPA that removing export taxes and restrictions is essential to meeting the criteria laid down in Article XXIV of GATT, which is the elimination of 'substantially all the trade' together with export and import measures.<sup>727</sup>

*(b) Provision on National Treatment in the EPA*

National treatment is one of the pillars of WTO laws, and it is provided for in the three main WTO agreements: General Agreement on Tariff and Trade (GATT), General Agreement on Trade in Services (GATS), and Trade-Related Aspect of Intellectual Property Rights (TRIPS). The Ghana EPA provision on National treatment is framed in the exact specification as GATT Article III.<sup>728</sup> As provided in both GATT and EPA, the national treatment principle stipulates that Parties should

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<sup>724</sup>Lorand Bartels, 'The Legal Status of the Initialled EPA' (ICTSD, 1 April, 2008) 7 (3), *Trade Negotiation Insights* www.ictsd.org accessed: 25 February 2020; Sanoussi Bilal & Christopher Stevens, *The Interim Economic Partnership Agreements between the EU and African States: Contents, Challenges and Prospects* (Overseas Development Institute, ECDPM Policy Management Report, Maastricht: ECDPM (2009) 67, [www.ecdpm.org](http://www.ecdpm.org) accessed: 1 July 2020

<sup>725</sup>Melissa Julain, ACP-EU Council Discusses EPAs, *Trade Negotiations Insights*, vol 10 (5) (15 July, 2011) www.ictsd.org accessed: 25 February 2020

<sup>726</sup>Rpberta Piermartini, *The Role of Export Taxes in the Field of Primary Commodities* (World Trade Publication Geneva 2004) available at [https://www.wto.org/english/res\\_e/booksp\\_e/discussion\\_papers4\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/discussion_papers4_e.pdf) 14 accessed 23 June 2021

<sup>727</sup>Sanoussi Bilal & Isabelle Ramdoo, 'Options to Address Contentious Issue in EPA Negotiations: A Question of Political Will' European Centre for Development Policy Management (ECDPN, 20 November 2010), 4 available at <https://ecdpm.org/wp-content/uploa...> accessed: 4 November 2021

<sup>728</sup> GATT Article III: National Treatment on Internal Taxation and Regulation of General Agreement on Tariff and Trade 1947

provide the same treatment that they provide to national products.<sup>729</sup> In other words, locally produced and foreign goods should compete at the same level once the goods have crossed the border.<sup>730</sup> This provision should be of no consequence to ACP members who are Contracting Parties to the WTO because they are conversant with implementing Article III of GATT. As provided in GATT, the national principle does not apply to government procurement, as the government can purchase locally made products on a preferential basis.<sup>731</sup>

Similar to the provision of CARIFORUM, Eastern and Southern Africa (ESA), East African Community (EAC) and Central Africa Economic and Monetary Community (CEMAC), the Ghana EPA provides in Article 19 (5) that ‘the provision of this article shall not apply to laws, regulations, procedures or practices governing public procurement.’ A technical meeting on the EPA between the ACP-EU urged the EU to explicitly mention the national treatment in GATT to remove any ambiguity regarding the scope in the EPA. However, this went unheeded.<sup>732</sup>

Another point of disagreement is the provision that deals with subsidies. Article 19 (4) of the Ghana EPA states:

the provisions of Article 19 shall prevent the payment of subsidies exclusively to national producers, including payments to national producers derived from proceeds of internal taxes or charges applied consistently with the provisions of this Article, and subsidies effected through governmental purchases of national products or for their benefit.

The ambiguity is that it is not clear whether Ghana can continue and introduce new subsidies. The WTO acknowledged the significance of subsidies as a policy tool. For instance, Bilal and Lui observed that the ACP Countries are not bound to reduce tariffs or subsidies under the WTO law.<sup>733</sup> However, there are limits to how it can be used to avoid distortions to world trade. The provision of laws dealing with trade in goods can be found in the Agreement on Subsidies and Countervailing Measures (ASCM); and Agreement on Agriculture (AoA). Domestic producers can be paid subsidies as far as they do not violate the ASCM and AoA. Based on Ghana’s EPA provision, there is no clarity as to what subsidies entail. Under the WTO, developing countries who need to

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<sup>729</sup>Ghana-EU EPA Article 19 (1) (2) (3)

<sup>730</sup>‘Imported goods all not directly or indirectly be subject to internal taxes...’ ‘Parties shall not otherwise apply internal taxes or other internal charges so as to afford protection to national treatment’

<sup>731</sup>GATT/WTO Article III 8 (a)

<sup>732</sup>Commonwealth and ACP Secretariat in April 2008 (Commonwealth Secretariat, 2008)

<sup>733</sup> Sanoussi Bilal & Dan Lui, ‘Contentious issues in the Interim EPAs Potential Flexibility in the Negotiations’, Discussion Paper No. 89 European Centre for Development Policy Management Brussels, Belgium (2009) 3

promote the industry by providing subsidies can refer to Article XVIII: c to give other WTO members notice to start a consultation. Following that, the developing country is allowed to deviate from the GATT provision to take specific measures subject to some restrictions.

(c) *Bilateral Safeguard Measure and Infant Industry in the Ghana-EU EPA*

Article 24 of the Ghana-EU EPA provides a multilateral safeguard measure in the EPA, while Article 25 makes provisions for bilateral EPA safeguards. Concerning Article 24, the EPA protects the right of the EU and Ghana to invoke multilateral safeguard measures in line with Article XIX of GATT 1994, the WTO Agreement on Safeguards, and Article 5 of the WTO Agreement on Agriculture Article. The text further stated that notwithstanding paragraph 1, ‘the EC Party shall’ in the interest of, and due to the low level of development, ‘exclude imports from Ghana on any measures taken pursuant to Article XIX of the GATT 1994, the WTO Agreement on Safeguards and Article 5 of the WTO Agreement on Agriculture.’ The paragraph shall apply for five years and then be reviewed for developmental needs.<sup>734</sup>

In contrast, article 25, which deals with bilateral safeguard measures, stipulates the framework in which the EU and Ghana may hold their tariff liberalisation obligation in abeyance in some situations.<sup>735</sup> The Ghana-EU EPA provides for the procedure to be followed. Paragraph 5 (a) states that the ‘Ghanaian Party may take surveillance on safeguard measures limited to its territory following the procedure laid down in paragraphs 6 and 9. The length of time that the safeguard measure will last is also provided.’<sup>736</sup> Even though both parties must comply equally, any of the parties can take a unilateral step as provided in Article 25 (8).<sup>737</sup> Safeguards may be applied for a more extended period for Ghana, which is twice as long as the EU.<sup>738</sup> However, the EU’s outermost regions are treated as the same as the Ghanaian’s, except that the period for Ghana is 200 days and 180 days for the EU.<sup>739</sup> It is observed that the difference is not much, given the different levels of development between the parties.

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<sup>734</sup>Ghana-EU EPA Article 24 (3)

<sup>735</sup> Ghana-EU EPA Article 24 Para (6) (b), ‘Safeguard measures shall apply for a period not exceeding two years. If the circumstances warranting imposition of safeguard measures continue to exist, such measures may be extended for a further period of no more than two years...’

<sup>736</sup>Ghana-EU EPA Article 25 (6) (a)

<sup>737</sup>Ghana-EU EPA Article 25 (8) ‘where exceptional circumstances require immediate action, the importing Party concerned, whether the EC Party or the Ghanaian Party as the case may be, may take the measures provided for in paras 3, 4, 5 on a provisional basis without complying with Article 25 (7) (b) and (e)

<sup>738</sup>Ghana-EU EPA Article 25 (6) (b)

<sup>739</sup>Ghana-EU EPA Article 25 (8) and (7) (b)

The level of protection given to nascent industries has been a subject of debate among trade theorists. In the EU-Ghana EPA, some provisions specifically protect infant industries, which is more like the traditional safeguard measures. For example, Article 25 (5) (b) provides:

Ghana may take safeguard measures where a product originating in the EU Party... which is likely to cause or threaten to cause injury to infant industry producing products. (b) if the Ghanaian Party can show a specific need for the infant industry, customs duties on export or equivalent charges may be introduced,<sup>740</sup> for mainly raw material and equipment for existing and infant industries, the liberalisation will start on 1st January 2013 to be completed by 31st December 2017.<sup>741</sup>

The EU recognised the need for safeguard measures for Ghana in the EPA to avert any negative impact from the liberalisation of Market access. It was debated during the EPA negotiation that the multilateral and bilateral safeguard takes care of a sudden surge in import that may cause damage to the local products.<sup>742</sup>

However, observers have noted some lack of clarification in the safeguards provision.<sup>743</sup> For instance, some terms that need to be adequately understood are not defined, such as ‘serious injury.’ This phrase originated from the WTO. The fear is expressed by Ghana and ACP countries about the interpretation in Article XIX of the WTO on safeguards and the strict meaning given to it by the Appellate Body. Like the rest of the ACP countries, Ghana fears that the safeguard as presently structured may be too complicated for Ghana to make good use of.<sup>744</sup> According to an interviewee, Ghana cannot take advantage of the safeguard measures as provided in the agreement’s text. This is similar to how the GATT/WTO is believed to have made adequate balanced provisions in the name of embedded liberalism, but observers argued that it is only to benefit the core countries with the capacity to utilise such exceptions.<sup>745</sup>

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<sup>740</sup>Ghana-EU EPA Article 16 (c)

<sup>741</sup>Ghana-EU EPA Annex 2

<sup>742</sup>Interview with official of MoTI (2020)

<sup>743</sup> Bilal, Stevens, Rampa et al *op cit note 79*

<sup>744</sup> Jacques Berthelot, The Contradiction of Ghana’s Interim EPA, (SOL, October 8 2016), [www.sol-asso.fr](http://www.sol-asso.fr) (accessed 7/8/2020)

<sup>745</sup>Lang, *op cit note 48*

(d) *The EU-Ghana EPA: Provision of Most Favoured Nation Clause*

As provided in the EPA, the Most Favoured Nation principle states that if Ghana signs a trade agreement with any ‘major trading partner’<sup>746</sup> other than the EU country, ‘a joint consultation’ will be held to decide the implementation method. ‘A major trading Partner’<sup>747</sup> means any developed country, or any country accounting for a share of world merchandise exports above 1 per cent, or a group of countries accounting collectively for a share of world merchandise exports above 1.5 per cent in the year before the entry into force of the free trade agreement referred to in paragraph 2 of Article 17. The Articles provide that ‘the Ghanaian Party shall accord to the EC Party any favourable treatment applicable due to the Ghanaian Party becoming a party to a free trade agreement with any major trading partner after the signature of this agreement.’

If the EU extends favourable treatment to another party, the reverse shall be the case. Bilal<sup>748</sup> argues that the EU could be exempted from this duty because it granted Duty-Free Quota Free (DFQF) to the ACP EPA countries.<sup>749</sup> However, the application of the MFN principle does not cover tariffs alone. It applies to all the chapters where it is found, including Articles 14 on rules of origin, 15 on a standstill, 24 on multilateral safeguards, and 25 on bilateral safeguards.<sup>750</sup> This would also mean that if the EU, for instance, granted less restrictive rules of origin to a non-ACP country, it would have to extend these to the ACP countries, including Ghana.

Even though the WTO does not explicitly require the inclusion of the MFN clause in an FTA, it is not unusual for parties to include it in the text of their agreement. Of the 20 regional trade agreements examined by the Organisation for Economic Co-operation and Development (OECD) in 2008, only five have no provision for an MFN clause.<sup>751</sup> The most prominent agreement with an MFN provision is the North American Free Trade Agreement (NAFTA). Others are the Central American-Dominican Republic Free Trade Agreement, the Japan-Mexico, Thailand-Australia, and USA-Morocco agreements. Nevertheless, Economic Partnership Agreements became the first in which the EU included the MFN clause in its FTAs with

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<sup>746</sup>Ghana-EU EPA Article 17 (3) provides that ‘if the Ghanaian Party obtains from a major trading partner a substantially more favourable treatment than the one offered by the EC Party, the Parties will enter into consultations and jointly decide on the implementation of the provisions of paragraph 2.’

<sup>747</sup>Ghana-EU EPA Article 17 (6)

<sup>748</sup>Bilal & Stevens op cit note 706 at 123

<sup>749</sup>Ghana-EU EPA Article 12

<sup>750</sup>Cheikh Tidiane Dieye and Victoria Hanson, ‘MFN Provision in EPAs: A Threat to South-South Trade?’ (March 2008) 7 (2) *Negotiation* ictsd.org accessed: 14 February 2020

<sup>751</sup>Organization for Economic Cooperation and Development 'International Investment Law' Paris, France (2008)

developing nations. For example, FTAs between the EU-Chile, EU-Mexico, and EU-South Africa agreements have no such provision.<sup>752</sup>

According to an interviewee, the MFN clause in the EPA is contradictory because the EU made the ACP Countries believe that the EPA is all about development.<sup>753</sup> The respondent asserts that the clause will impede the economic development of Ghana as it would in the rest of the ACP countries.<sup>754</sup> The proviso is not necessitated under GATT Article XXIV from when the EPAs derive their stance or the General Agreement on Trade in Services (GATS). Article V deals with the agreement on services. The reason is that GATS Article V is not similar to GATT Article XXIV. The MFN provision was not provided for under the Cotonou Partnership Agreement. Despite that, the MFN proviso is contained in all the EPAs' text. Examples include Articles 19, 70 and 79 in the EPA of the Caribbean Forum, a subgroup of the organisation of African, Caribbean, and the Pacific States or CARIFORUM. Other examples are Article 28 in the EU-SADC EPA, Article 15 in the East African Community (EAC) EPA, Article 16 in the Eastern and Southern Africa (ESA) EPA, and Article 17 of the Ghana EPA. All the provisions are similar in every detail.<sup>755</sup>

The EU justification for the inclusion of the MFN is premised on two grounds: first, to protect the EU interests, and second, it claims that the MFN protects the interests of the ACP countries.<sup>756</sup> For the EU interests, the EU contends that the MFN provision protects it against potentially less favourable treatment by ACP countries in future free trade agreements (FTAs) with third-country partners. According to EU former Development Commissioner Louis Michel, '[i]t is difficult to say that Europe should let our partner countries treat our economic adversaries better than us. We are generous but not naïve.'<sup>757</sup> Concerning the interests of the ACP countries, the EU argues that the EPA MFN clause would defend the ACP countries from the undue pursuit of interest from advanced developing countries such as Brazil, Russia, India, China, and South Africa (BRICS) block. The point is that the Understanding that any favourable treatment they bring to

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<sup>752</sup>Stevens, Bilal, Rampa et al *op cit note 75*

<sup>753</sup> Interview with NANTs officials (2020)

<sup>754</sup> Interview with ECOWAS official (2020)

<sup>755</sup> *ibid*

<sup>756</sup>Economic Partnership Agreement (EPAs) (European Commission, September, 2018)4, <https://trade.ec.europa.eu/doclib/docs/2017/february/tr...> accessed: 21 January 2021

<sup>757</sup>Q&A: 'We Are Generous but Not Naïve' (Inter Press Service, Brussels, January IPA Interview with Louis Michel, EU Development Commissioner Louis Michel) available at [www.ipsnews.net](http://www.ipsnews.net) accessed: 22 January 2020

bear upon the ACP countries will immediately be granted to the EU may deter advanced developing countries from taking advantage of the ACP's weak position in negotiations.

According to Obote Ochieng, while the EU's argument is cogent, it is made, to a large extent, to protect the EU's mercantilist's interests.<sup>758</sup> Obote-Ochieng is of the view that the argument has three major flaws: first, if the ACP countries viewed the MFN provision as protecting them against an aggressive third party, why were they many opposed to it? Secondly, there is no concrete provision in the EPAs to show that the ACP Countries are protected from the economic weight and interests of the EU.<sup>759</sup> Thirdly, the Enabling Clause regulate South-South FTAs; however, with the inclusion of some developing countries in its interpretation of key trading economies, the EPA MFN clause remains problematic 'to the purpose and functions of the Enabling Clause and the smooth functioning of the multilateral WTO system'.<sup>760</sup> The MFN is limited to goods only in most of the EPA's text, except for the CARIFORUM MFN clause, which includes services and investment. Another point to explore is the dispute settlement mechanism.

(e) *Ghana-EU EPA Dispute Settlement Mechanism.*<sup>761</sup>

In many respects, the dispute settlement mechanism is similar to all of the EPAs and the full CARIFORUM EPA.<sup>762</sup> For instance, title V of the EU-Ghana EPA, Article 55 of the ESA, Article 38 and 39 of the EAC EPA,<sup>763</sup> and Part 111 of the SADC EPA are the same. Generally, the provisions are restrictive alterations of the WTO Dispute Settlement (DS) provision. The EPA dispute settlement (DS) mechanism reflects a preference for judicatory intervention instead of diplomacy.<sup>764</sup> The provisions are intended to reduce the difficulty experienced in trying to utilise

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<sup>758</sup> Obote-Ochieng. *Op cit note 716* at 13

<sup>759</sup> *ibid*

<sup>760</sup> *ibid*

<sup>761</sup> Interview with MoTI official (2020)

<sup>762</sup> Karli Mehmet, 'Assessing the Development Friendliness of Dispute Settlement Mechanisms in the Economic Partnership Agreements and an Analytical and Comparative Guide to the Dispute Settlement in the EU's FTAs' Occasional Paper, European Studies Centre, Oxford University, Oxford, UK (2008) available at [www.papers.ssrn.com](http://www.papers.ssrn.com) 7 accessed: 22 January 2021; Bilal & Lui *op cit note 724*

<sup>763</sup> East African Community 'Agreement Establishing a Framework for an Economic Partnership Agreement with the East African Community Partner States one part and the European Community and its Member States on the other part' (EAC Secretariat, Arusha, United Republic of Tanzania)

<sup>764</sup> Mehmet, *op cit note 762* at 7-8

the WTO DS.<sup>765</sup> Robert Hudec<sup>766</sup> succinctly explains the experience of developing countries, beginning from the era of GATT. According to him, ‘the GATT dispute settlement system, at a margin, more responsive to the interests of the strong than the interests of the weak.’ He backs this assertion with evidence by pointing out the frequency of discontinuing disputes by developing countries before the panel’s decision. This, to Hudec, reveals the extensive barriers developing countries face at the start of any dispute settlement procedure.<sup>767</sup>

Busch and Reinhardt<sup>768</sup> are in accord with Hudec. These scholars have ascertained that WTO severely impacts developing countries’ capacity to participate in dispute settlement. Essentially, two key obstacles are faced by developing countries in the WTO DS.<sup>769</sup> First, countries like Ghana are bereft of human and financial resources to take part in the WTO DS’s judicial procedure productively; secondly, they depend economically on developed countries. Countries like Ghana cannot thus gain from the WTO DS remedially. Article 19 of the WTO DS system allows for the termination of a breach as a remedy. In other words, the country causing the infringement takes steps to conform to WTO obligations.<sup>770</sup> Retaliatory trade measures such as the suspension of concessions and other legal commitments have been observed for a long time not to be feasible for developing countries.<sup>771</sup> In the Antigua and Barbuda-USA Gambling case, even though the United States lost, it did not promptly enforce the decision within the time frame stipulated. However, due to the economic costs to Antigua and Barbuda, they halted the suspension of concessions to the United States.<sup>772</sup>

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<sup>765</sup>Alavi Amin, ‘African Countries and the WTO’s Dispute Settlement Mechanism’ Development Policy Review 25 (1) (2007) available at [https://www.peacepalacelibrary.nl/ebooks/files/Alavi\\_African-Countries.pdf](https://www.peacepalacelibrary.nl/ebooks/files/Alavi_African-Countries.pdf) 25-42 accessed: 21 January 2021); Benard M Hoekman & Petros C Mavroidis, ‘WTO Dispute Settlement, Transparency and Surveillance’, The World Economy 23 (4), (2000) 527-542 at 527

<sup>766</sup>Robert Hudec, ‘Enforcing International Trade Law: The Evolution of the Modern GATT Legal System’ (1993) 353, cited Obote Ochieng. Op cit note 707 at 17

<sup>767</sup> ibid

<sup>768</sup>Busch M and Reinhardt, E, ‘Testing International Trade Law: Empirical Studies of GATT/WTO Dispute Settlement’, Paper presented at the University of Minnesota Law School Conference on the Political Economy of International Trade Law, 15-16 September, 2000

<sup>769</sup> ibid

<sup>770</sup>Alavi op cit note 765

<sup>771</sup>Bilal & Lui, *op cit note 79* at 89

<sup>772</sup> United States—Measure Affecting the Cross-Borders Supply of Gambling and Betting Services, WT/DS285/26, 25 April 2013 available at [www.wto.org](http://www.wto.org) accessed: 29 January 2021

Drahos has argued that ‘rules and procedure, whether bilateral or multilateral’, do not automatically reduce the power asymmetry between peripheral countries and the dominant core.<sup>773</sup> He states that ‘What matters to the preservation or extension of an individual’s economic interests ultimately rests on that individual’s bargaining power.’<sup>774</sup> As a result of North-South asymmetry, special and differential treatment was created favouring developing countries within the WTO Dispute Settlement Understanding (DSU). Within the DSU system, Special and Differential Treatments are, for the most part, procedural; that is to say, developing countries may decide to select a quick procedure, ask for a more extended period or legal assistance from Secretariats of the WTO. Various stages of WTO DS have their provisions. Article 4.10 of DSU allows for Foreign Digital Services Taxes (DSTs) in the consultations, with attention to be given to the interest of developing countries. Article 12.10 of the DSU permits the Settlement Body (DSB) chairperson to extend the time frame for peripheral countries to prepare for defence. Article 8.10 of the DSU provides for SDT at the panel, permitting the developing country to select or ask for the inclusion of a panellist from a developing country.

The EPA dispute settlement (DS) framework essentially copied the WTO DSU, but comparatively, the regulations are more restrictive. Most of the EPA DS does not have any special treatment for a developing country, even though it was a development-oriented package.<sup>775</sup> Instead of seven to eight months, the EPA DS reduced the panel to six months for filing submissions. According to Mehmet, these countries are at critical development stages, but their access to legal resources is relatively limited.<sup>776</sup> The short time frame in the EPA DS makes the regulation more restrictive than the WTO DS. The short panel stage in the EPA DS seemed to favour the EU which has unmatched legal capacity. It has been argued that even if a more extended period is granted in the agreement, it would still not make any difference, given peripheral countries’ constraints in financing and human resources.<sup>777</sup>

The Ghana-EU EPA did not altogether ignore Ghana’s level of development. For example, Article 52 (2) provides that the ‘complaining Party shall endeavour to select measures that least

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<sup>773</sup> Peter Drahos, ‘The Bilateral Web of Trade Dispute Settlement’ Paper Presented to the Conference on WTO Dispute Settlement and Developing Countries, Centre for World Affairs and the Global Economy, University of Wisconsin-Madison, Wisconsin, WI, USA, (2005) 14

<sup>774</sup> *ibid* at 14

<sup>775</sup> Ghana-EU EPA Title V, ESA-EU Article 55; EAC-EU EPA Article 38, 39, & Part 111 SADC EPA

<sup>776</sup> Karli Mehmet, *op cit* note 162 at 29

<sup>777</sup> *ibid*

affect the attainment of this Agreement's objectives and shall consider their impact on the economy of the Party complained against.' The provision is soft in the sense that it is based on the thoughtfulness of the complaining party. There are, however, clauses that seem to strengthen this point of special and differential treatment by stating that 'under no circumstance will the appropriate measures referred to in the present paragraph affect development assistance in Ghana.' Subparagraph 3 of Article 56 called for 'due restraint in asking for compensation ... pursuant to paragraph 1 or 2' not to impede development in Ghana. Also, Article 54 (3) of the Ghana-EU EPA allows an arbitration panel to consider the 'constraint' that adopting a measure may bring about against the defendant. At this juncture, the development aspect of the EPA, the bone of contention between the EU and ECOWAS, is explored next.

(f) *Convergence Between Economic Partnership Agreement And Development*

According to Ruggie, once a system is formed, it creates expectations, rules, organisational plans, and financial obligations.<sup>778</sup> Tussie believes that the regime becomes a place where the most powerful dominate to protect its interest eclipsing the peripheral countries.<sup>779</sup> Sometimes, the latter can resist the pressure to articulate its concerns but not to a large extent.<sup>780</sup>

In the negotiation of the EPA, ECOWAS countries called the EU's attention to the importance of building an agreement focusing on development and poverty reduction. The EC and ECOWAS agreed to draw up an EPA based on reciprocity and make it development-oriented to pave the way for the new trade environment.<sup>781</sup> However, an interviewee asserts, that the conclusion of EPA demonstrates no convergence in the views among the ECOWAS countries and the EU that the EPA will be a tool through which development will be delivered.<sup>782</sup> Several areas of interest to ECOWAS were excluded from the EPA. According to Heron, it is plain that the exclusion of power-moderating institutions reinforced development trade-offs during the negotiation.<sup>783</sup> Langman and price argued that asymmetrical negotiations were produced due to

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<sup>778</sup> Ruggie, *op cit* note 158 at 56

<sup>779</sup> Diana Tussie, 'Developmental Opposition in International Trade Regimes: Regional Groupings, State and Civil Society Coalition' Working Paper, Rigway Centre for International Security Studies at the University of Pittsburg, (2015) 1

<sup>780</sup> *ibid* (emphasis added)

<sup>781</sup> Enda, Impact Study *op cit* note 1137 at 8

<sup>782</sup> Interview with the official of ECOWAS (2020); Addis Ababa Ministerial Declaration on Economic Partnership Agreement Negotiations, adopted by the Conference of Ministers of the African Union at its third Extraordinary Session (Addis Ababa, 15-16 January 2007, document Ext/Exp/Trade/Decl. (2) III, available [www.uneca.org](http://www.uneca.org)

<sup>783</sup> Tony Heron, Asymmetric Bargaining and Development Trade-offs in Cariforum-European Union Economic Partnership Agreement (2011) 18 (3) *Review of International Political Economy* p 328-357 at 334

excessive dependency on the part of the ACP Countries.<sup>784</sup> A respondent claims that the EU paid for the ECOWAS negotiators and the venue; to him, it is no surprise that the EU dictated to ECOWAS what the subject of negotiation should be.<sup>785</sup>

In its document, however, the EU states that it supports flexibility and the development need of the ACP countries, ECOWAS inclusive.<sup>786</sup>

However, EPA negotiations are described as ‘commercial’ trade talks and not portrayed as development negotiations. According to Bengtsson and Elgstrom,<sup>787</sup> the EU delineated itself during the EPA negotiations as ‘a partner for development [and]... a promoter of norms.’ The idea of a ‘partnership’ rather than ‘conditionality’ became the focal point for the World Bank discourse toward the end of the 1990s when it brought the Comprehensive Development Framework to the fore.<sup>788</sup> Lister considers that descriptions like ‘even’, ‘uneven’, ‘unequal’, or ‘asymmetrical’ can be added to ‘partnership’ to show the ‘unbalanced nature in practice’.<sup>789</sup> Further, Lister compared the ‘partnership’ to ‘horse and a rider’,<sup>790</sup> rather like the Orwellian ‘partnership’ style in which the powerful, in this case, the EU, decide on what is best for the party with insufficient capacity (developing countries such as Ghana), and view them fundamentally as ‘a historical burden.’<sup>791</sup>

Central to the EU’s depiction of the EPA is its unwavering conviction regarding the gain from trade liberalisation for development.<sup>792</sup> However, according to Patel,<sup>793</sup> removing tariffs

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<sup>784</sup>Langman op cit note 1137 at 278- 280

<sup>785</sup> Interview with ECOWAS official (2020)

<sup>786</sup> Louis Michel, European Consensus on Development, December (European Commission, Directorate General for Development, June, 2006), para 36, <https://ec.europa.eu/international-partner...> accessed: 23 January 2021; Lonel Zamfir, ‘An Overview of the EU-ACP Countries’ Economic Partnership Agreements: Building a New Trade Relationship’ (European Parliament, Briefing, July, 2018) available at [www.europarl.europa.eu/thinktank8](http://www.europarl.europa.eu/thinktank8) accessed: 9 January 2021

<sup>787</sup>Bengtsson Rikard & Ole Elgstrom, ‘Conflicting Role Conceptions? The European Union IN Global Politics’ (2012) 8 (1) *Foreign Affairs Analysis* 93-108 at 103

<sup>788</sup>Pender John, ‘From Structural Adjustment to Comprehensive Development Framework’: Conditionality Transformed?’ *Third World Quarterly* 22 (3) (2001) 397-411

<sup>789</sup>Marjorie Lister, ‘European Development Policymaking: Globalisation and the Post-Lomé World’ in Andrew Mold (ed), *EU Development Policy in a Changing World: Challenges for the 21st Century* (2007) 77

<sup>790</sup>Kunibert Raffer, Cotonou: Slowly Undoing Lomé’s Concept of Partnership’ Development Studies Association Paper (2001) available at <https://pdfs.semanticscholar.org/60c0d/do36ce61be44...> 19 accessed: 24 January 2021; Majorities Lister, The European Union’s Greene Paper on Relations with the African, Caribbean and Pacific Countries, (1988) 26 (3), *Oxford Development Studies* 375-390 at 381

<sup>791</sup> ibid Raffer

<sup>792</sup>Michel Louis, Economic Partnership Agreements: Drivers of Development, (European Commission, Brussels, 2008) 16; Lorenz Ulrike, ‘Negotiating Regions-Fostering Welfare. The Economic Partnership Agreements as a New Model of Development?’ (2011) 14 (1) *Journal of International Relations and Development* 142-151

<sup>793</sup>Mayur Patel, Economic Partnership Agreements between the EU and African Countries: Potential Development Implications for Ghana (Oxford: Realising Rights, 2007) 18.

would lead to a loss of income for small farmers in West Africa, including Ghana, considering their lack of capacity compared with EU producers. Notably, Patel referred to the European Commission's own Sustainability Impact Assessment (SIA) on an ECOWAS EPA. This projected a substantial sudden import increase of up to 16 per cent for Onions, 15 per cent for Potatoes, 16 per cent for beef, and 18 per cent for poultry. This displaced local production in the region.<sup>794</sup> He has argued that the current European subsidies for agricultural production under the Common Agricultural Policy (CAP) will end the likelihood of West Africa taking advantage of its comparative advantage in competitive sectors like dairy and millet rice. For example, the EU subsidies for dairy are about US\$ 1 billion and \$ 39.4 billion for millet, which cannot bring about a level playing field for the West African subsistence farmer whose source of income would be exposed to the possibility of losses due to the EPA.<sup>795</sup> A respondent asserted that in Ghana, there is no provision for subsidies to benefit farmers. He maintained that there is no basis for competing with the EU without substantial special and differential treatment provisions.<sup>796</sup>

The United Kingdom published its position in 2005 in a paper on making the EPA development-oriented.<sup>797</sup> The UK remains resolute that the negotiation of the EPAs between the EU-ACP countries, including Ghana, 'should not be used as a backdoor means to prise open their markets'.<sup>798</sup> The EU described the UK publication as 'a major and unwelcome shift'.<sup>799</sup> The European Commission responded that the UK was undermining its mandate as given by the European Council's Commission.<sup>800</sup> As a result of the concerns expressed by the UK, closer attention was paid to the needs of ECOWAS.

The text of the EPA between Ghana-EU provided special and differential treatment. The EU believed that development is an integral part of the EPA. However, the lack of concrete terms for development cooperation contrary to the overall aims of the Agreement was set in ambitious

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<sup>794</sup> *ibid* at 20

<sup>795</sup> *ibid*

<sup>796</sup> Interview with MoTI official (2020)

<sup>797</sup> Economic Partnership Agreements: Making EPAs Work for Development. (DTI and DFID paper, March 2005) cited in Alan Hudson, Case Study: Economic Partnership Agreement, available at <https://cdn.odi.org/media/documents/3671.pdf> accessed 25 June 2021

<sup>798</sup> Larry Elliott, EU Move to Block Trade Aid for Poor (The Guardian, 19 May 2005) [www.theguardian.com](http://www.theguardian.com) accessed 24 January 2021

<sup>799</sup> *ibid*

<sup>800</sup> *ibid*

terms, which is to promote regional integration,<sup>801</sup> encourage sustainable development,<sup>802</sup> transform into the country into an active player in the global economy.<sup>803</sup>

While there are few texts on concrete forms of non-financial cooperation, for instance, exchange of information and expertise<sup>804</sup>, conducive business climate,<sup>805</sup> support implementation of rules<sup>806</sup>, and improve the productive sector;<sup>807</sup> in respect of financial cooperation, the provision only recognised the problem that elimination of customs duties posed to Ghana and called for ‘dialogue and cooperation in this field’.<sup>808</sup> This represented the European Commission’s position that aid be external to the EPA text; in other words, it is treated separately through Regional Preparatory Task Force (RPTF), a Regional EPA Fund, Aid for Trade and European Development Fund.<sup>809</sup>

## VII CONCLUSION

The evidence reviewed indicated that power asymmetry between the EU and Ghana played a significant role in bringing about the signing and subsequent ratification of the EPA. The argument put forward against the inclusion of the MFN and dispute settlement mechanism demonstrates that the instrument is mainly in the interest of the EU. The manner in which peripheral countries are hemmed-in within the WTO system, similarly, the EU-Ghana EPA may constrain economic development because Ghana cannot take advantage of these exceptions due to their lack of capacity. The EPA provides a similar provision. The WTO notably allows flexibility regarding the two clauses mentioned above, much more than the EPA between the EU and Ghana.

This chapter has explored the various asymmetrical provisions in the EU-Ghana Economic Partnership Agreement (EPA). It demonstrated that Ghana might likely not take advantage of the special and differential treatment provisions due to a lack of capacity.

This chapter questioned the level of asymmetry provided in the text of EPA between the

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<sup>801</sup> *ibid* Article 27

<sup>802</sup> Preamble to the EPA between Ghana-EU Article

<sup>803</sup> *ibid*

<sup>804</sup> Ghana-EU EPA Article 43 (a)

<sup>805</sup> Ghana-EU EPA Articles 5

<sup>806</sup> Ghana-EU EPA Article 6

<sup>807</sup> Ghana-EU EPA Article 7

<sup>808</sup> Ghana-EU EPA Article 8

<sup>809</sup> West Africa EPA Negotiations: Preliminary Comments on the EC ‘Draft EPA Text for West Africa’ South Centre Geneva May 2007 4-5

EU and Ghana. The majority of the Civil Society Organizations (CSOs) in Ghana were concerned about excessive liberalisation of trade, mounting up to 80 per cent. The EU insisted it was the minimum required by the provisions of GATT Article XXIV.

As shown in the chapter, both the EU and the United States have allowed latitude for indefinite application of the provision of GATT Article XXIV, particularly, substantially all the trade and reasonable period. However, no ACP countries benefitted per se from such asymmetrical provision. Instead, the EU canvassed and obtained a deep liberalisation in the ACP countries.

Also, some of the agreement's text was examined, one being Article 2 (e) of the EU-Ghana EPA, which provides for compatibility with the WTO. The conflict of ideas that arose during the negotiation was about the proper interpretation to be given to 'substantially all trade', where it was insisted that the proper interpretation was Ghana liberalising 80 per cent of its trade. It was agreed in the Cotonou Partnership Agreement that there would be room for flexibility, but eventually, the EU ignored the provision and imposed terms that protect its interests.<sup>810</sup> For instance, there is no permission to increase tariffs upon signing the agreement in the standstill provision, even for products exempted from liberalisation.

The thesis turns next to explore economic policy in Nigeria—post-independence to present day.

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<sup>810</sup> Interview with NANTs official (2020); Lui & Bilal, *op cit note 724*

## CHAPTER SIX: HISTORICAL TO PRESENT-DAY TRADE IN NIGERIA

### I INTRODUCTION

The chapter examines the economic policies of Nigeria's post-independence period. It explores colonial trade philosophy and its impact on prevailing economic conditions in Nigeria through the lens of the theoretical framework adopted. The chapter gives insight into why Nigeria believes that it cannot sign the Economic Partnership Agreement (EPA). According to a trade expert interviewed, for many years, Africa, Caribbean, and Pacific (ACP) countries, including Nigeria, could access the European Union market non-reciprocally.<sup>811</sup> Nevertheless, it failed to take advantage of non-reciprocal free access.<sup>812</sup> However, as noted in chapter 3, the non-reciprocal market access for the ACP countries did not amount to any appreciable trade exports for peripheral countries due to other structural factors and impediments in the agreement.<sup>813</sup>

This chapter argues that the ideological belief underlying the liberalisation of the market in Nigeria is largely problematic. As observed by Lang, both Ruggie's embedded liberalism, discussed in chapter two, and neoliberal ideas are unreceptive to Nigeria's historical and domestic structure.<sup>814</sup> This chapter borrows from the revisionist perspective to explore the historical nature of trade in Nigeria's post-independence period. The chapter discusses the following questions: (a) Does Nigeria's structural condition enable it to develop its global competitiveness? (b) What are the factors that make support for trade liberalisation challenging in Nigeria?

The rest of the chapter is divided as follows: Section 2 explores various National Development plans in Nigeria; section 3 examines the economic policy of the Structural Adjustment Programme. Section 4 takes a cursory look at the ideological construct of trade in Nigeria. Section 5 examines trade policy and the state of infrastructure in Nigeria, and section 6 concludes the chapter.

### II ECONOMIC POLICIES: THE NATIONAL DEVELOPMENT PLAN OF NIGERIA

According to Ekundare, various medium-term projects were initiated post-independence, although implementation brought about mixed results.<sup>815</sup> Since the adopted plans failed to yield the desired

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<sup>811</sup> Interview with the official of ECOWAS (2020)

<sup>812</sup> *ibid*

<sup>813</sup> The ACP-EU Couriers 'The Finest and Most Complete Instrument of Cooperation Ever' (No 55, January-February 1996, Special Issue on the Revised Lomé Convention) 3-4

<sup>814</sup> Lang, *op cit note 53*

<sup>815</sup> Olufemi R Ekundare, *An Economic History of Nigeria 1860-1960* (1973) 20

outcomes, other key strategic initiatives like the Structural Adjustment Programme (SAP); the National Economic Empowerment and Development Strategy; the Strategy for Attaining the Millennium Development Goals; and the 7-Point Agenda were launched but criticised for poor implementation and intense focus on raw material production.<sup>816</sup>

The first National Development Plan (NDP 1962 – 68) emphasised the abundant resources of Nigeria but recognised the need for competent and systematic collective action in pursuit of the objective to obtain the utmost benefit from the country's resources.<sup>817</sup> The first Development Plan devised four phases aimed at attaining economic development.<sup>818</sup> The plan's implementation expects to bring Nigeria to 'self-sustained' economic growth and economic independence.<sup>819</sup> According to the World Bank, the plan 'appears soundly conceived.'<sup>820</sup> However, Nnadozie expressed the view that the objectives and targets were too broad.<sup>821</sup> The priority of the projects focused on the public sectors: education, transport, communication, and agricultural research.<sup>822</sup>

In 1954, the Bank Survey Mission to Nigeria posited that the country's economic progress depended upon strengthening essential government services and was more likely to be limited by the shortage of skills than lack of funds.<sup>823</sup> Wolfgang described the lack of expertise in Nigeria as follows: 'in Nigeria, and all underdeveloped countries, there is a great dearth of qualified administrators and businessmen-indeed, of qualified people of all descriptions'.<sup>824</sup> Wolfgang holds that the Federal government and the three regions recognised agriculture as the backbone in their various plans, notwithstanding the lack of skills amongst the population.<sup>825</sup> In the early years, pre and post-independence, according to Nnadozie Uche, agriculture provides approximately 60 per cent of the country's income, 75 per cent employment, and more than 80 per cent of exports.<sup>826</sup> However, according to the World Bank, oil makes up the largest percentage of Nigeria's exports.<sup>827</sup>

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<sup>816</sup>Commonwealth, National Development Plan of Nigeria, available at <https://www.commonwealthgovernance.org/africa/n...> accessed: 31 March 2021

<sup>817</sup> Stople F Wolfgang, 'Economic Development in Nigeria', (1963) 23 (4) *The Journal of Economic History*, 391-413 at 402

<sup>818</sup>International Bank for Reconstruction and Development: International Development Association, Report on Nigeria Development Plan 1962-1968 (file copy Report No AF-4, 31 December, 1962, Department of Operations, Africa, iii [www.documents.worldbank.org/curate/en/136901468084231919/pdf/multi0page.pdf](http://www.documents.worldbank.org/curate/en/136901468084231919/pdf/multi0page.pdf)) accessed: 19 May 2021

<sup>819</sup> *ibid*

<sup>820</sup> *ibid*

<sup>821</sup>Nnadozie Uche O The State Civil Service and Underdevelopment in Nigeria: An Analysis of Public Policy Making Process in a Neocolonial Society (2004) 10

<sup>822</sup> *ibid*

<sup>823</sup> *ibid*

<sup>824</sup>Wolfgang *op cit note* 817

<sup>825</sup> *ibid*

<sup>826</sup>Nnadozie *op cit note* 821

<sup>827</sup> World Bank, 'World Bank in Nigeria' (October 2021) <https://www.worldbank.org/en/country/nigeria/overview#1>

Akindele maintained that, while the strategy during this period acknowledged the prominent place of agriculture in Nigeria's economy, the policymakers also recognised the shortcomings of the subsistence farming methods.<sup>828</sup> The reason is that it averts extensive productive use of the land and diversification of the economy of the three regions.<sup>829</sup> Emphasising the importance of agriculture, Sir Abubakar Tafawa Balewa, the first Federal Prime Minister from 1957 to 1966, made it incontrovertibly clear that the economic power of Nigeria hinged on the advancement of agriculture.<sup>830</sup> Tafawa Balewa's confidence stemmed from the high level of diversified export during the period, where commodities such as cocoa, palm kernels, groundnuts, rubber, palm oil, cotton, and timber contributed 75 per cent of Nigeria's total export earnings.<sup>831</sup> However, according to Wells, only 7 per cent of government spending was allocated to the sector, even though agriculture was top on the Agenda.<sup>832</sup>

Instructively, the First National Development Plan included import-substituting industrialisation (ISI).<sup>833</sup> However, ISI, which had permitted countries like Nigeria to insulate its domestic market, according to Tussie, was dispensed with due to external pressure and constraints.<sup>834</sup> During this period, the Kanji Dam and Ugheli thermal plants were commissioned.<sup>835</sup> These two significant projects provided a vital infrastructural mainstay for infant industries.<sup>836</sup> The ISI plan's main objective was to encourage industries' growth and improve indigenous people's participation through a change of ownership structures—typified to a large extent by technological

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<sup>828</sup>R A Akindele, Nigeria's External Economic Relations, 1960-1985, (1986) 21 (1) *Africa Spectrum* 5-34 at 7; 'National Development Plan' 1962-68) available at <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/903921468098980089/nigeria-national-development-plan-1960-1968> accessed 20 March 2021; E N Iheanacho, National Development Planning in Nigeria: Endless Search for Appropriate Development Strategy, (2014) 5 (2) 49 *Int'l J of Economic Development Research & Investment*

<sup>829</sup> *ibid*, Akindele

<sup>830</sup> *ibid*

<sup>831</sup> *ibid* at 8-9

<sup>832</sup>Wells J C, 'Issues in Agricultural Policy During the 1962-68 Nigerian Development Plan' in Eicher C K and Liedholm, (eds) *Growth and Development of the Nigerian Economy* (1970) 251-52 cited in: David L Bevan, Paul Collier & Jan Willem Gunning, *The Political Economy of Poverty, Equity, and Growth: Nigeria and Indonesia* (1999); Brian Pinto, Oil Boom: A Policy Comparison with Indonesia' (1987) 1 (3) *The World Bank Economic Review* 419-445 at 432

<sup>833</sup> Import Substitution in Nigeria: Feasibility and Path towards Reduced Import Content, Pros hare Economy (Friday April 22, 2016), The Import substituting industrialisation means a framework for industrial policy adopted after independence. The primary aim of the objective to reduce to the barest minimal injurious impact of unbridled importation foreign goods by restricting access to forex, so as to encourage production of domestic goods.

<sup>834</sup>Tussie *op cit note* 774 at 3

<sup>835</sup>Wolfgang *op cit note* 817 at 40; International Bank for Reconstruction and Development, International Development Association, Report on Nigeria Development Plan 1962-1968 (file copy Report No AF-4, 31 December, 1962, Department of Operations, Africa, (December, 1962) 18-19 available at [www.documents.worldbank.org/curate/en/136901468084231919/pdf/multi0page.pdf](http://www.documents.worldbank.org/curate/en/136901468084231919/pdf/multi0page.pdf)) accessed: 6 July 2020

<sup>836</sup> *ibid*

dependence on foreign know-how and neglected local content.<sup>837</sup> The first plan was argued to have neglected most of the factors needed to handle the nascent industrial sector and control technology transfer.<sup>838</sup> In the view of Wolfgang, the plan's emphasis was more on productivity, profitability and growth.<sup>839</sup> According to him, inadequate local content and the indigenous people's campaign led to the Second Plan's formulation.<sup>840</sup>

The Second National Development Plan was launched in 1970-74.<sup>841</sup> According to Humphrey, it attempted to cure the shortcomings inherent in the First National Development Plan.<sup>842</sup> Besides the lack of local content, the civil war was blamed for the first plan's failure. The Second Plan focused on reforming domestic production of 'intermediate capital goods for sale to other industries.' Commenting on the objectives of the second plan, Ekundare states that the key aim of the plan was 'even development' all over the country.<sup>843</sup> According to an observer, it represents the 'first systematic effort to create an industrial structure linked to agriculture, transport, mining, and quarrying.'<sup>844</sup> The Second Plan came when Nigeria enjoyed being one of the major oil producers in the world. According to Oyelaran-Oyeyinka, the economy gained enormously from foreign exchange inflows.<sup>845</sup> However, the technological capacity shortage prevented the economy from developing beyond the primary production of raw materials.<sup>846</sup> Wolfgang observed that most projects built during the Second Development Plan are almost non-existent or are at the lowest functioning capacity.<sup>847</sup>

Chete et al. opined that a pedantic evaluation of the industrial development challenge of the 1970s demonstrated that the constraint was not about a lack of finance but a shortage of human resources, such as technology management abilities and skills needed for instituting, executing, and handling industrial projects.<sup>848</sup> Due to this deficiency, there is evidentiary support to the claim that most project preparations, feasibility studies, engineering and designs are handled by foreign

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<sup>837</sup> Louis N Chete, John O Adeoti, Foluso M Adeyinka et al. *Industrial Development and Growth in Nigeria: Lessons and Challenges* (2014) 1; Wolfgang *op cit note* 817 at 404

<sup>838</sup> *ibid* Chete, Adeoti, Adeyinka et al

<sup>839</sup> Wolfgang *op cit note* 817 at 404

<sup>840</sup> *ibid*

<sup>841</sup> Ratta Bhatia & Peter Engstrom, *Nigeria's Second National Development Plan & Financial Analysis* in Norman K Humphreys (ed), *International Monetary Fund Staff Paper* vol XIX (1) (1972) 146

<sup>842</sup> *ibid*

<sup>843</sup> R O Ekundare 'Nigeria's Second National Development Plan as a Weapon of Social Change' (1971)70 (279) *African Affairs*, 146-158 at 154

<sup>844</sup> Chete, Adeoti & Adeyinka et al *op cit note* 837

<sup>845</sup> Oyelaran B Oyeyinka 'Industrial Technology Policy - Making and Implementation in Nigeria: An Assessment' NISER Occasional Paper. Ibadan: NISER (1997) cited in Chete et al *op cit note* 828

<sup>846</sup> Bhatia & Engstrom *op cit note* 841

<sup>847</sup> Wolfgang *op cit note* 817

<sup>848</sup> Chete, Adeoti, Adeyinka et al. *op cit note* 837 at 17-18

companies, including construction, erection and commissioning.<sup>849</sup> Jaja Nwachukwu is quoted as having lamented in the House of Representatives that ‘nearly all our leading industries are in the hands of foreigners...’<sup>850</sup> Supporting the point made by Nwachukwu, KO Mbadiwe states that ‘we do not want to be hewers of wood and drawers of water all the time - raw materials since 1766 - we want to be manufacturers.’<sup>851</sup> Adding to the lamentations, the Federal Minister of State, Zana Bukar Dipcharima, asserted that ‘our country’s economy, strictly speaking, is not in our hands...’<sup>852</sup>

Thus, as a result of the outcry against the exclusion of indigenes by foreign companies,<sup>853</sup> the government of Nigeria endorsed an Act, the Nigeria Enterprises Decree (NEPD) (popularly called ‘Indigenization Decree’) in 1972. This brought about an indigenisation policy that allowed Nigerians to own, acquire and participate in projects built in the country.<sup>854</sup> The focus of the policy was to promote and strengthen indigenous investors in the manufacturing sector.<sup>855</sup> Decrees 9 and 11 stipulated a person's maximum amount before forming a company. This is to ensure that Nigerians benefit from such enterprises. Decree 7 (1) (a) provided an exception for a foreign company to own and operate in Nigeria. First, the foreign firm must have substantial money; secondly, such a company must have branches in 10 states in Nigeria. The Act was later amended, repealed, and subsequently replaced by the Nigeria Enterprises Promotion Act of 1977, which came into force in 1978.<sup>856</sup>

In 1975-8, the Third National Development Plan (NDP) was launched. The third NDP took place at the high point of the oil boom.<sup>857</sup> It aims to ensure that Nigeria is first rooted in unity, strength and self-reliance; secondly, to build an economic force that stimulates progress in economic life; thirdly, to build a fair and egalitarian society; finally, to create a land full of opportunities for citizens of the country.<sup>858</sup> The focus remained on public sector investment in industry, particularly the big industries and access to foreign exchange.<sup>859</sup> According to Chete *et*

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<sup>849</sup> Eno L Inanga, ‘The First Indigenisation Decree’ and the Dividend Policy of Nigeria Quoted Companies’ (1978) *The Journal of Modern African Studies* 16 (2) 319-328 at 319

<sup>850</sup> Federation of Nigeria, Hansard (House of Representative Debates, Official Report, Session 1959-1960) vol II; Lagos Federal Government Printer 19-20 (February 1959) pp 578 cited in Chibuzo S A Ogbuagu, *The Nigerian Indigenisation Policy: Nationalism or Pragmatism?* African Affairs 82 (327) (1983) 241-266 at 245

<sup>851</sup> *ibid*

<sup>852</sup> *ibid* at 585

<sup>853</sup> A Adedeji, ‘Historical and Theoretical Background’ in Adebayo Adedeji (ed) *Indigenisation of African Economies* (1981) 29

<sup>854</sup> *ibid*

<sup>855</sup> Akindele *op cit note* 828

<sup>856</sup> Ogbuagu, *op cit note* 850 at 241

<sup>857</sup> Akindele *op cit note* 828

<sup>858</sup> Olufemi A Lewis, *Nigeria’s Third National Development Plan 1975-80: An Appraisal of Objectives and Policy Frame*

<sup>859</sup> *ibid*

*al.*, it became crystal clear at this point that Nigeria had signed industrial project agreements with little or no regard for the country's capacity for technological acquisition.<sup>860</sup> The challenge noted in the third plan, according to Olufemi, is that it is hard to explain the underlying objectives of the plan.<sup>861</sup>

Beginning from 1981-85, the Fourth National Development Plan was launched.<sup>862</sup> This coincided with the start of economic decline in Nigeria, resulting in the deterioration of foreign exchange earnings,<sup>863</sup> the balance of payment disequilibrium, and unemployment.<sup>864</sup> According to Chete *et al.*, the high import base with emphasis on the 'oil economy' acutely affected the performance of the manufacturing industry.<sup>865</sup> According to observers, the country became aware of the harsh reality that the strategies employed to advance industrial development were not likely to solve the challenge of economic underdevelopment or social difficulties such as abject poverty, unemployment, and threat to lives and property.<sup>866</sup> Consequently, to Bevan, pressure mounted to seek an alternative economic policy.<sup>867</sup>

It became evident that the Nigerian government's series of development plans failed to meet the desired economic development.<sup>868</sup> Thus, the Ibrahim Babangida military junta endorsed the International Monetary Fund (IMF) and the World Bank's prescription for economic growth by adopting Structural Adjustment Programme (SAP) policy.<sup>869</sup> The following section now turns to the IMF and World Bank formula for growth.

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<sup>860</sup> Louis N Chete, John O Adeoti, Foluso M Adeyinka et al. 'Industrial Policy in Nigeria: Opportunities and Challenges in a Resource-rich Country' in Carol Newman, John Page, John Rand, Abebe Shimeles, et al *Manufacturing Transformation: Comparative Studies of Industrial Development in Africa and Emerging Asia* (2016) 119

<sup>861</sup> *ibid* at 60

<sup>862</sup> Peter Koehn, Local Government Involvement in National Development Planning; Guidelines for Project Selection Based Upon Nigeria's Fourth Plan Experience, (1989) 9 *Public Administration and Development* 417-436

<sup>863</sup> David Bevan, Paul Collier & Jan Willem Gunning, *The Political Economy of Poverty, Equity, and Growth: Nigeria and Indonesia*, (1999) 50

<sup>864</sup> Newman, Page, Rand et al *op cit note* 851 at 119; Iheanacho E N, National Development Planning in Nigeria: An Endless Search for Appropriate Development Strategy (2014) 5, (2) *International Journal of Economic Development Research and Investment* 50-5

<sup>865</sup> Chete. Adeoti, Adeyinka et al *op cit note* 860 at 15-16

<sup>866</sup> *ibid* at 3; Bevan, Collier & Gunning, *op cit note* 832 at 100-1

<sup>867</sup> *ibid* Bevan et al at 63

<sup>868</sup> Paul Collier, 'Oil, Growth and Governance in Nigeria' in Paul Collier, Chukwum C Soludo and Cathrine Pattillo (eds), *Economic Policy Options for a Prosperous Nigeria* (2008) 45

<sup>869</sup> John C Anyanwu, President Babangida's Structural Adjustment Programme and Inflation in Nigeria (1992) 7 (1) *Journal of Social Development in Africa* 5-24

### III ECONOMIC POLICY OF STRUCTURAL ADJUSTMENT PROGRAMME (SAP)

Drawing from the insights of Cox's critical theory, a 'theory is always for someone and for some purpose.'<sup>870</sup> Following this view, the section explores neoliberal discourse and practice initiated by the dominant core and its institutions and donors to answer Africa/Nigeria's challenges. According to the IMF and other proponents, the economic problems of Africa were not a result of external factors but internal factors.<sup>871</sup> According to these observers, the primary challenges were state interference in the price mechanism, excessive spending on public service, exchange control, state involvement in manufacturing and enterprises, and investing in social welfare.<sup>872</sup> African countries' particular problems were described to be in excess due to price control, overvalued currencies, conflict, inward-directed trade policy and immoderate spending on the part of the government.<sup>873</sup> The proponents hold that if obstacles are removed through the adoption of the IMF policies, it will hasten African countries' transition into an efficient economy.<sup>874</sup> Woods posits that this assumption began to permeate Africa, including Nigeria, when SAP policy was introduced to solve economic problems.<sup>875</sup>

Commenting on the limited ability of African countries to manage the conditions imposed by the IMF, Woods states: 'Many African governments had limited capacity to analyse global economic trends and shocks.'<sup>876</sup> Furthermore, Woods noted that the underlying intention of the Bank was to thoroughly reform the role of the states differently so that markets and the private sector would trump the state in the economies of Africa.<sup>877</sup> However, the author noted that it is easier for the Bank to advocate for trade liberalisation and devaluation of exchange rates than a comprehensive institutional reform within borrowing countries.<sup>878</sup> As argued by Cox in his problem-solving theory, the IMF is only interested in fixing the problem, not the cause of the problem, 'it takes the world as it finds it.'<sup>879</sup>

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<sup>870</sup>Cox, *op cit note 47* at 128

<sup>871</sup> World Bank, *Accelerated Development in Africa: An Agenda for Action*, Washington DC: World Bank 1981; Green Reginald H, *Stabilisation and Adjustment Policies and Programme Country Study 1: Ghana* 1987

<sup>872</sup> *ibid*

<sup>873</sup> World Bank, *Adjustment in Africa: Reforms, Results, and the Road Ahead* (1994); Roe Alan & Hartmut Schneider, *Adjustment and Equity in Ghana* (1992)

<sup>874</sup> *ibid*

<sup>875</sup> Ngair Woods, *The Globalisers: The IMF, The World Bank, and their Borrowers* (2006)

<sup>876</sup> *ibid* at 141

<sup>877</sup> *ibid* at 149

<sup>878</sup> *ibid*

<sup>879</sup> Cox, *op cit note 47*

(a) *Post-Independence Economic Restructure*

In 1983, the high unemployment and deficit in the balance of payment led the Shehu Shagari government to apply to the IMF for a three-year loan facility of \$2.3 billion. The IMF listed seventeen conditions for the grant of the loan.<sup>880</sup> The negotiation continued into the Buhari regime, onto the Babangida junta in 1985.<sup>881</sup> According to Abubakar Momoh, the international community received the Babangida coup because he was more amenable to the IMF plan, even though the ‘Nigerian people rejected the loan.’<sup>882</sup> According to Bevan *et al.*, the Babangida regime made it categorically clear that the austerity regime adopted by Buhari’s military regime was not sustainable, and as such, it had to be supported by reforms.<sup>883</sup> The new administration opened a public debate on the merits and demerits of accepting IMF reform.<sup>884</sup> Babangida lost the debate but ignored the outcome and adopted the IMF programme. The SAP covered a wide range of issues. However, the main feature was the liberalisation of markets in the exchange rate system areas and the removal of import licensing.

Notwithstanding the overarching reform by the IMF, the government asserted that the IMF strategy was ‘Home Grown.’<sup>885</sup> Ihonvbere and Ekekwe hold that the reform ‘deteriorated’<sup>886</sup> the conditions of the poor, but it was beneficial to the ‘local elites’,<sup>887</sup> who were against the development of industries in Nigeria.<sup>888</sup> As articulated by Cox, the hegemon carefully chose the elites that would accept its ideas.<sup>889</sup>

Momoh maintained that the SAP policy was not homegrown; instead, the primary aim was to satisfy the interests of the foreign creditors.<sup>890</sup> According to him, the IMF imposed economic and political conditions, generating contradictory results.<sup>891</sup> According to Bangura and Beckman, in 1993, SAP did not enhance Nigeria’s economy. Instead, it made the economy worse, brought about low capacity in industrial utilisation, abjectly impoverished peasants and caused an extreme

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<sup>880</sup> Julius O Ihonvbere & Eme N Ekekwe, *Dependent Capitalism, Structural Adjustment and Democratic Possibilities in Nigeria’s Third Republic*, *Africa Spectrum* vol 23 (3) (1988) pp 273-291 at 280

<sup>881</sup> Anyanwu, *op cit note* 869

<sup>882</sup> Abubakar Momoh, *The Structural Adjustment Programme and the Transition to Civil Rule in Nigeria (1986-1993)* (1996) 21 (1) *Africa Development* 19-37 at 20

<sup>883</sup> Bevan, *Collier & Gunning op cit note* 832 at 74

<sup>884</sup> *ibid* at 75

<sup>885</sup> Ayagi Ibrahim, *The Trapped Economy* (1990) 97-8

<sup>886</sup> Ihonvbere & Ekekwe *op cit note* 871 at 287

<sup>887</sup> Evans Peter, *Dependent Development: The Alliance of Multinational, State and Local Capital in Brazil* (1979) 20 cited in Ihonvbere & Ekekwe *op cit note* 880 at 275

<sup>888</sup> *Ibid*

<sup>889</sup> Cox, *op cit note* 96 at 172

<sup>890</sup> Momoh, *op cit note* 882 at 20

<sup>891</sup> *ibid*

reduction in the provision of social and dilapidated infrastructure.<sup>892</sup> Collier termed SAP as ‘coping policies.’<sup>893</sup>

However, from the standpoint of Jefferies, the Bank moved to rescue Nigeria from total economic collapse in the 1980s.<sup>894</sup> He attributed the failure of SAP policies to endemic corruption, which generated indiscipline before SAP and its implementation.<sup>895</sup> Collier blamed the Nigerian situation on two significant shocks: in 1986, oil fell from 30 to 18 dollars, and there was a move from borrowing to paying back the debt. It is surprising to Collier that Nigerians blamed poverty and hardship on SAP policies since the same policies worked for Indonesia.<sup>896</sup>

On the extensive coverage of the IMF programme, David Greenaway and Oliver Morrissey opined that economic liberalisation as prescribed under SAP brought about the country's overarching privatisation programme in 1989 and 1993.<sup>897</sup> Trade was liberalised, and fiscal spending was effectively controlled.<sup>898</sup> The restoration of democracy in 1999 further strengthened these economic reforms by enacting the Privatisation and Commercialisation Act.<sup>899</sup>

According to Said Adejumobi, the re-emergence of civil governance can be viewed as a ‘post-adjustment era.’<sup>900</sup> He argues that the Structural Adjustment Programme was heavily criticised; thus, it lost all credibility as an answer to the economic challenges of Nigeria.<sup>901</sup> Ka and Van de Walle critiqued the policy of SAP as being ‘too detailed and copious to be implemented and too seldom enforced.’<sup>902</sup> Ndiaye characterises the policy as upsetting to the recipient's economic balance, with its negative impact on ‘health, sanitation, education, and literacy’ being enormous, hence not sustainable.<sup>903</sup> Several agencies, such as the United Nations Children’s Fund

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<sup>892</sup>Bangura Yusuf & Beckman Bjorn, ‘African Workers and Structural Adjustment: A Nigeria Case-Study’ in Adebayo Lukoshi (ed) *The Politics of Structural Adjustment in Nigeria*, (1993) 45

<sup>893</sup> Collier, *op cit note* 868 at 45

<sup>894</sup> Richard Jefferies, ‘The State, Structural Adjustment and Good Government in Africa’ (1993) 31 (1) *Journal of Commonwealth & Comparative Politics* 20-35 at 23-5

<sup>895</sup> *ibid* at 23-5

<sup>896</sup>Paul Collier, Chukwuma C Soludo & Catherine Pattillo, *Economic Policy Options for a Prosperous Nigeria* (2008) 45-6

<sup>897</sup> David Greenaway & Oliver Morrissey, ‘Structural Adjustment and Liberalisation in Developing Countries: What Lessons Have we Learned?’ (1993) 46 (2) *Kyklos* fasc at 243

<sup>898</sup> *ibid*

<sup>899</sup> *ibid*

<sup>900</sup>Said Adejumobi, ‘Introduction: State, Economy, and Society in a Neo-Liberal Regime’ in Said Adejumobi (ed), *State, Economy, and Society in Post-Military Nigeria* (2011) 2; Marie Pauline Eboh, ‘The Anti-SAP Upeaval in Nigeria’ (1990)16 (3) *Philosophy and Social Action*

<sup>901</sup>*Ibid*

<sup>902</sup>Ka Samba and Nicholas Van de Walle, ‘Senegal: Stalled Reform in a dominant Party System’ in Stephen Haggard & Steven B Webb (eds), *Voting for Reform: Democracy, Political Liberalisation, and Economic Adjustment* (1994) 151

<sup>903</sup>Ndiaye Abdourahmane, Foreign Debt, Structural Adjustment Programme, and Poverty in Senegal ATTAC 2003

(UNICEF), publicly recommended a need for SAP to have a ‘human face.’ Similarly, the World Bank faulted the SAP policy through a much-acclaimed report, ‘Sub-Saharan Africa: From Crisis to Sustainable Growth’, which suggested a human-focused policies agenda and blamed African leaders for corruption and mismanagement.<sup>904</sup> Nonetheless, according to Momoh, the criticism of SAP by the agencies is not practical because it is not directed at ‘the underlying philosophical assumptions and bases of SAP.’<sup>905</sup>

As a result of the overwhelming criticism of the unsustainability of the policy, the leading proponents of SAP, being the IMF, accepted the new dictum of constructing ‘capable and effective states.’<sup>906</sup> However, Adejumobi opined that the underlying principle of neo-liberalism remained embedded in the policy.<sup>907</sup> For instance, the Poverty Reduction Strategy Papers (PRSP),<sup>908</sup> which succeeded SAP, called for participation by all. Ayagi referred to the new strategy as a delusion of ‘homegrown’ because it was based on market forces.<sup>909</sup> Commenting on the dominant forces of the market, Adejumobi stated that ‘Free market ideology remained the overbearing creed of economic policy formulation and political choices for many countries.’<sup>910</sup>

Gilles observes that the policies adopted by President Olusegun Obasanjo from 1999 to 2007 are a typical example of the constraints and contradictions of neo-liberalism.<sup>911</sup> During the reign of Babangida (1984 -1993), Olusegun, acting through different civil societies, opposed SAP for lacking in ‘human face and milk of human kindness.’<sup>912</sup> Nevertheless, upon assumption of governance in 1999, observers noted that his economic strategy and reform were no different from that of the previous regime - it was based on neoliberal ideologies of giving absolute rein to the free market, embracing far-reaching privatisation and deregulation measures.<sup>913</sup>

According to Ademola Ariyo, the Obasanjo regime was steeped in free-market ideology.<sup>914</sup> Not long before Obasanjo took over power in 1999, the outgoing military regime headed by

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<sup>904</sup>World Bank, *Sub-Saharan Africa: From Crisis to Sustainable Growth*, Washington DC (1989) 5-10

<sup>905</sup> Momoh, *op cit note* 882 at 23

<sup>906</sup>Adejumobi *op cit note* 900 at 2

<sup>907</sup> *ibid*

<sup>908</sup>International Monetary Fund, *Nigeria: Poverty Reduction Strategy Paper—National Economic Empowerment and Development Strategy* (IMF Country Report No. 05/433, December 2005) 116

<sup>909</sup> Ibrahim, *op cit note* 885 at 97-8

International Monetary Fund, *Nigeria: Poverty Reduction Strategy Paper—National Economic Empowerment and Development Strategy* (IMF Country Report No. 05/433, December 2005) 116

<sup>910</sup>Adejumobi, *op cit note* 900 at 2

<sup>911</sup> Alexandra Gilles ‘Obasanjo, the Donor Community and Reform Implementation in Nigeria’ the Round Table vol 96 (396) (2007) pp 569-586 at 575, (emphasis added)

<sup>912</sup> National Concord Lagos December 12 1987, cited in Ihonvbere & Ekekwe, *op cit note* 32 at 283

<sup>913</sup>Adejumobi *op cit note* 900 at 141

<sup>914</sup> Ademola Aryo ‘Economic and Social Welfare’ in Adejumobi *op cit note* 891 at 144, 150-1

Abubakar Abdusalami established the Public Enterprises (Privatisation and Commercialisation) Act of April 1999.<sup>915</sup> The Obasanjo government followed through with this law with conscientious regularity.<sup>916</sup>

Another extensive reform by the Obasanjo government was the National Economic Empowerment and Development Strategy (NEEDS).<sup>917</sup> NEEDS was founded on four major strategies: first, reforming the government works and its institutions; secondly, growing the private sectors; thirdly, implementing a social charter for the people; and fourthly, re-directing the people with an enduring African value system.

The NEEDS framework provided that the critical elements of this strategy are privatisation and liberalisation, which means ‘shrinking the domain of the state and enlarging the size of the private sector.’ An observer argued that some efficiency level was returned to the privatised companies, and government meddling in patronages has reduced tremendously.<sup>918</sup> According to Beck *et al.*, the study on privatised banks in Nigeria from 1990 to 2001 demonstrates exemplary performance in nine banks studied.<sup>919</sup> However, Adejumobi maintained that the performance only concerns profit-making improvement but no job creation or cost reduction.<sup>920</sup>

Furthermore, NEEDS is believed to be ‘Nigeria’s homegrown poverty Reduction Strategy’.<sup>921</sup> According to Adejemobi’s perspective, while it states that it is ‘homegrown,’ the content is notably a free-market ideology without consideration to the level of development of Nigeria as to whether it can undertake such overarching liberalisation.<sup>922</sup> In the explanation of *transformismo*, Cox argued that a contrary idea is incorporated into the core countries’ Agenda to make it seem ‘homegrown’, but in essence, it only promotes key ideas of interest driven by the core.<sup>923</sup> For example, the framework of NEEDS states: ‘The role of government will become that of a facilitator providing the enabling environment for the private sector to invest and operate in a

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<sup>915</sup> United Nations, Press Conference by Head of State of Nigeria (25 September 1998) available at [www.un.org](http://www.un.org) accessed: 24 March 2021

<sup>916</sup> *ibid*

<sup>917</sup> Foreword of Olusegun Obasanjo to the IMF, Nigeria: Poverty Reduction Strategy Paper--National Economic Empowerment and Development Strategy (December 2004, IMF Country Report No 05/433)

<sup>918</sup> Beck Robert, R Cull & A Jerome, ‘Bank Privatisation and Performance: Empirical Evidence from Nigeria’ (2005) 29 23 *Journal of Banking and Finance* 55-23 at 79

<sup>919</sup> *ibid*

<sup>920</sup> Adejumobi *op cit note* 900 at 9-10

<sup>921</sup> IMF, Nigeria: Poverty Reduction Strategy Paper--National Economic Empowerment and Development Strategy (December 2004, IMF Country Report No 05/433) 116

<sup>922</sup> *ibid* at 91; Adejumobi, *op cit note* 900

<sup>923</sup> Cox *op cit note* 96 at 173

free market system.<sup>924</sup> The private sector is the executor, the direct investor, and the manager of businesses.<sup>925</sup>

Ezeani believed<sup>926</sup> the Bretton Woods ideology altered the indigenisation attempt with its policies of the liberalised market, focusing on export promotion and currency devaluation.<sup>927</sup> In his view, the landmark role of the United States and European hegemony in subjugating Africa, Asia, and Latin America resulted from the former's great advantage in science and technology.<sup>928</sup> This advantage tilted the balance of power in their favour.<sup>929</sup> The power asymmetry between the two worlds of developed and peripheral countries has given an enormous advantage to the core countries.<sup>930</sup> Thus, Akindele argued that 'the poor and underdeveloped South is locked into the rich and developed North's economies and into webs of global economic relationships controlled mainly by the North.'<sup>931</sup>

Nevertheless, some Nigerian elites find no fault with the idea of neoliberalism. For example, the post-independence first Minister of Finance, Chief Okotie-Eboh, clearly stated that 'trade must come before aid and that more fundamental to the economic growth of Nigeria than anything else is a healthy condition of world trade'.<sup>932</sup> However, according to Adekeye, Nigeria's refusal to sign the EPA revealed that the country has realised that strict adherence to these rules does not advance its interest; rather, it furthers the interests of the rule-makers.<sup>933</sup>

The following section explores the idea behind British trade fusion with Nigeria and its impact.

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<sup>924</sup> *ibid*

<sup>925</sup> *ibid* at 24, 109, 117

<sup>926</sup>Elimma C Ezeani, Economic and Development Policy-Making in Nigeria, *Journal of African Law*, vol 56 (1) (2012) pp 109-138 at 115-116 at 115

<sup>927</sup> *ibid*

<sup>928</sup> *ibid*

<sup>929</sup>M.S. Reviving the National Economy, Lecture delivered by the Minister of National Planning at the Nigerian Institute of International Affairs, Lagos on 19th March 1985, 7-9 cited Akindele *op cit* note 828 at 9

<sup>930</sup> *ibid*

<sup>931</sup> *ibid* at 10

<sup>932</sup> 1962-63 Mobilization Budget and the 1963-64 Modernization 19 Mazruri; Ali A, Africa in World Affairs: Conflict and Change in the Next Thirty Years-In: (July 1975) *Nigerian Journal of International Affairs* 79-80, 20 House of Representative, Official Records, 1960-61, p 25

<sup>933</sup>Adebayo Adekeye, 'The Travails of Regional Integration in Africa' in Adebajo &Whiteman *op cit* note 6 at 84

#### IV IDEOLOGICAL CONSTRUCT OF COLONIAL TRADE IN NIGERIA

Before independence in 1960, Nigeria's trade policies were fused with colonial trade policies.<sup>934</sup> According to Axel, the primary aim of the fusion was to foster and control the trade to serve the metropolis' interests.<sup>935</sup> He further notes that, fundamentally, emphasis was laid on reinforcing trade connections with the metropolitan country, which ultimately cornered the colony's external trade for itself.<sup>936</sup> However, according to the standpoint of Charle, the British trade activity brought mutual benefit to the colonialists and the colony.<sup>937</sup> The colonialists, it is argued, introduced new crops to several African regions, technical advancements, improved transportation, and European firms and governments invested in railroads and ports in Africa.<sup>938</sup> Before independence, the quantitative restrictions employed in the 1950s discriminated only between sterling-area imports and other countries.<sup>939</sup>

Sam Olofin observed that licenses had to be applied for and granted from Nigeria's so-called hard currency or non-sterling areas.<sup>940</sup> The licenses are usually granted if Nigeria's requirements cannot be met by the United Kingdom or other areas favoured by the UK.<sup>941</sup> Charle gave examples of various ways Britain proscribed Nigeria's trade relations with other countries. Charles states that Britain prohibited Nigeria's palm kernel export to Germany following the First World War.<sup>942</sup> Before the war, more than three-fourths of these shipments went to Germany, but the war affected the market. 'The Germans living in Nigeria were deported, and their trade passed to the hands of British merchants.'<sup>943</sup>

The British Parliament conceived a plan to ensure the long-term diversion of shipments to England in 1916 due to fears that the acquired trade could revert to Germany at the end of hostilities. Export duty of two pounds per ton was imposed on all palm kernels shipped from British West Africa and not destined for processing within the Empire. It further approved the

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<sup>934</sup>Axel Harneit-Sievers, 'Economic Nationalism and British Colonial Policy: Southern Nigeria 1935-1954' (1996) *African Economic History* 24 pp 25-68; Kalegha J O, 'Trade Policy' A Paper presented at CBN/World Bank National Workshop on Nigeria-Prospect for Development, (Abuja, 1996) 15-17 April cited in Obadan, *op cit* note 32 at 932

<sup>935</sup>Akindele *op cit* note 828 at 6, 26

<sup>936</sup> Harneit-Siever *op cit* note 934

<sup>937</sup>Edwin G Charle Jr, English Policy and the Economy of Nigeria' (January 1967) 26 (1) *The American Journal of Economic and Sociology* pp 79-92 at 79-80

<sup>938</sup> Lewis Gann and Peter Duigan, Burden of Empire: An Appraisal of Western Colonialism in Africa South of the Sahara (1967); Patrick Manning, 'Analysing the Costs and Benefits of Colonialism' (1974)1 (2) *African Economic Review* 15-22 at 17

<sup>939</sup> *ibid*

<sup>940</sup>Sam Olofin Trade Policies in Nigeria, (1953) 1 (2) *Nigerian Trade Journal*, 480

<sup>941</sup> *ibid*

<sup>942</sup> Charle Jr, *op cit* note 937 at 79-80

<sup>943</sup>Sir, F D Lugard, Report on the Amalgamation of Northern and Southern Nigeria, and Administration, 1912-1919, Cmd 468 (1920) P 30 cited in: Charle Jr, *op cit* note 937 at 81

amount to be raised if it was insufficient to change trade to the country mentioned above.<sup>944</sup> An observer doubted whether this tariff contributed to the weakening of Nigeria's exports and productive capacity.<sup>945</sup> Charle seemed to agree that the trade policy suppressed Nigeria's ability to relate with other countries besides Britain.<sup>946</sup> However, other observers attributed the Nigerian problem to mismanagement and poor infrastructure.<sup>947</sup> Ultimately, an observer maintained that the challenges stem from colonial philosophy, which Britain and Nigeria can disconnect from to allow for a genuine partnership while recognising the different development levels.<sup>948</sup>

Charle related how England used tariff powers to support its manufacturing industries to deal with colonial markets.<sup>949</sup> British textile manufacturers had suffered serious competition with inexpensive textile exports from Japan.<sup>950</sup> Japanese textile exports to Nigeria had significantly increased and were priced below their British counterpart in 1934. England used its tariff power to help its manufacturers in the colonial markets.<sup>951</sup>

In order to effectively control the competition, the Governor of Nigeria set quotas on Japanese textile imports, fixing the maximum levels brought into the country.<sup>952</sup> Nigerians who were members of the Legislative Council stood against this policy because the policy was only in Britain's interests and reduced living standards in Nigeria.<sup>953</sup> During the Second World War, the British completely controlled the trade in West African colonies.<sup>954</sup> It achieved this by establishing Statutory Marketing Boards to purchase and export major crops.<sup>955</sup> Through the boards, quotas were set on export firms to make them responsible for granting collection agents licenses and preventing other competitors' admission into the market.<sup>956</sup> According to the report, the native producers had their prices fixed below the price to amass reserves held in trust for those

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<sup>944</sup>Report of Committee on Edible and Oil-producing Nuts and Seeds Cd. 8247 London: H.M.S.O., 1916, P 22

<sup>945</sup> *ibid*

<sup>946</sup>Charle Jr, *op cit note 937*

<sup>947</sup> Adeel Malik & Francis Teal, 'Towards a More Competitive Manufacturing Sector' in Collier Soludo & Pattillo, *op cit note 896* at 260

<sup>948</sup>Crawford Young, 'The End of the Post-Colonial State in Africa? Reflection on Changing African Political Dynamics' (2004) 103 *African Affairs* 23-49

<sup>949</sup> *ibid*

<sup>950</sup> *bid*

<sup>951</sup>Nigeria Blue Book, 1933 (Lagos: Federal Government Printer, pp T63-T70 cite in Charle *op cit note 928*

<sup>952</sup>Ordinance No 7, June 12 1934; Order No 39, June 13, 1934. The quota of Japanese textile imports for 1935 was set at 2.4 million square yards by Order No 61, December 3, 1934; cite in Charli *op. cit note 127*

<sup>953</sup>Nigeria Legislative Council Debates, 12 Session, June 12, 1934 (Lagos: Federal Government Printer, pp 6, 49-50, 53

<sup>954</sup> Gavin Williams, Marketing Without and with Marketing Boards: The Origins of State Marketing Boards in Nigeria (1985) 12 (34) *Review of Africa Political Economy* 4-15

<sup>955</sup> *ibid* at 4-15

<sup>956</sup>Report on Cocoa Control in West Africa, 1939-1943, Cmd. 6554 (London: H.M.S.O., 1944, P 3; P T Bauer, West African Trade (1954) chapter 22-24

producers.<sup>957</sup> In Gavin William's view, the primary aim for setting up the Marketing Board was 'meeting the British needs.' It became an instrument in the hands of Nigerian politicians to tax farmers excessively to enrich themselves.<sup>958</sup> According to William's analysis, the protection of the various interests was such that the British and the Nigerian elite discouraged the farmers from producing crops for export.<sup>959</sup>

According to an observer, the trade policy primarily reflects 'an apparent subordination of Nigerian interests to British importers, because import licenses significantly constrained imports from countries such as Japan, Eastern Europe, and the United States.'<sup>960</sup> However, this regulation eased up when Nigeria gained political independence in 1960.<sup>961</sup>

Mike Obadan opined; that the tariff was used as a tool through three stages. First, Until 1953, it was aimed at generating revenue for the colonial government; secondly, between 1953 and 1967, it focused on two primary objectives: generating revenue and serving as a solution to the balance of payment adjustments, and finally, the establishment of multiple tariff rates in 1967 signified the start of using tariffs as a tool for industrial policy.<sup>962</sup> The use of an import-substitution industrialisation strategy, which relied on tariff and non-tariff barriers, was later abandoned to encourage broad outward policy but maintained a restrictive trade regime.<sup>963</sup>

The research explores the current trade policy in Nigeria to put the reader in the picture of the country's level of development in terms of trade policy, negotiation, and infrastructure.

## V NATIONAL TRADE POLICY

The World Trade Organisation (WTO) report of 2017 states that the Nigerian law dealing with trade-related issues are obsolete.<sup>964</sup> Some amendments to the laws are before the National Assembly for approval.<sup>965</sup> The current regime design plan, referred to as the Economic Recovery and Growth Plan (ERGP), has no concrete direction focusing on trade matters - it only provides

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<sup>957</sup>Statement of Future Marketing of West African Cocoa, Cmd. 6950 (London: H.M.S.O., 1946) PP 5-6 [https://hansard.parliament.uk/Commons/1947-10-29/debates/48a49df7-fb7d-4e37-8600-d3fef4816345/WestAfricanCocoa\(Price\)](https://hansard.parliament.uk/Commons/1947-10-29/debates/48a49df7-fb7d-4e37-8600-d3fef4816345/WestAfricanCocoa(Price))

<sup>958</sup> Gavin *op cit note* 940

<sup>959</sup> *ibid* at 4

<sup>960</sup> Olofin, *op cit note* 831

<sup>961</sup> *ibid*

<sup>962</sup> Mike I Obadan 'The Impact of External Sector Policies on Nigeria's Economic Development' *CBN Economic & Financial Review* 34 (4) p 484

<sup>963</sup> *ibid* at 481

<sup>964</sup> WTO, Trade Policy Review Reported by the Secretariat, Nigeria WT/TPR/S/356 (9 May 2017) available at [https://www.wto.org/tratop\\_e/tp\\_r\\_e/tp456\\_e](https://www.wto.org/tratop_e/tp_r_e/tp456_e) accessed: 5 April 2021 at 25

<sup>965</sup> *ibid*

for diversification of its exports.<sup>966</sup> Adinde posits that the country's trade policy is fraught with inconsistent trade and economic policy-making processes.<sup>967</sup> This has led him to describe the Nigerian trade regime as an unpredictable, discouraging investment in vital sectors.<sup>968</sup>

According to the WTO 2017 review, the trade policies that are applied in Nigeria are restrictive.<sup>969</sup> According to Hoffman and Melly standpoint, Nigeria uses a high tariff to limit imports to protect local industries and encourage industrialisation.<sup>970</sup> As indicated by a respondent, nascent industries will suffer if the country is further liberalised through the EPA. It, therefore, elects to use high tariffs.<sup>971</sup>

Most of the trade experts interviewed acknowledged several challenges in trade policy design and the power to negotiate and endorse trade agreements.<sup>972</sup> The problems identified by the interviewees include insufficient ability to monitor and analyse trade policies of chief trading partners, lack of experts and competent people, and limited knowledge of international trade law.<sup>973</sup>

*(a) Trade Negotiations*

Nigeria has always aimed to compete for opportunities and compromises obtainable in international trade relations at bilateral, multilateral, regional, or continental levels. These instances are seen in its active involvement in ECOWAS, committing to achieving its goals and aims.<sup>974</sup> After obtaining independence from colonial rule in 1960, Nigeria automatically became a GATT member.<sup>975</sup> Based on this membership, it has participated in several multilateral trade negotiations under the aegis of GATT.<sup>976</sup>

The Lagos Plan of Action, which was endorsed by the Second Extra-Ordinary Assembly of African Heads of State and Government in the year 1980, stipulated in paragraph 256 (1) that the Organisation of Africa Union (OAU) - now Africa Union (AU) – was to become more active

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<sup>966</sup> *ibid* at 26

<sup>967</sup> Stephannie Adinde, 'Policy Inconsistency in Nigeria' (Stears business, 4 October 2018), available at [www.stearsng.com](http://www.stearsng.com) accessed: 5 April 2021

<sup>968</sup> *ibid*

<sup>969</sup> WTO Review *op cit* note 964

<sup>970</sup> Hoffman Leena Koni, Melly Paul & Elizabeth Donnelly, Nigeria's Booming Borders the Drivers and Consequences of Unrecorded Trade (7 December 2015) available at [www.chathamhouse.org](http://www.chathamhouse.org) accessed: 5 April 2021

<sup>971</sup> *ibid*

<sup>972</sup> Interview with FMITI official (Abuja, 2020)

<sup>973</sup> *ibid*

<sup>974</sup> World Trade Organisation, Trade Policy Review Reported by Nigeria (WT/TPR/G/247) (24 May 2011) available at [https://www.wto.org/tratop\\_e/tpr\\_e/tp456\\_e](https://www.wto.org/tratop_e/tpr_e/tp456_e) accessed: 5 April 2021 at 26

<sup>975</sup> Wolfgang Benedek, 'The Participation of Africa in the General Agreement on Tariffs and Trade (GATT)' (1987) 20 (1) *Quartal* 45-58 at 47;

<sup>976</sup> *ibid*; Ademola Oyejide, Ogunkola A, & Bankole A, 'Import Prohibition as a Trade Policy Instrument: The Nigerian Experience' available at [www.wto.org](http://www.wto.org) accessed: 4 April 2021

in global economic negotiations. Also, paragraph 251 (d) obliges members to establish a trading strategy at the international level, mainly based on new rules that consider structural adjustment, preferential treatment for developing countries, and removal of all forms of protectionism. Paragraph 251 calls for diversification of present African trade to solve the endemic economic crisis in Africa.<sup>977</sup> The Lagos Plan of Action objectives were made pre-eminent in recent times by establishing the African Continental Free Trade Area (AfCFTA).

As a result of this call for participation, Nigeria took part in the Tokyo Round and Uruguay Rounds. As expected, GATT is the central pillar of the country's trade policies. Nigeria is also a signatory and founding member of the WTO agreement.<sup>978</sup> According to the GATT report, the outcomes of the Multilateral Trade Negotiation that emanated from the Tokyo Round contain different provisions favouring Nigeria, such as the code of Technical Barriers to Trade, Anti-dumping Subsidies and Countervailing Duties Code.<sup>979</sup> However, Wolfgang noted that these provisions had not been taken advantage of due to legal capacity constraints.<sup>980</sup> For instance, the Protocol of Trade Negotiations among Developing Countries, which was established within the framework of the GATT of non-aligned states in 1971, had Egypt as its only African member. Nigeria was explicitly blamed for not showing serious commitment to the GATT rules and initiative because it signed into a single concession of Stockfish in the schedule.<sup>981</sup> However, Wolfgang suggested that this could result from the fact that its trade volume is marginal.<sup>982</sup> Due to the low level of trade, it has been observed that the positions taken by the country are the same as other WTO members, categorised as developing countries.<sup>983</sup> The group advocated for improved market access to the developed countries' market and preferential treatment based on issues outside market access, including food security, poverty reduction, rural development, and debt burden.<sup>984</sup>

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<sup>977</sup>Tore Rose (ed), *Crisis and Recovery in Sub-Saharan Africa*, (OECD Paris 1985) cited in *Economic Crisis in sub-Saharan Africa: The International Dimension* (1986) 41 4 *International Journal* pp 748-767 at 761; The World Bank, *Toward Sustained Development in Sub-Saharan Africa*, Washington 1984 cited in Wolfgang *op cit* note 20 at 49

<sup>978</sup>World Trade Organisation, *Trade Policy Review Reported by Nigeria (WT/TPR/G/247)* (24 May 2011) 27#

<sup>979</sup>Report by the Director-General of GATT on: *The Tokyo Round of Multilateral Trade Negotiations*, vol I and II, GATT 1979-3 and 1980-1, BISD 265, 3-196

<sup>980</sup>Wolfgang *op cit* note 975

<sup>981</sup>F Roessler, *The Scope, Limits and Functions of the GATT Legal System*, Working Paper prepared for the Leutwiler Reports, commissioned by the GATT in 1984 and published in *Trade Policies for a Better Future*, Geneva (1985) 8 (3) (1985) *the World Economy*, 287-298 cited in Wolfgang *op cit* note 211

<sup>982</sup>Wolfgang *op cit* note 808 at 48

<sup>983</sup> *ibid* at 46

<sup>984</sup> *ibid* at 49; Faizel Ismail, *Rediscovering the Role of Developing Countries in GATT Before the Doha Round*, Research and Information System for Developing Countries (Ris) Discussion Papers, September 2008; Ismail *op cit* note 60

In 1995, Nigeria opened its Trade office and carried out the operation under the umbrella of the Nigerian Permanent Mission in Geneva.<sup>985</sup> The Trade Office handles all trade-related activities in Geneva, such as the WTO, World Intellectual Property Organisation (WIPO), UNCTAD, and the International Trade Centre (ITC). The Trade Office is managed by an Ambassador, the head of the Delegation to the WTO.<sup>986</sup> In this regard, the Ambassador is answerable directly to the Honourable Minister of Trade and is regarded as the chief negotiator. The Minister of Commerce represents Nigeria at the Ministerial Conference, the highest decision-making body of the WTO. The Ministerial Conference takes place every two years.<sup>987</sup>

The work of the WTO is performed in the context of meetings. It takes place at different levels in formal and informal settings: the Ministerial Conference, General Councils, and subsidiary bodies.<sup>988</sup> Formal and informal meetings are held simultaneously by different bodies, subverting the participation of peripheral countries like Nigeria.<sup>989</sup> This holds regardless of the clause on voting in Article IX.1 of the Marrakech Agreement Establishing the WTO, which clarifies that ‘the WTO shall continue the practice of decision-making by consensus followed by the GATT 1947.’<sup>990</sup>

Nonetheless, it is observed that in any event whereby a country cannot participate or is excluded, it reduces its welfare.<sup>991</sup> Also, where a more significant number of the members are excluded, ‘it undermines the rule-based system itself.’<sup>992</sup> However, Liang argues that it is impractical for WTO members to negotiate simultaneously, given their diverse backgrounds.<sup>993</sup> However, Nigeria seemed to have an internal challenge. According to Afeikhen Jerome, a Special Adviser to the Commissioner for Rural Economy and Agriculture, African Union Commission, Addis Abba, Ethiopia, the information flow between Abuja and Geneva is minimal. The Information is one-directional from Geneva to Abuja, with virtually no reply from Abuja.<sup>994</sup>

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<sup>985</sup> Afeikhen Jerome, ‘Institutional Framework and the Process of Trade Policy Making in African: The Case of Nigeria, National Institute for Economic Policy (NIEP) (Paper for the International Conference, African Economic Research Institute and Policy Development: Opportunities and Challenges, Dakar, January 28-29, 2005) 6

<sup>986</sup> *ibid* at 5

<sup>987</sup> *ibid*

<sup>988</sup> Kent Jones, Regionalism and the Problem of Representation in the WTO’ (prepared for: CSGR/GARNET Conference Pathway to Legitimacy? The Future of Global and Regional Governance, September 19 2007), <https://warwick.ac.uk/fac/soc/pais/res...> accessed: 5 April 2021

<sup>989</sup> Kent Jones, Green Room Politics and the WTO’s Crisis of Representation Progress in Development Studies 9 (4) (2009) pp 349-57 at 150-1, available at <https://www.researchgate.net/publication/238336438> accessed: 5 April 2021

<sup>990</sup> *ibid*

<sup>991</sup> *ibid*

<sup>992</sup> *ibid* at 151-2

<sup>993</sup> Margaret Liang, Evolution of the WTO Decision-Making Process, Singapore Year Book of International Law (SYBIL) vol 9 (2005) 125-132 at 126

<sup>994</sup> Afeikhen *op cit note* 985 at 5

Nigeria's inadequacy of human and material resources and knowledge has been a source of concern.<sup>995</sup> The recent negotiation of the Economic Partnership Agreement reflected this problem, where according to an interviewee, the EU paid for the venue of meetings and accommodation.<sup>996</sup> This, according to Afeikena, constituted a conclusive impediment to Nigeria's capacity to appreciate the ramifications of the issues and proposals discussed in the varied negotiation groups.<sup>997</sup> This limits the country's ability to participate across the board and draw up national interests in the negotiations. Nevertheless, in her examination of the level of participation of developing countries in the multilateral regime, Apercu maintains that developing countries have levelled up a bit through technical assistance.<sup>998</sup> She argues that notwithstanding the assistance, the duty still lies with African delegations to coordinate and use the system to their advantage.<sup>999</sup>

In Afeikena's view, the militating structural factor complicates the process of the entire WTO system.<sup>1000</sup> Nigeria, which commits itself beyond its administrative and institutional capacity to implement complex rules, demonstrates that the country cannot appreciate the level of obligations it imposes on itself.<sup>1001</sup> Like other peripheral countries, Nigeria signed on to an obligation to reduce trade barriers, implement reforms in trade, and several other regulatory areas that have negatively impacted the local economy, such as intellectual property law and sanitary and phytosanitary standards. However, Osakwe posits that developing countries have 'optimised WTO-rule compliance', increasing sound trade performance for these countries.<sup>1002</sup> Nevertheless, critics argue that signing on to some of the agreements reveals little or no awareness of the development challenges of peripheral economies besides low capacities to implement these obligations provided in the WTO law. In his opinion, Afeikena stated that 'implementation of WTO rules requires more than just removing obtrusive policies, it also requires solid infrastructure and institutions that facilitate economic activity.' For instance, implementing the Trade-Related Intellectual Properties (TRIPS) agreement would need equipment installation, clear procedures, and adequate staff training.<sup>1003</sup>

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<sup>995</sup> Chiedu Osakwe 'Developing Countries and GATT/WTO Rules: Dynamic Transformations in Trade Policy Behaviours and Performance' (2011) 20 *Minn. J INT'L L* 20 365 at 383

<sup>996</sup> Interview with AG Director of MAN (Abuja, 2020)

<sup>997</sup> Afeikena *op cit* note 985 at 5

<sup>998</sup> Joan Apercu, *The Level of African Engagement at the World Trade Organisation from 1995 to 2010* (2013) para 111, available at [www.journals.openedition.org](http://www.journals.openedition.org) accessed: 5 April, 2021

<sup>999</sup> *ibid* 161

<sup>1000</sup> *ibid*

<sup>1001</sup> Afeikena *op cit* note 985 at 5

<sup>1002</sup> Osakwe *op cit* note 995

<sup>1003</sup> Afeikena *op cit* note 985 at 5

(b) *Infrastructure*

It is acknowledged that infrastructure plays a critical role in advancing and sustaining economic growth and promoting global competitiveness.<sup>1004</sup> Hirschman conceptualises infrastructure as the requirements that make the economy function accordingly in a society.<sup>1005</sup> In a broad sense, it comprises effective services from the rule of law to education and public health services, transportation, communication, power and water supply, agricultural overhead capital, and irrigation and drainage systems.<sup>1006</sup>

From Ascher and Krupp's viewpoint, basic infrastructure is the cornerstone of any advanced economy and the central component of living standards.<sup>1007</sup> The 2030 Agenda for Sustainable Development highlighted many goals set to achieve infrastructural development. It identified the primary importance of human development. For a particular purpose, Goal 6 addresses the need for clean water and sanitation for all.<sup>1008</sup> Goal 7 deals with universal access to affordable, high quality, modern energy services, and Goal 8 focuses on constructing a durable infrastructure to encourage sustainable industrialisation and further innovation and industrialisation. According to observers, infrastructure has a remarkable and positive effect on economic development.<sup>1009</sup> Juma argues that Africa's lack of economic transformation and grossly inadequate integration into the global economy is at the heart of insufficient investment and poor infrastructure.<sup>1010</sup> Infrastructure is one of the key categories in the World Economic Forum's yearly Global Competitiveness Report.<sup>1011</sup>

The World Economic Forum's 2016-17 Global Competitiveness Index ranks Nigeria's infrastructure at the bottom of 132 out of 138 countries.<sup>1012</sup> Infrastructure is one out of 12 pillars

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<sup>1004</sup>Afeikhena Jerome & Ademola Ariyo, Infrastructure Reform and Poverty Reduction in Africa (Forum Paper 2004, 13-15 October 2004, South Africa) 3

<sup>1005</sup> Albert O Hirschman A, *Strategies of Economic Development* (1958) 83

<sup>1006</sup> *ibid*

<sup>1007</sup>William Ascher and Corrine Krupp 'Distributional implications of Alternative Financing of Physical Infrastructure Development' William Ascher and Corrine Krupp(eds),*Physical Infrastructure Development: Balancing the Growth, Equity and Environment Imperatives* in (2010) 35-60

<sup>1008</sup>United Nations, 'Transforming our World: The 2030 Agenda for Sustainable Development' A/RES/70/1,<https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf>

<sup>1009</sup>Dale S Rothman, Mohammad T Irfan, Eli Margolese-Malin, et al. *Building Global Infrastructure*, (2014) available at [https://paradee.du.edu/sites/default/files/PPHP4\\_Full\\_Volume\\_Corrected.pdf](https://paradee.du.edu/sites/default/files/PPHP4_Full_Volume_Corrected.pdf) accessed: 22 June 2021 at 6

<sup>1010</sup>Calestous Juma, Leapfrogging progress, The misplaced promise of Africa's Mobile Revolution, 2017, <http://thebreakthrough.org/index.php/journal/issue-7/leapfrogging-progress>

<sup>1011</sup> Klaus Schwab & Saadia Zahidi, How Countries Are Performing on the Road to Recovery, Global Competitiveness Report (World Economic Forum, Special Edition 2020) 12-19, [https://www3.weforum.org/docs/WEF\\_TheGlobalCompetitivenessReport2020.pdf](https://www3.weforum.org/docs/WEF_TheGlobalCompetitivenessReport2020.pdf) accessed: 24 May 2021

<sup>1012</sup> Klaus Schwab, The Global Competitiveness Report 2016-2017, (World Economic Forum, Insight Report, 2016-2017)7, [https://www3.weforum.org/docs/GCR2016-2017/05FullReport/TheGlobalCompetitivenessReport2016-2017\\_FINAL.pdf](https://www3.weforum.org/docs/GCR2016-2017/05FullReport/TheGlobalCompetitivenessReport2016-2017_FINAL.pdf) accessed: 24 May 2021

that the World Economic Forum (WEF) uses to evaluate the overall competitiveness of economies in the world.<sup>1013</sup> Nigeria's competitiveness is ranked 127 out of 138.<sup>1014</sup> Also, according to its 2016 Executive Opinion Survey, the infrastructure deficit is a significant impediment to carrying out business in Nigeria.<sup>1015</sup> In Africa, Nigeria ranks 32 out of 54 countries in its infrastructure level. Only Sudan and Papua New Guinea perform more poorly than Nigeria among lower-middle-income peers. The current projection indicates that in 2040, Nigeria will only rank second-last in this category.<sup>1016</sup>

Confirming the World Economic Forum report, Nigeria's 2017 Economic Recovery & Growth Plan (ERGP) identified the 'deplorable infrastructure' as the critical factor that 'seriously undermined' economic development.<sup>1017</sup> Although some progress has been made in the past years, it is noted that there is a lack of basic infrastructures such as clean water, sanitation, electricity, and good roads. Also, Nigeria is not sufficiently equipped because of its income levels and population growth.<sup>1018</sup> Presently, only 16% of the roads in Nigeria are tarred. In a similar vein, in 2016, it was reported that only 30% of Nigerians could access improved sanitation, clean water and electricity.<sup>1019</sup> The ERGP acknowledged the deficit state of infrastructure and put forward a specific framework and objective.<sup>1020</sup> Nigeria's National Integrated Infrastructure Master Plan (NIIMP), approved in 2015, provides a strategic plan to transform its poor infrastructure to make it competitive.<sup>1021</sup>

One of the most significant challenges faced in Nigeria is export competitiveness.<sup>1022</sup> More specifically, the concerns seek to create a niche for exports to benefit from the added value and diversify exports from raw materials.<sup>1023</sup> The OECD observed several opportunities for markets access for Nigeria, both domestically and in the foreign market.<sup>1024</sup> For example, the ECOWAS Trade Liberalisation Scheme and non-reciprocal trade opportunities provided under the Africa

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<sup>1013</sup> *ibid* at 35-7

<sup>1014</sup> *ibid*

<sup>1015</sup> World Economic Forum, *The Global Risks Report 2017*, 12 editions, Appendix C: <http://reports.weforum.org/global-risks-2017/appendix-c-the-executive-opinion-survey-2016-views-of-the-business-community-on-the-global-risks-of-highest-concern-for-doing-business/> accessed: 24 May 2021

<sup>1016</sup> *ibid*

<sup>1017</sup> Federal Republic of Nigeria, *Economic Recovery & Growth Plan*, Ministry of Budget and Planning February 2017-2020 11 <https://estateintel.com/wp-content/uploads/2017/03/Nigeria-Economic-Reform-Plan-2.pdf>

<sup>1018</sup> Schwab, *op cit note* 201 at 24

<sup>1019</sup> *ibid*

<sup>1020</sup> *ibid*

<sup>1021</sup> Federal Republic of Nigeria, *Nigeria Integrated Infrastructure Master Plan NIIMP* <HTTP://www.niimp.gov.ng/> accessed 22 June 2021

<sup>1022</sup> Schwab, *op cit note* 1003 at 4-5

<sup>1023</sup> *Investment Policy Reviews: Nigeria 2015* OECD (OECD Publishing, Paris) <http://dx.doi.org/10.1787/at152>

<sup>1024</sup> *ibid*

Growth and Opportunity Act (AGOA) have not been utilised to a great extent. In the year 2013, Nigeria's Task Force on Trade Facilitation blamed the low performance on the following challenges: (i) several checkpoints and poor trade facilitation at the sub-regional level, informal trade, poorly organised port, and lack of transparency; (ii) insufficient information sharing and substandard products, made worse by defective standard-setting and process of certification; (iii) Supply-side constraints for competitiveness, inadequate human resource development, and deplorable state of the infrastructure network, particularly in the power sector, which is believed to increase the cost of goods and services in Nigeria by 40% due to the usage of private power generators. (iv) Limited trade facilitation measures and deficient export promotion strategies, worsened by lack of funding to monitor trade facilitation activities; (v) Absence of mechanisms for dispute settlement; (vi) There is no coordination in strategy to organised fiscal and trade measures between the federal, state, and local governments; (vii) weak link with private sectors and traders regarding fiscal and tariff changes. (viii) inadequate value-addition.

The previous government acknowledged these challenges posed by the poor state of infrastructure and made it one of the critical issues in the 2003-2007 National Economic Empowerment Development Strategy (NEEDS). Power and energy featured prominently in the government's 'seven-point agenda' for economic development. Also, under the current dispensation, the Nigeria National Vision 20:2020 emphasised 'poor and decaying infrastructure' as one of the significant challenges obstructing economic growth and development. The 2015 Budget granted the most significant share of the overall capital budget (32.58%) to infrastructure.<sup>1025</sup> However, the Nigeria Guardian paper reported several companies are leaving the country due to poor policy and worsening infrastructure, especially at the port.<sup>1026</sup> In order for a country to become competitive, it must have the basic infrastructure in place. The World Economic Forum succinctly demonstrated this point in its various reports mentioned above.

## V CONCLUSION

This chapter has reviewed Nigeria's attempt at economic development and its relationship to trade from a broad and historical perspective. Nigeria's economic and trade history validates the argument made in this thesis. Nigeria has struggled to develop its various nascent industries as a

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<sup>1025</sup> Ngozi Okonjo-Iweala 'Budget of the 2015 Budget Proposal: a Transition Budget, , Federal Republic of Nigeria, (September 2014.) 188, Available at <http://nairametrics.com/wp-content/uploads/2014/12/CME-Budget-Speech-2015.pdf> accessed: 22 June 2021

<sup>1026</sup> Sulaimon Salau, 20 Shipping Firms Leave Nigeria Over Low Business Guardian News Paper, 26 August 2016, [www.guardian.ng](http://www.guardian.ng) accessed: 24 May 2021

former colony and developing country and has fared poorly, first under colonial rule and then into the modern neoliberal era. The chapter demonstrated that Nigeria could not compete with the EU in the context of the EPA.

This chapter has explored the various steps taken by Nigeria since independence in 1960 to establish its policies for economic development. However, it is observed that Nigeria remains weak in terms of development with poor infrastructure. As a result, the country cannot diversify its economy. It remains focused on oil, notwithstanding plummeting prices in the international market. The policies adopted pre and post colonialism still influence the trade relationship between the EU and Nigeria, which protect the interests of the former. According to an observer, the setting up of the Marketing Board catered to the interests of the British government before independence and weakened the capacity to diversify the Nigerian economy post-independence.

To advance its economic development, Nigeria formulated four National Development Plans beginning from 1960 to the 1980s. Nigeria articulated its strategy in different plans, which focused chiefly on the agricultural sector. However, according to observers, only a minimal percentage of the money was allocated to the sector.<sup>1027</sup> The oil boom became another factor that harmed the Nigerian economy as it diverted attention from other viable; and sustainable sectors. Also, the gain from oil exacerbated poor governance and corruption; Roy claims this resulted in stifling the comprehensive formulation of policies for other sectors.<sup>1028</sup> Others attributed the past and current economic doldrums to a shortage of human skills, including technological management abilities and skills required to handle industrial projects. As a result, observers say that foreigners managed most projects.<sup>1029</sup>

As a result of failure to realise its aspiration and yearning for trade and economic development, the Babangida junta moved quickly to endorse the IMF policy, notwithstanding objections from Nigerians. The Fund was criticised for imposing conditions without first examining the underlying problems caused by colonialism. The World Bank was encouraged to focus more on structural factors that impede economic development. SAP was viewed as a strategy employed to protect creditors' interests in Africa.<sup>1030</sup>

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<sup>1027</sup> Wells *op cit* note 832

<sup>1028</sup> *ibid*

<sup>1029</sup> Eno L Inanga, 'The First Indigenisation Decree' and the Dividend Policy of Nigeria Quoted Companies' (1978) *The Journal of Modern African Studies* 16 (2) pp 319-328 at 319

<sup>1030</sup> Woods *op cit* note 866

The next chapter explores why Nigeria refuses to sign the EPA. The chapter is based on interviews conducted with persons at the Federal Ministry of Trade and Investment, Manufacturer Association of Nigeria, ECOWAS, National Association of Nigeria Traders, and documents obtained from ECOWAS and FMITI archives. It employs secondary sources for analysis.

## CHAPTER SEVEN: HISTORICAL TO PRESENT-DAY TRADE IN NIGERIA

### I INTRODUCTION

Chapter six explored Nigeria's development plan, trade policies, and state of infrastructure to know whether it can compete with the EU on a reciprocal trade arrangement. This chapter focuses on Nigeria's participation in the European Union (EU) Economic Partnership Agreement (EPA) negotiations. It seeks to gain insight into the first and second questions posed earlier in this thesis. Based on the theoretical framework of revisionist writers, the questions interrogated are as follows: (a) Why did Nigeria decline to sign the EPA despite its close trade relations with the EU? and (b) What were the country's concerns with the interpretation of Article XXIV of the General Agreement on Tariff and Trade (GATT)?

Nigeria enjoys privileges in trading with the EU. As a result of large oil reserves and a successful commencement of industrialisation, Nigeria has a GDP that is more than the GDPs of all ECOWAS member states.<sup>1031</sup> Nigeria trades 39.2% of its whole trade value with the EU; however, its intraregional trade accounts for just 3.7%. The main export of Nigeria is oil. The EU does not charge any tariffs for the oil to access its market. According to a 2017 report, the total value of Nigeria's export to the EU amounted to 16.3 billion dollars, of which oil was 15.7 billion US dollars. This is translated to mean that 96% of Nigeria's export can access the EU market without tax.<sup>1032</sup> Nigeria benefits from a privileged position when compared to Ghana. Notwithstanding the above, Nigeria's relationship with the EU is still asymmetrical because as discussed later in this chapter, the latter was not able to obtain her preferences, even when she signed the series of conventions required by the EU, Nigeria was not admitted to trade under GSP+. Due to its low level of development compared, it was observed that the EPA would have negative impact on Nigeria.

Andriamananjara *et al.* posit that the economic impact of the EPA on Nigeria will be minimal because protected sectors are not part of liberalisation under the EPA arrangement.<sup>1033</sup> However, using the World Bank's Tariff Reform Impact Simulation Tool

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<sup>1031</sup> Farrell, *op cit note 36*

<sup>1032</sup> Sebastian Krapohl & Sophie Van Huut, 'A Missed Opportunity for Regionalism: The Disparate Behaviour of African Countries in the EPA-Negotiations with the EU' (2019) <https://www.tandfonline.com/doi/full/10.1080/07036337.2019.1666117> accessed: 5 July 2022

<sup>1033</sup> Soamiely Andriamananjara, Paul Brenton, Jan Erik Von Uexkull et al 'Assessing the Economic Impact of an Economic Partnership Agreement on Nigeria' [www.elibrary.worldbank.org](http://www.elibrary.worldbank.org) accessed: 9 April 2021

(TRIST), the Bank forecast projected a magnitude of 17.3-18.7 per cent loss of tariff revenue. According to the Bank, this can only be prevented if a mechanism is put in place to check smuggling activities at the borders.<sup>1034</sup> From the standpoint of one of the interviewees with the Manufacturer's Association of Nigeria (MAN), it was projected that the structural factors in Nigeria militate against industrialisation, and it is not wise for a country to begin to liberalise its markets up to 80 per cent for EU goods. The respondent further stated that such an agreement would only stifle and impede Nigeria's diversification effort.<sup>1035</sup>

In order to evaluate concerns raised by Nigeria during the negotiation of the EPA, a qualitative approach was used. This method offers an effective means to gain insight into the real issues canvassed by the opponents of the EPA and the current impasse in trade relations between Nigeria and the EU. Before commencing the empirical research, ethical clearance was sought and obtained. For the case study of Nigeria, ten officials were interviewed in public and private sectors of Nigeria.<sup>1036</sup> Also, reference will be made to all the nine officials interviewed at the ECOWAS Commission. In order to explore communicative discourse surrounding the EPA negotiations, the research relied on a series of speeches and articles by Commissioners Peter Mandelson and Louis Michel, as well as factsheets on the EPA. There is a high likelihood that this discourse is calculated to promote and win approval for the Commission's policy on trade liberalisation in Africa, the Caribbean, and Pacific (ACP) countries under the guise of having no viable alternative. The chapter draws on the insight of revisionist writers Wilkinson<sup>1037</sup>, Cox<sup>1038</sup>, Patterson<sup>1039</sup> and Strange.<sup>1040</sup>

The rest of the chapter is divided into sections 2-6. Section 2 discusses President Buhari's position on the EPA, and section 3 examines the capacity of Nigeria to trade with the EU reciprocally. Section 4 explores the reasons for Nigeria's refusal to sign the EPA. Section 5 discusses Nigeria's draft negotiating text and examines a development-oriented EPA in the context of 'substantially all the trade' provision and reasonable length of time and communicative discourse. Section 6 concludes the chapter.

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<sup>1034</sup> World Bank, 'ECOWAS Economic Partnership Agreement with the EU and Nigeria Trade and Development' (30 September 2014), [www.openknowledge.worldbank.org](http://www.openknowledge.worldbank.org) accessed: 9 April 2021 14-15

<sup>1035</sup> Interview with Oluwatoyin Durojaiye the Head of Manufacturing Association of Nigeria (MAN) (hereinafter Oluwatoyi MAN) 2020

<sup>1036</sup> See Appendix 1

<sup>1037</sup> Wilkinson, *op cit note 45*; Wilkinson, *op cit note 91*; Wilkinson *op cit note 46*

<sup>1038</sup> Cox, *op cit note 204*

<sup>1039</sup> Patterson, *op cit note 96*

<sup>1040</sup> Strange, *op cit note 311*

## II PRESIDENT MUHAMMADU BUHARI'S POSITION ON THE EPA

In 2018, Muhammadu Buhari, the President of the Federal Republic of Nigeria, explained to the EU Ambassador to Nigeria, Ketil Iversen Karlsen, that the country would not sign the Economic Partnership Agreement (EPA). This was during the presentation of his letter of credence.<sup>1041</sup> Commenting on his lack of interest in signing, he stated:

We are not enthusiastic about signing the EPA because of our largely youthful population. We are still struggling to provide jobs for them, and we want our youth to be kept busy. Presently, our industries cannot compete with the more efficient and highly technologically driven industries in Europe. We have to protect our industries and our youths.<sup>1042</sup>

This resistance to signing the EPA is not new. In 2016 at the Plenary Assembly of the European Parliament in France, Strasbourg, President Buhari reiterated why Nigeria would not sign the agreement. According to the President, the lack of economic symmetry between the two regions (EU and ECOWAS) 'must be considered in terms of technology and manufacturing experience.'<sup>1043</sup> This means the EPA poses a threat to the industrialisation of Nigeria, hampering the creation of millions of jobs for the teeming youth. The President argued that the EU failed to address these concerns during the negotiation of the EPA.<sup>1044</sup> The country is willing to sign the agreement if there is a mutuality of benefits.<sup>1045</sup> Similarly, the Manufacturing Association of Nigeria (MAN) and the National Association of Nigeria Traders (NANTS) raised concerns over the EPA's negative impact on Nigeria's industrialisation programme.<sup>1046</sup> This consternation is further explored later in this chapter.

During the interviews for this thesis, the first thing most interviewees often pointed out from the onset was the level of asymmetry between the EU and Nigeria, ECOWAS or ACP as a whole. According to an interviewee, 'the EU's economy is vast, we are not near them. They have

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<sup>1041</sup> Jacques Berthelot, 'The EU Caught in the Trap of Nigeria's Refusal to sign the West Africa Economic Partnership Agreement and the Continental Free Trade' (9 May 2018), available at: [www.eeas.europa/archives/delegations/nigeria/documents/press\\_corner/news/20160203\\_statement\\_by\\_president\\_buhari\\_03-02\\_CADTM](http://www.eeas.europa/archives/delegations/nigeria/documents/press_corner/news/20160203_statement_by_president_buhari_03-02_CADTM), accessed: 9 February 2020

<sup>1042</sup> Press Release, 'Why Nigeria Won't Sign Economic Partnership Agreement with the EU' Premium Times, 5 April 2018, available at [www.premiumtimesng.com](http://www.premiumtimesng.com) accessed: 4 March 2020

<sup>1043</sup> Statement by H.E. Muhammadu Buhari, President of the Republic of Nigeria (Strasbourg, Eastern France, 12-12:30, 3rd February, 2016), [www.eeas.europa/archives/delegations/nigeria/documents/press\\_corner/news/20160203\\_statement\\_by\\_president\\_buhari\\_03-02](http://www.eeas.europa/archives/delegations/nigeria/documents/press_corner/news/20160203_statement_by_president_buhari_03-02) accessed: 9 February 2020

<sup>1044</sup> *ibid*

<sup>1045</sup> *ibid*

<sup>1046</sup> Interview with the officials of National Association of Nigerian Traders (NANTS) & Manufacturing Association of Nigeria (MAN) (2020)

the technology to produce, but we only produce raw materials. Nigeria only began focusing on diversification of its economy in Nigeria not too long ago.<sup>1047</sup> According to an interviewee from FMITI, the country cannot in good conscience enter into such an agreement that would thwart its diversification effort in the short and long term.<sup>1048</sup> Another interviewee from the ECOWAS stated that President Goodluck Jonathan recognised the danger posed in trading with the EU at a reciprocal level, so he refused to sign.<sup>1049</sup> The interviewee claimed that the EU offered to fight Boko Haram on behalf of Jonathan if he agreed to sign the EPA, but he declined.<sup>1050</sup> According to Jacque, the resistance from Goodluck Jonathan was made possible through private sector activism.<sup>1051</sup>

According to some academic observers, private sector organisations wanted to ensure that the country benefits from the EPA arrangement.<sup>1052</sup> As a result, business organisations such as the Lagos Chamber of Commerce and Industry; National Association of Chambers of Commerce, Industry, Mines, and Agriculture; Manufacturers Association of Nigeria; and National Association of Nigerian Traders, as well as the academics such as the Trade Policy Research and Training program at the University of Ibadan, opposed the idea of Nigeria signing the EPA.<sup>1053</sup> They pointed to the power asymmetry that exists between the EU and Nigeria.<sup>1054</sup>

Nevertheless, the EU remains optimistic that if Nigeria agrees to sign, the EPA will in no small measure, benefit the country.<sup>1055</sup> Mr Fillipo Amato, the then Head of Trade and Economic Section of the EU Delegation to Nigeria and ECOWAS, advised the Nigerian government to sign the EPA to accelerate the country's industrial development. This was at a Lagos Chamber of Commerce and Industry (LCCI) event in 2017.<sup>1056</sup> In response to Mr Fillipo Amato, Nike Akande emphasised that Nigeria would need a formidable infrastructure and vital industries to compete with the EU. She stated that the country could not get a fair deal because it is not competitive.<sup>1057</sup>

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<sup>1047</sup> Interview with Oluwatoyin Durajaiye Director, (Abuja 2020)

<sup>1048</sup> *ibid*

<sup>1049</sup> Interview with ECOWAS official (2020)

<sup>1050</sup> Interview with an official ECOWAS Official (Abuja, 2020)

<sup>1051</sup> Jacques Berthelot, *op cit* note 744

<sup>1052</sup> Franklin Alli & Naomi Uzor, 'EU Threaten to Stop Market Access for Nigerian Products Over EPA' Vanguard October 17 2016, [www.vanguardngr.com](http://www.vanguardngr.com) accessed: 19 May 2021; EU, ECOWAS Urge FG to Sign Economic Partnership Agreement, Vanguard, 1 August 2017, [www.vanguardngr.com](http://www.vanguardngr.com) accessed: 19 May 2021

<sup>1053</sup> Samuel O Oloruntopa, *Regionalism and Integration in Africa: EU-ACP Economic Partnership Agreements and Euro-Nigeria Relations* (2016) 60

<sup>1054</sup> *ibid*

<sup>1055</sup> Peter Mandelson, 'Putting Development First: EU-ACP Relations, EPAs and the Doha Round' SPECCH/05/4, Georgetown, Guyana, 6 January 2005 p 3

<sup>1056</sup> EU, ECOWAS Urge FG to Sign Economic Partnership Agreement, Vanguard, August 1 2017, available at [www.vanguardngr.com](http://www.vanguardngr.com) accessed: 19 May 2021

<sup>1057</sup> *ibid*

Nigeria maintains that she has salient concerns due to its historical and structural factors despite the assurance from the EU. According to Kabir Akanbi, a senior trade expert in the Federal Ministry of Industry Trade and Investment (FMITI), the concerns raised by Nigeria were ignored by the proponents of the EPA.<sup>1058</sup>

### III ECOWAS CAPACITY TO ENGAGE WITH THE EU

As noted above, since the Lomé Convention failed to produce its intended result, the EU activated its replacement in its 1996 Green Paper.<sup>1059</sup> However, the curative measure for the failed Lomé Convention has not been without fierce criticism.<sup>1060</sup> The Netherlands faulted the solution, stating that ‘the economic remedy proposed by the EU was extreme: ‘differentiation based around a commitment to free trade.’<sup>1061</sup> In order to make the solution acceptable, the EU employed extensive language discourse to replace the legitimate status of the Lomé Convention.<sup>1062</sup>

Mark Blyth eruditely analyses how economic ideas and interests are used as weapons by agents to cause changes through ‘delegitimising’ the current arrangement if it suits the agent’s interests.<sup>1063</sup> The ‘delegitimation’ of the Lomé Convention was used to change the previous preferential trade arrangement and, thus, make a case for a reciprocal based EPA.<sup>1064</sup>

However, the EU’s stand on EPA did not align with the Nigerian strategy for diversification of its economy. When asked, ‘why did Nigeria not sign the EPA when Cote d’Ivoire and Ghana, who are also members of ECOWAS, signed?’, an interviewee, Oluwatoyin Durojaiye, the head of the Manufacturers Association of Nigeria (MAN), Abuja branch, stated that the new trade relation—EPA is a continuation of colonial ideology. He stated frankly: that the EPA as negotiated is ‘a reminder of slavery and colonialism, a master/servant relationship.’<sup>1065</sup> Durojaiye went on to expressly states that the EPA arrangement is not tenable. However, it is argued that the asymmetry of the colonial relationship is quite different from the modern power asymmetry. The former was based on brutal force to protect the interest of the colonialists, while the latter focused on granting aid

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<sup>1058</sup> Interview with official of FMITI 2020

<sup>1059</sup> EC Green Paper *op cit note 52*

<sup>1060</sup> Stephen R Hurt, The EU-SADC Economic Partnership Agreement Negotiations: 'Locking in' the Neoliberal Development Model in Southern Africa? (2012) 33: (3) *Third World Quarterly* 496

<sup>1061</sup> Martin Holland, ‘20/20 Vision? The EU’s Cotonou Partnership Agreement., (2003) 9 (2) *The Brown Journal of World Affairs* pp 161-175 at 164

<sup>1062</sup> EC Green Paper *op cit note 52* at iii

<sup>1063</sup> Blyth, *op cit note 182* at 37-8

<sup>1064</sup> EU Green Paper *op cit note 52* at 5-15

<sup>1065</sup> Interview with MAN officials (Appendix 1) (MAN)

and development promises without legal commitment and using subtle threats and coercion to secure its interests.<sup>1066</sup> Although the interviewee exaggerated the factual situation, certain aspects of past colonial relationship asymmetries are reflected in the continuation of power imbalance and the over dependence of the African countries on the EU markets.

In Durojaiye's view, the 'GDP of the EU and the combined GDP of West Africa is 10 times higher than the combined GDP of West Africa, with a high-capacity economy 'while ours is a subsistence economy.' According to him, there is no basis to sign such an agreement. Another interviewee, Kabir Akanbi, a trade expert with the Federal Ministry of Industry, Trade and Investment (FMITI), referred to the electrical power supply situation as a classic example of Nigeria's infrastructure state. Durojaiye stated that power constitutes 43 per cent of production cost in Nigeria, whereas in China, it is 5 per cent, and in Europe, it is less than 5 per cent. As such, there is no basis for competition.<sup>1067</sup> Another extreme situation cited by the interviewee was of inadequate transportation. Moving goods from Lagos to the EU is cheaper than from Lagos to Maiduguri within Nigeria.<sup>1068</sup>

However, a senior trade expert, Gbenga Obideyi with ECOWAS Commission, declined to subscribe to the views of civil society, comparing the process of EU-ECOWAS negotiation to slavery and colonialism.<sup>1069</sup> According to the ECOWAS former Director of Trade, ECOWAS, like the EU, ECOWAS negotiated its agreement terms.<sup>1070</sup> The Gambia, under Yahya Jammeh, refused to sign and was not penalised. He remained convinced that the EPA aimed to assist the region's development, hence the Special and Differential Treatment (S&DT) provisions in the agreement's text.<sup>1071</sup>

However, the senior ECOWAS trade expert noted that the EU Commissioners had access to the ECOWAS Heads of State directly to give orders regarding the EPA negotiation but pointed out that the ECOWAS Trade Commissioners or member states Ministers could not contact the EU's Commissioners directly in the same manner. The respondent observed that Nigeria would not have declined to sign if a more respectful and equal relationship existed between Nigeria and the EU. The interviewee explained the limitations faced by ECOWAS thus:

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<sup>1066</sup>Norman Girvan, 'Power Imbalances and Development Knowledge', Theme Paper prepared for the project Southern Perspectives on Reform of the International Development Architecture, (September 2007) at 7

<sup>1067</sup> *ibid*

<sup>1068</sup> *ibid* (Maiduguri is located in the North-Eastern part of the Nigeria)

<sup>1069</sup> Interview with former Director ECOWAS Trade expert, Gbenga Obideyi, Abuja 2020

<sup>1070</sup> *ibid*

<sup>1071</sup> *ibid*

At times, the EU had to support us; before we could attend meetings, we had looked for experts in different areas of negotiation. We were seriously limited adversely affected—either we do not have the experts in the region, then we had to hire somebody from the EU or the USA who may not necessarily be talking strictly in our favour... When we hire a consultant, the EU will support us in paying the consultant, even paying for our hotel accommodation.<sup>1072</sup>

According to the respondent, this lack of capacity and infrastructure severely impeded the region's performance.

Some academics, such as Ascher and Krupp argued that the critical component of an advanced economy is infrastructure.<sup>1073</sup> The 2030 Agenda for Sustainable Development brought the importance of infrastructure to the fore. As a result of the appalling state of infrastructure, market access opportunities for Nigeria have not produced substantial benefits, both in ECOWAS and outside West Africa. This includes preferences such as under the ECOWAS Trade Liberalisation Scheme (TLS) and preferences offered under Africa Growth and Opportunity Act (AGOA). In 2013, Nigeria's Task Force on Trade Facilitation imputed the low performance at the local level to several factors: first, (a) an overwhelming informal trade and the smuggling of low-quality goods into Nigeria, a pattern that is detrimental to local manufacturers; (b) a cumbersome port administration with an inefficient, costly, non-transparent and time-consuming import, export and clearance procedure, with several checkpoints; and (c) poor information-sharing, ineffective standard-setting and certification activities.

Secondly, the defects in Nigeria's power sector are roughly calculated to increase the cost of goods and services by 40 per cent due to the extensive use of generators. Thirdly, settlement mechanisms are inefficient. Fourthly, there is an inability among the federal, state, and local government councils and their officials to organise and ensure the smooth running of fiscal and trade measures. Finally, government and private sector engagement are inadequate as it affects trade, fiscal matters, and tariff alteration.<sup>1074</sup> Subsistence farmers find it extremely hard to access rural roads, whereby an already low level of irrigation exacerbates this difficulty because only one per cent of cultivated land in Nigeria is currently irrigated.<sup>1075</sup> According to Kwakwa, Adenikinju,

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<sup>1072</sup> *ibid*

<sup>1073</sup> William Ascher and Corrine Krupp, (eds) 'Distributional implications of Alternative Financing of Physical Infrastructure Development' in *Physical Infrastructure Development: Balancing the Growth, Equity and Environment Imperatives* (2010), available at [http://link.springer.com/chapter/10.1057/9780230107670\\_2](http://link.springer.com/chapter/10.1057/9780230107670_2) 35-68 3 February 2022

<sup>1074</sup> OECD Investment Policy Reviews: Nigeria (2015) 152 available at [http://www.oecd-library.org/finance-and-investment/oecd-investment-policy-reviews-nigeria-2015\\_](http://www.oecd-library.org/finance-and-investment/oecd-investment-policy-reviews-nigeria-2015_) accessed: 23/11/2020) 152

<sup>1075</sup> Karen Frenken & Virginie Gillet, *Irrigation Water Requirement and Water Withdrawal by Country*, (Food and United Agriculture Organisation of the United Nations (FAO) Aquastat Reports, November, 2012) [www.fao.org/nr/water/aquastat/water\\_use\\_agri/IrrigationWaterUse.pdf](http://www.fao.org/nr/water/aquastat/water_use_agri/IrrigationWaterUse.pdf) accessed: 24 November 2020 at 2-5

Mousley, *et al.*, the severe reduction in agricultural exports further indicates the weak competitiveness of Nigeria's agricultural sector. For example, agricultural exports fell from 2.5 to 0.2 per cent of all exports in 1980 and 2005.<sup>1076</sup> This is a drastic reduction from over 80 per cent— in the 1960s, as the research states in the previous chapter.<sup>1077</sup>

While some interviewees from Nigeria argued that there is no basis for competition between Nigeria and the EU,<sup>1078</sup> other interviewees in ECOWAS believed that the new arrangement would boost the country's global trade competitiveness.<sup>1079</sup> When asked whether the level of special and differential treatment/asymmetry provided in the agreement's text is sufficient, the ECOWAS interviewee responded that it is adequate. He stated, 'The EU provides 100 per cent access to West Africa, so it takes care of asymmetry between the EU and Nigeria.'<sup>1080</sup> According to the senior trade experts from ECOWAS, the EU had no ulterior motive other than 'following the obligations under the WTO.' When reminded that the United States still offers preference to Sub-Saharan Africa under AGOA, he responded that the 'United States is moving steadily toward reciprocity, already the USA is signing a reciprocal arrangement with some African countries.'<sup>1081</sup> When asked about infrastructure and lack of comprehensive trade policy for Nigeria to engage with a region like the EU, the respondent answered that the country has to put in more work for its benefit, as it cannot expect the EU to solve all its problems.<sup>1082</sup> He further stated, 'there is no need to hide behind barriers because it is a global world. If free trade and fair trade are good, it is good for everybody. Free trade is good for developing countries. It may be challenging in the short term, but it is more beneficial in the long run. He counselled countries in West Africa to start building capacity to engage concretely with the rest of the world. The respondent further stated that the money used by the EU to support Africa is from the taxpayers who have their interests as well.<sup>1083</sup> This was also the view of the trade experts interviewed from the West Africa Economic and Monetary Union (WAEMU).

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<sup>1076</sup>Victoria Kwakwa, Adeola Adenikinju, Peter Mousley et al, 'Binding Constraints to Growth in Nigeria' in Paul Collier, Chukwuma C Soludo & Catherine Pattillo, *Economic Policy Options for a Prosperous Nigeria* (2008) 15

<sup>1077</sup>Nnadozie Uche O 'The State Civil Service and Underdevelopment in Nigeria: An Analysis of Public Policy Making Process in a Neocolonial Society' 2004 10

<sup>1078</sup> Interview with FMITI official (2020)

<sup>1079</sup> Interview with ECOWAS official (2020)

<sup>1080</sup> Interview with ECOWAS Commission official (2020)

<sup>1081</sup> *ibid*

<sup>1082</sup> *ibid*

<sup>1083</sup> *ibid*

(a) *Mutual Benefit of Economic Partnership Agreement*

On 25 October 2013, the Ministers of ECOWAS met in Dakar. They urged the West Africa chief negotiators to continue negotiations to ensure mutual benefit to both parties, ‘bearing in mind the development imperative of West Africa.’<sup>1084</sup> On 31 March 2014, the West African leaders agreed in principle to the EPA text.<sup>1085</sup> The regional leaders produced a communique at the end of the 44th Ordinary Summit in Yamoussoukro, Cote d’Ivoire, which states that it endorsed the EPA in principle, pending the resolution of the technical issues. The technical issues were that West Africa wanted a liberalisation of 60% of its trade over 25 years, with EU financial support of €16 billion to the Economic Partnership Agreement Development Programme (EPADP) to help the region adjust to the new trade arrangement.<sup>1086</sup> In the end, they agreed to phase 75 per cent market access for 20 years and €6.5 billion with which the EU would support the EPADP between 2015 and 2019. Based on this assistance, the ECOWAS negotiators argued that the EPA would be beneficial for Africa.<sup>1087</sup> Mandelson continued to re-emphasise to the West African group that the EPA is not for the EU’s benefit but to improve the ease of doing business in ACP countries. According to the Commissioner, the EU has no commercial interest.<sup>1088</sup>

On another occasion, Mandelson emphasised the importance of reciprocity in trade agreements, saying that it is far more profitable than preferential access to the EU market.<sup>1089</sup> In response to the question regarding the EU’s claim that the EPA is the solution to the challenges of Nigeria and ECOWAS in general, an interviewee pointed out that ‘if the proposed text of the arrangement is in the interest of the country, the EU would have paid attention to the concerns that were raised on Nigeria’s side, and not coerced the ECOWAS parties.’<sup>1090</sup> The respondent asserted that all the proposals Nigeria tendered before the EU was never considered.<sup>1091</sup>

The ACP countries (including Nigeria) believe that the agreement favours the EU.<sup>1092</sup> When one of the interviewees was asked whether asymmetrical provisions in the EPA text are

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<sup>1084</sup>‘EPAs high on the agenda at West Africa summit’ (Dakar, 25 October 2013/ ECOWAS/ ACP), available at [www.acp.int/content/epas-high-agenda-west-africa-summit](http://www.acp.int/content/epas-high-agenda-west-africa-summit) accessed: 10 April 2021

<sup>1085</sup>‘West Africa Endorse in ‘Principle’ EPA Deal with the EU’, available at [www.acp.int/content/west-africa-leaders-endorse-conclusion-epa-negotiations.eu](http://www.acp.int/content/west-africa-leaders-endorse-conclusion-epa-negotiations.eu) 10 April 2021

<sup>1086</sup> Interview with Ken Ukaoha the Director General of National Association of Nigeria Trades (NANTS), Ukaoha was one of the key persons who negotiated the EPA both at regional and national level in West Africa. (2020)

<sup>1087</sup> *ibid*

<sup>1088</sup>Peter Mandelson, ‘The ACP-EU Relationship in the Global Economy’ SPEECH/04/505, ACP-EU Ministerial, Brussels, 1 December 2004 p 3

<sup>1089</sup>Peter Mandelson, ‘Economic Partnership Agreements: EU and West Africa Agree Next Phase of Negotiations’ (Brussels, 28 October 2005, IP/05/1362 p 2

<sup>1090</sup> Interview with FMITI official (2020)

<sup>1091</sup> *ibid*

<sup>1092</sup> Interview with officials of FMITI, MAN and NANTS (2020)

sufficient to make ECOWAS competitive, he responded that the gap is vast and that ‘it is not possible and feasible to compete with the EU.’ The interviewee further claimed that the agreement is exploitative, as ‘it is solely to protect the interest of the EU and tie Nigeria down for years just like colonialism had done.’ The respondent noted that ECOWAS and Nigeria cannot take advantage of the exceptions provided in the agreement. The question was, ‘in your view, would the pattern of asymmetry further exacerbate and increase unequal distribution of economic opportunity between the two regions?’ Although some of the respondents from the ECOWAS Commission agreed that parties protect their interests in any negotiation, Ukaoha and trade experts from FMITI posited that the EU should have exercised some flexibility, given the vast nature of economic asymmetry between the two regions.

Rather than focus on negotiation, the ACP countries, including ECOWAS, were concerned about the EU relaxing its deadline and requesting the European Commission to remove Market Access Regulation 1528/2007.<sup>1093</sup> In a delegate’s words at the meeting, ‘Instead of emphasis being placed on negotiating on substance... ACP countries [are pushed] into meeting their unilateral deadline, which results in sub-optimal outcomes of the concerned regions... ‘We are committed to concluding a mutually beneficial agreement with the EU, but we should not be hurried unduly follow a mutually agreed road map of negotiation’.<sup>1094</sup> The Kenyan delegate at the meeting reported that the deadline was not set in ‘good faith’. Instead, it put excessive pressure on the ACP countries.<sup>1095</sup> The Zambian Minister for Trade and Commerce, Bob Sichinga, stated that it is preferable not to have a deal at all, as the proposed agreement would be bad for the economy.<sup>1096</sup>

Supporting the above view, an interviewee contended that they do not want to be rushed into an agreement because,

We want to export finished products and not raw materials. There is no need to export cocoa to the EU; let it be manufactured in Nigeria so that the youths can be effectively engaged. We asked the EU to open its borders and let our youth move freely to Europe. The EU refused, rather, it fights against migration to Europe, but it wants us to depend on raw material production.<sup>1097</sup>

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<sup>1093</sup> ACP Ministers resist ‘unilateral deadline’ to wrap up EPAs Published on ACP website, (Brussels, 10 December 2011/ ACP News desk) <http://www.acp.int> accessed: 10 April 2021

<sup>1094</sup> *ibid*

<sup>1095</sup> *ibid*

<sup>1096</sup> *ibid*

<sup>1097</sup> Interview with official of MAN (2020)

Instead, the EU, through its Executive Vice President and Commissioner for Trade Valdis Dombrovskis, expresses the resolve that every choice to reform worldwide must consider ‘our strategic interests and values.’<sup>1098</sup>

#### IV CONSTRUCTED NARRATIVE IN THE EPA

Most ACP countries were not convinced by the EU’s use of language, what Wilkinson referred to as the ‘presentation of metaphor, historical logic as fact and common-sense’. According to Mark Blyth, an agent could utilise various techniques to protect its interests.<sup>1099</sup> Blyth quoted John Maynard Keynes, who explored three techniques agents use to encourage ideas targeted at actors, for example, ‘assume that the present is a much more serviceable guide to the future than a candid examination of the past’.<sup>1100</sup> In the third hypothesis, Blyth asserts that ideas are weapons agents used to supplant the existing institution, believing that ‘economic ideas not only facilitate collective action and radical policy change but are a prerequisite for them’.<sup>1101</sup>

Mandelson states, ‘My fellow Commissioner, Louis Michel, and I are both committed to working constructively together to reinforce the link between trade and development.’<sup>1102</sup> During the speech, he assured the ACP countries that he was not unaware of the complexities of trade liberalisation. Consequently, he states that ‘market opening must be tailored to countries’ circumstances. It should be flexible and asymmetric’. Mandelson gave his words on the protection of sensitive sectors and adequate time within which to transition.<sup>1103</sup> In his speech to the 9th ACP-EU Joint Parliamentary Assembly in Mali, the EU former Trade Commissioner Mandelson argued that EPAs would be ‘both trade and development deals.’ He emphasises the point that ‘Tariff liberalisation on the ACP side will be progressive and we are prepared to take a very pragmatic and flexible approach...’ Mandelson distanced himself from the position that the standard of the WTO should apply to the North-South strictly. He further declared, ‘I am quite prepared to defend this view should anyone wish me to do so.’<sup>1104</sup>

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<sup>1098</sup> EU, the Commission Sets Course for an Open Sustainable and Assertive EU Trade Policy (18 February 2021), Available at [www.trade.ec.europa.eu/doclib/press/index.cfm?id=22438&title=Commission-sets-course-for-an-open-sustainable-and-assertive-EU-trade-strategy](http://www.trade.ec.europa.eu/doclib/press/index.cfm?id=22438&title=Commission-sets-course-for-an-open-sustainable-and-assertive-EU-trade-strategy) (10 April 2021)

<sup>1099</sup> Blyth, *op cit note* 182 at 42

<sup>1100</sup> John Maynard Keynes, *The General Theory of Employment, Interest and Money* (London: Harcourt Brace, 1964) quoted in: Blyth, *op cit note* 182 at 42

<sup>1101</sup> *ibid*

<sup>1102</sup> Peter Mandelson, ‘The ACP-EU Relationship in the Global Economy’ SPEECH/04/505, ACP-EU Ministerial, Brussels, 1 December 2004 p 3

<sup>1103</sup> *ibid*

<sup>1104</sup> Peter Mandelson, European Commissioner for Trade, *Economic Partnership Agreements: Progressive Trade Policy into Practice* (SPEECH/05/241, ACP-EU Joint Parliamentary Assembly, Bamako Mali, 19 April 2005)

However, Mandelson later began to employ the Smoot-Hawley Metaphor, what Strange referred to as bicycle theory<sup>1105</sup>, and Wilkinson termed crisis discourse.<sup>1106</sup> In his 2006 speech in Brussels, Mandelson began to warn about the danger of protectionism. According to Mandelson, the history of protectionist policies reveals that such policies are a ‘dead end.’ ‘Protectionism deepened the economic recession of the 1930s.’ He acknowledged the transitional protection to assist infant industries to grow, but protectionism planned to help established industries adjust is not practical.<sup>1107</sup>

An interviewee stated that all the EU did was make us relax by making a positive declaration intended to promote confidence in the EPA and sign without critical examination of the clauses. An interviewee noted the EU changed the narrative from development and placed prominence on liberalisation of markets to 90 per cent, ‘we argued that the rate of the opening should be proportionate to the level of development because since the EPA was based on the tenet of development from the Cotonou agreement.’ The interviewee added that everything is mere rhetoric. He stated: ‘right from the Yaoundé agreement, we have heard about development discourse, but no concrete development has resulted from all these agreements.’<sup>1108</sup> Another interviewee faulted the African countries for the failure of the series of conventions. An interviewee observed that the countries in Africa prefer to depend on the EU instead of focusing on building capacity. However, another interviewee posits that the EU, through the European Development Fund (EDF), has dictated to ECOWAS what policy it should adopt and whether it worked or not.<sup>1109</sup>

Nevertheless, an interviewee from the ECOWAS Commission argued that Nigeria and the rest of the ECOWAS had not made substantial progress because they continue to insulate themselves from the rest of the world. He states, ‘if the EU is opening its market, the rest of West African countries should also open.’<sup>1110</sup> The former ECOWAS Commissioner of Industry expressed deep concern that if they rely on imports from the EU without producing in West Africa, ‘how do we create jobs for our youths.’ He contended that trade liberalisation is not bad, but the

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<sup>1105</sup>Susan Strange, ‘Protectionism and World Politics’, (1985) 39 (2) *International Organisation* 233-259 at 239-42

<sup>1106</sup>Rorden Wilkinson, *The WTO: Crisis and the Governance of Global Trade*, (2006) 597

<sup>1107</sup>Peter Mandelson ‘Sustainable Trade: Observations on Trade and Protectionism’ SPEECH/06/187) (Brussels, 21 March 2006 p 2

<sup>1108</sup> NANTS, Appendix 1

<sup>1109</sup> ECOWAS, Appendix 1

<sup>1110</sup> Interviewee with ECOWAS official (2020)

ECOWAS region does not have the right environment to support opening their markets, dominated mainly by the informal market.<sup>1111</sup>

The European Parliament acknowledged these concerns when it called on the Commissioner of Trade to exercise utmost asymmetry and flexibility in the EPA negotiation.<sup>1112</sup> It stated that the ACP-EU trade relations should be WTO compliant; however, it should not take pre-eminence over the development concerns of these countries.<sup>1113</sup>

Notwithstanding the positive declaration by some EU leaders, such as former EU Trade Commissioner Peter Mandelson, that the EU objective in the EPAs is to support the principles of cohesive ‘partnership’, sustainable development, and making ACP countries viable players in the world economy,<sup>1114</sup> many observers were not easily convinced about the feasibility of the EU EPA being a combination of trade and development instruments.<sup>1115</sup> However, in his description of the ACP share of the world market, Mandelson stated that its share of the EU market (its primary export market by far) had shrunk dramatically.<sup>1116</sup> The broader picture is no better: ‘Africa’s share of world trade depreciated from 6 per cent in 1980 to 2 per cent in 2002.’<sup>1117</sup> With the exclusion of South Africa, sub-Saharan Africa’s total GDP is, to a large extent, lower than that of Taiwan. According to Mandelson, the market share deflated because Africa insulated itself by relying on preferences. He claims that ‘[a]rtificially insulate the ACP economies from the global economy creates dependency and therefore vulnerability’.<sup>1118</sup> In other words, the unbridled opening of the market to global competition would solve the economic backwardness in Africa.<sup>1119</sup>

Despite that, recounted that a region that signed an EPA, a Commissioner from the Caribbean, advised Nigeria not to sign during a conference in Abuja.<sup>1120</sup> The Commissioner

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<sup>1111</sup> Interview with ECOWAS official (2020)

<sup>1112</sup>European Parliament (Committee on Development, Final A6-0053/2006) Report, On the Development Impact of Economic Partnership Agreements (EPAs) 2004-2009) para 10

<sup>1113</sup>ibid at para 1

<sup>1114</sup> Mandelson Peter, Statement to the Development Committee of the European Union Parliament, (Brussels, March, 2005)

<sup>1115</sup> ACP Council of Ministers, ‘Declaration of the ACP Council of Ministers at its 86<sup>th</sup> Session Expressing Serious Concern on the Status of the Negotiations of the Economic Partnership Agreements’, Brussels (December 2007); Goodison Paul, ‘EU Trade Policy and the Future of Africa’s Trade Relationship with the EU’ (2007) *Review of African Political Economy* 34 (112) p 247-266; Stephen R Hurt ‘Co-operation and Coercion? The Cotonou Agreement Between the European Union and ACP States and the End of Lomé Convention’ (2003) 24 (1) *Third World Quarterly* 161-176; Actionaid International, ‘Trade Trap: Why EU-ACP Economic Partnership Agreements Pose a Threat to Africa’s Development’ p 29

<sup>1116</sup>Peter Mandelson, (European Commissioner for Trade), Economic Partnership Agreements Progressive Trade Policy into Practice (ACP-EU Joint Parliamentary Assembly, Bamako, Mali, 19 April 2005 Speech/05/241) 2

<sup>1117</sup> ibid

<sup>1118</sup> ibid at 4

<sup>1119</sup> ibid

<sup>1120</sup> Interview with officials of MAN

counselled Nigeria not to follow its example because the Caribbean countries could not make economic policy decisions without input from Europe after signing.<sup>1121</sup> Also, as chapter 2 of this thesis mentioned, Kofi Annan, then Secretary-General of the United Nations, believed that making peripheral countries engage in free trade without restraint would be highly disadvantageous.<sup>1122</sup> What Annan asked for on behalf of the peripheral countries was not new. According to Wilkinson, before the First World War, British agriculture was heavily protected until the final repeal of the Corn Laws in 1846.<sup>1123</sup> Agriculture was highly protected in the economies of Germany and Sweden in the nineteenth century, and it was customary for Britain, France and Germany to protect their nascent industries.<sup>1124</sup> In the 21<sup>st</sup> century, the GATT construct a ‘selective liberalisation of [the] market in areas of economic interests to General Agreement’s founder Contracting Parties’.<sup>1125</sup>

It has been observed that while the EU promotes the ideas of free trade and a free market in Africa through its Commissioner of Trade, it effectively protects its sensitive sectors of the economy.<sup>1126</sup> For example, the Common Agricultural Programme (CAP) is funded by the European Commission’s Agricultural Guidance and Guarantee Fund (EAGGF).<sup>1127</sup> According to Mutasa, the policy amounted to 60 per cent of the EU budget in 1990, 49 per cent in 2003, and 31 per cent in 2010.<sup>1128</sup> The subsidies aim to ensure the lowest price to producers, as subsidies are paid for crops planted and incentives granted to farmers in Europe to maximise productivity and efficiently use factors of production such as capital, enterprise, land, and labour.<sup>1129</sup> However, African countries cannot afford to protect farmers with subsidies because of the numerous challenges African countries face.<sup>1130</sup> Akanbi<sup>1131</sup> expressed his frustration thus:

we have no electricity to even cater to the nascent industries, and there is no irrigation that farmers can use during the dry season; there is no form of government support; what

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<sup>1121</sup> *ibid*

<sup>1122</sup> The Realization of Economic, Social and Cultural Rights: Globalization and its Impact on the Full Enjoyment of Human Rights, Preliminary Report Submitted by Joseph Oloka-Onyango and Deepika Udagama in accordance with Sub-Commission Resolution [hereinafter U.N. Report] 1999/8 U.N. Commission on Human Rights, 52d Sess., Provisional Agenda Item 4, 15 U.N. D.v. E/CN.4/Sub.2/2000/13, (2000)

<sup>1123</sup> Wilkinson *op cit* note 40 at 86

<sup>1124</sup> *ibid*

<sup>1125</sup> *ibid*; Heydon K & Woolcock S, *The Rise of Liberalism: Comparing American, European and Asian to Preferential Trade Agreement*, (United Nations University Press, Tokyo, 2009) 6-7

<sup>1126</sup> Mutasa, *op cit* note 294

<sup>1127</sup> *ibid*

<sup>1128</sup> *ibid*

<sup>1129</sup> *ibid* at 138

<sup>1130</sup> *ibid*

<sup>1131</sup> Interviewed with Federal Ministry of Industry, Trade and Investment official (2020)

do we use to compete with the EU, that is why we could not sign the EPA because it does not make sense to us...<sup>1132</sup> Relying mainly on the export of raw materials would not help the Nigerian economy.

Akin Adesina, the Nigerian Vice President of the Alliance for a Green Revolution in Africa, similarly observed that there was no form of support for farmers in countries like Nigeria - neither from the local governments nor 'international development institution'.<sup>1133</sup> Whereas the EU rhetoric during the preparatory stage of the negotiations was that the EPA is about the development and capacity building of West African countries, documents and interviews revealed that the EU made no explicit or concrete provision to support economic development in Nigeria and the rest of the ECOWAS. Cheikh Tidiane Dieye, the Senegal-based Enda Tiers-Monde programmes coordinator in Dakar, stated that the 'EU does nothing more than 'recycle' and transfer funds already provided for by simply changing the heading'.<sup>1134</sup> In other words, there is nothing new the EU adds to the existing funds for development.<sup>1135</sup>

The following section now takes a closer look at the reasons for Nigeria's refusal to sign.

## V. NIGERIA'S REFUSAL TO SIGN THE EU-WEST AFRICA EPA

As mentioned above, in 2002, the EU and West Africa, along with ACP countries, commenced preparation for negotiations of a new trade arrangement as provided in Articles 36 and 37 of the Cotonou Agreement,<sup>1136</sup> a successor to the Lomé Conventions.<sup>1137</sup> The Economic Partnership Agreement (EPA) negotiations were set in motion in Brussels on 27 September 2002,<sup>1138</sup> with the expectations and assurances that it would benefit the West African region.<sup>1139</sup> The EPA negotiations were launched on 6 October 2003 and scheduled to be concluded in 2007,<sup>1140</sup> as contained in the roadmap.<sup>1141</sup> However, this could not be due to the many contentious issues

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<sup>1132</sup> Interviewed with Federal Ministry of Industry, Trade and Investment (2020)

<sup>1133</sup> Cited in Mutasa, *op cit note* 294 at 247

<sup>1134</sup> 'EPAs: An Unending Saga' (2010) 13 (3) 8

*African Agenda* 8

<sup>1135</sup> *ibid*

<sup>1136</sup> The Cotonou Agreement Article 36 (1), (2), (3) Article 37 (3), (4)

<sup>1137</sup> *ibid*; Enda, Impact Study of the Economic Partnership Agreement Market Access Offer on West African Countries (Study Done by the Consortium Pour La Recherche Economique et Sociale, Friedrich Ebert Stiftung, July 2011) 5; Aniekan Ukpe and Ken Ukaoha, 'West Africa's EPA: Defining A Pro-Poor Market Access Offer' (2009) 2 (4) Trade Policy p 2

<sup>1138</sup> Pascal Lamy & Poul Nielson, Economic Partnership Agreement: A New Approach in the Relations Between the European Union and the ACP Countries' (European Communities, Belgium, September 2002) 1 available at [www.ec.europa.eu](http://www.ec.europa.eu) accessed: 24 November 2020

<sup>1139</sup> *ibid*

<sup>1140</sup> The Cotonou Agreement Annex 1B

<sup>1141</sup> Economic Partnership Agreement (ECOWAS,) available at [www.ecowas.int](http://www.ecowas.int) accessed: 25 November 2020

between West African countries and the EU.<sup>1142</sup> The significant disputes concern the extent of the liberalisation of the West African markets for imports from the EU,<sup>1143</sup> the transition period, development-oriented and the addition of funds to cushion the negative impact of the EPA.<sup>1144</sup>

Some EU leaders, such as Commissioners Pascal Lamy, Poul Nielson, and Peter Mandelson, assured ACP countries, including Nigeria, of the benefit of the EPA.<sup>1145</sup> However, Nigeria refused to be persuaded because the text did not meet its expectations. Even though the EPA has its legal standing, it is an indispensable part of the Cotonou Agreement.<sup>1146</sup> EPAs are, above all, instruments for development.<sup>1147</sup> According to the EU, it means two things: first, negotiations and implementation must be flexible to take account of the stage of development as provided in Article 37 (4) of the Cotonou Agreement, and secondly, economic, social, and environmental constraints to engaging in trade liberalisation must be taken into consideration.<sup>1148</sup> Nevertheless, observers contended that the EU would not critically accommodate Nigeria's need to examine and negotiate the various thorny clauses.<sup>1149</sup>

Nevertheless, Nigeria carried out an impact analysis centred on generating empirical evidence on the likely impact of the EPA on the Nigerian economy.<sup>1150</sup> It sought to establish the implications arising from Nigeria's signing of the EPA, the implications of Nigeria not signing the EPA, and the implications of Nigeria delaying the signing of the EPA.<sup>1151</sup> The result of this modelling of the EPA on the country's economy revealed that its participation in the EPA would create significant revenue and economic loss.<sup>1152</sup> Even though most industrial and agricultural products such as food and beverages, tobacco, textiles, and leather were on the exclusion list. According to ENDA Tiers Monde's studies on West Africa, Nigeria's 'economy will pay the highest price for liberalisation of more than 65 per cent to the EU.

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<sup>1142</sup>European Union, EU-ACPs: Opening of Trade Negotiations with West and Central Africa (IP/03/1334, Brussels, 02 October 2003) available at [www.ec.europa.eu/commissioner/presscorner/detail](http://www.ec.europa.eu/commissioner/presscorner/detail) accessed: 24 November 2020

<sup>1143</sup>Enda, *op cit note* 530 at 1

<sup>1144</sup>Evita Schmiege, EU Economic Partnership Agreements in Sub-Saharan Africa: Avenues of Compromise for Constructive Outcome by September, 2014 Stiftung Wissenschaft und Politik, German Institute for International and Security Affairs, May 8 2014) 4; Cotonou Agreement, Article 39 (1) (2) (3)

<sup>1145</sup> Lamy & Nielson, *op cit note* 1138

<sup>1146</sup> *ibid*

<sup>1147</sup> The Cotonou Agreement Article 36 (2)

<sup>1148</sup> Lamy & nielson *op cit note* 1138

<sup>1149</sup> Interview with MAN official (2020)

<sup>1150</sup> Interview with NANTs officials (2020)

<sup>1151</sup> *ibid*

<sup>1152</sup> *ibid*

Conversely, however, Andriamananjara, Brenton, Von Uexkull, *et al.* considered that such an impact would be slight.<sup>1153</sup> Some of the factors that would have impeded the implementation issues of the EPA in Nigeria, according to an observer, include, first, the lack of a trade defence mechanism in the event of the unfavourable effect of EPA's liberalization, as Nigeria would not be able to protect itself, using the trade mechanisms. Secondly, the country's insufficient accredited laboratories would not meet the requirements for the quality and standardisation of its products. Thirdly, another factor is its vast infrastructural deficiency and weak capacity.<sup>1154</sup> Concerning the lack of institutional capacity, an interviewee stated that

ECOWAS had no template to follow during the negotiation; toward the end of the negotiation in 2007, we prepared a template that the Francophone countries kicked against that it was strongly worded.<sup>1155</sup>

According to Ukaoha, during ECOWAS and the EU negotiation, 'West Africa followed the template of the EU'.<sup>1156</sup> A further reason why Nigeria wanted to delay the signing of the West Africa-EU EPA was because of the recent developments in the political landscape of the EU regarding the withdrawal of the United Kingdom from the EU (Brexit).<sup>1157</sup> For example, the UK is a notable trading partner with Nigeria, and full implementation of the EPA could affect the country's \$8.3 billion trade volume with Britain. Presently, Nigeria has signed a Memorandum of Understanding with the UK. However, Ismail gave cautionary counsel to all African countries that trade with Britain; they should strive to minimise the UK's 'mercantilist and nationalistic tendency', which was displayed in the colonial era. According to him, to build an adept trade relationship, the UK must include values of development and equity.<sup>1158</sup>

Besides the abovementioned points, further critical concerns were raised by Nigeria, and it is to these concerns that this discussion now turns, based on documents obtained from Nigeria's Federal Ministry of Trade and Investment (FMITI) in Nigeria.

*(a) Nigeria's Draft Position on the Economic Partnership Agreement*

One of the reasons for Nigeria's EPA negotiators facing significant challenges was due to concerns raised by Nigeria's public and private sectors that the EU and West African countries were not at

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<sup>1153</sup>Soamiely Andriamananjara, Paul Brenton, Jan Erik Uexkull et al 'Assessing the Economic Impacts of an Economic Partnership Agreement on Nigeria' Policy Research Working Paper 4920 April 2009 1

<sup>1154</sup>Nigeria and EU's Economic Partnership Agreement (EPA): Economic Cooperation or Economic Slavery? (Briefing No 11 August, 2016) 3, 6-10

<sup>1155</sup> NANTS, appendix 1

<sup>1156</sup> *ibid*

<sup>1157</sup> *ibid*

<sup>1158</sup> Faizel Ismail & Jay Grunder, Making Britain Great Again! For What Purpose? Implications for South Africa's Future Relations with the UK Post-Brexit! Trade & Industrial Policy Strategies Working Paper (June 2019) 19

the same level of development.<sup>1159</sup> According to Wilkinson, negotiations among unequal partners produce an asymmetrical result, accompanied by ‘heightened contestation and drama’.<sup>1160</sup> In his work ‘The National System of Political Economy’, Georg Friedrich List made a similar argument. According to him, free trade can only flourish among countries with the same level of economic development.<sup>1161</sup>

Nigeria, as mentioned above, had concerns about the negotiating architecture and argued that the negotiations should be with individual countries rather than with the ECOWAS Commission negotiating on behalf of its members. This is to allow each country to present its specific problems and needs. However, other member-states overruled this contention.<sup>1162</sup>

It is important to note that Nigeria set in motion a dual programme in 2014, namely, the Nigeria Industrial Revolution Plan and the National Enterprise Development Programme (NIRP), to dramatically change the nation’s industrial prospects by expanding and encouraging development.<sup>1163</sup> The former Minister of Industry, Trade and Investment, Olusegun Aganga, believed that the ratification of the EU-ECOWAS EPA would conflict with the aims and objectives of these programs. In the course of the launch of the programmes, President Goodluck Jonathan said, ‘NIRP is the flagship industrialisation programme ever embarked upon by this country.’ He extolled the programmes’ ability to ‘fast-track industrialisation, accelerate inclusive economic growth, job creation, transform Nigeria’s business environment and stop the drain on [the country’s] foreign reserves, caused by importing what can [be] produced locally’.<sup>1164</sup> At the Ministerial Monitoring Committee (MMC) meeting in February in Dakar, Nigeria’s Minister of Trade and other Ministers expressed their discontent with the EPA negotiations’ proceedings and asked for a careful review of the repercussions.<sup>1165</sup>

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<sup>1159</sup> Interview from MAN, Appendix; EU, Economic Partnership Agreements (EPAs), New ACP-EU Trade Partnerships (July, 2010), available at <http://eu.europa.eu/trade/wider-agenda/development/economic-partnerships> accessed: 29 May 2018; Nigeria’s Draft Position on the Economic Partnership Agreement, (hereinafter Nigeria’s draft Position) (Archival Doc/Nigeria Ministry of Industry, Trade and Investment, 2007); Isabelle Ramdoo & San Bilal, ‘EPA Negotiations: The Honey Moon is Over’ Briefing Note 31 (2011) available at [www.ecdpm.org/publications/](http://www.ecdpm.org/publications/) accessed: 29 May 18 at 3

<sup>1160</sup> Wilkinson 2014 *op cit* note 45 at 74

<sup>1161</sup> List, *op cit* note 230 at 4

<sup>1162</sup> Nigeria’s Draft Position on the Economic Partnership Agreement, (hereinafter Nigeria’s draft Position) (Archival Doc/Nigeria Ministry of Industry, Trade and Investment, 2007);

<sup>1163</sup> Nigeria Clarifies Reason for not Endorsing EU-ECOWAS EPAs, (15 May 2014) 3 (4) *Bridges Africa* available at [www.ictsd.iisd.org](http://www.ictsd.iisd.org) accessed: 1 December 2020; Steve Omanufeme & Jaieola Andrewa, Jonathan Launches Industrial Revolution Plan, (Thisdaylive)12 February 2014, [www.globaltradealert.org/act/nigeria-launch-of...](http://www.globaltradealert.org/act/nigeria-launch-of...) (accessed: 13 De2020)

<sup>1164</sup> *ibid* Bridges Africa

<sup>1165</sup> *ibid*

At the meeting, Nigeria raised ten concerns at the Council of Ministers held on 26 March 2014 in Yamoussoukro, namely: (a), the need to address the product mix in groups ‘C’ and ‘D’ in order not to hurt the economy; (b), provisions for industrialisation drive in Nigeria and West Africa generally;<sup>1166</sup> (c), the need for the development of a transparent support programme to enhance the competitiveness of products in group ‘C’ by the EU and ECOWAS Commission and annexed to the EPA agreement; (d) the agreement did not address the issue of the reimbursement of the financial loss for Nigeria and over 50 per cent of the budgets of some least developed countries (LDCs) that rely on custom duties, as well as loss of investments and jobs that will arise from signing the EPA, and lack of clarity on how the fiscal/revenue loss will be recovered; (e) the €6.5 billion for the financing of the EPADP is unsatisfactory, as its sources, that is, European Development Fund (EDF) or EU Member States funding, Aid-for-Trade, etc. all exist without an EPA. Nigeria wants to be assured of additional support funds; (f) the need for an additional safeguard clause/instrument as a declaration would become an integral part of the agreement. The regional supplementary protection measures should be annexed or embedded in the agreement; (g), the need to re-examine the text of the EPA should be guaranteed. For instance, Article 60 deals with transfers based on cooperation instead of legal guarantees to compensate for financial loss and ensure transfers into West African economies. The language used by the EU for the removal of the export subsidy is not binding; (h) a review clause is necessary, allowing for a review of the agreement every five years, using agreed indicators. Furthermore, member states should have the right to withdraw from the commitment if the agreement is disadvantageous to their economy. (i), the EU needs to work out specific modalities with its private sector and relate this to the EPA to locate production plants in West Africa in a joint venture arrangement to take advantage of raw materials for the EU market; (j), monitoring and evaluation systems and benchmarks should be put in place. There is a need to develop monitoring indicators and benchmarks that include economic indicators such as the loss of revenue and jobs, output and investments. It is imperative for Nigeria, the only Generalised System of Preferences (GSP) economy in ECOWAS, to be a member of the EPA monitoring group; and, finally, impact assessment measures for assessing the impact of EPA on member state’s growth, and industrialisation need to be put in place for the ECOWAS Commission and member states.<sup>1167</sup>

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<sup>1166</sup>Enda, *op cit* note 530 at 1-8

<sup>1167</sup> Nigeria’s Draft Position on the Economic Partnership Agreement 13<sup>th</sup> Extraordinary Session of the ECOWAS Council of Ministers, Yamoussoukro, 26<sup>th</sup> March, 2014 available at <http://events.ecowas.int/wp-content/uploads/2014/03/draft...> accessed: 1 December 2020 (FMITI Doc, Nigeria);

As maintained by some interviewees, the EU declined to consider the concerns raised, as it was too late to begin to return to these issues.<sup>1168</sup> The following subsection examines the technical issues that the parties could not agree upon.

## VI EUROPEAN UNION DEBATE ON FLEXIBILITY

During the EU's new trade strategy, EU Commissioner for Trade, Mandelson, emphasised the importance of special treatment for ACP countries. In his speech at the London School of Economics (LSE) on 9 October 2006, he unequivocally stated that ACP countries' period for liberalisation would be prolonged and 'tailored to the needs of the countries themselves.'<sup>1169</sup> In another address to the Party of European Socialists on 19 October 2006, he repeated that the EU had an obligation to 'build regional markets, build up production capacity and diversify ACP economies' before their market could be liberalised.<sup>1170</sup>

The European General Affairs and External Relations Council (GAERC) meeting in Brussels from 14 to 15 May 2007 declared that the Council had admitted that 'flexibility in favour of ACP states (exclusions of products, long transition periods and safeguard clauses) must be compatible with WTO rules.'<sup>1171</sup> Not long after this statement, Mandelson made it known that:

in many areas, we are ready to give serious consideration to transition periods and, in some cases, very long transition periods — up to 25 years — together with substantial financial aid to help these countries implement their commitments so that EPAs genuinely act as a catalyst for policy reform in ACP Countries.<sup>1172</sup>

Nevertheless, the EU concluded that the EPAs should ask for a minimum of 80 per cent of liberalisation over a period of 15 years.<sup>1173</sup> The UK Commission for Africa, set up in 2005, under the supervision of Prime Minister Tony Blair, proposed 20 years for the liberalisation of some sensitive products.<sup>1174</sup> Similarly, the governments of Denmark, Ireland, and the Netherlands wrote

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<sup>1168</sup> Interviews with FMITI officials, (2020)

<sup>1169</sup> Peter Mandelson, Bilateral Agreements in EU Trade Policy (London School of Economics, London 9 OCTOBER 2006) speech 06/574-09/10/2006, (London School of Economics), [https://ec.europa.eu/Commission/presscorner/detail/en/SPEECH\\_06\\_574](https://ec.europa.eu/Commission/presscorner/detail/en/SPEECH_06_574) accessed: 14 December 2020

<sup>1170</sup> Peter Mandelson Commissioner Mandelson to the PSE-organised seminar on EPAs (SPEECH/10/612-19/10/2006), <http://europa.eu/rapi/pressReleaseAction.do?reference=SPEECH/06/612&fromant=HTML&aged=0&language=EN&guiLanguage=en> cited in Goodison, *op cit* note 667

<sup>1171</sup> press release, European General Affairs and External Relations Council (GAERC), 14-15 May 2007, <http://www.concilium.europa.eu/ueDocs/cms-Data/dcos/pressData/en/gena/94116.pdf> (accessed: 14/12/2020)

<sup>1172</sup> Peter Mandelson, European Parliament Debate on EPAs, 22 May 2007, Strasbourg, available [www.europarl.europa.eu](http://www.europarl.europa.eu) accessed: 14/12/2020

<sup>1173</sup> South Centre, EPA Negotiations: State of Play and Strategic Considerations for the Way Forward, (Analytical Note SC/AN/TDP/EPA/13, Geneva, Switzerland, February 2008) available at <http://www.southcentre.org> 18

<sup>1174</sup> The Commission for Africa Report, Chapter 8 'More Trade, Fairer Trade', March 2005

to European Trade Commissioner Baroness Ashton, asking for the extensive use of flexibility and asymmetry as allowed under the laws of the WTO to demonstrate the different stages of development needs of ACP countries and various regions.<sup>1175</sup> According to Julian Baroness Ashton never relented in promising flexibility.<sup>1176</sup> However, as negotiations progressed, the notion that the EPA would be flexible enough to accommodate the different levels of development in ECOWAS became a mirage, according to an interviewee.<sup>1177</sup>

According to Goodison, despite several glowing speeches on the importance of flexibility during the EPA negotiations, the underlying intent was that the more extended period was more feasible to be dealt with if only with some specific considerations and if the aim of the extensive liberalisation were accepted.<sup>1178</sup> Goodison maintained this sent a mixed message to those engaged in the EU negotiations concerning an EPA with African countries.<sup>1179</sup>

With this approach adopted by the EU's EPA negotiators, Goodison believes that the Commission is so focused on Europe's capacity and role to transform the world that it ignores the fundamental reality.<sup>1180</sup> This means the EU posturing is that the starting point for African countries is dissimilar to its gradual historical development.<sup>1181</sup>

The method adopted for the negotiations of the EPAs was challenged during a debate in the European Parliament. The majority of the debaters argued in favour of flexibility and taking the development concerns of ACP countries into account. The following recommendations were made by Robert Sturdy (PPE-DE) that the EPA should be 'simplified, liberalised and more flexible rules of origin, full duty-free, quota-free market access for the ACP'. Sturdy supported a practicable safeguard, dispute-settlement and monitoring mechanism. According to him, actors must be armed with actual 'power to act' if the EPAs' negative impact becomes a cause for concern.<sup>1182</sup>

On behalf of the Group of the European People's Party (Christian Democrats) and European Democrats, Jean-Pierre Audy stated that the EPAs must be in line with the spirit of the

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<sup>1175</sup>Letter to Commissioner Ashton by EU Member States Denmark, Ireland and the Netherlands, dated 7 November 2007 available published on the tralac, [www.tralac.org](http://www.tralac.org)

<sup>1176</sup>Julian M, 'EU Member States and New EC Trade Commissioner committed to Flexibility in EPA Negotiations' EPA update (Longer version), Trade Negotiations Insight, (December 2008/Jan 2009)

<sup>1177</sup> Interview with NANTs Officials (2020)

<sup>1178</sup>Goodison, op cit note 667 at 143

<sup>1179</sup> *ibid*

<sup>1180</sup> *ibid*

<sup>1181</sup> *ibid*

<sup>1182</sup> European Parliament, 'The Economic Partnership Agreement (debate) (Tuesday, 22 May 2007, Strasbourg), [www.europarl.europa.eu/sides/getDoc?reference=20](http://www.europarl.europa.eu/sides/getDoc?reference=20) accessed: 14 December 2020

Cotonou Agreement. The EPA, the group, argued must not only become a free trade agreement as provided for by the WTO but must also provide an enabling environment for the development of the ACP countries. However, another view was offered by Leopold Józef Rutowicz, a member of the European Parliament (MEP), who argued that though he recognised the strong commitment made by the European Union, cooperation based on agreements that fail to take account of the global market and the principles laid down by the WTO, would not advance such partnership agreement. He further recommended that ‘European Union aid to these countries should aim first and foremost to stimulate production that will not represent competition for EU producers.’ In other words, any financial aid should generate the minimum income needed for subsistence in the ACP countries and no more.

Vittorio Agnoletto, another MEP, argued that EPA negotiations conducted by the Commission and supported by the Council ‘are threatening the economic and food security of the ACP countries and jeopardising any remaining possibility for these countries to consolidate their productive sectors.’ MEP Jerzy Buzek pointed out that free trade ‘does not by itself improve competitiveness.’ Carl Schlyter challenged Mandelson by reminding him of the vast economic power asymmetries between the EU and ACP countries. He reminded the Commissioner of the ‘hundreds of experts’ at the EU’s disposal to negotiate the EPA, while the ACP countries have few.

During the debate, Gabriele Zimmer objected to Mandelson’s handling of the EPAs negotiation, saying that compliance with WTO rules does not mean a ‘new world order’. Zimmer further stated that Mandelson’s conduct of the negotiations was ‘overreaching’ and ‘overestimating’ his negotiating authorisation, creating a vast advantage for the EU market.<sup>1183</sup> Notwithstanding this argument favouring the ACP countries, observers noted there was no flexibility and no concrete development plans in the text of the West African EPA.<sup>1184</sup>

Discussing the low capacity in ECOWAS, an interviewee observed that while the EU had long worked extensively on replacing the Lomé Convention, Africa did not have a position on how the replacement should look like from their economic situation.<sup>1185</sup> According to an interviewee, after an ECOWAS meeting, where the content of EPA was discussed, President Olusegun Obasanjo summoned his minister, private sector and civil society to examine the EPA proposal and its impact, but it was late. According to Ukaoha, ‘It was only toward the end of the negotiation

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<sup>1183</sup> *ibid*

<sup>1184</sup> Interview with MAN official (2020)

<sup>1185</sup> Interview with NANTs official (2020)

that Obasanjo set up a technical negotiation team between the private sector and public sector, and made an official of NANTs, a secretary.’<sup>1186</sup>

Based on Patterson’s historical account of the GATT, the widespread contradiction in the multilateral trading system is indistinguishable from EPA negotiations. According to Patterson, the Community spokesmen for the OEEC noted that the anxiety expressed by Austria, Norway and Sweden about industries in those countries being unlikely to survive discrimination was ‘exaggerated.’ The EEC counselled ‘that too rigid interpretation of the GATT was not advisable.’ Therefore, GATT must consider that ‘the changing condition of the world was necessary if the GATT were to survive and be useful’.<sup>1187</sup> The contracting party decided that the GATT rule should not be strictly dwelt on; instead, there should be a ‘focus on specific and practical problems.’<sup>1188</sup>

In another instance, the Netherlands, Belgium, and Luxembourg had a deficit challenge like the rest of the world. The postponement of liberalisation from 1946 to 1949 of ‘both intra and extra-Benelux trade’ by the Netherlands was permitted.<sup>1189</sup> Similarly, when the UK had a severe diminution of reserves and imposed stringent 15 per cent import surcharges, several developing countries requested that they be excluded from surcharges in goods. However, the UK and the United States refused, arguing that it ‘would be discriminatory and hard to administer if such a request is granted’.<sup>1190</sup> During the GATT years, the European Free Trade Association admitted that agriculture is vastly protected through government intervention in its various member countries.<sup>1191</sup> The above examples represent the double standard in the multilateral trading system; these contradictions are also inherent in the EU-ECOWAS EPA.

(a) *Reasonable Time for Transition Within the Context of the WTO*

Article XXIV:5 (C) of GATT provided a transition period for liberalisation of substantially all the trade for parties to an FTA. The 1994 Understanding on Article XXIV of GATT provided for a ‘reasonable length of time’ within the context of an FTA. It states that the period should not be more than ten years, but a prolonged period may be permitted in exceptional circumstances.<sup>1192</sup> In other words, a more extended period could be allowed. What amounts to ‘exceptional circumstances is a subject to be determined on a case-by-case basis.’<sup>1193</sup> Many FTAs have been

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<sup>1186</sup> *ibid*

<sup>1187</sup> Patterson, *op cit* note 96 at 128

<sup>1188</sup> *ibid* at 157

<sup>1189</sup> *ibid* at 190

<sup>1190</sup> GATT Press Release, 913, 21 December, 1964 quoted in Patterson, *op cit* note 282 at 196

<sup>1191</sup> *ibid*

<sup>1192</sup> Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994, para 3

<sup>1193</sup> *ibid*

permitted for a more extended period of transition in the past. This shows flexibility in applying a reasonable length of time.<sup>1194</sup> In defence of the United States-Australia FTA that removes barriers to Australian beef exports after only 18 years, the two countries' justification for the long transition period was based on a pragmatic rationale.<sup>1195</sup> The United States posited that using more extended transition periods for complex products is more prosperous and encourages a solid and long-term agreement with maximum coverage.<sup>1196</sup>

In justifying the more extended transition period in the agreement between the United States and Chile's FTA, the United States said:

Neither GATT Article XXIV nor the 1994 Understanding on Article XXIV requires that transition period to be limited to 10 years. Article XXIV does require, however, that the agreement eliminate tariffs on substantially all the trade. Focusing, therefore, on the requirement, the parties worked to negotiate as comprehensive an agreement as possible. In these negotiations, it became clear to each party that a limited number of agricultural products were susceptible and hence would require longer transition periods.<sup>1197</sup>

The emphasis is that the mere length of a transition period for an FTA does not violate the WTO rule. Ultimately, the most important thing is that there is a high likelihood of the *SAT* requirement being met.<sup>1198</sup> On several occasions, WTO members have used this logic to justify a more extended period than ten years.<sup>1199</sup> In the Turkey-Textile case, it was observed by the Appellate Panel that the transition period of the interim agreement metamorphosing into the EC-Turkey customs union continued for 35 whole years.<sup>1200</sup> In its defence of the extended transition period, Turkey made the point that the customs union was initially scheduled to conclude effectively upon utilising the long

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<sup>1194</sup>South Centre, Revisiting EPAs and WTO Compatibility, [http://www.southcentre.org/publications/AnalyticalNotes/Other/2005Jul\\_EPA\\_WTO.pdf](http://www.southcentre.org/publications/AnalyticalNotes/Other/2005Jul_EPA_WTO.pdf) accessed: 1 December 2020

<sup>1195</sup>WT/REG184/5, Free Trade Agreement between the United States and Australia-Questions & Answers, para 19; Lorand Bartels, Legal Issues Relevant to the Notification of EPAs under Article XXIV GATT, [http://www.acp-eu-trade.org/library/files/Bartels\\_EN\\_261007\\_Legal-issues-notification.pdf](http://www.acp-eu-trade.org/library/files/Bartels_EN_261007_Legal-issues-notification.pdf) p 7

<sup>1196</sup>World Trade Organisation, Free Trade Agreement between the United States and Australia: Question and Replies (Committee on Regional Trade Agreements, Forty Seventh Session, WT/REG184/5 (3 September 2007), [www.wto.org/DDFDocuments>Q>WT>REG>184-5](http://www.wto.org/DDFDocuments/Q>WT>REG>184-5) accessed 14 December 2020

<sup>1197</sup>World Trade Organisation, Examination of the Free Trade Agreement Between the United States and Chile, Goods and Services, (Committee on Regional Trade Agreements Thirty-Ninth Session, WT/REG160/M/1, 14 March 2005) 2, [www.docs.wto.org/FE\\_search>DDFDocuments>WT>REG](http://www.docs.wto.org/FE_search>DDFDocuments>WT>REG) accessed: 14 December 2020; Lorand Bartels, Legal Issues Relevant to the Notification of EPAs under Article XXIV GATT, [http://www.acp-eu-trade.org/library/files/Bartels\\_EN\\_261007\\_Legal-issues-notification.pdf](http://www.acp-eu-trade.org/library/files/Bartels_EN_261007_Legal-issues-notification.pdf) p 8; Obote Ochieng *op cit note* 716 at 364

<sup>1198</sup> *ibid* Obote Ochieng

<sup>1199</sup>CRTA, Examination of the EC-Jordan Euro-Mediterranean Agreement, WT/REG14/M/1, 28 April 2004, para 8), cited in Aniekan Iboru Ukpe, Will the EU-Africa Economic Partnership Agreements Foster the Integration of African Countries into the Global System' [www.paper.ssrn.com](http://www.paper.ssrn.com) accessed: 14 December 2020

<sup>1200</sup>Turkey Restrictions on Imports of Textiles and Clothing (Turkey-Textile) adopted on 31 May 1999, WT/DS34/R, para 6.126, [www.worldtradelaw.net/reports>wtopanelsturkey...](http://www.worldtradelaw.net/reports/wtopanelsturkey...) accessed: 14/12/2020

transition period. This therefore diffused and minimised criticisms that the period was excessively long to be regarded as ‘reasonable.’<sup>1201</sup>

In a similar vein, it is advocated that African countries are at a different level of development and need extensive internal reform.<sup>1202</sup> Also, the situation in Africa is observably not a strange one. For example, it took the EU 35 years to transform from the Treaty of Rome to establish a single internal EU market and an additional 15 years to implement agricultural (CAP) reform.<sup>1203</sup> The CAP is planned and adopted to furnish the European food and agricultural sector to address the problem of liberalisation in the world economy.<sup>1204</sup>

Instructively, the EU utilised lengthy time-frames for its domestic adjustment for market liberalisation and enormous finance to support the process.<sup>1205</sup> Its agricultural budget increased from ECU € 30.3 billion in 1992 to €44.46 billion in 2003 before the ten new members. It increased to €54.7 billion in 2006.<sup>1206</sup> According to Lui and Bilal, this flexibility allowing for a transition period for the EU was not extended to African countries under the EPAs.<sup>1207</sup> According to an interviewee, in Nigeria, like the rest of the African countries, the formation of a regional market and its strength is at the preliminary stage.<sup>1208</sup> With the exclusion of the Southern African Customs Union (SACU) markets, Goodison opined that the aim of the African trade negotiators in the EPAs is essentially to contribute to the structural economic transformation of African economies by encouraging and promoting locally made goods and services for national, regional and international markets.<sup>1209</sup> Goodison argued that the whole of the EU policy and the EPA negotiation process did not support the objective of the African countries’ development plan.<sup>1210</sup>

The preamble of the WTO Agreement acknowledged the need for ‘positive efforts’ to ensure that developing countries (largely the LDCs) obtain a share in international trade.<sup>1211</sup> Thus, Patel argues that the 25 years requested by West African countries to make structural adjustments

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<sup>1201</sup> *ibid*

<sup>1202</sup> Goodison, *op cit note 69*

<sup>1203</sup> *ibid* at 143

<sup>1204</sup> *ibid*

<sup>1205</sup> *ibid*

<sup>1206</sup> *ibid*

<sup>1207</sup> Lui & Bilal, *op cit note 79* at 3

<sup>1208</sup> Interview with MAN officials

<sup>1209</sup> Goodison, *op cit note 69*

<sup>1210</sup> *ibid*

<sup>1211</sup> World Trade Organisation, Working Party on the North American Free Trade Agreement: Questions and Replies, WT/REG4/1, 23 June 1995, paras 23 and 34), [www.docs.wto.org>DDFDocuments>WT>REG>4-1](http://www.docs.wto.org/DDFDocuments>WT>REG>4-1) accessed: 14 December 2020

before opening up fully to reciprocal trade arrangement with the EU in the EPA context count as ‘positive efforts.’<sup>1212</sup>

## VII CONCLUSION

This chapter’s primary question was why Nigeria refused to sign the EPA despite its close trade relations with the EU. It was determined that Nigeria recognised the built-in asymmetrical nature of the trade agreements—as, indeed, did other ECOWAS countries—and, almost uniquely amongst its ECOWAS and ACP Countries, was in a position to refuse to acquiesce on this basis. Specifically, Nigeria had concerns about the interpretation of Article XXIV of GATT.

It reveals that complying with the provisions of GATT Article XXIV would be detrimental to its efforts to diversify its economy.<sup>180</sup> However, one of the reasons Nigeria did not sign is because the main export to the EU market is crude oil, which is duty free, as such, Nigeria did not suffer the case of Ghana. There is an asymmetry between the EU and Nigeria, but it was not strong enough to put pressure on Nigeria to sign. In addition, its main products export destination was the UK which has exited the EU. In other words, Nigeria could withstand the power asymmetry favouring the EU because she was looking forward to a trade deal with a dominant core (UK) and continuing the export of oil tax free to the EU. This finding corresponds to Drahos’s argument that ‘rules and procedure, whether bilateral or multilateral’, do not automatically reduce the economic power asymmetry between peripheral countries and the dominant core.<sup>181</sup> He states, ‘What matters to the preservation or extension of an individual’s economic interests ultimately rests on that individual’s bargaining power.’<sup>1213</sup> The documentation and interviews indicate that the EU adopted a posture that sought to impose its views on Nigeria rather than consider its concerns.<sup>183</sup>

The contradictions observed have shown that while the EU promotes the ideas of free trade and attempts to impose it on Nigeria and the rest of West Africa, in practice, the former has distanced itself from the GATT tenets, except when compliance would protect its interests. If the EU applies the provisions of GATT to itself, it does so with leniency. However, the lack of strict compliance to the GATT Article XXIV provisions was due to political and economic reasons, as observed in chapter one of this thesis.

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<sup>1212</sup>Patel M, Economic Partnership Agreements Between the EU and African Countries: Potential Development Implications for Ghana, [http://www.realizingrights.org/pdf/EPAs\\_between\\_the\\_EU\\_and\\_African\\_Countries-Development\\_Implications\\_for\\_Ghana.pdf](http://www.realizingrights.org/pdf/EPAs_between_the_EU_and_African_Countries-Development_Implications_for_Ghana.pdf) 8 June 2020

<sup>1213</sup> Drahos Peter, ‘When the Weak Bargain with the Strong: Negotiations in the World Trade Organisation,’ 2003 International Negotiations 8

## CHAPTER EIGHT: CONCLUSIONS

### I OVERVIEW

This thesis has argued that the interpretation of the General Agreement on Tariff and Trade (GATT) Article XXIV in the context of the Economic Partnership Agreements (EPAs) between the European Union (EU) and the Economic Community of West African States (ECOWAS) is a reflection of ‘systemic’ power asymmetry and a case of double standards, just as the GATT has been.<sup>1214</sup> Asymmetries between the EU and ECOWAS are believed to be continuity of colonialism, which are the cause of unequal trade agreements such as the EPAs.<sup>1215</sup> However, the asymmetry of the colonial relationship is quite different from the modern day power asymmetry. The former was based on the use of force to protect the interest of the colonialists while the latter focused on granting aid and development promises without legal commitment and sometimes employed subtle threats and coercion to secure its interests. Nevertheless, Faundez and Tan argue that trade arrangements such as the EPAs are highly affected by the colonial past with its damaging effects.<sup>1216</sup> The authors viewed that a genuine partnership between the core and peripheral countries is impossible. Kwame Nkrumah’s perspective was that, for the gap between the core and peripheral countries to shrink, there has to be a deviation from the ‘patron-client relationship’.<sup>1217</sup>

This PhD research engaged three core questions: (a) Is the EU Trade Relations with the ECOWAS region based on systemic economic power asymmetry just as the GATT had been? How is this reflected in the interpretation of Article XXIV? (b) Is Special and Differential Treatment in the text of the EU-Ghana Economic Partnership Agreement sufficient to bring about economic development? (c) Why was Nigeria not coerced or pressured by the systemic power asymmetry between it and the EU to sign the EPA agreement? In order to obtain insights on these three core research questions, the research explored the academic literature from the conformist and revisionist perspectives, it conducted structured interviews, explored the text of the EPAs, engaged with archival materials from the ECOWAS and WAEMU Commission, Federal Ministry of Industry, Trade and Investment (FMITI) in Nigeria, Ministry of Trade and Investment in Ghana and official documents obtained from the EU website.

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<sup>1214</sup> Chantal Thomas, ‘Developing Countries and Multilateral Trade Agreements’: Law and the Promise of Development(1994-1995) 108 *Harvard Law Review* 1715 at 1723

<sup>1215</sup> Kwame Nkrumah, *Neo-Colonialism: The Last Stage of Imperialism* (1966) 17-19

<sup>1216</sup> Julio Faundez and Celin Tan, *International Economic Law, Globalisation and Developing Countries* (2012) 15

<sup>1217</sup> Nkrumah op cit note 4 at 176

In support of the perspective offered by academics such as Lang, the thesis argued that Ruggie seemed not to have considered the peripheral countries in the GATT/WTO, who could not effectively engage with the GATT exceptions due to poor capacity and infrastructure. Also, as discussed by various scholars, the exceptions did not take into account the development issues and capacity constraints faced by most peripherals.<sup>1218</sup> Similarly, the contradiction inherent in the ideas and practice of GATT was not addressed by embedded liberalism.<sup>1219</sup> Also, Ruggie's embedded liberalism, enthusiastically accepted without critical examination, has limited the capacity to question the ideas and interests underlying the framework of the multilateral trading system.<sup>1220</sup>

A significant body of revisionist academic literature<sup>1221</sup> questioned the conformist view and demystified the theory of free trade. The thesis gained insights from the revisionist standpoint on the multilateral trading system to discuss the three main research questions of the thesis. The negotiation leading to the signing of the EPA demonstrated that ideas played an important role. In order to gain insight into how agents utilised these ideas, the thesis draws on the works of Ruggie, who shows how ideas create social facts. According to Keohane and Goldstein, ideas arise from interests, preferences, and identities.<sup>1222</sup> Drake and Kalypso revealed that the dominant core would consult experts and create an 'epistemic community'<sup>1223</sup> to clarify any ambiguity for easy acceptance of such an idea.

The research demonstrated that even as the EU pushes for sweeping applications of Article XXIV: 8, it has not applied the provision in many instances. In the contradiction between ideas and practice, according to Wilkinson, the United States is only willing to open its market in the areas where it faces little competition but not in the areas of economic sensitivity.<sup>1224</sup> In chapter 2, this research explored the work of Mutasa to show the different ways in which the EU relentlessly engages in the protection of the agricultural sector.<sup>1225</sup> This, according to Mutasa, has had a detrimental impact on peripheral countries like the ECOWAS region.<sup>1226</sup> According to Goldstein,

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<sup>1218</sup>Lang, *op cit note 53* at 99-100

<sup>1219</sup>Ismail, *op cit note 146* at 28

<sup>1220</sup>Lang, *op cit note 53*

<sup>1221</sup>Cox, *op cit note 42*; Wilkinson, *op cit note 40*; Mark Mazower, *Governing the World: The History of an Idea* (2012)

<sup>1222</sup>Goldstein & Keohane, *op cit note 160* at 13

<sup>1223</sup>Drake & Nicolaidis, *op cit note 187* at 38

<sup>1224</sup>Wilkinson, *op cit note 45* at 19

<sup>1225</sup>Mutasa, *op cit note 294* at 239

<sup>1226</sup>ibid

the core countries, the United States and the EU, pursue market liberalisation worldwide but make laws to protect their advanced domestic industries.<sup>1227</sup>

In recent times, the core countries have continued to undermine their formulated rules. Donald Trump indiscriminately increased tariffs and engaged in trade wars with members of the WTO, especially China.<sup>1228</sup> Also, in the GATT's early days, The Benelux countries in 1954 asked for a deviation from the non-discrimination principle of GATT to grant favours to themselves. The United States and Canada asked that 'sympathetic consideration' should be extended to their countries.<sup>1229</sup> France argued that states should be allowed to intervene as long as it considered free trade profitable.<sup>1230</sup> However, the peripheral countries struggled to have their interests considered from GATT to the present. Although there is provision for preferential treatment for developing countries, the clauses are worded in the best endeavour language.<sup>1231</sup>

Similarly, the EPA was fraught with double standards. The EU acknowledged the abject poverty in the ECOWAS region; it argued that the EPA's objective is the development and gradual liberalism. Nevertheless, it dramatically asked for 80 per cent trade liberalisation for a period of 15 years. However, it recognised that Moldova is a small country that needed more time to engage in holistic liberalisation. It could not apply the same leniency or flexibility to the ACP countries, including ECOWAS, which was provided in the Cotonou Agreement.

The conclusion outlines the key findings from the case studies, investigating the systemic power asymmetry inherent in the EU-ECOWAS EPA negotiation and ratification of the instrument. Finally, it makes a few recommendations.

## II KEY FINDINGS OF THE THESIS

In order to gain insight into the historical account of trade relations between the EU and West Africa, critical theory was employed instead of problem-solving theory to address the above questions.<sup>1232</sup> This is because the latter would seek to excavate historical experiences that resulted in a change and then inquire into the origin of the contradiction and lack of agreement in an

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<sup>1227</sup> Goldstein, *op cit* note 260 at 188-189

<sup>1228</sup> BBC News, Trade Wars, Trump Tariffs and Protectionism Explained (May 10 2019) available at [www.bbc.com](http://www.bbc.com) accessed: April 22 2021

<sup>1229</sup> Patterson, *op cit* note 96 at 106

<sup>1230</sup> *ibid* at 108

<sup>1231</sup> *ibid*; Ismail, *op cit* note 984 at 17-19; Ismail *op cit* note 60 at 11-12

<sup>1232</sup> Cox, *op cit* note 46 at 158

institution. In critical theory, there is a dissection of history for thorough examination and questioning of ideas and interests underlying the formation of such an organisation.<sup>1233</sup>

Another work by Cox employed to address the key questions in this thesis is the Neo-Gramscian Theory.<sup>1234</sup> Cox critically analysed how the core sustained its power and domination. Cox narrated the various means used by the dominant core to continue its hold on peripheral countries. He states, 'the economic life of subordinate nations is penetrated by, and intertwined with the powerful nations.' This situation becomes complex if such a country comprises different social and ethnic backgrounds.

This theory allowed the research to explore why ECOWAS could not present a united front before the EU, even to the extent of ignoring the instructions of the ECOWAS President, when he declared that members should not sign until all Member-states' concerns were addressed.<sup>1235</sup> For example, interviewees from the civil sector and ECOWAS Commission asserted that when Nigeria prepared a template for negotiation with the EU, the Francophone countries thought it too strongly worded, and 'one could perceive that they have taken the side of the French government.'<sup>1236</sup> He further recounted that non-LDCs (Cote d'Ivoire, Ghana and Nigeria) agreed not to sign the agreement until the EU tilted the scale in their favour. Following the agreement, a letter was written to the EU stating why the non-LDCs would not sign. 'The EU never sent a reply to the letter.' The first two mentioned countries signed without the knowledge of Nigeria.<sup>1237</sup> Dr Gbenga Obideyi claimed that the Francophone countries would object to any contribution made by the English speaking countries before the EU and declare that they are satisfied with the amount the EU contributed toward development.<sup>1238</sup>

According to Cox, conditions or beliefs can influence theories.<sup>1239</sup> Commenting on the importance of Eurafrica, a spokesperson for France posits that the possession of the African market is a 'collective' task—protection of the interests of Europe. The French negotiators maintained that the interests were balanced because the offer was made to African countries.<sup>1240</sup>

Mandelson famously stated that the new structure of the trade relationship must discard whatever remains of the idea of colonialism. According to observers, the EU-Africa relationship

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<sup>1233</sup> Ibid; Cox, *op cit* note 47 at 129

<sup>1234</sup> Cox *op cit* note 204

<sup>1235</sup> Interview with Ken Ukaoha Director, NANTs official (Abuja 2020)

<sup>1236</sup> Interview with ECOWAS official (2020)

<sup>1237</sup> Interview with NANTs official (2020)

<sup>1238</sup> Interview with form DG Trade, ECOWAS 2020

<sup>1239</sup> Cox *op cit* note 47

<sup>1240</sup> Guy *op cit* note 367

is inextricably linked to the colonial constraint.<sup>1241</sup> Minta referred to the relationship as an ‘unbroken historical continuum.’<sup>1242</sup> The general view is that the nomenclature of the EU and ECOWAS may change, but the crux of the idea underlying the relationship is hardly altered.<sup>1243</sup> For instance, Part IV of Article 131 provides that the Community should foster the Associates’ economic and social development. Also, 132 subparagraphs enjoined the parties to promote progressive development investment in the associated states. The research finds this manner of presenting every agreement as the interests of Africa have not changed.<sup>1244</sup> Mandelson, the EU Trade Commissioner, declared about the EPA being homegrown, saying, ‘Let there be no mistake: as with New Economic Partnership Africa’s Development (NEPAD), you are in the driving seat, and we will support your priorities and your ambitions.’<sup>1245</sup> According to Wilkinson, this manner of speaking constrains others from questioning such discourse.<sup>1246</sup>

In another speech, Mandelson distanced himself from the WTO standard of interpretation of rules and said that it should not strictly apply to the North-South.<sup>1247</sup> He declared that he was more than willing to defend this position if asked to do so. However, as the negotiation progressed, Mandelson began citing the 1930 protectionism that led to the great depression. According to him, engaging in protectionism is a ‘dead end.’<sup>1248</sup> Based on the interviews conducted, primary and secondary sources consulted provided evidentiary support to the argument that the EU merely employed this manner of talking to prevent the peripheral countries from subjecting the agreement’s text to critical examination. This form of communication is deployed to ensure the trade arrangement asymmetrical outcomes.<sup>1249</sup>

(a) *How was Ghana Coerced and Pressure to Sign the EPA?*

Is the special and differential treatment provisions in the text of the EU-Ghana Economic Partnership Agreement sufficient to bring about economic development? The thesis applied the role of ideas and interests to chapters 4 and 5. Goldstein and Keohane believe that ideas can be

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<sup>1241</sup>Adebajo & Whiteman *op cit note 6*; Nkrumah *op cit note 4* at 176

<sup>1242</sup>Minta, *op cit note 378* at 953

<sup>1243</sup> *ibid*

<sup>1244</sup> Interview with Senior Academic staff (Zaria, 2020)

<sup>1245</sup>Peter Mandelson, ‘The ACP-EU Relationship in the Global Economy’ (SPEECH/04/505, ACP-EU Ministerial, Brussels, 1 December 2004) 2-3

<sup>1246</sup>Wilkinson, *op cit note 45* at 20, 79; Wallerstein Immanuel, *The Modern World System* (1974); Wallerstein Immanuel, *The Capitalist World-Economy* (1979) 9

<sup>1247</sup>Peter Mandelson, European Commissioner for Trade, *Economic Partnership Agreements: Progressive Trade Policy into Practice* (Speech/05/241, ACP-EU Joint Parliamentary Assembly, Bamako Mali, 19 April 2005) 2

<sup>1248</sup>Peter Mandelson (EU Trade Commissioner) ‘Sustainable Trade: Observations on Trade and Protectionism’ (SPEECH/06/187) (Brussels, 21 March 2006) 2

<sup>1249</sup> Wilkinson, *op cit note 45*

used to influence policy change by the dominant core.<sup>1250</sup> The authors believe that ideas are utilised as road maps to assist agents in managing the absence of symmetry embedded in the institution for a long time.<sup>1251</sup> Ruggie argues that the dominant core can alter and restructure an institution through ideas. It does this by adopting a ‘road map’ to ascertain its preference. Once the ideas are clarified, it then focuses on interests and how to bring about results.<sup>1252</sup> In order to manage the lack of symmetry between the EU and ECOWAS, including Ghana, the EU Commissioner of Trade went on an extensive campaign to diffuse the idea behind trade liberalisation in the ECOWAS region. According to Cox, in his Neo-Gramscian theory, the dominant core always promotes the ideas that legitimise the norm they have set in the global order.<sup>1253</sup> Given the nature of the argument, chapters 4 and 5 relied on the revisionist view to answer the second question.

According to a trade expert from ECOWAS Trade Commission, the EU was generous because it recognised Ghana's development level and provided exceptions in the agreement.<sup>1254</sup> From the standpoint of Cox, even though economic power asymmetry is to the advantage of the dominant core, it still accommodates the interests of the peripheral countries, which will cost nothing substantial to its interests.<sup>1255</sup> However, other interviewees lamented that the exceptions exist, but Ghana lacks the necessary structures to take advantage of such provisions.<sup>1256</sup> Another respondent expressed that it would not have signed the agreement if Ghana had a robust civil society and private sector like Nigeria.<sup>1257</sup> As a result of the weakness, the EU carried favour with government officials and some private sector actors and got the interim EPA signed without the popular support of the masses.<sup>1258</sup> This situation is what Cox referred to as ‘*transformismo*’, meaning that the dominant core does not leave the elite behind in pursuing its interests.<sup>1259</sup>

As chapter five of this thesis mentions, Article 2 (e) of the Ghana-EU EPA provides for compatibility with Article XXIV of the WTO. As GATT Article XXIV provides, the regional agreement must remove duties on ‘substantially all the trade’ and be within a ‘reasonable length of time’. The insertion of the clause is a significant departure from the Cotonou Agreement in the EPA, which provided for reciprocal liberalisation obligation. The interpretation of GATT XXIV:

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<sup>1250</sup>Goldstein & Keohane, *op cit note* 160 at 13

<sup>1251</sup> *ibid* at 29

<sup>1252</sup> Ruggie, *op cit note* 53 at 17

<sup>1253</sup> Cox *op cit note* 47

<sup>1254</sup> Interview with MoTI officer of (Ghana 2020)

<sup>1255</sup> Cox *op cit note* 96 at 172

<sup>1256</sup> Interview with MoTI official (Ghana 2020)

<sup>1257</sup> Interview with ECOWAS official (Abuja 2020)

<sup>1258</sup> Interview with official of FMITI (Abuja 2020)

<sup>1259</sup> Cox *op cit note* 96 at 173

5 (C) was that reasonable time should not be more than ten years, only in a special circumstance but what constitutes ‘exceptional cases’ remain abstruse. Thus, the EPA negotiations were fraught with different interpretations of Article XXIV.

However, Article 37 and 38 (4) of the Cotonou Agreement contains direction on how WTO compliance is to be achieved between the EU-ACP EPA. Paragraph 4 of 38 of the Cotonou Agreement provided flexibility and sufficient time for the ACP countries to transition to full implementation gradually. However, the EU-Ghana standstill provision in Article 15 provides that new import duty shall not be introduced, and Article 18 provides for the elimination of all forms of import restrictions. The EU argued that removing export taxes and restrictions is essential to meeting the criteria laid down in Article XXIV of GATT. The EU-Ghana EPA was extensively discussed in chapter five of this thesis.

According to an interviewee, a trade expert from the Ghana Ministry of Trade and Investment (MoTI), Ghana signed the EPA in its own best interest. When asked what the interests are? His response was ‘to continue trading with the EU’. However, the interviewee recognised that they cannot take advantage of the Special and Differential Treatment provided in the EPA text.<sup>1260</sup> Ken Ukaoha, who played an active role in the EPA negotiation, described it as a restructured colonialism, just like its predecessors (the Lomé Convention) had been.<sup>1261</sup> According to Kabir Akanbi, a senior trade expert from the Federal Ministry of Industry, Trade and Investment (FMITI), ‘the EU does not consider our views, ECOWAS continues to shift its position on the scope of liberalisation, but the EU hardly changes its position.’<sup>1262</sup> He stated, ‘The EU treats us like children who do not know what is beneficial to them.’<sup>1263</sup> Laryea and Akuoni aptly summed up the predicament of peripheral countries like Ghana, stating that the ideology underlying the relationship is the continuation of the EU stronghold on its former colonies politely. The authors believe that power asymmetry has fostered and encouraged African countries to focus on raw material production.<sup>1264</sup>

Ken Ukaoha referenced the EU-Ghana provision of Article 19, which prevents payment of subsidies exclusively to national producers. Although the provision is not particularly clear nonetheless, Bilal and Lui observed that ACP countries are not prevented from paying subsidies

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<sup>1260</sup>EU-Ghana EPA Articles 24 and 25

<sup>1261</sup> Interview with NANTs (2020)

<sup>1262</sup> Interview with official of FMITI (2020)

<sup>1263</sup> *ibid*

<sup>1264</sup> Alberta Laryea and Sarah Akuoni, *An Overview of Trade Policies and Developments in Ghana* in: Charles Ackah and Ernest Aryeetey, *Globalisation, Trade and Poverty in Ghana*, eds (Sub-Saharan Publishers, Ghana, 2012 (emphasis added))

under the WTO. It is recognised as a policy instrument to advance economic development.<sup>1265</sup> Ghana's liberalisation of 80 per cent of its market with the EU for 15 years contradicted the initial declaration by the EU to ensure flexibility and gradual liberalisation. As of 2020, according to Gbenga, Ghana was still meeting with the EU over extensive 80 per cent trade liberalisation. The EU insisted that Ghana takes what has been offered and accept it. He states, 'when I was going to leave office, my friend, the Director of Trade in Ghana, was not straightforward, they refuse to make available to everyone at the ECOWAS Commission the accepted market offers because they were uncomfortable with the offer'.<sup>1266</sup>

The thesis finds that Ghana signed because its economy relies on exports of Cocoa.<sup>1267</sup> Even though the country discovered Crude Oil, it is yet to reach Nigeria's production capacity. In summary, the EU still influences Ghana due to high-level power asymmetry, which has its origin in colonialism. Initially, the government of Ghana stood firm against endorsing the agreement as it was not in the country's favour due to its level of development.<sup>1268</sup> According to an interviewee, Ghana signed after much pressure with a promise to extend assistance to Ghana and emphasis on the GSP not being a good alternative.<sup>1269</sup>

It also finds that, like Nigeria, Ghana is still very poor in infrastructure and development; Ghana cannot take advantage of the exceptions or special and differential treatment provided in the agreement. As is the case in the GATT/WTO, the exceptions provided in the EU-Ghana EPA agreement can only be taken advantage of by the dominant core.

*(b) Why Was Nigeria Not Coerced or Pressured to Sign The EPA?*

Why was Nigeria not influenced by the systemic economic power asymmetry favouring the EU to sign the agreement? In order to answer this question, the chapter relied on interviews, primary instruments and revisionist views of Cox. The findings in this chapter apply the perspectives of Cox, who postulated that, fundamentally, critical theory is a historical account of the past and the enduring reality. In chapters 6 and 7, which focus on Nigeria, the research finds that applying embedded liberalism as postulated by trade conformist and neoliberalism ideas is unreceptive to the country's historical and domestic structure.<sup>1270</sup>

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<sup>1265</sup> Bilal & Lui, *op cit note 79* at 3

<sup>1266</sup> Interview with Gbenga Obideyi, ECOWAS Commission Abuja (2020)

<sup>1267</sup> Interview with MoTI official (Appendix 1)

<sup>1268</sup> Interview with ECOWAS official (2020)

<sup>1269</sup> *ibid*

<sup>1270</sup> Lang *op cit note 53*

The significant disagreement between the EU-Nigeria during the EPA negotiation was the scope of GATT Article XXIV, its interpretation, and its application. While Nigeria negotiated 65 per cent trade liberalisation within a reasonable time of 25 years, the EU argued that what can help the Nigerian economy and be acceptable in the WTO is 80 per cent within 15 years.<sup>1271</sup> However, Nigerian negotiators believed that to subject the EPA to strict jurisdiction of the GATT Article XXIV would impede the development and diversification agenda.

In the course of the interview, the researcher discovered a tendency to quickly acknowledge the vast power asymmetry between Nigeria and the EU by the respondents.<sup>1272</sup> Some respondents pointed out that the EU is advanced technologically, but Nigeria does not even have a stable power supply as it relies on generators to power its few industries.<sup>1273</sup> There is also the recognition of the EU using this disparity to its advantage. An interviewee stated, ‘due to its power, the EU can dictate what its opponent’s preference should be, but not what is suitable to its economic conditions.’<sup>1274</sup> When asked why Nigeria did not sign, given its relationship with the EU, Kabir Akanbi replied that infrastructure is abysmally poor and no substantial production industries exist. Currently, the country is making an effort to diversify its economy. This was also the views of some Nigerians in the ECOWAS Commission and an interviewee from Ahmadu Bello University.

According to a respondent, Nigeria withstood the EU’s pressure because the country is an established exporter of Crude Oil duty-free to the EU. According to the interviewee, petroleum products make up 90 per cent of Nigeria’s exports. As such, it could afford not to sign the EPAs. However, some interviewees in Nigeria maintained that the country refused to sign because the EU failed to address its concerns. Besides, due to its strategy to diversify its economy, it cannot liberalise beyond 65 per cent and for less than a reasonable period of 25 years.<sup>1275</sup> It is perceived that respondents interviewed in Nigeria, particularly the civil society and private sector, believe it withstood the pressure from the EU because they have built some level of capacity; for them, it is no longer business as usual unless the EU adequately addresses the country’s concerns, it would not sign.<sup>1276</sup>

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<sup>1271</sup> (Appendix 1)

<sup>1272</sup> Interview with Paul Onuh, Senior Academic staff (Zaria 2020)

<sup>1273</sup> Interview with an official of FMITI (2020)

<sup>1274</sup> Interview with former state Minister of Trade, Industry and Investment (2020)

<sup>1275</sup> Interview with former state Minister of Trade, Industry and Investment and Interview with NANTs official (2020)

<sup>1276</sup> Interview with Ken Ukaoha (2020)

Another reason why Nigeria did not succumb to the coercion and economic power of the EU is far from the issue of diversification. A respondent stated that Nigeria eagerly looks forward to signing an agreement with the United Kingdom (UK) once Brexit is concluded.<sup>1277</sup> Approximately 80 per cent of Nigerian goods find their way into the UK market.<sup>1278</sup> At the time of writing this thesis, FMITI and Nigeria Trade Negotiation offices and consultants were preparing for negotiations with the UK, as officials are sure the UK cannot ignore its market.<sup>1279</sup> The two countries recently signed a memorandum of Understanding (MOU). The country is waiting to fully access the UK market, of which it cannot compete, except for the advantage of crude oil export and few raw materials. The UK still weighs a strong influence on Nigeria; however, it must clearly articulate its position in any negotiation.<sup>1280</sup>

Besides exports of crude oil duty-free and anticipated agreement with the UK post-Brexit, the country had formidable groups such as the National Association of Nigeria Traders (NANTs), Manufacturers Association of Nigeria (MAN), and civil society in general who stood behind the government not to sign.<sup>1281</sup> It is essential to note that Nigeria would have signed the EPA left for the public sector alone.<sup>1282</sup>

### III RECOMMENDATIONS

#### (a) *Tackling Asymmetry*

This thesis has argued that ‘asymmetry’ has defined the relationship between developed and developing countries in the global trading system. This concept of asymmetry can be applied to the bilateral relationship between the EU-ACP trade. While GATT adopted the concept of most favoured nations to reflect the equality between countries, it imposed enormous constraints on developing countries.<sup>1283</sup> Due to the criticism, GATT recognised the special need of the developing countries by providing Special and Differential Treatment. To cushion asymmetry between the EU-ACP, the EPA made special and differential treatment provisions. Although the EU-ACP trade relationship was – until the Cotonou Agreement – based on a non-reciprocal arrangement, the economic and political relationship between the two regions represents a vast asymmetry of economic development and the disproportionate political power of the EU over the ACP countries.

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<sup>1277</sup> Interview with FMITI official (2020)

<sup>1278</sup> Former Senior government official, who started the negotiation process on behalf of Nigeria (2020)

<sup>1279</sup> Senior government official (2020)

<sup>1280</sup> Ismail & Grunder, *op cit* note 1158 at 19

<sup>1281</sup> Interview with Trade Expert, ECOWAS representative to AFCFTA Secretariat, (Ghana 2020)

<sup>1282</sup> Interview with MAN official, (Abuja 2020)

<sup>1283</sup> Akyus, *op cit* note 21 at 34-7

The relationship between the EU-ACP and the EU-ECOWAS depicts asymmetry with economic development ramifications.

The state of a country's economy, especially trade, determines the level to which it can or be confident enough to manoeuvre a stronger party. If a country always looks forward to aid from the EU for its development needs, it may not seek alternative trade and aid partners. An interviewee clearly stated, 'it is high time countries in ECOWAS stop looking solely to the EU for aid and development.'<sup>1284</sup> He called on the countries to become serious with their economic development because the EU would always protect its interests.

The African Continental Free Trade Agreement (AfCFTA) offers an opportunity for these countries to develop a trade relationship that will benefit all parties in the final analysis—as the power asymmetry will be absent, or at least minimal in size. This is a sobering conclusion; there may not be much that can be done when the existing power asymmetry is significant. However, the hope is that trade agreements like the AfCFTA can achieve what the ideological framework purports to; economic development from trade liberalisation—but the right kind of liberalisation and with the right partners. Such opportunities can help Nigeria and Ghana to develop.

*(b) Recommendations for ECOWAS*

According to Richard Frimpong Oppong, a community such as ECOWAS must be adeptly organised and structured to benefit within and in the global economy.<sup>1285</sup> Thus, it is recommended that both countries, especially Nigeria, expend all efforts to build vibrant institutions and rehabilitate their infrastructure to compete globally. Placing reliance on crude oil and a single primary market may not be wise., It is encouraging that, in the case of Nigeria, the country can withstand the pressure from the EU, but the reason it could do so is not adequate to bring about development and diversification of its economy. Ghana seems to have a more promising and forward-looking approach to its economic growth, even though structural factor still militates against its progress. Having a more robust private as well as public sector could assist it in withstanding the economic and political power of the EU.

Ghana has a tremendous capacity to formulate a strategy, but the issue noted is that it is mainly controlled by foreign elements that may negatively impact its economic success.<sup>1286</sup> This can place significant pressure on the country's political sphere and on the self-reliance required to

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<sup>1284</sup> Interview with ECOWAS official (2020)

<sup>1285</sup> Richard Frimpong Oppong, *Legal Aspects of Economic Integration* (2011) 31 (emphasis added)

<sup>1286</sup> Interview with Trade Expert, ECOWAS representative to AfCFTA Secretariat, (Ghana 2020)

deal with EPA negotiations.<sup>1287</sup> It may be helpful to look inward instead of focusing and being influenced extensively by external factors because it reduces government ownership and robs its ability to promote and adopt its initiative and preference. Ghana could benefit from the EPA with the EU, if the level of liberalisation is reduced and the EU provides substantial support to allow the country to catch up. Most of the officials interviewed believe that Ghana signed the EPA in its interest and subsequently lamented how the country does not have the necessary structure to take advantage of the various clauses in the agreement's text.<sup>1288</sup>

Structurally, emerging countries in ECOWAS are severely affected by power asymmetry because of the lack of capacity and sound institutions. According to the interviews conducted, it is noted that Ghana and Nigeria fundamentally lack institutional and administrative organisation capacity to withstand the EU's strict procedures, lack of ability to implement policies and programmes, and have poor negotiating skills.<sup>1289</sup> This prevents the countries from effectively engaging and putting forward clear negotiating demands and preferences and sticking to their policies. ECOWAS, as a whole, has the same problems.

According to an interviewee, 'it was in 2007 that we formulated our template.' Nigeria formulated the template adopted by the ECOWAS, although the Francophone countries objected to its adoption. However, it was eventually endorsed by the ECOWAS chief negotiator. Therefore, it is recommended that experts be trained in trade policy formulation and implementation and negotiation skills. International trade law experts also need to be trained by teaching international trade law in Nigeria's and Ghana's universities to generate interest early. Tussie observes that participation in multilateral and bilateral arrangements requires legal and economic expertise. The lack of it worsens the difficulties faced by peripheral countries.<sup>1290</sup> In the same vein, Oppong expressed the view that the 'legal framework must define the relationship among members of the community.'<sup>1291</sup> In other words, compliance with the community law enhances the 'effectiveness of the community.'<sup>1292</sup> Put another way, to integrate into the world economy, African countries must be structured to comply with the legal framework of the community.

Good leadership in any country or region gives it the capacity to manoeuvre to secure its

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<sup>1287</sup> *ibid*

<sup>1288</sup> Interview with ECOWAS official and NANTS officials Abuja 2020

<sup>1289</sup> Ken Ukaoha Director of NANTS (2020); Interview with former ECOWAS Director of Trade (2020)

<sup>1290</sup> Tussie, *op cit* note 779 at 1

<sup>1291</sup> Oppong *op cit* note 1285

<sup>1292</sup> *ibid*

preference in a trade agreement.<sup>1293</sup> Some observers claim a lack of leadership in ECOWAS, as each country was concerned about its interests.<sup>1294</sup> According to an interviewee, ECOWAS tried its best, but disunity among member states, as a result, a united front was not presented.<sup>1295</sup> UEOMA seems to have a different agenda from ECOWAS, while the English-speaking countries wanted their concerns taken into account. The initial team set up to negotiate the EPA was only made up of French-speaking West African countries. The respondent recounted that the negotiation went on for a long time before Gbenga Obideyi, the former ECOWAS Trade Director, a Nigerian, was brought in.<sup>1296</sup> On further probe, why this was the case, the interviewee claimed that the EU always find it easier to impose its policies on ECOWAS through the Francophone countries. This research adopts the recommendations of Opong that for a community to become productive in its quest for integration, there must be ‘reciprocal trust and harmonious coexistence among member states’.<sup>1297</sup> He observed that this objective integration could not be achieved except education and awareness about the community law is created, emphasizing the importance of cooperation in the community among the citizens. In this regard, some economically strong states must take the lead to achieve unity in the community.

Some respondents blamed Nigeria for not taking leadership. According to this view, Nigeria was not proactive at the beginning of the negotiation since it has Oil to export duty-free; it did not worry about others. However, this claim was refuted by most interviewees, who believed that Nigeria did all it could to ensure that the region stood against the pressure mounted by the EU. Cote d’Ivoire, Ghana and Nigeria wrote to the EU stating that they would not sign until their concerns were met. The respondent asserted that Nigeria was shocked when it received news that the other two had signed the agreement. It is suggested that ECOWAS needs to become better structured like the EU and build the capacity to speak with one voice and become self-reliant to be able to commit at the regional, continent and global levels.

For instance, Article 3 (b) of the Treaty Establishing the Economic Community of Central African States (ECCAS) makes ‘solidarity and collective self-reliance’ a core principle to be adopted by the members.<sup>1298</sup> In a similar way, Article 4 (b) of the ECOWAS Treaty provides

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<sup>1293</sup> Rabineau Louis, *The Importance of Leadership for Regionalism: Some Suggestions for Action* (Washington, DC June 1978) (emphasis added)

<sup>1294</sup> Interviews with External Relations officials of the ECOWAS Commission, and WAEMU Commission

<sup>1295</sup> *ibid*

<sup>1296</sup> Opong *op cit note* 1285 at 22-3

<sup>1297</sup> *ibid* at 31

<sup>1298</sup> Treaty Establishing the African Economic Community of Central African States para 3, Oct 19 1983, 23 I L M 945 (1984) Article 3 (b)

‘solidarity and collective self-reliance’ as a basic principle,<sup>1299</sup> the process of African countries controlling their economic affairs is an idea that pervades during the first generation of regional integration attempts after the period of colonialism.<sup>1300</sup> Whereas economic self-determination gained popularity in Africa, the African Union (AU)’s New Economic Partnership for Economic Development (NEPAD) is dedicated to a market-oriented development strategy, mainly to obtain foreign aid for development in Africa.<sup>1301</sup> Thus, even though Africa has an asymmetrical economic relationship with the EU and the rest of the world does not mean it should operate in an insular manner.<sup>1302</sup>

Therefore, as observed by Gammage, ‘multipolarity’ could be an opportunity for the ACP countries to variegate their partnership and to make good progress toward new relationships with countries outside the EU.<sup>1303</sup> This does not mean that the ECOWAS member states should cut ties with the EU; rather, Nigeria should continue to negotiate with the EU until favourable terms for both parties are arrived at. This means the EU may need to allow for a liberal interpretation of GATT Article XXIV or redraft the terms to permit leniency. As noted above, Ghana is still renegotiating certain terms in the EU-Ghana EPA for the country's economic advancement, and it is a good opportunity to address all the concerns.

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<sup>1299</sup> Treaty of Economic Community of West African States (ECOWAS) May 28, 1975, Article 4 (b) available at

<sup>1300</sup> Nkrumah, *op cit note 4* at 101; James Thuo Gathii, ‘African Regional Trade Agreements as Flexible Legal Regimes’ (2009) 35 *N C J INT’L L* 571 at 601

<sup>1301</sup> *ibid* Gathii at 605

<sup>1302</sup> *ibid* at 607

<sup>1303</sup> Clair Gammage, Symposium ACP-EU Cooperation: Challenges and Opportunities for the Post-2020 Relationship’ (African International Economic Law Network, 27 May 2019) available at [www.afronomicslaw.org](http://www.afronomicslaw.org) accessed: 1 August 2022

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# APPENDICES


## APPENDIX A: ETHICAL CLEARANCE



### Faculty of Law: Research Ethics Committee

Private Bag X3 • Rondebosch • 7701 • South Africa  
 Room 6.29 • Kramer Building • Middle Campus  
 Tel: +27 021 650 3080 Fax: +27 021 650 5660  
 E-mail: [lamize.viljoen@uct.ac.za](mailto:lamize.viljoen@uct.ac.za) Internet: [www.law.uct.ac.za](http://www.law.uct.ac.za)

### Certificate of Approval for Ethical Clearance

PRINCIPAL INVESTIGATOR/SUPERVISOR: ADA ORDOR  STUDENT: CHRISTIANA AGBO-EJEH CHRCHR027  FACULTY: LAW  DEPARTMENT: COMMERCIAL LAW	<b>ETHICS REFERENCE NUMBER: L0143-2020</b>  ORIGINAL APPROVAL DATE: 23-SEPTEMBER-2020  APPROVAL EXPIRY DATE: 22-SEPTEMBER-2021
PROJECT TITLE: The Economic Partnership Agreement between the EU-ECOWAS and WTO LAW / Analysis of the Economic Partnership Agreement between the EU-ECOWAS and Article XXIV of the GATT/WTO  PURPOSE OF RESEARCH: The proposed research is an analysis of how the European Union (EU) changed its views on the structure of the Cotonou Agreement through power asymmetry to suit its purpose. The EU argued that the best and only alternative for Economic Community of West Africa States (ECOWAS), like the rest of the ACP states, is the Economic Partnership Agreement (EPA), which provides for reciprocity between the Parties.	
<b>CONDITIONS OF APPROVAL</b>	
This Certificate of Approval is valid for the above term provided there is no change in the protocol.  <b>Modifications</b> To make any changes to the approved research procedures in your study, please submit a formal "Request for a Modification" to the REC Administrative Office. You must receive ethics approval before proceeding with your modified protocol.  <b>Renewals</b> Your ethics approval must be current for the period during which you are recruiting participants or collecting data. To renew your protocol, please submit a "Request for Renewal" form before the expiry date on your certificate. You are responsible for submitting this by at least 2 months prior to the expiry date of clearance date issued.  <b>Project Closures</b> When you have completed all data collection activities and will have no further contact with participants, please formally notify the REC: Law as well as your supervisor where applicable.	
<b>Certification</b>	
This certifies that the University of Cape Town Law Faculty's Research Ethics Committee has examined this research protocol and concluded that, in all respects, the proposed research meets the appropriate standards of ethics as outlined by the University of Cape Town Research Regulations Involving Human Participants.    Associate Professor Kelley Moul LAW REC: CHAIRPERSON	

## **APPENDIX B: FIELDWORK QUESTIONS FOR ECOWAS, GHANA AND NIGERIA**

1. Exactly how unequally match are member states of the ECOWAS to the EU when they negotiated the EPA in terms of bargaining power, expertise, capabilities, importance in the world trading system?
2. In your view, would the pattern of asymmetry further exacerbate and firmly established the unequal distribution of economic opportunity between the two regions?
3. What were EU reasons for not granting preferences to ACP states, including ECOWAS as the United States was able to do under the Africa Growth and Opportunity Act?
4. Why is ECOWAS member states concern about the possible loss of revenue generated through imports from the EU?
5. How did the WTO agenda influence the Cotonou agreement?
6. Why were the ECOWAS EPA negotiations framed as a 'trade' negotiation instead of 'development' or 'trade and development' negotiation?
7. In your view, is it tenable that free trade and entry into the trading world system is the ideal path to development for ECOWAS member states?
8. What are the measures put in place for ECOWAS to benefit from trade reform and build export competitiveness, and are these measures provided for in the agreement?
9. Is the gradual liberalization provided for in the text of the ECOWAS member states and the exclusion of sensitive products from liberalization enough for ECOWAS to become competitive with the EU?
10. What is the trade policy of the Economic Community of West African States?
11. Would ECOWAS sub-region have matched and secured a better deal from the EU if they had negotiated as a group?
12. What in your view would have been the most preferred equitable outcome of the EPA?
13. Why in your view did Ghana sign the EPA without ECOWAS?
14. Why did Ghana not rely on the Africa Growth and Opportunity Act and decline signing the EPA?
15. What is the likely impact of the EPA on the economic development of Ghana?
16. Are the asymmetrical provisions in the EPA between the EU and Ghana sufficient to allow Ghana to transform its economy in order to become competitive in the global market?
17. Can you explain the pros and cons of tariff liberalization for Ghana?
18. How in your view will be the impact of the Ghana-EU EPA on infant industries in Ghana?
19. What was the reaction of Non-Governmental Organisation's in Ghana to the ratification of the EPA?
20. Given opportunity would Ghana, in your view, wish to renegotiate the EPA agreement?
21. Why did Nigeria not sign the EPA agreement, when Ghana and Cote d'Ivoire that are members of ECOWAS did sign?
22. Why did Nigeria not provide the leadership required to ensure that ECOWAS negotiated as a group?
23. What are the implications of Nigeria not signing the EPA?
24. If Nigeria should eventually sign the EPA, what would be the short and long-term implication on its economic development and regional integration in West Africa?
25. What role did the Manufacturing Association of Nigeria (MAN) played in Nigeria not signing the agreement?

26. What are the terms that Nigeria wanted to include in the EPA that was not acceptable to the EU?
27. How does the fact that some countries in ECOWAS signed the EPA while Nigeria failed to sign affect the integration process in ECOWAS?

## APPENDIX C: INTERVIEW LIST

Interview explanation below has been anonymised, with few exceptions where the interview was agreed to be conducted on record.

### ECOWAS Commission

S/N	Some anonymised Description	Interview Date	Interview Location
1	ECOWAS Commission of Industry Mamodou Trore	5 October 2020	Abuja
2	ECOWAS Directorate of Trade Directorate	5 October 2020	Abuja
3	ECOWAS Directorate External Relations	14 October 2020	Abuja
4	ECOWAS Senior Research officer	16 October 2020	Abuja
5	ECOWAS Directorate of Research Fofana F Nzue	16 October 2020	Abuja
6	ECOWAS Former Trade Commissioner	19 October 2020	Telephone
7	ECOWAS: former Director of Trade, Dr Gbenga Obideyi	21 October 2020	Telephone
8	UMEOA Commission, Albert Rabeious	26 October 2020	Telephone
9	UMEOA Commission	26 October 2020	Telephone

### Ghana

S/N	Some anonymised Description	Interview Date	Interview Location
1	Director in Ministry of Trade and Investment (MoTI) Michael Osborn	6 November 2020	Ghana
2	Observer of Trade negotiation	10 November 2020	Ghana
3	Citizen of Ghana (ECOWAS)	16 November 2020	Abuja
4	Concern farmer	17 November 2020	Telephone (Ghana)
5	Senior trade officer, Peter Joy Sewornoo Currently representing ECOWAS at AFCTA Secretariat in Ghana	26 November 2020	Telephone (Ghana)

## Nigeria

S/N	Some anonymised Description	Interview Date	Interview Location
1	Government senior officer	8 October 2020	Abuja
2	Former Minister of States, Ministry of Commerce and Investment of Nigeria	12 October 2020	Abuja
3	FMITI Trade negotiator	15 October 2020	Abuja
4	Trade negotiator: Ken Ukaoha	19 October 2020	Abuja
5	An officer of National Association of Nigeria Traders (NANTs)	20 October 2020	Abuja
6	Acting Director General MAN Olutatoyin Durowaiye	6 October 2020	Abuja
7	Associate Professor Paul Onuh	1 November 2021	Zaria
8	Officer of Manufacturing Association of Nigeria (MAN)	7 November 2020	Telephone

## APPENDIX D:

### JOINT DECLARATION REGARDING COUNTRIES WHICH HAVE ESTABLISHED A CUSTOMS UNION WITH THE EUROPEAN UNION

The European Union Party underlines the obligation for countries which have established a customs union with the European Union to align their trade regime with that of the European Union and, for some of them, to conclude preferential agreements with the countries that have preferential agreements with the European Union.

In this context, the European Union calls upon the West Africa Party to enter negotiations as soon as possible with the countries which:

- a) have established a customs union with the European Union and
- b) whose products are not covered by the tariff conditions provided for by this Agreement.

with the aim of concluding a bilateral agreement establishing a free-trade area.

The West Africa Party takes note and informs the European Union Party that it will do everything to ensure that the European Union's request regarding the negotiation of free-trade agreements with the countries concerned will be appropriately examined.

## APPENDIX E:

### ANNEX F

#### PROTOCOL ON THE EPA DEVELOPMENT PROGRAMME (PAPED)

##### PREAMBLE

THE PARTIES TO THE ECONOMIC PARTNERSHIP AGREEMENT BETWEEN THE WEST AFRICAN STATES, ECOWAS AND THE UEMOA, OF THE ONE PART, AND THE EUROPEAN UNION AND ITS MEMBER STATES, OF THE OTHER PART

BEARING IN MIND the objectives set out in the EPA;

CONVINCED of the need to make the EPA Development Programme (PAPED) one of the main instruments for ensuring the development dimension of the EPA between West Africa and the European Union;

TAKING NOTE of the conclusions of the Council of the European Union of 10 May 2010 and 17 March 2014, which welcomed PAPED and acknowledged the importance of mechanisms to help the West African region to address adaptation and adjustment needs in the economic, social and taxation fields, and estimates of the indicative funds available at those dates for activities connected to PAPED under all its financial instruments;

WISHING to specify the arrangements for implementing and supporting PAPED by way of agreement, by means of an annex forming an integral part of the EPA and in accordance with its principles;

HAVE AGREED AS FOLLOWS:

#### CHAPTER I - OBJECTIVES AND PRINCIPLES

##### *Article 1*

##### **Objectives**

1. The objective of this Protocol is to specify the implementation arrangements for the EPA Development Programme (PAPED) on the basis of the provisions of part III of the Agreement. This implementation shall be carried out in a spirit of partnership, in the context of support for the West African region's efforts to meet the objectives defined in the Economic Partnership Agreement and the Cotonou Agreement.
2. In accordance with the provisions of Article 57 of the Agreement, the implementation of PAPED shall promote:
  - a) diversification and growth of production capacities;
  - b) development of intra-regional trade and facilitation of access to international markets;
  - c) improvement and reinforcement of regional and national trade-related infrastructure;
  - d) implementation of the necessary adjustments and consideration of other trade-related needs;

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## APPENDIX F:

### ANNEX D

#### APPENDICES TO CHAPTER 3 CONCERNING TECHNICAL BARRIERS TO TRADE, AND SANITARY AND PHYTOSANITARY MEASURES

##### **Appendix I**

###### **List of priority products from the West Africa Party for export to the European Union**

These products shall be identified by the West Africa Party and notified to the Joint Implementation Committee of the EPA at the latest three (3) months from the date of its establishment.

##### **Appendix II**

###### **List of competent authorities**

###### **A. List of competent European Union authorities**

Responsibility for monitoring activities shall be shared between the national services of the Member States and the European Commission. The following provisions shall apply on this subject:

- a) as regards exports to the West African region, the Member States shall be responsible for monitoring production conditions and requirements, in particular the performance of the compulsory inspections and the issuing of health (or animal welfare) certificates confirming compliance with the agreed standards and requirements;
- b) as regards imports from the West African region, the Member States shall be responsible for monitoring compliance with the import conditions set by the European Union;
- c) the European Commission shall be responsible for the general coordination, inspection and auditing of the monitoring systems, and for taking the legislative initiatives required to ensure the uniform application of standards and requirements on the European internal market.

These authorities shall be appointed by the European Union Party and notified to the Joint Implementation Committee of the EPA at the latest three (3) months from the date of its establishment.

###### **B. List of competent authorities of the West African region**

These authorities shall be appointed by the West Africa Party and notified to the Joint Implementation Committee of the EPA at the latest three (3) months from the date of its establishment.

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## APPENDIX G:



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 11 March 2014  
(OR. en)**

**7028/14**

**ACP 34  
WTO 80  
DEVGEN 44  
RELEX 170  
COAFR 58**

### **"I/A" ITEM NOTE**

---

**From:** ACP Working Party  
**To:** Permanent Representatives Committee (Part 2)/Council  
**Subject:** Draft Council conclusions on West Africa's EPA Development Programme (PAPED)

---

1. West African countries developed the EPA Development Programme (PAPED) in the context of the Economic Partnership Agreement (EPA) negotiations, as an attempt by the region to assess in detail the challenges and opportunities of an EPA, and to propose a donor support agenda for dealing with the challenges and maximising the opportunities of the EPA and the regional integration process.
2. The Presidency prepared draft Council Conclusions in order to provide an EU reaction to the EPA Development Programme.
3. On 11 March 2014 the ACP Working Party agreed on the attached text of draft Council Conclusions.

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7028/14

DG C 1

PK/mv

1

**EN**

## APPENDIX H:



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 11 March 2014  
(OR. en)**

**7028/14**

**ACP 34  
WTO 80  
DEYGEN 44  
RELEX 170  
COAFR 58**

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**To:** Permanent Representatives Committee (Part 2)/Council  
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2. The Presidency prepared draft Council Conclusions in order to provide an EU reaction to the EPA Development Programme.
3. On 11 March 2014 the ACP Working Party agreed on the attached text of draft Council Conclusions.

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7028/14

DG C 1

PK/mv

1  
**EN**

**APPENDIX I:**



**EXTRA-ORDINARY MEETING OF THE MINISTERIAL MONITORING  
COMMITTEE OF THE ECONOMIC PARTNERSHIP AGREEMENT  
BETWEEN WEST AFRICA AND THE EUROPEAN COMMUNITY**

**FINAL**

Abuja, 30 November 2005

**SUMMARY OF CONCLUSIONS AND  
RECOMMENDATIONS**

Abuja, 30 November 2005

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## APPENDIX J:

### **Nigeria strongly objected to the EPA agreement in 10 areas, namely;**

- i. The need to address the product mix in Group "C" and "D", in order not to hurt Nigeria and West Africa Industrialization drive;
- ii. There is need for the development of a clear support programme to enhance the competitiveness of products in group "C" by the EU and ECOWAS Commission and annexed to the EPA agreement;
- iii. The agreement did not address the issue of re-imburement of the fiscal loss estimated to be about \$1.3 trillion for Nigeria and over 50% of some LDC budget that rely on custom duties, as well as loss of investments and jobs that will arise from signing the EPA. Some member States that rely on custom duty will lose up to 50% of their budget. Furthermore, it is not clear how the fiscal/revenue loss will be recovered;
- iv. The 6.5 billion Euros for the EPADP financing is not satisfactory, as its sources i.e. EDF, EU Member States funding, Aid-for-Trade etc all exist without EPA. Nigeria wants to be assured about additional funds to the current support;
- v. There is need for additional safeguard clause/ instrument as declaration that would become an integral part of the Agreement. The Regional Supplementary Protection Measures should be annexed or embedded in the agreement;
- vi. The EPA text needs to be re-examined. For instance Article 60 on transfers is based on cooperation instead of legal guarantee to compensate for fiscal loss and ensure transfers into our economies. The language used by the EU for removal of export subsidy is on the best of endeavours and not binding;
- vii. Review clause: a review of the Agreement every 5 years, using agreed indicators, is needed and Member States should reserve the right to pull out, if the Agreement proves to be disadvantageous to their economy;
- viii. The EU needs to work out specific modalities with its own private sector and relate this to the EPA to locate production plants in West Africa in a joint venture arrangement to take advantage of raw materials for EU market;
- ix. Monitoring provisions/benchmarks: there is need to develop monitoring indicators and Benchmarks that should include economic indicators like loss in revenue ( since different models give different amount; but it is certain that there will be loss in revenue); jobs; impact on MSME, loss of investment etc, Given the size and significant impact on Nigeria's economy and the fact that Nigeria is the only GSP economy in ECOWAS, we propose that Nigeria should be a member of the EPA monitoring group;
- x. There is need to put in place clear monitoring and evaluation indicators to assess the impact of EPA on member State's growth and industrialization by ECOWAS Commission and Member States and

## APPENDIX K:

ECONOMIC COMMUNITY OF  
WEST AFRICAN STATES

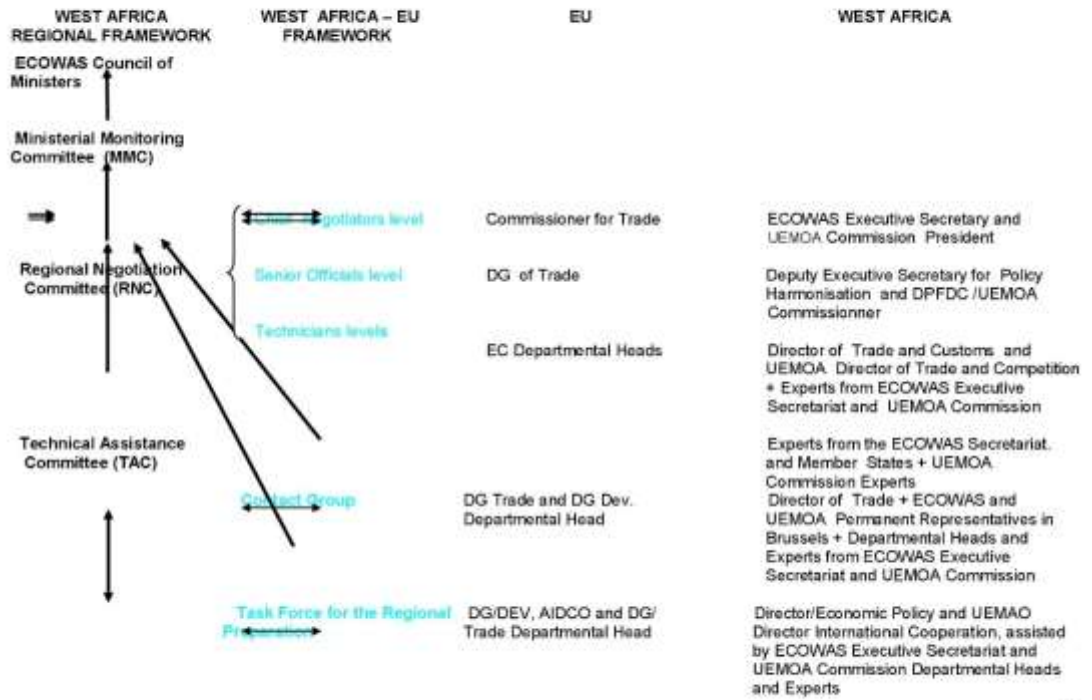
COMMUNAUTE ECONOMIQUE DES  
ETATS DE L'AFRIQUE DE L'OUEST

**ECW/ECM VII/4A (I)**

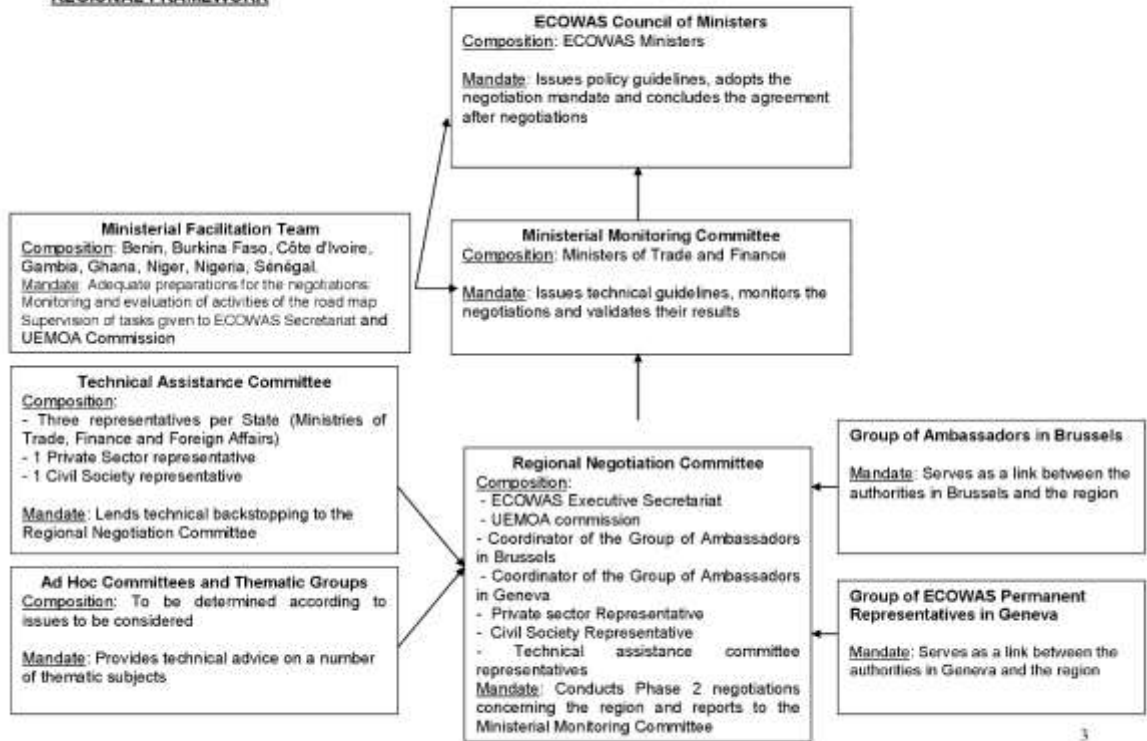
### **ORGANOGRAM AND OPERATION OF THE NEGOTIATION STRUCTURE**

Cotonou, September 2003

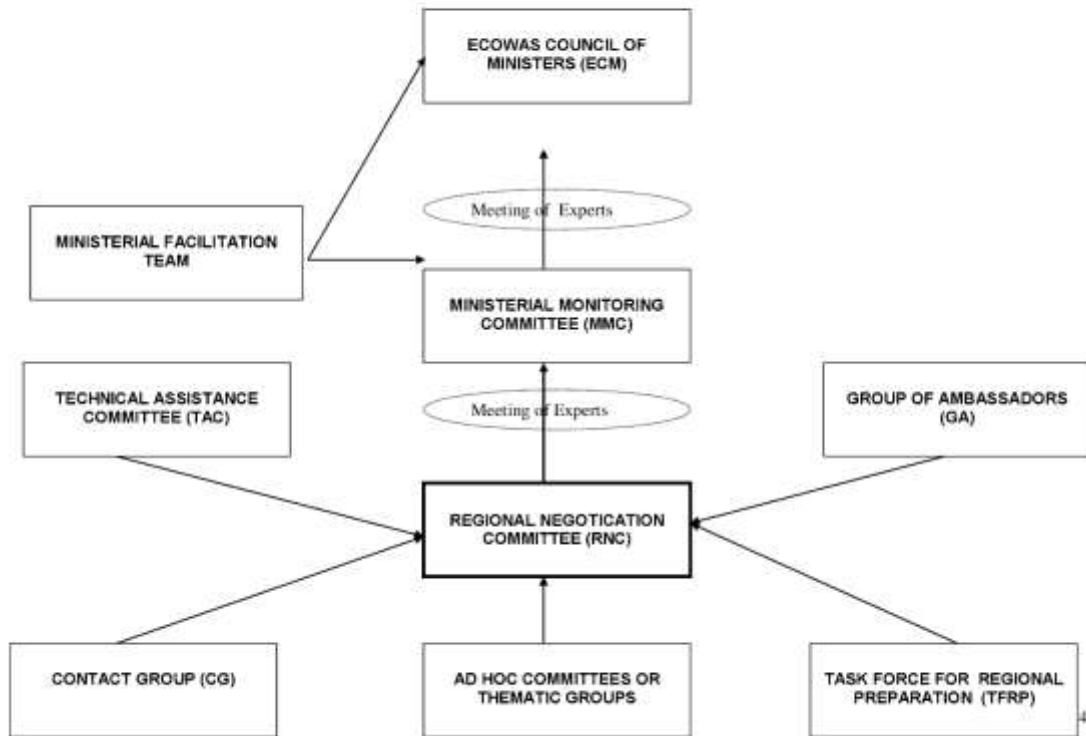
**OPERATION OF THE REGIONAL NEGOTIATION STRUCTURE**



**REGIONAL FRAMEWORK**



ORGANISATION OF THE NEGOTIATION PROCESS



**WEST AFRICA – EU FRAMEWORK**

