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Lome IV-No "Fortress Europe"

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I. Introduction

On December 15, 1989, the twelve states of the European Community (EC)[1] signed the fourth Lome Convention[2] with sixty-eight African, Caribbean, and Pacific nations (ACPs).[3] Lome IV is the first major trade agreement signed by the EC with external trade partners since acceleration toward the european single market began in earnest.[4] As such, Lome IV provides the first significant signpost along the EC's way to a single market on the issue of the EC's protectionism, which some fear will result in "Fortress Europe."[5]

This note reviews the terms of Lome IV in the context of the single market plans and previous Lome conventions. Part II briefly reviews the historical relationship between the EC and the ACPs as a backdrop for evaluating EC protectionism in the Lome context. Part III then examines the pre-convention effect that the forthcoming single market had on the EC and the ACPs' positions at the Lome IV negotiation table. Part IV sum-

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1. The 12 states of the European Community are Belgium, Denmark, France, Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain and the United Kingdom.

2. Fourth ACP-EC Convention, Commission of the EC Summary of Lome IV [hereinafter Lome IV]. The Lome Conventions are named after the location where the first convention was signed.

3. Killen, *European Community Signs Major Aid Treaty with Third World*, Reuters, Dec. 15, 1989 (NEXIS, Nexis library, Omni file).

4. By February 1986, all 12 member states of the EC had signed the Single European Act. Single European Act, art. 2, Bull. E.C. 11 Supp., Feb., 1986 [hereinafter SEA). The SEA mandates, by the end of 1992, the establishment of a common market with no barriers among the 12 states for the movement of goods, persons, services, and capital in accordance with the provisions of the Treaty of Rome. *Id.* at art. 13 (supplementing art. 8A of the EEC Treaty), *reprinted in* 23 Common Mkt. L. Rev. 813, 821 (1986).

5. Those who are cautious about the possible "Fortress Europe" effect upon the completion of the single market generally fear that the single market may be open internally but closed off to foreign goods. This concern has been expressed by both the powerful and powerless traders of the world. *See e.g.*, Ikemura, *Japanese Worry About E.C. Regulations After 1992*, Reuters, Nov. 4, 1988 (NEXIS, Nexis library, Omni file); Trautman, *U.S. Concerned Over Possible "Fortress Europe" in 1992*, Reuter Bus. Rep., Oct. 20, 1988 (NEXIS, Nexis library, Omni file); *World's Poorest Countries Threatened by Single Market*, Xinhua Gen. Overseas News Serv., Jun. 26, 1989 (NEXIS, Nexis library, Omni file); *see also*, *EC Plans for 1992 Single Market Under Scrutiny in Gatt*, Reuters, Oct. 19, 1988 (NEXIS, Nexis library, Omni file).

marizes the provisions of Lome IV which were specifically affected by the EC's plan to complete a single market by 1992, followed by a summary in Part V of those provisions which were not so affected. This note concludes that while some provisions of Lome IV were affected by the anticipation of the single market, it is largely a continuation and expansion of the EC's historical relationship with the ACPs, a far cry from a building block for "Fortress Europe."

II. Evolution of the Lome Convention

The Lome conventions arose in the context of European colonialism. It is probably that history, more than any other single factor, which sustains the spirit and substance of the Lome conventions. In 1956, when the European Coal and Steel Community states were negotiating to form the European Economic Community (EEC), France insisted on EC trade preference and aid to their former colonies and overseas territories as a condition of accession to the EEC. As a result, the colonies of France, Belgium, Italy and the Netherlands were granted association[6] with the six EC members.[7] The United Kingdom also insisted on trade preferences to its commonwealth territory. The first Lome convention[8], signed in 1975, was the direct result of the United Kingdom's refusal to join the EC unless its commonwealth territories were given the preferences already enjoyed by the former colonies of other EC member states.[9] As a result, the ACPs have enjoyed unmatched trade preference in the EC market as well as emergency and developmental aid from the EC's foreign aid fund under the Lome convention provisions.

Lome I granted ACP goods duty- and quota-free access to the EC market without any requirement of reciprocity.[10] A com-

6. The first clause of article 131 of the Treaty of Rome states: "The Member States agree to associate with the non-European countries and territories which have special relationships with Belgium, France, Italy, and the Netherlands." Treaty Establishing the European Economic Community, *signed* Mar. 25, 1957, 298 U.N.T.S. 3, art. 131 (effective Jan. 1, 1958)[hereinafter cited as Treaty of Rome]. An English translation is located at 1 Comm. Mkt. Rep. (CCH) ¶ 151 (1971).

7. These six were France, Germany, Italy, Belgium, Luxembourg, and the Netherlands.

8. Secretariat of the Council of the European Communities, *Convention of ACP-EEC of Lome, Collected Acts* [hereinafter Lome I].

9. J. Moss, The Lome Conventions and Their Implications for the United States 15-17 (1982).

10. Lome I, *supra* note 8, art. 2.

pensation fund to stabilize export earnings (STABEX) was another major feature.[11] Lome I also provided guaranteed access and price for ACP sugar[12] and a special arrangement for duty exception to a limited quota of ACP beef and veal.[13] Financial,[14] industrial and technological aid[15] packages accompanied by a provision for an administrative body of joint EC-ACP institutions completed the major features.[16]

Lome II (in effect during the period 1980-85)[17] and Lome III (1985-1990)[18] continued the same basic program envisioned under Lome I. However, there were some significant innovations along the way. For example, Lome II introduced a special financing facility for minerals,[19] and extended separate protocols or agreements for a specific quantity and price for rum[20] and bananas[21] while raising the guaranteed quota on beef and veal.[22] Lome III saw the beginning of a renewed push toward self-reliance by the ACP countries emphasizing agricultural and rural development.[23] Improving and developing ACP fisheries,[24] regional trade cooperation,[25] and human rights[26] were also financed under Lome III.

Despite this favorable history and promises of continued EC loyalty under the Lome agreements, the ACPs were concerned about a protectionist Europe.[27] Since the EC absorbs about seventy percent of the ACPs non-oil exports, even small changes within the EC would have a potentially huge impact on the ACPs. The EC, however, found itself at a crossroads between its

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11. *Id.* at art. 16.
12. *Id.* at General Matters 112 (Protocol No. 3 on ACP Sugar).
13. Rep. ACP-EEC Council of Min., *1980*, at 58-60.
14. Financial aid was to flow from the European Development Fund. Lome I, *supra* note 8, art. 42, § 1.
15. *Id.* at art. 36 (provision for Center for Industrial Development).
16. *Id.* at arts. 69-82.
17. Secretariat of the Council of the European Community, *Second ACP-EEC Convention, Collected Acts*, 1980 [hereinafter Lome II].
18. Third ACP-EEC Convention, *reprinted in* THE COURIER Jan.-Feb. 1985 (yellow pages)[hereinafter Lome III].
19. Lome II, *supra* note 17, arts. 49-56.
20. *Id.* at Protocol No. 5 on Rum.
21. *Id.* at Protocol No. 4 on Bananas.
22. *Id.* at 23 O.J. EUR. COMM. (No. L 365) 20 (1980).
23. Lome III, *supra* note 18, art. 12.
24. *Id.* at arts. 50-59.
25. *Id.* at arts. 101-03.
26. *Id.* at arts. 118-24.
27. *See, e.g.*, Graves, *ACP Countries Share U.S. Fears on E.C. Integration*, Reuters, Sept. 28, 1989 (NEXIS, Nexis library, Omni file).

history and the urgency of the task at hand—accomplishing a single market. These separate concerns played an important role in the Lome IV negotiation process.

III. 1992 and Negotiating Positions

A. *ACP Position: Desperation and Distrust*

The ACP states were wary of Lome IV long before negotiations began. They had watched with fear as the bottom fell out of the commodities market in the mid-1980s.[28] They had unsucessfully attempted regional development programs with their neighbors.[29] The debt crisis was worsening year after year,[30] and aggressive structural reform programs were taking an unbearable toll in social and economic costs.[31] Trade with the EC, on which they depended for seventy percent of their export earnings, had fallen steadily[32] with little hope of a reversal. Meanwhile, biotechnological research[33] and the substitution of modern materi-

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28. World prices fell drastically between 1980 and 1987 for the ACPs major export commodities. Using 1980 dollars for comparison, prices in 1987 were 20-30% below their 1980 level. In addition, crude petroleum had fallen to 51.6%; coffee to 72.8%; cocoa to 76.7%; wood to 70.4%; and iron to 81.6% of their 1980 level in 1985. Stevens, *Commodity Prices in the 1980's: A decade of Decline for the ACP's*, The Courier, Jul.-Aug. 1989, at 60. In 1980 real dollar terms per ton, the price of coffee dropped from $4,656 in 1975-79 to $3,135 in 1980-84 and to a depressed level of $2,000 in 1987. *Id.* at 76. Cocoa dropped from $3,610 per ton in 1976-79 to a mere $1,590 in 1987. Sugar, which accounts for 5% of the ACPs' total export earnings, dropped from $502 per ton in 1980 to $93 in 1985. However, the ACP's sugar protocol with the EC has insulated them from the shock of this drop. *Id.* at 78. Other ACP exports such as rubber and cotton have also seen a steady decline. *Id.* at 79.

29. For a comprehensive discussion on the regional development efforts among the ACPs, see *Regional Cooperation*, The Courier, Nov.-Dec. 1988, at 47, and accompanying articles on the failed East African Community and similar experiences in sub-Saharan Africa and other areas of the ACP.

30. Due to the sharp decline in the world commodity market, most of the ACPs have not been able to service their debts in recent years. Those who have managed to service their debt have done so at the cost of great internal sacrifices which has almost halted long-term development. *IMF Gains in a Tug-of-War for Africa*, South, Sept. 1987, at 12-13.

31. *See infra* note 101 and accompanying text for a discussion of the short-term effects of structural adjustment.

32. The ACPs' share of EC imports has declined from 9% in 1970 to less than 6% in 1989. Graves, *supra* note 27.

33. Two major techniques are being developed to drastically improve the rate and quality of agricultural commodities: tissue culture and genetic engineering. It is forecast that once these techniques are successfully producing bigger and better crops at a faster rate, the third world will lose almost all hope of competing in the commodities market, unless such technology and accompanying financial support can be extended to the third world by developed countries. *Forces Behind the Price Trends*, The Courier, July-Aug.

als for traditional raw materials[34] in the industrialized nations threatened even the commodities market to which the ACPs clung. To make matters worse, the General Agreements on Trade and Tariffs (GATT) was pushing free trade across the board,[35] and the EC was granting trade preferences to many ACP competitors.[36] Even more frightening, a movement toward regional trade agreements among powerful world economic leaders,[37] as well their competition between each other, seemed to leave little hope of economic survival for the ACPs.

Against this dismal global economic backdrop loomed the threat of the EC single market. The ACPs feared that the Europeans would feel less of a sentimental obligation to their former colonies, in favor of a more standardized approach with all trading partners.[38] In addition, the ACPs felt that the EC's obsession with its own internal market could mean the EC's public funds would be channeled into its own regional or sectorial concerns rather than toward foreign aid.[39] Moreover, the EC could decide that the political harmony required to pull 1992 off would force the EC to give up the patchwork arrangements its members had created with the ACP states.[40]

1989, at 64.

34. For example, aluminum is widely substituted for other metals which the ACPs produce. Plastics and ceramics also substitute for traditional metals like steel. Optical fibers are replacing copper in telecommunications (a 45 kg. of fiber cable can transmit as much information as a ton of copper wire). Recycling is another threat. *Id.* at 63.

35. Free trade is the ultimate theme of the GATT, the multilateral international agreement which sets trade policy for over three-fourths of the world's countries. However, there is a growing trend to allow some derogations to this theme. How far the GATT would be willing to bend is an unanswered question. *See The Uruguay Round of the Future of the Multilateral Trading System*, THE COURIER, July-Aug. 1989, at 2-4.

36. The EC has extended its General System of Preference (GSP) to all developing countries, numbering some 120 countries. Of these, the ACPs are considered the poorest. Under the GSP, the developing countries can export their industrial products to the European Community free of customs duties, subject to some volume limits. Some 300 agricultural products also enter the EC under zero or reduced tariffs, subject to the Community's agricultural policy. *The European Community and the Third World*, COMMISSION OF THE EUR. COMMUNITIES 200-B-1049 (May 1985).

37. For example, the U.S.-Canada Free Trade Agreement went into effect in early 1989. Other trade agreements include the Alliance of Southeastern Asian Nations (ASEAN), and the Council of Mutual Economic Assistance (COMECON). Japan is also thinking of forming an East Asia trade group with its neighbors. Wang, *Year Ender: The World is Changing*, Xinhua Gen. Overseas News Serv., Dec. 26, 1988 (NEXIS, Nexis library, Omni file).

38. Brooke, *Europe's Old Colonies are Getting Anxious as 1992 Nears*, N.Y. Times, Jan. 1, 1989, at A4, col. 1.

39. Graves, *supra* note 27.

40. Brook, *supra* note 38.

The ACP negotiating position[41] for Lome IV therefore first addressed the widening gap between developing and developed countries.[42] Specifically identified causes included variables such as export prices, growth rates, exchange rates, protectionism and interest rates as some of the factors contributing to the gap. The ACPs expected a continuing high population growth rate, further deterioration of their commodity export earnings, onerous debt servicing and even lower net resource inflows. Structural adjustment and its side effects were also a large concern to the ACP states.

In light of these concerns, the ACP proposed that Lome IV: 1) continue to expand upon Lome III by removing all customs barriers, internal taxes or other measures against ACP commodity exports; 2) reduce the EC's artificial support measures and export subsidies on EC-produced agricultural commodities or their substitutes; 3) support ACP commodities processing; 4) support and participate in the International Commodity Agreements (ICAs); 5) revamp STABEX; 6) increase the volume and quality of financial aid; 7) provide for the cancellation of all EC debt, or for debt/equity swaps, debt conversion, training in debt management, or reduction of interest; and 8) provide support for structural adjustment.[43]

B. *EC Position: Ambivalence at Historic Crossroads*

The EC had its own worries going into the negotiations. There was wide and open disagreement[44] among the EC members as to how much should continue to be invested in the EC-ACP relationship. This was especially true because most of the ACP states were former colonies of only three EC member states: England, France, and Belgium. For the other members of

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41. *Lome IV—The ACP Negotiating Position*, THE COURIER, Jan.-Feb. 1989, at i-iii (yellow pages)[hereinafter *Negotiating Position*].

42. The average ACP citizen earns U.S. $317 per year, compared to U.S. $11,475 per year in industrialized counties. In ACP countries, 126 out of every 1,000 babies die, compared to 15 in developed countries. An ACP man can expect to live 49 years, compared to 72 years for a man in a developed nation. Graves, *Poor Countries Share U.S. Concern About EC 1992 Market Changes*, Reuters, Oct. 1, 1989 (NEXIS, Nexis library, Omni file).

43. *Negotiating Position*, *supra* note 41.

44. *See, e.g.*, Ljunggren, *EC Says It Will Go on Helping Third World Exports After 1992*, Reuters, Oct. 25, 1988 (NEXIS, Nexis library, Omni file); Ljunggren, *E.C. Tells ACP Its Exports Will Not Be Harmed By 1992*, Reuters, Oct. 13, 1988 (NEXIS, Nexis library, Omni file).

the EC, the Lome was an expensive way to maintain Europe's benevolent image.[45]

Spain and Portugal, who acceded to the Lome Convention one year after joining the EC in 1986,[46] were particularly opposed to the continuation of the banana protocol, the indefinite nature of the sugar protocol, and the further liberalization of trade terms.[47] Recalling its ties to Latin America and recognizing the potential market for EC goods in Latin America, Spain and Portugal felt that EC investments would pay off better in granting trade preferences to Latin American developing countries.[48]

The EC was also under increasing international pressure to ease up its protectionist trade practices. While the United States and the EC pointed accusing fingers at each other at the GATT rounds,[49] the U.S. refused to change its trade practices with the EC unless the EC dropped its agricultural subsidies.[50] Meanwhile, the international community at the Uruguayan Rounds were pressuring both the U.S. and the EC to bring their practices in line with the principles of GATT.[51]

In the global market, the EC was not certain where it stood. Even though its share of the world's total trade had grown to twenty percent, compared to fifteen percent for the U. S. and nine percent for Japan,[52] it worried that its competitive position in the automotive, electronics, banking, and telecommunications markets could be lost overnight to the Japanese or the U.S.[53] For some in the EC, the single market was not, as many had

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45. Ljunggren, *supra* note 44 (both sources).

46. 29 O.J. EUR. COMM. (No. L 63) 243 (1986). *See also Spain, Portugal Agree to Enter Lome Convention*, Xinhua Gen. Overseas News Serv., May 15, 1987 (NEXIS, Nexis library, Omni file)(Spain and Portugal to be given seven-year transition period for the gradual opening of their market).

47. This is due to the production of agricultural products by Spain and Portugal which are in direct competition with ACP products. *ACP Countries Hope to Avoid Greater Losses in New Conventions with EC*, Xinhua Gen. Overseas News Serv., Oct 9, 1988 (NEXIS, Nexis library, Omni file). Spain also opposed the accession of Haiti and the Dominican Republic for the same reason. Ljunggren, *EC Agrees Mandate for Talks with Developing Countries*, Reuters, Oct 7, 1988 (NEXIS, Nexis library, Omni file).

48. *See* Espinoza, *Trade: Will Single EEC Market Benefit or Damage Latin America?* Inter Press Serv., Nov. 9, 1988 (NEXIS, Nexis library, Omni file).

49. *See, e.g.*, Rudolph, *Bitter Standoff in Montreal*, TIME, Dec. 19, 1988, at 58.

50. *See infra* notes 77-81 and accompanying text.

51. Farnsworth, *Talks Put on Hold by GATT*, N.Y. Times, Dec. 10, 1988, at 35, col. 5.

52. Percival, *Europe: Third World Debt Will be a Major EEC Priority*, Inter Press Serv., Jan. 17, 1989 (NEXIS, Nexis library, Omni file).

53. *See 1992 Under Construction; Outside, Looking in*, THE ECONOMIST, July 8, 1989.

labeled it, an offensive move, but rather a defensive move necessary for survival.[54]

The movement toward the single market itself was proving to be an arduous and difficult task. By the time the Lome IV negotiations began, the initial euphoria of the single market had worn off with the most difficult work left ahead. Even with hope of a 4.25 to 6.25 percent increase in the EC's Gross Production and a consensus there was no turning back, political and cultural divisions were slowing the market's completion.[55] France and the U.K. were squabbling over politics,[56] while deep cultural differences took a significant toll in delaying or blocking the single market agenda.[57] Even with the EC's new relaxed voting standard of a qualified majority,[58] matters of little relative importance were getting bogged down, threatening the resolution of important matters.[59] Many were still skeptical of reaching the goal,[60] and some were even having second thoughts about a unified single market.[61]

Against this background, the EC came to the Lome negotiating tables with ambivalence and uncertainty as to its ability or willingness to help ACP nations. While repeatedly assuring the ACP that 1992 would not negatively affect Lome IV,[62] the EC simultaneously admitted that it would be "difficult" not to jeopardize ACP trade privileges,[63] and hinted at a shift to equal treatment of all extra-EC trading partners.[64] Moreover, negotia-

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54. *Id.*

55. *Featuring . . . the European Unified market of 1992*, GERMAN INFO. CENTER BOOKLET, Oct. 1988, at 4.

56. De Young, *Europeans Squabble as Integration Deadline Draws Near*, Wash. Post, Oct. 31, 1988, at A13, col. 3.

57. *Id.*

58. The new qualified majority rule allows the Council to decide, by a majority vote rather than by unanimity, on proposals received from the Commission. SEA, *supra* note 4, art. 16. This has had a significant accelerating effect on reaching the single market goals.

59. For example, out of the 68 measures adopted by the Commission since December 1988, which should have been implemented by member states, only two had been adopted by July 1989. FOURTH PROGRESS REPORT OF THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT, 1989 EUR. COMM. Doc. (COM No. 311) 14 (1989).

60. *See* De Young, *supra* notes 56-57 and accompanying text.

61. De Young, *supra* note 56; Carrington, *Europe's Left Fears 1992 Will Cost Jobs*, Wall St. J., Mar. 16, 1988, at A12.

62. *See, e.g.*, Ljunggren, *supra* note 44 (both sources).

63. Graves, *supra* note 27 (comment by French National Assembly President Laurent Fabius).

64. *ACP-EC Negotiations for Lome IV: Hoping to Do Better*, THE COURIER, May-June 1989, at News Roundup (yellow pages).

tions among EC members raged hotter at times than between the EC and ACP states.[65] This tentative and mixed nature of the collective EC position roused the ACP's suspicion that Lome IV would result in the EC states coming together at the lowest point of agreement, creating a building block for "Fortress Europe" rather than paying continued homage to the EC's colonial past.

The final EC position was not firm until the very end of the negotiations.[66] Initially, the EC came to the tables with vague commitments and an unwillingness to accommodate any major changes.[67] It conceded that the Lome Convention "[made] an essential contribution to the Community's image in the world, both quantitatively and qualitatively."[68] The EC further recognized that the world economy had changed dramatically since the signing of Lome III. The EC specifically agreed that the debt crisis and commodity market conditions called for immediate attention. The EC also lauded the effort of ACP states in structural reform and announced a willingness to set up the means for "broader, faster, and more flexible support to help meet short-term ACP need."[69] As to the anticipated effect of 1992, the EC's official negotiating position was that the single market would provide a potential boost for ACP exports. The EC also alluded to other important topics, but made no specific stand on any of them.[70]

In the end, it was French leadership that provided the impetus to wind up the negotiations and tilt the convention decidedly in favor of the ACPs.[71] The final product, Lome IV, retains most of the benefits for the ACPs under previous Lome conventions, and even goes a few steps further by introducing important innovations.

The next section will examine the specific provisions of Lome IV which were affected by the EC's concern for the Com-

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65. *See* Pearce, *World's Biggest Aid Treaty Set to Accept Three New Members*, Reuters, Oct. 28, 1989 (NEXIS, Nexis library, Omni file); Pearce, *Third World Ministers Face Hard Clog as Aid Talks Start*, Reuters, Oct. 28, 1989 (NEXIS, Nexis library, Omni file).

66. *Id.*

67. *See ACP-EEC Negotiations for Lome IV: A Spur from the Council of Ministers*, The Courier, July-Aug. 1989, at News Roundup (yellow pages).

68. *Id.*

69. *Id.*

70. *Id.*

71. *See* Killen, *supra* note 3.

mon Market and those, in contrast, which continue to foster the historical EC-ACP trade and aid relationship at potential expense to the Common Market.

IV. Lome IV Provisions Affected by 1992

A. *Trade Provisions*

Approximately seventy-five percent of ACP exports are sold to the EC.[72] Therefore, the trade provisions are the core of the Lome convention. The most significant Lome IV trade provision manifesting the EC's protectionist stance is the continuation of Lome I's safeguard clause.[73] The safeguard clause of the Lome is similar to Article XII of GATT.[74] It allows the application of safeguard measures, or trade restrictions, if duty-free entry for ACP products leads to "serious disturbances" in the economy of any EC state, or jeopardizes its external financial stability, or gives rise to "difficulties" of similar nature.[75]

While this provision has never been actually utilized by the EC against the ACPs, it has nevertheless been threatened as a means of forcing ACP states to accept "voluntary" export restraints. For example, in 1979, France warned Mauritian textiles away from the French market. When the Mauritian companies subsequently tried to gain access to the U.K., they were informed by the EC that safeguard action would be taken unless an agreement could be reached on reduction of Mauritian textiles to the EC. Mauritius acquiesced to the reduction of its exports, even though total ACP textiles constitute less than one percent of EC textile imports and the EC enjoyed a favorable balance of trade with the ACP countries in textiles.[76] This is a clear indication that the EC regards even a small economic threat in this area as serious.

The EC's past inflexibility on the safeguard clause and its

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72. Pearce, *EC Presents Third World With Plans For a New Aid Treaty*, Reuters, Oct. 29, 1989 (NEXIS, Nexis library, Omni file).

73. Lome I, *supra* note 8, arts. 10-11.

74. Article XII of the GATT allows any contracting party to safeguard its external financial position and balance of payments by imposing quotas subject to finely detailed limitations. These details are beyond the scope of this note. *See* General Agreements on Trade and Tariffs, March 24, 1958, 55 U.N.T.S. 194, art. XII.

75. Lome I, *supra* note 8, arts. 10-11.

76. J. Moss, *supra* note 9, at 130. For an EC-wide view of the textile business and the anticipated effect of 1992, see Bannon, *1992: Fashioning a New Europe; Effect of European Economic Community Free Trade Agreement on Apparel Industry*, Info. Access Co., Nov. 1, 1988 (NEXIS, Nexis library, Omni file).

refusal to modify it in Lome IV should not be taken lightly by the ACPs; it may mark the ultimate limitation of the EC-ACP trade relationship. It directly protects the competitive interests of EC producers in areas of potential ACP strength, whether in agricultural products, processing, or manufacturing. Coupled with the ACPs' heavy dependence on EC trade and the EC's demonstrated policy of "home-producers first," the ACP's diversification into processing or manufacturing may be met by a cool EC response. The larger potential implication of the safeguard clause in the EC-ACP context is that, unless other significant trade outlets can be developed, the continued threat of the safeguard clause will guarantee a downward spiral in the ACP economy by forcing them to remain in the production of primary commodities with all their pitfalls. As one observer has stated, even if the third world could improve production of primary goods, it may be that "nobody will buy what they are selling."[77]

The message of the EC's refusal to modify the safeguards in light of 1992 is clear: regardless of how bright the prospects of a single market seem, the EC considers the safeguard clause absolutely essential for its own protection. Such a stance clearly invites accusations of protectionism when the safeguard clause is used against the EC's own past colonies. Moreover, since the EC has shown its willingness to use the safeguard clause against the ACPs, and has refused to modify it for the next ten years under Lome IV, it seems likely that the EC will be willing to use similar measures against other trading partners after 1992.

Another protectionist trade provision under Lome IV likely to have been affected by 1992 is the new title for commodities.[78] This new title is an effort to address two important needs: the EC's need to protect its Common Agricultural Policy (CAP) and the ACPs' need for continuing access to the EC commodities market. The CAP is the embodiment of the EC's policy of "home production first, the ACPs next, and all third world countries last."[79] It is a very complicated protectionist regime, incorporating internal price supports, export subsidies, high tariffs and quotas on imports. In addition, there are outright prohibi-

77. Clements, *As Trade Talks Falter, Bankers Tell Debtors to Export*, Inter Press Serv., Dec. 28, 1988 (NEXIS, Nexis library, Omni file)(comment made by former West German Chancellor Helmut Schmidt at the joint International Monetary Fund/World Bank meeting in early 1988).

78. Lome IV, *supra* note 2, at A-7.

79. Treaty of Rome, *supra* note 6, art. 134.

tions on a wide range of agricultural products. The CAP is, of course, accomplished at the expense of foreign agricultural producers and the EC's consumers.

As 1992 draws near, the future of CAP has met with almost hopeless disagreement among the EC member states. CAP subsidies alone claim two-thirds of the Community's budget,[80] and the program is near bankruptcy.[81] Due to the deep cultural commitment to agriculture in some member states and an opposing sentiment in others,[82] CAP faces an uncertain future within the EC single market. Regardless of what remedial measures are taken to deal with CAP, it is clear that the EC cannot afford to spend or lose more money on agricultural programs, either within or without the EC.

On the other hand, the ACPs' need for market access for its commodities has never been greater. Twenty primary ACP agricultural commodities make up eighty-five percent of ACP exports.[83] A few ACP countries are wholly dependent on a single crop for all their export earnings.[84] In the face of this heavy dependence on commodities, the fall in the world commodities market has been devastating for the ACPs. For example, between 1980 and 1987, the price of coffee, cocoa, and sugar dropped more than fifty percent in real dollar terms.[85]

Under previous Lome conventions, the EC carved out exceptions to its CAP in favor of the ACPs: protocols for ACP sugar,[86] rum,[87] and bananas[88] and special arrangements for beef

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80. A. DALTROP, POLITICS AND THE EUROPEAN COMMUNITY 79 (2d ed. 1986).

81. *See* Azmeh, *EC Farm Prices Unlikely To Be Set By April Deadline*, Reuters N. Eur. Serv., Mar. 23, 1986 (NEXIS, Nexis library, Omni file).

82. *Id.*

83. Pearce, *supra* note 72.

84. *Id.*

85. For details on the fall of commodity prices, see *supra* note 28.

86. Under Lome I, the Sugar Protocol provided for a special guarantee of price for 1.3 million tons of ACP cane sugar annually. Lome I, *supra* note 8, Protocol No. 3 on ACP Sugar. Lome II expanded on the protocol but raised the price. Lome II, *supra* note 17, Protocol 7. Lome III further expanded it by adding two new ACP countries to the protocol. Lome III, *supra* note 18, Protocol No. 7.

87. The first protocol for rum allowed duty-free market access to ACP rum to the EC with an annual market increase rate of 40% of the U.K. market and 13% of the entire EC market. Lome I, *supra* note 8, Protocol No. 7 on rum. Lome II increased the ACPs' market share of rum to 40% for the U.K. and 18% for the rest of the EC. Lome II, *supra* note 17, Protocol No. 5 on rum. Lome III set the minimum quantity of rum to be imported by the EC at 170,000 hectoliters of pure alcohol, and modified the growth rate to 37% of the U.K. market and 27% of the rest of the Community markets. Lome III, *supra* note 18, Protocol 5 on rum.

88. The first banana protocol merely guaranteed that the ACPs will be in no less

and veal.[89] The EC also provided STABEX,[90] significantly cushioning the shock of the agricultural commodity crises. However, with CAP in disarray and the international pressure on the EC to abolish its agricultural subsidies, the EC's internal balancing act could have eliminated the privileges previously enjoyed by the ACPs. Nevertheless, the EC continued its historical agricultural preferences in spite of its own internal concerns.

Lome IV takes a two-pronged approach to the agricultural issue. First, the EC guarantees the continuation of the banana protocol,[91] regardless of what the single market may require in market standardization or as a result of changes in the CAP.[92] It also continues the sugar protocol,[93] and provides for the gradual elimination of quotas on ACP rum by the year 1993.[94]

Lome IV also requires joint effort by the EC member states to expand the ACPs' commodities market.[95] A commodities committee is to be established to review the effects of the Convention in the commodities area and more importantly, to work with international cooperation efforts to improve commodity prices.[96] This is clearly an effort to make the ACPs less dependent on the EC market for its commodities. The two-pronged approach, then, demonstrates the EC's balancing of 1992 concerns with its historical obligations to the ACPs.

A third trade provision impacted by 1992 is its emphasis on the development of ACP tourism.[97] Even though details are to

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favorable situation than in the past or at present. It also committed to a joint endeavor to increase banana exports. Lome I, *supra* note 8, Protocol No. 6 on bananas. Lome II basically maintained the same stance. Lome II, *supra* note 17, Protocol No. 4 on bananas. Lome III addressed a wider range of issues such as internal transport and storage and marketing and trade promotion of bananas; however, there has never been a minimum quota set up for ACP bananas. Lome III, *supra* note 18, Protocol No. 4 on bananas.

89. *See, e.g.*, 23 O.J. EUR. COMM. (No. L 2377) 80 (1980).

90. This is a fund to stabilize losses in export earnings. The Community spent 380 million ECU's (European Currency Units) under Lome I for STABEX, 557 million ECU's under Lome II, and 415 million ECU's under Lome III. THE EUROPE-SOUTH DIALOGUE 31 (1989). Even at this rate, STABEX funds have only been equal to 10% of the losses caused by the fall in commodity prices.

91. Lome IV, *supra* note 2, at A-6.

92. *Id.*

93. *Id.*

94. *Id.* Also, the member states' shares of tariff quota for the ACPs will be phased out. *Id.*

95. *Id.* at A-7.

96. *Id.* For an overview of international commodities organizations and their activities, see THE COURIER, July-Aug. 1989, at 68-75.

97. Lome IV, *supra* note 2, at A-1.

be negotiated after the outcome of the Uruguay Round is known, Lome IV devotes a whole chapter to tourism.[98] Thus, Lome IV envisions the marketing of another "commodity" that is potentially income-producing for the ACPs without creating a great deal of competition for the EC and with a relatively small initial risk.

B. *Non-Trade Provisions*

From the very beginning, there was talk that some of the EC member states preferred to give more financial aid rather than additional trade preferences to the ACPs.[99] It was speculated, therefore, that new financial areas would be created to absorb the additional funding and to soften ACP disappointment over the EC's refusal to modify the safeguard clause.

The new provision on structural adjustment[100] support may be one of those areas. Since 1985, some thirty sub-Sahara African countries have launched a program of structural adjustment[101] in an effort to balance external debts and stimulate economic growth through internal price-fixing, trade liberalization, increased taxes and reduced spending. These ACPs had struggled with short term costs of structural reform, including unemployment, decline in wages, loss of public and social services, worsening debt imbalance, and higher food prices.[102] The new provision in Lome IV provides support for these short-term problems as well as the long-term reform goals. In doing so, the goal of Lome IV is to reduce EC emergency aid to the ACPs as well as provide support for the eventual economic self-sufficiency of the ACPs.

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98. *Id.*

99. *See* Pearce, *World's Biggest Aid Treaty Set to Accept Three New Members*, Reuters, Oct. 28, 1989 (NEXIS, Nexis library, Omni file).

100. Lome IV, *supra* note 2, at 2. As early as 1986, the Joint Commission of the ACP-EC convention called for a more realistic, pragmatic approach to structural reform that would take into account the social dimensions of such reform policies, utilizing STABEX and food aid, as well as coordinating with the International Monetary Fund and World Bank. In May, 1988, the EC Council passed a unilateral resolution setting forth the EC's basic policy regarding its role in the ACPs' structural adjustment efforts. *The Adjustment Process in Africa: A European Council Resolution*, THE COURIER, Sept.-Oct. 1988, at 73.

101. *The Structural Adjustment Process*, THE COURIER, Sept.-Oct. 1988, at 52-72.

102. Fromont, *The Poor: Bearing the Burden of Adjustment*, THE COURIER, Sept.-Oct. 1988, at 94; *We Genuinely Deplore the Social Effects of the Measures We Have Had to Take*, THE COURIER, Sept.-Oct. 1988, at 32.

The environmental provision of Lome IV[103] is another area affected by 1992. However, this provision should not be characterized as protectionist, even though it reflects the impact of the larger movement toward 1992. In promulgating its own environmental standards for the single market, the EC has partially completed a common environmental policy.[104] In accordance with this policy, Lome IV bans the export of all hazardous and radioactive waste to the ACPs.[105] This provision was the result of several years' discussion between the EC and the ACP countries, and discussion between the delegates to the Lome convention and the European Commission.[106]

To summarize, the Lome IV provisions affected by 1992 are: 1) the safeguard clause; 2) the continued inflexibility of CAP coupled with EC involvement in finding extra-EC markets for ACP commodities; 3) emphasis on the development of ACP resources, such as tourism, which are not in direct competition with the EC; 4) cash investments narrowly tailored for building long-term ACP self-sufficiency; and 5) environmental measures designed to protect the ACPs.

V. Lome IV Provisions Reflecting Loyalty to EC-ACP History

While some provisions of Lome IV contain protectionist features, Lome IV continues the tradition of very liberal trade preferences granted by the EC.[107] It takes only a cursory overview of a few major provisions to see that the original spirit of the Lome convention is still very much alive in Lome IV.

In the trade area, STABEX funding has been significantly increased with each convention. Not only has the amount of aid

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103. Lome IV, *supra* note 2, at A-1. For a list of toxic wastes to be controlled, see *ACP-EEC negotiations for Lome IV, A Spur from the Council of Ministers*, The Courier, July-Aug. 1989, at News Roundup (yellow pages) 1-2. *See also* Ljunggren, *EC and Third World Group Agree to Ban Toxic Waste Traffic*, Reuters, June 5, 1989 (NEXIS, Nexis library, Omni file); *Developing Nations Fear Pact May Leave Door Open to Toxic Waste*, Reuters, Sept. 22, 1989 (NEXIS, Nexis library, Omni file).

104. The common environmental policy, or the "Greening of Europe" policy, calls for harmonization of pollution control systems, innovations in biotechnology for disposal of toxic waste, stringent impact assessments prior to construction of public and private projects, civil liability on polluters to pay for the clean-up, and standardization of the import and export of dangerous waste chemicals. 1989 U.S. Chamber of Commerce Publication on Europe 1992, at 71-78.

105. *See supra* note 102.

106. *Id.*

107. *The European Community and the Third World*, *supra* note 36.

increased,[108] but the eligibility requirements have been lowered with each convention.[109] Lome IV not only reduced this threshold again,[110] but also made STABEX funds outright grants no longer requiring replenishment by the ACPs.[111] Funds for the system to help with the export and development of minerals (SYSMIN) have also been increased, and have also been converted to grants.[112] This change to outright grants was made in order to help the ACPs with their debt servicing needs.[113]

Lome IV also retains all of the protocols on agricultural products and augments many of them. The beef and veal agreements are now a separate protocol[114] with an increase in the overall annual quantity and the total elimination of the former export tax.[115] The tariff quota on rum is to be eliminated,[116] and the banana protocol is safely in place for at lease the next ten years.[117]

The Rules of Origin have also been relaxed.[118] These Rules, designed to ensure that only products originating in the ACPs enjoy preferences in the EC market, have in the past been heav-

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108. STABEX funding under Lome I was 380 million ECU's, 557 million under Lome II, and 925 million under Lome III. THE EUROPE-SOUTH DIALOGUE, *supra* note 90, at 31. Lome IV provides 1,500 million ECU's for STABEX. Lome IV, *supra* note 2, at Financial Breakdown.

109. Eligibility for STABEX funds is determined under two threshold criteria, and both must be met. The *country* is eligible if the loss from a product represents a certain percentage level of total export earning of that country in the preceding year. The *product* is eligible if export earnings for that product drop at least a certain margin from the average over a reference period. The country eligibility level was set at 7.5% under Lome I, 6.5% under Lome II, and 6% under Lome III. *See* Lome I, *supra* note 8, art. 17(2); Lome II, *supra* note 17, art. 29; Lome III, *supra* note 18, art. 161(1). Lome IV further reduces this threshold to 5%. The product eligibility level was set at 6.5% under Lome I and II, and 6.0% under Lome III. *See* Lome I, *supra* note 8, art. 19(2); Lome II, *supra* note 17, art 37; Lome III, *supra* note 18, art. 162. This threshold requirement remains at 6.0% under Lome IV. Lome IV, *supra* note 2, at 7. In addition, there are special rates applicable to the least developed, landlocked and island countries of the ACP.

110. Lome IV, *supra* note 2, at 7. *See also supra* note 107.

111. Lome IV, *supra* note 2, at 7.

112. *Id.*

113. *Id.* at 3.

114. *Id.* at 5.

115. *Id.*

116. *Id.* at 6.

117. *Id.*

118. One of the main features relaxing the Rules of Origin is the derogation clause. This clause provides for the presumption of sufficient local content unless challenged by the importing EC country within three months of entry into the EC. Lome IV has also eliminated the "positive" and "negative" lists which detailed all the processes and materials which constituted non-local content, and has substituted them with a single, much shorter list. Lome IV, *supra* note 2, at A-6.

ily criticized for difficulty of usage and the high level of local content required.[119] Lome IV significantly overhauls the Rules so that they are easier to use, makes fewer ACP products vulnerable to disqualification, and most importantly, lowers the local content requirement from sixty percent to forty-five percent.[120]

The new convention period of ten years,[121] rather than five years under previous conventions, is an extremely meaningful sign of continued mutual commitment, especially in light of 1992. In addition, the overall amount of money pledged by the EC is another sign that the Lome agreements are here to stay. Lome IV commits 12 billion ECU's over the first five years, 1990-95. This is a substantial increase from the 8.5 billion ECU's under Lome III, up from 5.5 billion ECU's under Lome II, and 3.5 billion ECU's under Lome I.[122] The actual increase under Lome IV is even more significant because the European Development Fund, covering the STABEX and SYSMIN funds (as well as grants and risk capital assistance), are all now outright grants.[123] Even though the ACP states would have preferred receiving more in trade concessions for agricultural commodities than monetary grants, the additional funding will help, at least temporarily, with the harsh realities of debt servicing and problems related to structural adjustment.

The addition of three new ACP countries[124] to the Lome convention is also counterindicative of "Fortress Europe." These additions required more money[125] and caused some intra-EC political conflict,[126] but they were approved without undue difficulty.[127]

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119. *See, e.g.*, Minta, *The Lome Conventions and the New International Economic Order*, 27 How. L.J., 953, 963-64 (1984).

120. Lome IV, *supra* note 2, at A-6.

121. Lome IV, *supra* note 2, at 2.

122. For a breakdown of funding from Lome I to Lome IV, see Appendix A of this note.

123. Lome IV, *supra* note 2, at A-2.

124. These new countries are Haiti, the Dominican Republic, and Namibia (once it gains independence). *Id.*

125. Pearce, *World's Biggest Aid Treaty Set to Accept Three New Members*, Reuters, Oct. 28, 1989 (NEXIS, Nexis library, Omni file).

126. *Id.*

127. The ACPs and the EC had some difficulty arriving at the decision to include the three new members, primarily due to perceived threats to ACP members already in the Convention and the desire of Spain and Portugal to extend more trade preference to the countries of Latin America. *Id.*

VI. Conclusion

Had the EC been trying to mold Lome IV into a building block for "Fortress Europe," it could have done so. It may have suffered politically as a result, since it is generally agreed that Europe should assist its former colonies, but in this context the EC was in a position to tailor its own obligations. The EC could have eliminated or reduced the agricultural protocols, refused to raise the overall amount of aid, or held on to the Rules of Origin as it did with the safeguard clause. Instead, Lome IV represents a tenuous balance between the EC's continuing sense of obligation to the ACPs and its internal focus on a single market. While it is not a perfectly altruistic solution to the ACPs' plight, Lome IV is a far cry from being a building block for a Fortress Europe. If anything, it demonstrates the lack of a collective will to achieve a single market at the cost of its history with the ACPs. Lome IV thus stands more as a building block for a monument to the EC's internal ambivalence about the cost to be paid for achieving 1992.

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