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# Tendency to an "Orderly" Development Policy

by Rolf Hasse, Robert Weitz, Cologne\*

**Recently the new convention between the EC and the ACP states (Lomé II) which is to succeed the one due to expire on March 1, 1980 (Lomé I), was signed after protracted, tough and tense negotiations which were at times even brought to a halt because the negotiating parties set out from widely diverging target positions<sup>1</sup>. The following article discusses the most important results of the negotiations and their repercussions on trade, investment and finance.**

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Lomé II has more than twice as many articles, supplementary protocols and bilateral or unilateral declarations as Lomé I. The considerable enlargement of the convention contents is due to various, in part opposite causes of which it is impossible to give here more than an outline:

The essential elements of Lomé I (trade cooperation, stabilization of export earnings, industrial cooperation, financial and technical cooperation, institutions) have been taken over but the existing instruments and mechanisms have in part been amended and supplemented by new ones. Of the changes which are not described here in detail mention should be made in particular of those in the fishery regulations, in the chapter on agricultural cooperation, concerning the newly established Technical Centre for Cooperation in Agriculture and the Rural Area and the intensification of administrative and political cooperation.

The regulations on promotion of trade and sales and on technical and financial cooperation have been amended in the light of the experience gained with Lomé I so as to enable more consideration to be given to the highly heterogeneous conditions in the ACP states. Better preconditions have been created, above all, for the furtherance of small and medium-sized enterprises and micro-projects and for the strengthening of regional and interregional cooperation among ACP states. On the institutional side it is intended to extend the Centre for Industrial Development and complement it by an ACP-EC Committee on Industrial Cooperation.

Other supplementary arrangements derive from the attempt to achieve a better coordination of the work of

the executive organs. A new ACP-EC committee has been formed for this purpose which is to define the criteria for promotion more precisely and to speed up the supplementary procedures.

Finally, the convention shows in many articles tell-tale signs of superfluous verbosity which distorts rather than clarifies. The same facts have been formulated differently in different places, leaving a margin for interpretation presaging possible conflicts, and disputes may also arise in instances where the clear wording of the convention is rendered ambiguous by explanations.

## Tariff Barriers to be Reduced Further

In view of the large number of amendments we can only deal with the mechanisms of major importance for development policy, and even of these only the key areas can be discussed<sup>2</sup>.

The arrangements on trade cooperation take up only little room in the convention although they are the most important and most effective instruments under development aspects. They are the crucial switch-points for a broadening and enlargement of the export base and for improving the economic structure of the ACP states, provided they are maintained and utilized in a consistent free-trade spirit. The highly acclaimed stabilization of export earnings on the other hand may, like the *dirigiste* organization of industrial cooperation, turn out to be an instrument for the consolidation of

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<sup>1</sup> Cf. R. Hasse, R. Weitz: The Renegotiation of the Lomé Convention, in: INTERECONOMICS, No. 11/12, 1978; cf. G. K. Helleiner: Lomé: Market Access and Industrial Co-operation, in: Journal of World Trade Law, Vol. 13, 1979.

<sup>2</sup> On the concepts and contents of Lomé I cf. R. Hasse, R. Weitz: Das Abkommen von Lomé – Übergang oder Alternative zu einer neuen Weltwirtschaftsordnung? (The Convention of Lomé – Transition to or alternative for a New International Economic Order?), Untersuchungen, Vol. 43, Cologne 1978. The second, enlarged and improved edition is under preparation.

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one-sided economic and supply structures. The decisive question is therefore to what extent the arrangements under Lomé II provide the ACP states with free access to the EC markets and contribute to an improvement of the international competitiveness of their exports.

Lomé II has retained the non-reciprocal exemption of the ACP states from tariff barriers to the trade in industrial semi-finished and finished goods. This arrangement does not apply generally to agricultural products subject to an EC agricultural market regulation. Lomé I had already conceded special export-facilitating regulations to ACP states, namely:

- ☐ General customs exemptions for certain fishery products, certain kinds of fruit and vegetables, as well as certain processed products from fruit and vegetables;
- ☐ Exemption from customs duty within the limits of fixed quotas and/or a fixed time-schedule for beef and raw tobacco;
- ☐ Tariff cuts or levy reductions for maize, millet, rice, certain processed grain products, confectionary, chocolate, malt extracts, sago, and certain kinds of pastry.

By Lomé II the preferential treatment was extended to other products, namely tomatoes, carrots, onions (tariff reductions limited in time and to a quota), mushrooms, asparagus (tariff reduction for a limited period), and passion-fruit and guava preserves and juices (removal of the supplementary sugar duty).

As in Lomé I, further special arrangements were made for certain products to benefit individual ACP states. The obligatory acceptance of certain quotas of raw or white sugar at guaranteed prices was retained without change, as were the preferential terms for the marketing of bananas. The annual growth rate of duty-free imports from the rum-producing ACP states was raised from 13 to 18 %. It was also agreed that the import licensing procedure is to be handled in future in such a way that it does not impede imports within the limits of the tariff quotas. The beef quota was increased by 9 % to 30,000 tons in the interest of the traditional beef-exporting states – Botswana, Kenya, Madagascar and Swaziland. These quantities can be imported duty-free and are exempt from 90 % of the import levies. More important is another change: in case any of the favoured states is unable to use its quota in full because it cannot effect deliveries, the

remainder of the quota may be transferred to one or more of the other favoured states.

Although the mentioned extensions of the preferences may mark a great advance for individual ACP states, they amount in toto only to a slight improvement on Lomé I. They are unlikely to result in a lasting amelioration of the overall trend of trade exchanges which the ACP states regard as unsatisfactory. The protective effect of tariff obstacles to trade is of less and less importance compared with that of non-tariff obstacles to trade. An effective development policy in favour of the ACP states would have required substantial improvements in regard to the non-tariff barriers which were neglected in Lomé I.

### Only Slight Advances

Slight advances were achieved in regard to the country of origin arrangements and the regulations for the application of the general safeguarding clause. The regulation on countries of origin in Lomé I has proved to be too rigid and too complex. The cumulative country of origin principle was retained in Lomé II but it has been rendered somewhat more flexible in technical and administrative usage. Generous exemptions were, besides, conceded to the least developed states, land-locked states and islands on the one hand and for certain products (fishery products) on the other. The negotiating parties did not however decide in favour of a general regulation applying to all products irrespective of the share of value added in ACP states. The arrangements are therefore unlikely to have more than a limited promotional effect on trade.

The EC states did not give up the general safeguarding clause but an attempt was made to evolve implementary rules to prevent abuse of the clause as an instrument of protection. These will however prove a blunt instrument: it is not defined which circumstances amount to an "effective" or a "presumptive" crisis in an industry, and "orderly marketing arrangements" are not included.

Previous agreements between the EC and developing countries served the aim of favouring the export products of developing countries compared with like products from industrialized countries. During the Lomé II negotiations the ACP states demanded for the first time that they should also be treated preferentially in regard to EC exports of foodstuffs so as to safeguard their food supply. No arrangements have as yet been made for obligatory deliveries at preferential prices but

agreement was reached on a further elimination of the – in any case already impaired but not yet ineffective – price mechanism in the international agricultural markets. For certain quantities of staple foodstuffs it shall now be possible to conclude contracts at stable prices for one year ahead. For the ACP states this measure of stability of supplies is a first step towards partial stabilization of their spending on imports to complement the arrangements for the stabilization of their export earnings. It may be the aim of the ACP states to become less dependent on the world market so as to improve the viability of their internal economic planning.

In the field of industrial cooperation and technical assistance cornerstones have been laid for a system of EC-ACP investment planning. This holds good of the new system of industrial consultations within the framework of the ACP-EC Committee on Industrial Cooperation in particular although this is for the present to be used chiefly for mutual exchanges of information and is not entitled to take binding decisions. There are however tendencies to make use of this committee as a sort of investment control authority. This route was marked out by the EC Commission in 1978 when it put its ideas of a preventive protectionism in these terms: "To avoid difficulties in certain sensitive sectors such as textiles, petroleum products, and shoes, the Commission suggests there should be periodic consultations involving both trade unionists and industrialists. The object would be to plan jointly for the future and examine the viability of envisaged ACP investments. For instance, it would be irresponsible to encourage the development of export-oriented textile and sugar refining mills if the Community market was then closed to them"<sup>3</sup>.

### Extension of the Stabilization Fund

The Stabilization Fund for Export Earnings STABEX remains instrumentally and politically a cardinal feature of Lomé II. STABEX II corresponds in its essentials to STABEX I: it is a discretionary fund; it offsets only nominal earnings shortfalls which are incurred primarily in the exports of ACP states to the EC. The demand for compensation covering the real earnings shortfalls was rejected by the EC states. The following changes were adopted:

The financial ceiling was raised from 395 mn European Units of Account (EUA) to EUA 550 mn. This

stock increase is explained to be due to the lowering of the thresholds, the increase in the number of products covered, the substantially easier replenishment of the fund, and the possibility of covering trade between ACP states.

The only mineral raw material covered – iron ore – will be turned over completely to SYSMIN (system for minerals), the newly established fund for mineral raw materials, when Lomé II runs out<sup>4</sup>. STABEX II has thus become an even more specialized compensatory system for agricultural products.

The list of products has been extended and the product designation has been rendered more precise. Lomé I began with 29 products, Lomé II begins with 44. The products are no longer grouped verbally according to principal and secondary products but identified by their Nimexe code. The possibility of adding more products remains; the rules for this were relaxed as the ACP states wished. The ACP-EC Council of Ministers is obliged to take a decision within six months from the date of application.

The principle of differential treatment of ACP states according to their stage of development and locational and transportation problems has been retained. Group A of the least developed states comprises 35 states (lower thresholds, no replenishment of resources), Group B of the land-locked states and islands consists of 32 states<sup>5</sup> (lower thresholds), and Group C combines 12 states without any preferential treatment.

The prerequisites for claims for compensatory payments were relaxed all along the line. The *dependence threshold* and the *fluctuation threshold* were lowered from 7.5 to 6.5 % for Group C countries and from 2.5 to 2.0 % for Group A and Group B countries. There is a new feature: STABEX II can, after examination of the individual case, also be applied to earnings shortfalls in the intra-ACP trade.

Another new feature is that the ACP states may choose in regard to some principal and secondary products whether they want the earnings shortfalls to be computed for each individual product (individual product approach) or for a group of products (product family approach). The chosen method then applies to all STABEX II computations.

There will now be two reference periods to determine the reference levels. In general the reference period is a period of four years before the

<sup>3</sup> Quoted from G. K. Helleiner: Lomé: Market Access and Industrial Co-operation, op. cit.

<sup>4</sup> Only iron ore which was already being mined on the signing date of Lomé II, will still be covered by STABEX II for five years.

<sup>5</sup> 22 of these ACP states are also included in the group of "least developed countries".

filing of the application. In order to further the diversification and processing of raw materials in ACP states a reference period of only three years has been introduced for ACP states beginning to export a product which they did not traditionally produce or starting to process a product which they traditionally exported in the raw state.

The transfers have been raised as a general rule. A standard 1 % is added to the difference between the reference level and the earnings of the shortfall year to take account of statistical errors and omissions.

### Unsatisfactory Regulations

The most important changes are those introduced in the regulations on replenishment of resources. They have been extended in such a manner that the revolving principle has been almost completely abandoned.

The provision that the unit value and the unit quantity of the actual export earnings must exceed the reference unit value and the reference unit quantity remains. To these two conditions a third one has been added: the actual earnings must be equivalent to at least 106.5 % of the average of earnings from exports to the EC over the four years prior to the preceding year. The figures for the states and products concerned are examined each year.

The repayment cannot exceed the received transfer. The computed sum for repayment need not be remitted immediately. Repayments are phased over a seven-year period with a two-year grace period (Art. 42 and 43). Assuming that Country A receives in the second year covered by the convention ( $t + 2$ ) transfers for the year  $t + 1$ , it will be in  $t + 3$  that the first examination whether a repayment is due is made for the export earnings in  $t + 2$ . If Country A has to make a repayment, no repayments will be due as yet in the years  $t + 3$  and  $t + 4$ . The repayments will be made in equal instalments during the years  $t + 5$  to  $t + 9$ .

As this examination has to be carried out annually over the whole seven-year period, it is necessary for a transfer in  $t + 5$  to compare in  $t + 13$  the earnings in  $t + 12$  with the average earnings in  $t + 8$  to  $t + 11$ . In  $t + 13$  the ACP-EC Council of Ministers may under Art. 44 decide whether the still outstanding repayment obligations are to be fulfilled or whether the repayment is to be waived.

From these Articles it could be inferred that the duration of Lomé II and the provision of financial resources for STABEX II are limited to five years (Art. 31/35) whereas the repayment period and thus the

duration of STABEX II continue far beyond this five-year period (Art. 42/43). A comparison of Art. 44 and 35 reveals ambiguities about the repayment modalities. Art. 35 entitles the ACP-EC Council of Ministers to decide at the end of the five-year period already "on the conditions for the use of the sums which will still have to be paid for replenishment according to Art. 42 and 43 after the expiry of the period mentioned in Art. 31". In theory it can cancel these obligations in which case only the ACP states in Groups B and C would have to make a repayment provided that they received transfers for  $t + 1$  and their export earnings in  $t + 2$  were so favourable that the three mentioned conditions were fulfilled; in  $t + 5$  they would have to meet one-fifth of this obligation. In this case the revolving and credit principles of the transfers would scarcely be worth mentioning. The regulations are, at the very least, confusing.

The inadmissibility clause (Art. 38) has been phrased more clearly but is still unsatisfactory. Transfers are not paid if the application is made after March 31 of the year following on the year to which it refers or the fall of export earnings occurred in consequence of a trade policy of the ACP state which acted as a special impediment for exports to the EC or it is ascertained that the earnings from exports to *all destinations* of a product for which an ACP state applied for transfers were in the year in question larger than the average of the earnings from exports of this product to all destinations in the four preceding years.

The adoption of the earnings from exports to all destinations as a yardstick and upper limit for the transfers is to be regarded as a positive change. This provision rules out manipulation of the export earnings by deliberate mutation of the supply flows and by sales disruptions in the EC market offset by additional earnings in other markets.

That compensatory payments are made for earnings shortfalls which have occurred owing to – albeit non-discriminatory – interference with the export trade remains an unsatisfactory feature. It is also difficult to understand why earnings shortfalls due to political disturbances and strikes ("internal" causes) are offset by STABEX. A different arrangement would certainly involve delicate political questions. But STABEX II is now in part taking on the functions of an international strike fund. The reference to social aspects touches only on part of the argument: in conformity with the principle of budget clarity social transfers should be made from other funds, for STABEX II ought not to be a social fund. It could for instance also be considered

whether such transfers should not be made exclusively as loans.

Another ground of criticism of STABEX I was the lack of control over the application of payments. STABEX II does not change the situation in this respect, in spite of some euphemisms (Art. 23, 41). The provision in Art. 41, para 2 that ACP states must provide information on the probable use before the transfer agreement is signed involves in the final analysis no real commitment. Any linkage between the act of information and the claim for transfers is renounced by a joint declaration on Art. 41. What is thus left is the obligation to provide after 12 months information on the utilization, and the catalogue of objectives in Art. 23, para 2 which strictly interpreted excludes only the financing of general public tasks.

### Special Investment Fund for Raw Materials

Insistent demands by the ACP states notwithstanding, the EC states refused to open STABEX II to mineral raw materials. The financial risks would have been too great. The importance of the mining industry to the ACP states and the raw material supply problems on the other hand were recognized, and a separate financing facility has been set up for mineral raw materials. SYSMIN is not a stabilization fund but a special, non-revolving investment fund which only provides loans<sup>6</sup>. To start with it will be available for copper (incl. the conjoint cobalt production), phosphates, manganese, bauxite and alumina, tin, pyrites and iron ore. Its size for the five years of the convention has been fixed at EUA 280 mn<sup>7</sup>.

The criteria for drawings on SYSMIN are similar to those for STABEX II: there is a *dependence threshold* (average export earnings of one product during the four preceding years) of 15 % or (in the case of the least developed states) 10 % of total actual export earnings; the production must be viable and economical, and any disruption must be unconnected with the wishes of the state concerned (Art. 49)<sup>8</sup>.

In contrast to STABEX II the transfers under SYSMIN are not computed but negotiated between the

EC Commission and the ACP state. The extent of the disruption, the programme proposed by the ACP state, its ability to participate in its financing and the maximum limit for annual drawings by any one state (50 % of the funds available in a year) are taken into consideration in the allocation of financial aid.

In affirmation of their concept the EC states have directed the European Investment Bank (EIB) to earmark EUA 200 mn of its own funds for the technical and financial support of the development of the mineral and energy potential.

### Comparison of the Financial Aid by the Community under Lomé I and Lomé II

(in EUA mn)

	Lomé I	Lomé II
European Development Fund (EDF)		
Total	3,150	4,542
of which:		
Grants	2,165	2,928
Special loans	470	504
Risk capital	100	280
STABEX	395+20 <sup>a</sup>	550
SYSMIN	—	280
European Investment Bank (EIB): Total	400	685+200 <sup>b</sup>
Administration Costs	—	180 <sup>c</sup>
Grand Total	3,550	5,607

<sup>a</sup>Reserve.

<sup>b</sup>The EIB's articles of association provide in Art. 18 that the institution is to provide EUA 200 mn from its funds for investments in the mineral raw materials and energy sectors, in addition to the general provision of EUA 685 mn.

<sup>c</sup>The Community has declared itself willing to defray the administrative costs of the ACP states (which are estimated at EUA 180 mn) from the Community budget.

### A Passage to Dirigisme

The contents of Lomé II can give satisfaction only to those who consider it to be the only politically practicable concept. If the field of vision is narrowed down in this way, alternatives indicating different orders for the international economic intercourse are no longer given sufficient consideration, and there is a danger in this case of the long-term problems arising in the course of already discernible trends being played down.

Against a background of an increasing number of individual arrangements one must not lose sight of the complex of problems of an institutionalized policy of preferences which by its own momentum leads to more and more intervention and to progressive discrimination and will in the long run result in a rigid *dirigiste* system for the international economic relations.

<sup>6</sup> The terms correspond to those for special loans (Art. 102): Duration 40 years, no repayments in 10 years, interest rate 2 % (0.75 % for least developed states).

<sup>7</sup> Equal annual tranches, unused amounts to be carried forward, anticipatory drawings of up to 50% of the annual tranche, cuts when applications exceed the maximum tranche.

<sup>8</sup> This principle is elucidated but also partly eroded by Art. 52 which says that among "unconnected" disruptions are: serious technical incidents or disruptions and a significant decline of the output or export capacities owing to grave internal or external political events.