

THE SA-EU TRADE, DEVELOPMENT AND CO- OPERATION AGREEMENT: DEMOCRATISING SOUTH AFRICA'S TRADE POLICY

TALITHA BERTELSMANN-SCOTT

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Supervisor: Prof Philip Nel
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I, the undersigned, hereby declare that the work contained in this thesis is my own original work and that I have not previously in its entirety or in part submitted it at any university for a degree.

ABSTRACT

This thesis examines the democratisation of South Africa's foreign trade policy, by evaluating the negotiations surrounding the establishment of a free trade area between South Africa and the European Union (EU). Democracy here is defined as a form of government that rests on three components namely, public participation in and public debate over policy formulation and a governing elite that is responsive to the needs of the majority of the population.

The thesis firstly outlines the process of negotiation itself, looking at the developments that shaped the years of talks. It examines the nature of the final agreement, called the Trade, Development and Co-operation Agreement (TDCA). It focuses on the Co-operation Agreements that were concluded, South Africa's partial accession to the Lomé Convention and the details of the free trade agreement. It finds that although the negotiations took very long to complete and the EU proved to be a tough negotiator, there are a number of opportunities for South Africans in the TDCA.

In the second section the internal process in developing a South African negotiating mandate is examined. This is done to conclude whether or not South Africa's foreign trade policy is being formulated in a democratic manner. However, first of all the question why the democratisation of foreign trade policy formulation is important is addressed. Two possible theories are advanced. Firstly, globalisation has forced countries to lure foreign direct investment (FDI) as a matter of urgency. Seeing as FDI is mostly tied up with western nations that prefer democracies, states are opting to democratise. The focus is to a large extent on satisfying international actors. Or alternatively, the very survival of the nascent democracy today depends on the consultative nature of domestic economic and international economic policy formulation. This is not a question of choice with an external focus, but rather a matter of urgency with purely an internal focus.

Four actors in foreign policy formulation, namely parliament, government, the bureaucracy and civil society, are examined in order to understand whether they had access to the process and whether these institutions themselves have been democratised since 1994. The thesis finds that the process was to a large extent democratic in nature.

However, the thesis also finds that no matter how democratic policy formulation is in South Africa, the options for policy are limited by a number of international elements. These include globalisation, regional trading blocs like the European Union, and international organisations like the World Trade Organisation.

OPSOMMING

Die tesis evalueer die demokratisering van Suid-Afrika se buitelandse handelsbeleid deur die onderhandelingsproses tussen die Europese Unie (EU) en Suid-Afrika rakende die sluiting van 'n vryhandelsooreenkoms te ontleed. Demokrasie word in die tesis definieer as 'n tipe regering wat rus op drie komponente, naamlik deelname in en debat oor beleidsformulering en 'n regerende elite wat die behoeftes van die meerderheid van die burgers in ag neem in beleidsformulering.

Eerstens omskryf die tesis die gebeure wat die onderhandelingsproses beïnvloed het. Die finale ooreenkoms word oorweeg teen die agtergrond van die samewerkingsooreenkoms wat tussen die partye gesluit is, Suid-Afrika se gedeeltelike deelname aan die Lomé Konvensie en die vryhandelsooreenkoms. Die gevolgtrekking word bereik dat ten spyte van die feit dat die onderhandelings oor 'n hele aantal jare gestek het, en alhoewel die EU 'n uitgeslape onderhandelaar was, die ooreenkoms talle geleenthede vir Suid-Afrikaners skep.

In die tweede instansie word die interne proses wat tot Suid-Afrika se onderhandelingsmandaat gelei het, ondersoek. Dit is gedoen om vas te stel of die beleid op 'n demokratiese manier geformuleer is. Daar word egter eers bepaal waarom die demokratisering van buitelandse handelsbeleid belangrik is. Twee moontlike teorie word geformuleer. Die eerste stel dit dat globalisering lande forseer om direkte buitelandse beleggings aan te lok. Siende dat buitelandse beleggings van westerlike state afkomstig is, wat verkies om met demokratiese state sake te doen, word ontwikkelende lande as te ware geforseer om veral hulle buitelandse beleidsformulering te demokratiseer. In die alternatief kan dit betoog word dat die voortbestaan van die demokrasie self afhang van 'n ekonomiese beleidsformulering wat beide binnelandse en internasionale prosesse insluit. Dit is nie 'n kwessie van keuse met 'n eksterne fokus nie, maar 'n noodsaaklikheid met 'n interne fokus.

Vier groeperinge wat buitelandse beleidsformulering beïnvloed word ondersoek, naamlik die Parlement, the regering, die burokrasie en die burgerlike samelewing, om vas te stel of hierdie instansies toegang tot die proses gehad het en of hierdie instansies self sedert 1994 gedemokratiseer is.

Die tesis kom tot die gevolgtrekking dat al is die formulering van buitelandse beleid hoë demokraties, word die moontlikehede vir beleidsformulering beperk deur globalisering, streeksorganisasies soos die EU, en internasionale organisasies soos the Wêreld Handelsorganisasie.

Vir Chris, Gitti, Thomas en my ouers, sonder wie hierdie nooit klaar sou gekom het nie. Baie dankie ook aan Prof Philip Nel vir sy hulp, leiding en ondersteuning.

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CHAPTER ONE: INTRODUCTION

Democratic forms of government have become the norm rather than the exception over the last couple of decades — in 1975 68% of all states were under authoritarian rule and yet by 1995 this number had decreased to only 26%. This massive increase in democratisation coincides with the emergence of the phenomenon of globalisation. This is no coincidence, as globalisation thrives on economic policies that are more closely associated with democratic governments than any other.

William Robinson argues that this global pressure to democratise has its origins in the United States' search for a global political dispensation that will ensure the economic and political dominance of the US over other nations. For many decades it accommodated authoritarian regimes due to the stability and opposition to socialism they provided, but with the advent of globalisation — that has benefited the US more than any other nation — the openness of democratic states is preferred.

The defining features of our epoch, [...], is the emergence of a capitalist global economy. [It] brings with it the material basis for the emergence of a singular global society, including the transnationalisation of civil society and of political processes. The old units of analysis – nation states – are increasingly inappropriate for understanding the dynamics of our epoch, not only in terms of economic processes, but also social relations and political systems. Promoting democracy can only be understood as part of a broader process of the exercise of hegemony [...].¹

Despite this perception that modern democracy is a tool to promote globalisation and to maintain the current global economic inequalities, democracy remains the only form of government that leaves sufficient room and rights for the individual.

Whereas many states are pushed towards democracy by the process of globalisation, there is not enough global pressure to ensure the democratisation of the entire state apparatus. Globalisation has little interest in citizen rights and, therefore, there rests a certain onus on governments to ensure that democratisation is extended to every aspect of life if the stability associated with democracy is to be achieved. This, in turn, is crucial for the governing elite to reap the benefits of the global economy.

South Africa also experienced a certain amount of global pressure to democratise during the late 1980's and early 1990's, which eventually translated itself into a negotiated transition towards democracy in South Africa. However, the mere transition did not guarantee that democracy would be the permanent form of government for Pretoria. South Africa had to democratise the entire state apparatus and daily policy formulation processes in the country.

But what do we actually mean when we are talking about the democratisation of a state?

By merely looking at the syntax of the word we can deduce that it entails a process whereby one becomes democratic or more democratic. However this is in contrast to the ideas that we have had of democracy over the years. A state is either a democracy or an authoritarian state and the lines between these are very clearly demarcated. In a democratic state the government of the day is elected through popular elections. In an authoritarian state a dictator has named himself the ruler or leader of that particular state without having been elected and rather calling on some right to that position.

To have held free and fair elections is no longer sufficient to ensure a democratic government. Or as Tom Lodge points out, '[s]tarting democracy is

¹ Robinson, W. 1995. 'Pushing polyarchy: the US-Cuba case and the Third World', *Third World Quarterly*, Vol 16, No 4. pp 649-650

easier than keeping it.² Citizens of numerous states are insisting more and more on having a role in daily policy formulation and not to only be called upon once every four to five years when popular elections are held. Potter *et al* define 'democratisation' as,

'political changes moving in a democratic direction... the character of such movement over time is from less accountable to more accountable government, from less competitive (or non-existent) elections to freer and fairer competitive elections, from severely restricted to better protected civil and political rights, from weak (or non-existent) autonomous associations in civil society to more autonomous and more numerous associations.'³

What is the expected outcome of democratisation or when is the process of democratisation complete? If we accept that the expected outcome of democratisation is a permanent democratic state, or a state which is expected to remain democratic for years to come, then the best indication, some argue, would be peaceful alternations between different political parties in the governing position. However, there are many states that have been democratic for generations and are expected to stay that way, that have never seen a different party in the governing position.

Therefore, other criteria need to be looked at. In essence these would refer to the fairness of the electoral system and the freedoms of individual choice⁴. Perhaps consolidation of democracy shows itself through the way in which control and policy formulation moves further away from the state towards popular participation. Which has important implications for all policy formulations and also that of foreign policy and foreign trade policy.

² Lodge, T. 1999. *Consolidating Democracy: South Africa's Second Popular Election*. Witwatersrand University Press, Johannesburg.

³ Potter, D.; Goldblatt, D; Kiloh, M; & Lewis, P. 1997. *Democratization*. Polity Press. Cambridge pp3 - 4

⁴ See Lodge, *Op Cit*.

One of South Africa's biggest foreign policy and — indeed foreign trade policy — challenges after its transition to democracy has been the formulation of a new relationship between itself and its largest trading partner and foremost political ally in the developed world, the European Union (EU). The talks surrounding this aim needed to address a wide range of issues, including aid, trade and co-operation in a number of development fields. The negotiations took several years to conclude, but culminated in a comprehensive agreement called the Trade, Development and Co-operation Agreement (TDCA). During the negotiations critique was levelled against South Africa's approach to the talks and the European Union's limited vision for the partnership. The critique against South Africa hinged on the fact that Pretoria was slow to respond to the European mandate and that it co-contributed to a lengthy negotiating period. South Africa's tardiness can, however, be attributed to its attempts to make the process inclusive and democratic. However, the talks have finally (for the majority of the aspects) been concluded and it is timely to examine the significance of the negotiations to South Africa's foreign trade policy formulation.

1.1 Limitations and Delimitations

Eighteen months after South Africa's second popular elections — that were deemed free and fair by all observers — it is appropriate to examine whether the democratisation of the South African state apparatus and its policy formulation processes has indeed taken place.

For the context of this study I have decided to focus on and limit the study to the manner in which foreign trade policy formulation, considered a sub-field of foreign policy formulation, has been democratised.

The reasons for this are, firstly, that foreign policy formulation in South Africa has never really been considered to be participatory in nature and foreign trade policy has always been the prerogative of the executive.

Secondly, the conclusion of a bilateral trade, development and co-operation agreement between South Africa and the EU provides us with a clear case study to examine whether foreign trade policy formulation has indeed been democratised. The process was initiated during South Africa's transition phase and was only completed after the second democratic elections in South Africa in 1999.

In terms of the negotiations the study will look at the entire negotiations and will not only be limited to the way in which decision was reached in South Africa. The study is however, limited to the role South Africa and the European Union played in the negotiations. Wider processes in the Southern African region and within the European Union that contributed to the talks will not be examined.

1.2 Conceptualisation

The understanding of democracy that guides the thesis is one based on Dahl's well-known writings on democracy. Dahl argues that democracy is characterised by effective public participation in policy formulation and public understanding and debate about policy options. However, it is important to add a third defining character, namely the responsiveness of the decision makers to the needs of the population. Dahl argues that control over the agenda for policy formulation is important to the democracy but in the modern state this is not always possible. Therefore, the responsibility to ensure that issues of public concern are addressed lies with the governing elite.⁵

For the purpose of this study I understand the democratisation of foreign policy and foreign trade policy within the same framework, to refer to the way in which policy is formulated becomes more democratic — where the formulation of policy becomes more accountable, more inclusive and representative. The democratisation of foreign policy, therefore, refers to the way in which actors outside of the executive are increasingly involved in the

⁵ See Dahl, R. 1998. 'On Democracy.' Yale University Press, New Haven & London. And Dahl, R. 1989. 'Democracy and its Critics' Yale University Press, New Haven & London.

policy formulation process of policy directions and have access to meaningful forums in which to debate policy that has been formulated. However, our understanding of the democratisation of foreign policy also has to extend to the nature of policy. This means that democratically formulated policy will be directed at the majority of the population. In South Africa's case policy should, therefore, aim at poverty alleviation and wealth creation.

1.3 Research Guidelines

Neither the literature examined, nor the definition of democracy proposed in the previous section, explicitly explains why democratising a country's foreign policy is important. However, it is important to understand this if we are concerned with whether or not South Africa's foreign policy formulation has been democratised. For many decades we were content with the executive making foreign trade policy decisions. Even today many well-established democracies still rely on executive decisions for their foreign trade policy. The countries that form part of the European Union have even sacrificed their control over trade policy to the European Commission that makes decisions on behalf of the member states. However, in South Africa — and other newly established democracies — popular participation in foreign trade policy formulation has received much attention. Why is this so?

Two potential theories are suggested in order to arrive at an understanding of *why* the democratisation of foreign policy is important to the consolidation of South Africa's democracy.

Once the reasons for the democratisation of foreign trade policy are identified the thesis examines *whether or not* South Africa's foreign policy formulation processes have become more democratic. The SA-EU TDCA negotiations are used as a case study to examine these developments against. In order to be able to answer this question, the first part of the thesis addresses the processes by which a bilateral deal was concluded between South Africa and the EU. It outlines the developments that surrounded the conclusion of a trade deal between South Africa and the European Union, the contentious

issues, the negotiating positions of the two parties, as well as the input third actors had to the negotiations.

In addition, the thesis looks at four key variables of democracy, namely participation, representation, transparency and openness. Although the borders between these are blurred, they can be understood to translate into the functions of parliament, government, the bureaucracy and the access ordinary citizens have to policy formulation.

Parliament's participation in policy formulation at once tests participation and representation. The bureaucracy, and the extent to which it represents the demographics of South Africa, tests transparency and representation. The way in which various government departments and institutions are co-opted in the policy formulation process again tests transparency and participation. Finally, the input civil society has - or can have - on the process tests openness, participation and even transparency.

In order to arrive at a conclusion regarding the impact of the institutions mentioned above, the thesis first of all examines whether these institutions themselves have been democratised. Then, secondly, it looks at whether its role as an institution in policy formulation is a democratic one. Even if apartheid South Africa's parliament had had input in foreign policy formulation, the policy itself could not have been considered democratic, as parliament itself was not. It follows, therefore, that democratic processes do not alone suffice and institutional make-up is also key to the democratisation process.

In order to test whether these institutions themselves have democratised, the thesis examines their institutional make-up and roots. In order to establish whether they form part of the policy formulation processes it examines to what an extent these institutions could impact on or were invited to participate within the negotiations. These evaluations mainly rest on interviews conducted with various role players over the years of negotiation, the following of newspaper articles and the various literature that has appeared during the

negotiations or after the conclusion of the TDCA. The findings of the thesis, therefore, rest on observations and analysis, rather than on empirical data.

However, during the research it became clear that no matter the nature of South Africa's foreign trade policy formulation, certain global restraints were placed on Pretoria's ability to reach a democratically formulated policy. The fourth research question, therefore, asks how South Africa was limited by the international arena in its policy formulation process.

These restraints identified include the phenomena of globalisation, the nature of established regional trading blocs like the European Union and the impact of international organisations that place limits on policy outcomes due to internationally established policy directions. Globalisation is examined and found to prescribe to developing countries to embrace the liberalisation of trade. The EU severely restricted the outcome of the talks by insisting on the compatibility of the South African agreement with all other agreements the EU has entered to hitherto. Finally, the World Trade Organisation (WTO) is found to prescribe certain details of a free trade agreement between two parties.

1.4 Data Gathering Process

Data collected for the purpose of the study can be divided in two sections, as they reflect the two sections of the thesis. The first part that deals with the actual events surrounding the establishment of a free trade area between the two parties is based on years of research at the South African Institute of International Affairs (SAIIA) as the Standard Bank European Union Research Fellow. The fellowship closely followed the unfolding of the negotiations, conducted numerous interviews with most role players both domestically and internationally and made use of news reports and articles and research papers from various organisations, as they became available.

The second part delves more into existing literature on democratisation, which is followed by more observation techniques to deduce whether South Africa's foreign policy formulation process has been democratised. As such,

therefore, the conclusions are based more on personal observation than on quantitative data. The study is, therefore, qualitative in nature.

1.5 An International Move Towards Democracy

The current literature on democratisation pays scant attention to the reasons why the democratisation of foreign policy — and foreign trade policy in particular — has become important. However, a number of potential theories are indirectly proposed.

Hypothesis One: Globalisation has forced countries to lure foreign direct investment (FDI) as a matter of urgency. Seeing as FDI is mostly tied up with western nations that prefer democracies, states are opting to democratise, especially their foreign policies, as this is the interface between the outside world and the given state. The focus is to a large extent on satisfying international actors.

The impressive increase in the number of democracies over the last couple of decades is a well-documented fact. In 1991 Samuel Huntington identified three waves of global democratisation with two reverse waves.⁶ The first was from 1828-1926, when countries like the USA, Britain, France, Italy and Argentina became democracies, with Italy, Germany and Argentina falling in the first reverse wave from 1922-42. The second wave was from 1943-62 with the redemocratisation of Germany, Italy and the democratisation of Japan, India and Israel. Brazil, Argentina and Chile fell in the second reverse wave from 1958-1975. The third and most impressive wave has been identified from 1975 onwards. Although it stretches over a couple of decades, the number of countries that have democratised over this period is most significant. Most continents changed towards democracy with Latin America changing the most significantly with 90% of states regarded as democracies.

⁶ Huntington, S. 1991. *The Third Wave: Democratization in the Late Twentieth Century* University of Oklahoma Press, Oklahoma.

In sub-Saharan Africa the dominant regime type pre-1975 was authoritarian, yet by 1995, 67% states of the sub continent were proclaimed democracies.⁷

Diamond, Linz and Lipset ascribe this increase in the popularity of democracy to the discreditation of all other options:

'The global advance of democracy in the 1980's and early 1990's was assisted by the demise of its historic ideological rivals. Fascism was destroyed as a vital force in World War II. The appeals of Marxism-Leninism withered with the harsh repressiveness, glaring economic failures, and loss of revolutionary idealism of the existing Communist regimes. More limited, quasi-socialist or mass-mobilisation models – the Mexican, Yugoslav and Nasserite models – also lost their aura. Almost universally, military regimes were shorn of any ideological justification and legitimacy beyond a temporary intrusion to correct political and social problems. Democracy became – partly by choice and political learning and partly by default – the only model of government in the world with any broad ideological legitimacy and appeal.⁸

This appeal can to a large extent be attributed to the impression that democracies were generally economically more well off than their authoritarian and communist counterparts. Ideologically there is a very clear link between the state centric economies of authoritarian and communist governments and between market-orientated economies and democratic governments. This link is highlighted by the difference in national income, where state centric economies perform less impressively than the market orientated ones.

⁷ Potter, D.; Goldblatt, D; Kiloh, M; & Lewis, P. 1997. *Democratization*. Polity Press. Cambridge. pp8-9

⁸ Diamond, L; Linz, J.J.; Lipset, S.M. 1995. *Politics in Developing Countries: Comparing Experiences with Democracy*. Lynne Rienner Publishers, Colorado. pp 2-3

There is a great body of literature by political theorists that comment on the link between economic development and democratisation. The modernisation theorists (like Lipset and Diamond) identify a positive correlation between the rise of per capita income and the rise of democracy; and others, that focus on structural change, like Linz and Rustow, focus on the capitalist activities of elites who favour democracy as an agent to greater economic activity. This ties in with Robinson's argument that the promotion of democracies has an elite focus; and Philip Cerny's work on the competition state.⁹

The link between economic prosperity and democracy not only ensured internal pressure for democratisation, but it also had a profound influence on international investment trends. With the fall of the communist regime in Eastern Europe and Russia and the rise of globalisation the western world began to associate democracy with prosperity and stability and other regime types were considered unstable. Seeing as investments and development aid are most often tied up with the western powers and their views of states it became more and more important to be a democratic state in order to secure foreign direct investment. In addition, in order to be able to make loans from the World Bank and the International Monetary Fund, certain basic democratic principles had to be met. As a result a number of countries proclaimed themselves to be democratic, although they still remain a far cry from actually holding popular elections.

A classic example on the African continent is that of the 'Democratic' Republic of the Congo (DRC). There is not much that is democratic about that country and a number of cartoonists refer to the DRC as 'The-not-so-very-Democratic Republic of the Congo'. However, proclaiming to be in the process of democratising the state has become the right the late Laurent Kabila called on to secure his position as the recognised leader of the DRC. However, it is doubtful whether he was in fact planning on ever holding popular elections.

⁹ See Robinson, W. 1995. 'Pushing Polyarchy: the US-Cuba case and the Third World', *Third World Quarterly*, Vol 16, No 4. pp 649-650 and Cerny, P. 1997. 'Paradoxes of the Competition State: The Dynamics of Political Globalization', *Government and Opposition*, Vol 32, Nr 2. pp251 – 274

And yet, when he took over the reigns of the country, foreign aid was pledged to help the country to democratise.

Countries like these have forced us — and international donor agencies and investors alike — to reconsider what we consider to be the elements of a democracy. Questions need to be posed to understand what the minimum critical mass of a democracy is. Also one needs to understand the processes by which countries become democratic. And how democracies are consolidated. Increasingly a proclamation of democracy is no longer sufficient to attract foreign direct investments and states are forced to embark on the democratisation of the entire state apparatus. Given the international goal of this democratisation it is self evident that the democratisation of foreign policy and foreign trade policy will become key to this process.

This process is most often encouraged, and even funded, by other states that wish to ensure the democratic nature of the given state in order to protect their investments and to increase the potential for economic returns. (Again William Robinson's viewpoint on US hegemony and democracy promotion applies.)¹⁰ Larry Diamond points to the following:

A variety of instruments are available for international actors seeking to promote, foster, or support democracy. ... Such assistance may be of financial or technical nature, but its goal is political: to develop democratic institutions, practices, and capacities. Economic assistance can also make a difference, if one presumes that (market-oriented) economic development ultimately encourages democratisation, and that economic improvement is at some point necessary to legitimate and sustain a new democracy. A major aid instrument that states have

¹⁰ Robinson, W. 1995. 'Pushing Polyarchy: the US-Cuba case and the Third World', *Third World Quarterly*, Vol 16, No 4. pp 649-650

at their disposal and are increasingly inclined to use is conditionality — tying desired forms of aid to democracy or political liberalisation.¹¹

He identifies a number of instruments that other states have at their disposal to promote democracy. Under political assistance he mentions the development of political institutions, legislative assistance, local government assistance, the development of political parties and finally legal and judicial assistance. However, it is economic assistance that is often key to the survival of a democracy.¹² Using conditionalities that are tied up with democratisation, provides the greatest impetus to democratise all aspects of political life.

Hypothesis Two: The very survival of the nascent democracy today depends on the consultative nature of domestic economic and international economic policy formulation. This is not a question of choice with an external focus, but rather a matter of urgency with purely an internal focus.

A good comparative example for the African continent is that of Latin America. As Huntington has pointed out, there has been a wave of democratisation in Latin America, which was followed by a wave of relapse into authoritarian rule. This is most often attributed to the fact that no consolidation of democracy took place. With the third wave of democratisation the Latin American continent has performed well in establishing stable democratic governments. The reasons for the success of the second wave lies in the consolidation of democracy through the democratisation of the entire state apparatus and greater, although far from perfect, redistribution of national income.

The Latin American experience has taught that, ironically, it is often economic policy formulation that becomes the major point of contention in new democracies and that can cause popular revolt. With the euphoria of a change

¹¹ Diamond, L. 1995. . *Promoting Democracy in the 1990's: Actors and Instruments, Issues and Imperatives*. Report to the Carnegie Commission of Preventing Deadly Conflict, Carnegie Corporation of New York.

¹² *Ibid.*

from a repressive system to a democratically elected government, the masses also expect tangible differences in their economic situation, as exemplified by other democracies. Larry Diamond points out that:

‘New (as well as established) democracies around the world have shown much greater capacity to launch bold economic reforms than many critics could have imagined. Nevertheless, increased unemployment and hardship for many middle- and lower-class groups typically accompany such reforms. Moreover, fear of these consequences often leads politicians to avoid instituting urgently needed reforms, aggravating macro-economic imbalances and throwing the economy deeper into crisis. History and logic suggest that economic crisis and hardship cannot continue indefinitely without undermining the legitimacy of democracy and gravely damaging its quality.’¹³

In order to avoid the undermining of democracy, new democracies therefore often institute consultative forums in which economic policy can be formulated in order to achieve consensus with the masses. However, the international climate states operate in today, which is dominated by the process of globalisation, have limited the option for economic policies quite drastically. In order to become an active player in the global market neo-liberal economic policies have to be accepted. In addition, the World Bank and the IMF have over the years become even more prescriptive on economic policy making that promotes neo-liberal ideologies. This leaves new democracies in a difficult situation, as neo-liberal policies are seldom reconcilable with the immediate needs of the poor in society.

In Latin America Von Mettenheim and Malloy make the observation that,

¹³ Diamond, L. 1995. *Promoting Democracy in the 1990's: Actors and Instruments, Issues and Imperatives*. Report to the Carnegie Commission of Preventing Deadly Conflict, Carnegie Corporation of New York.

[...] the central theme that emerges from recent experiences of governance in Latin America is the profound tension between technocratic and exclusive policy-making patterns deemed imperative by 'rational' neo-liberal economic restructuring and the ideals of broad-based participation of both citizens and associational groups historically implied by liberal and pluralistic conceptions of democracy...¹⁴

Foreign trade policy formulation is traditionally further removed from public opinion, in the same way that foreign policy is in general considered the domain of the government and not for ordinary citizens to decide. However, with the global shift towards neo-liberal economic policies and the desire of states to reap the benefits of globalisation, the liberalisation of trade has become the main focus of foreign trade policy for most countries. This liberalisation of the economy impacts directly on businesses throughout the given country. Where businesses will be negatively affected they find a seldom ally in labour that fears job losses due to the liberalisation of tariffs. This provides the potential for vigorous debate surrounding the extent of liberalisation and which sectors are to be protected. Therefore, policy formulation tends to no longer involve only the executive, but is democratising and incorporating the wishes of the majority.

Although Von Mettenheim and Malloy comment in general on economic policy formulation, their observations have clear relevance to foreign trade policy formulation:

'Economic policy can no longer be developed in isolation from elected representatives and the diverse organisations that seek to represent social groups. [...] The stuff of politics – bargaining, negotiating and compromise - is often critical for the successful implementation of economic policies.'¹⁵

¹⁴ Von Mettenheim, K & Malloy, J. 1998. *Deepening Democracy in Latin America*. University of Pittsburgh Press. Pittsburgh.

¹⁵ *Ibid*

The latter of the two theories seems more satisfying and explanatory given the South African situation.

I will now take a closer look at the democratisation process in South Africa and the implications this has had for foreign trade policy formulation.

1.6 South Africa Becomes A Liberal Democracy

Throughout the apartheid years the National Party government proclaimed to be a democratic government. However, it was quite clearly a very restricted form of democracy or partial democracy.¹⁶

With the elections of April 1994 South Africa instantly became the world's favourite new democracy. The world stood awed at how a country embroiled in racist violence could emerge as a single nation, queuing for hours and even days to be able to cast their first vote. However, the elections alone did not mean that democracy would be the order of the day. Many South Africans feared that with the honeymoon period over the enormous ANC would soon turn South Africa in a *de facto* one party state with a strong executive. However, Mandela's government embarked on the arduous journey of transforming South Africa into a true democracy. With the proclamation of the second elections in South Africa as free and fair, it has been broadly accepted that South Africa has truly become a liberal democracy — despite the fact that some hiccups might exist here and there.¹⁷

¹⁶ Potter *et al* define a partial democracy as 'a type of political regime in which the accountability of government to citizens is more or less qualified; military, traditional or other non-elected establishments within the state restrict the effect of elections and compromise the authority of elected government. Elections are held, but organised to ensure that only certain candidates can be elected; opposition political parties may exist and even make some impact but the electoral system is organised to ensure that normally they would neither win an election nor form a government. There are restrictions on the rights to freedom of expression and access to alternative information. Some independent associations and organisations critical of the state exist but are carefully monitored by the state.' pp5

¹⁷ I would like to once again use the definition supplied by Potter *et al* on a liberal democracy, which 'is a type of political regime in which binding rules and policy decisions are made not by the entire community but by representatives accountable to the community. This accountability is secured primarily through free, fair and competitive elections in which

The most pressing concern for both the Mandela and Mbeki presidency was the upliftment of the millions of poor people in South Africa. The Reconstruction and Development Programme (RDP) was initially used as the main tool to address this situation. The RDP had five main programmes of which one was the democratisation of the state and society. These programmes were to a large extent donor driven and focused on the role of the constitution, the Bill of Rights, the role of the national, provincial and local government, social movements and NGO's and a democratic information system in facilitating socio-economic development. In this way the seed to democratise the entire state apparatus was planted.

On state level the transformation of the bureaucracy was — and remains — high on the agenda, as well as the repositioning of South Africa on the international arena. This in turn does not only mean the forging of new ties with foreign countries, but also forging new and reinforcing old trade links that have suffered during the years of sanctions and isolation.

On the foreign policy front South Africa made it quite clear that it would not be dictated to and took some decisions that were frowned on by other countries, including western powers and some on the African continent. In the first instance, countries considered pariah by western nations were invited to witness Nelson Mandela's inauguration. Secondly, South Africa shun its long time ally in Taiwan in favour of Mainland China, which had great implications for investments and development aid. Thirdly, South Africa opted to become a member of the Southern African Development Community (SADC) and not to accept membership of COMESA, despite the fact that the ANC had had observer status in COMESA during the apartheid years and not in SADC.

virtually all adult men and women have the right to vote and stand for elective office. Citizens within a liberal democracy have the right: 'to express themselves without the danger of severe punishment on political matters broadly defined, including criticism of officials, the government, the regime, the socio-economic order, the prevailing ideology' and 'to form relatively independent associations or organisations including independent political parties and interest groups'. pp4

On the foreign trade policy side, the South African government was informed by its macro-economic policy GEAR. In addition, president Mbeki has commented frequently that South Africa has to become an active player on the global market and must become part of the globalisation process. GEAR advocates the liberalisation of tariffs to encourage domestic growth through export growth. Amongst its stated aims, the following liberalisation principles were included:

- A reduction in tariffs to contain input prices and facilitate industrial restructuring, compensating partially for the exchange rate depreciation; and
- An expansion of trade and investment flows in Southern Africa.

However, it is the GEAR policy that has brought the ANC-SACP-COSATU alliance to the brink of collapse. The decision to negotiate a free trade agreement with the country's largest trading partner, the European Union, therefore, also came under some fierce criticism from the alliance partners.

There is sufficient evidence to support both theories outlined above.

Hypothesis One: International pressure provides the impetus for the democratisation of foreign policy and foreign trade policy.

Given the long-standing relationship South Africa has had with the European Union, the EU exerted significant pressure on the new government to democratise. It provided a large amount of donor assistance for this process. On first glance the EU's massive involvement in South Africa seems surprising, but when one evaluates the history of European-South African engagement the reasons are clearer.

In the Multi-Annual Indicative Programme: A Framework for Co-operation between South Africa and the European Union of June 2000, it is pointed out that,

‘The framework for co-operation with development partners (donors) has been laid down by the South African authorities and there is only a limited scope for donors to influence policies at macro and sectoral level. The RDP White Paper, the GEAR Macro-Economic Strategy, the priority-setting through the Medium Term Expenditure Framework (MTEF) and the sector policies serve as guiding instruments for development in SA. As a result, the priority areas of support by donors by-and-large fall within the ambit of policy directions of the government.’¹⁸

The report further points out that whilst donor support seems to primarily focus on basic services delivery and good governance, democratisation programmes also receive substantial support from foreign donors. It is also clear that the European Union remains South Africa’s largest foreign donor and, as already pointed out, their main focus is on the democratisation of South Africa.

‘EU grants and the European Investment Bank (EIB) loan facilities together constitute the largest contribution to donor assistance to South Africa. Since the democratic election, the EU has committed over 700million Euros. The EIB’s two framework agreements with South Africa (covering the period 1995 to June 2000) have opened up new loan facilities amounting to 675million Euros. The EC development programme in the period 1997-1999 focused on the strategic areas of basic social services, private sector development and good governance and democratisation.’¹⁹

¹⁸ European Union Delegation to South Africa. 2000. Multi-Annual Indicative Programme: A Framework for Co-operation between South Africa and the European Community. June, 2000. Durban, Republic of South Africa. Annex 6: Foreign Assistance and EU Co-operation.

¹⁹ *Ibid.*

Although it is nowhere clearly stated that these funds were put towards democratising South Africa's foreign policy or foreign trade policy, these funds — especially the magnitude of the figures spent — created the climate in which policy formulation is taking place in South Africa. All elements and facets of public life are seen to be democratising and this clearly includes foreign trade policy. The first real major decision that needed to be taken on the foreign trade policy side was the agreement with the European Union. Having played a key role in inspiring democratic practices, it was only natural that the negotiations with the European Union would be approached in a democratic manner from South Africa.

In this way it can be argued that the foreign assistance of the European Union encouraged the democratisation of South Africa and by implication encouraged the democratisation of South Africa's policy formulation structures, which extended to the realms of foreign policy and foreign trade policy formulation. Although Pretoria was a willing partner it is no secret that if South Africa would have failed to democratise the state apparatus, the EU would have been less willing to spend as much on development aid in the country as it has done hitherto. In other words, there was a certain amount of pressure on South Africa from an international actor to democratise its foreign policy and foreign trade policy.

Hypothesis Two: The democratisation of domestic economic and foreign trade policy is crucial to the very survival of the nascent democracy.

The consultative and democratic form of policy formulation, it can be argued, was already well established in South Africa — through the activities of the ANC political party and the SACP-ANC-COSATU alliance — at the time of the democratic change. It should also not be forgotten that the entire process of change in South Africa was a negotiated change, which firmly planted the tradition of consultation.

CODESA, the Convention for a Democratic South Africa, was the arena in which South Africa's future was negotiated. CODESA represented 'the

broadest ever cross-section of the country's political leaders'²⁰, including nineteen parties: the ANC was joined by its allies, the SACP and the Transvaal and Natal Indian Congresses, the NP was joined by a government delegation, the IFP, the Democratic Party, five parties which controlled 'homeland' administrations and the four TBVC administrations and three parties drawn from the tricameral parliament.

The role then president Nelson Mandela played in acknowledging the interests of each and every group in South Africa further encouraged democratic forms of policy formulation.

The stability of South Africa at this important juncture from apartheid to democracy was dependent on every group in South Africa feeling safe and represented in the new government. Peace and stability was balancing on a knife's edge during the transition and without the prospect of every group being included in future policy formulation processes, South Africa could easily have fallen into a very nasty civil war. In other words, from the very beginning it was clear that the democratisation of every facet of South African life was key to the survival of the state.

It was, however, also clear that CODESA alone could not ensure a stable democratic government. As Friedman pointed out in 1993,

[..]If the 'transition' which 'began' on 2 February 1990 really began a long while before then, it will not end for a long while after the negotiation process has seemingly ended. If South Africa is unlikely to become another Lebanon or Yugoslavia, its journey to a consolidated democracy is at most halfway. The test will not be whether democracy and stability are achieved soon, but whether continued progress will be made towards them.²¹

²⁰ Friedman, S, 1993. *The Long Journey: South Africa's Quest for a Negotiated Settlement*. Raven Press. Johannesburg.

²¹ *Ibid*

The first test for consolidating the CODESA outcome was the formulation of the macro policy of the South African government, namely that of the RDP, which was drawn up by the ANC in conjunction with its alliance partners. In the process of drafting the document a large number of other key role players were consulted, stretching as far as NGO's and other research organisations. The government did well to consult as far as possible to draw up the RDP, and this process would be replicated on a continuous basis in other fields, importantly in that of economic policy formulation too.

In order to promote the democratisation process and to avoid conflict regarding the government's economic policy, to promote inclusive policy formulation and consensus-seeking, the National Economic Development and Labour Council (NEDLAC) was launched in February of 1995.²² According to the Nedlac reports of subsequent years,

'[its] origins lie in the struggle against apartheid, against unilateral decision-making and in calls from all sectors of society for decision to be taken in a more inclusive and transparent manner. It emerges out of a recognition of the importance of seeking consensus on major economic, social and development policies to ensure their success, and out of an awareness, as President Mandela remarked at its launch, that "our democratic gain will be shallow and persistently threatened if they do not find expression in food and shelter, in well-paying jobs and rising living standards."²³

²² Nedlac is essentially a tripartite body that incorporates business, government and labour. It also, however, gives a voice to a number of community organisations, although at a lower level. Government is represented through four government departments, namely Finance, Public Works, Labour and Trade and Industry. Business is represented by Business South Africa and NAFCOC and Labour by NACTU, FEDUSA and COSATU. These representative work in four chambers, namely the labour market chamber, the trade and industry chamber, the public finance and monetary policy chamber or the development chamber. The SA-EU TDCA negotiations were discussed in the trade and industry chamber.

²³ Nedlac. *Annual Report*. Nedlac, Johannesburg. (Numerous Years)

It is, therefore, quite clear that government was very aware of the potential threats if they chose to exclude business and labour from economic policy formulation. There is also a clear understanding that the upliftment of the previous disadvantaged poor should be very high on the national agenda. It is with this understanding that a consultative process was embarked on for the negotiations surrounding the free trade agreement with Europe.

By way of conclusion, Mills argues that South Africa's foreign policy focuses on issues of concern, which are of national importance.

This necessitates the definition of South Africa's foreign policy in terms primarily of domestic needs. A foreign policy in pursuit of such goals would be a policy aimed at economic growth and reducing unemployment, arguably (along with racial and political conciliation) they key contemporary challenge facing South Africa where there are four million unemployed and nearly 600,000 jobs required annually.²⁴

This supports the second Hypothesis that the democratisation of foreign trade policy formulation is important to the internal consolidation of democracy.

²⁴ Mills, G. *SA Foreign Policy after Mandela*. In SAIIA. 1999/2000. South African Yearbook of International Affairs. Johannesburg.pp1-13

CHAPTER TWO: THE CONTEXT OF THE SA-EU NEGOTIATIONS

Arguably the biggest foreign policy challenge that faced South Africa shortly after its transition to democracy was the formalisation of its relationship with its largest trading partner and political ally, the European Union (EU). It was never foreseen that the process would be so complicated, so wrought by controversy and it was never expected that the negotiations would take more than five years to complete.

However, the negotiations have now for the largest part been concluded and the time has come to evaluate the process. This section will look exclusively at the negotiating process, the developments that shaped the talks and the final agreement. It will highlight the issues surrounding the conclusion of a deal. Only then will I evaluate how democratic a process the negotiations in South Africa were.

In 1994 South Africa was undergoing major change in its political and social make-up. These changes had to translate into a new constitution, new laws, new governing structures and leaders. The future was unclear, the present turbulent and the past cause for heartache. By contrast, the EU is seen as the pillar of stability and predictability. However, it should be remembered that it took them over 40 years to reach this point. The difference in the contexts within which the agreement was negotiated would have a major impact on the outcome of the agreement.

2.1 The European Union is Crafted...

'After the devastation of the Second World War with 40 million deaths and which brought Europe to its knees economically, surviving democratic leaders, parliamentarians, academics and thinkers came together to seek the salvation of Europe in unifying France and Germany in a body which would encourage first economic and then political interdependence. The key ideas underlying the building of modern Europe were outlined in the Schuman Declaration of 1950:

“Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements, which will first create *de facto* solidarity. The coming together of the nations of Europe requires the elimination of the age-old opposition of France and Germany.

The pooling of coal and steel production should immediately provide for the setting up of common foundations for economic development as a first step in the federation of Europe, and will change the destinies of those regions which have long been devoted to the manufacture of munitions of war, of which they have been the most constant victims.”²⁵

In this spirit the European Coal and Steel Community (ECSC) was established in 1957 with six initial members: France, Germany, Italy, and the Benelux countries. Since then the Community has expanded and deepened and is moving ever closer towards a federalist state (although, arguably this is not the ultimate goal of all the members of the current EU structure.) It has moved from a purely coal and steel community through communal trade structures and recently, since signing the Maastricht Treaty, culminating in a common foreign and security policy.

With signature of the latter in 1993, the European Community became the European Union and abandoned its long-standing system of European Political Co-operation (EPC) by adopting the concept of a Common Foreign and Security Policy (CFSP). The first five ‘joint actions’ of the Union’s CFSP were identified as the promotion of peace and stability in Europe, the Middle East and the former Yugoslavia; support for the Russian parliamentary election; and notably also support for the democratisation process in South Africa.

²⁵ Luff, P. 1996. *A Brilliant Conspiracy?* The Greycoat Press.

This historic context in which South Africa engaged with the EU, already had a considerable impact on the direction the negotiations would take. Willem Smalberger – one of the chief South African negotiators commented in the following way,

The EU entered the negotiations within the context of a policy framework developed over almost 40 years. Trade policy is their greatest competency and, in Margaret Thatcher's words, is a form of pooled sovereignty. They have the advantage of repeated experience. Euro jargon refers to second, third and fourth generation agreements with clauses that have been thought through during many European winters when there was enough time to ponder and to refine. They have horizontal perspective and an institutional safeguard system that is developed and sophisticated. This forced us to be twice as careful.²⁶

2.1.1 The EEC's Relationship with the Apartheid Government

Previously sanctions and the country's virtual isolation had hampered relations between South Africa and the then European Economic Community (EEC).²⁷ In the years prior to South Africa's transition to democracy, the EEC played a leading role in trying to reverse apartheid. It had a comprehensive strategy towards ending the apartheid policy in South Africa: including not only sanctions, but sporting isolation and the suspension of full diplomatic ties with the pariah state, as well as supporting the Front-line States (South Africa's neighbouring countries). The EEC attempted to reduce Southern Africa's dependence on South Africa and actively encouraged and subsidised

²⁶ Smalberger, W. 2000. *Lessons learnt by South Africa during the Negotiations*. In Bertelsmann-Scott, T; Mills, G.; Sidiropoulos, E. *The SA-EU Agreement: South Africa, Southern Africa and the European Union*. SALLA. Johannesburg. pp47

²⁷ Strictly speaking, the European Economic Community now embraces all three communities, that is, the EEC, the ECSC, and the EAEC. Since the entry into force of the Maastricht Treaty in November 1993, the European Community has become a component part of the European Union, and legally there remains a difference between the two. However, for general purposes 'the European Union' or 'the Union' is used to refer to what used to be known as the European Community. (Bainbridge, T. & Teasdale, A. 1997. *The Penguin Guide to the European Union* Penguin Books.)

the former SADCC (Southern African Development Co-ordination Conference).²⁸ To a lesser extent, the Lomé Convention - to which all the SADCC members adhered - was also used to strengthen South Africa's neighbours against the country's destabilisation policies. This attempt was, however, partially hampered by the structure of the EPC, which made collective policy formulation cumbersome.

The new CFSP is an attempt to address these and other weaknesses of the EPC, including the "potentially immobilising effect of consensus policy formulation, the reliance on Community instruments for an intergovernmental procedure, and the reactive nature of past policy".²⁹ To a certain extent apartheid South Africa demonstrated through the years the inadequacies and poor implementation of the past EPC policies; the new democratic government of South Africa provided an opportunity to test the new CFSP of the European Union. This partially explains why, without being classed as an economic or strategic imperative, South Africa had been elevated to one of the first five 'joint actions' of the EU. More interestingly, this also signalled the EU's keen desire, as a regional organisation, to become a recognised international actor. Or, as Martin Holland explains: "South Africa was both topical and of international importance: politically, the Union could not ignore becoming involved. 'Joint action' was appropriate, justified and demanded."³⁰

In addition, although the South African situation was extremely volatile, the chances of a 'joint action' success in South Africa were most probable at the time.³¹ South Africa had embarked on an irreversible road towards democratisation. Although violence was condemned, it was also not

²⁸ SADCC members: Angola, Botswana, Lesotho, Malawi, Mozambique, Swaziland, Tanzania, Zambia and Zimbabwe. Today SADC includes the previous SADCC countries plus Namibia, South Africa, Mauritius, the Seychelles and the Democratic Republic of the Congo.

²⁹ Holland, M. 1994. *Plus ça change...? The European Joint Action and South Africa*. Brussels: Centre for European Policy Studies No. 57. (page 4)

³⁰ *Ibid*

³¹ According to the Presidency conclusions of October 1993 joint action towards South Africa would include the economic and social foundations of this transition.

completely unexpected in a country that was experiencing such a dynamic change. It was felt that the incidence of violence was minimal within the broader concept of complete political reversal in South Africa.³²

2.1.2 *The European Union's Relationship of the 'New' South Africa*

South Africa and the EU: Knock Knock! The two parties approach each other about a long-term trade and co-operation agreement. *The Economist*, 24 December 1994.

The Union's 'joint action' towards South Africa was initially divided into three phases, (as outlined in a Commission Paper of 29 September 1993):

The Paper proposed a distinction between actions to be taken

- once legislation for a Transitional Executive Council (TEC) was in place,
- once a TEC was established; and
- those actions to be adopted after the elections of 27 April 1994.³³

During these phases all sanctions were finally removed; aid was increased dramatically; support for the electoral process was given and support to remove the remaining restrictions on South Africa in the World Bank and the IMF programmes was pledged.

In terms of the future trade relations between the European Union and South Africa the British government made the first tentative steps towards formulating future policy. This was partially due to its historic ties with the South African republic, but also the British government held the presidency of the EU during 1993. It was in this year that the British government initiated a study to determine the best possible future trade deal between the two parties.³⁴ The suggestion made by the British government was the

³²This extract was previously published in Berteismann, T. 1998. *South Africa and the EU: Reaching Agreement*. SAIIA Reports. Johannesburg.

³³Ibid. Plus.._

³⁴ Goodison, P. 1998. *Marginalisation of Integration? Implications for South Africa's Custom Union Partners of the South Africa-European Union Trade Deal*. Institute for Global Dialogue. Johannesburg.

establishment of a trade and co-operation agreement, which should be based on a free trade agreement and a window on the Lomé Convention in order to take Southern African regional concerns into consideration.

During the second phase of the 'joint action', which started in December 1994, the Commission was empowered to open discussions with the TEC on the shape of a new bilateral trade and economic framework. However, the policy made it clear that South Africa should not expect any special privileges, but must realise that whatever agreement was concluded would have to be compatible with obligations under GATT and other existing third country and regional agreements.³⁵

This was later translated into an offer which envisaged South Africa as a partial member of the Lomé Convention and a Free Trade Agreement (FTA) to cover all other aspects of the relationship which would not be addressed by Lomé.

This proposal was brought to the TEC, but due to the fact that there was no official negotiating forum for the future foreign policy of the democratic South Africa, it was decided that such a decision would have to stand over until the new government had opportunity to consider the offer and formulate a response.³⁶

Goodison argues that 'whilst the British government was informally canvassing opinion on the possibility of a FTA agreement with South Africa, the European Commission in a January 1994 'Non-Paper' was outlining seven possible options for future EU-SA trade relations, namely:

³⁵ Ibid. Plus.._

³⁶ It is interesting to note here that the new South African government initially opted not to accept the 'British' offer and opted to pursue a closer association with the Lomé Convention. Had the TEC accepted the EU offer in 1993, South Africa might have been spared years of negotiation. It is further of note that the final agreement closely resembled the original offer made by the British. However, the value of the experience of negotiating the deal with the EU should not be underestimated.

- most-favoured nation status (MFN)³⁷;
- generalised system of preferences (GSP)³⁸;
- a non-preferential agreement;
- a preferential agreement;
- FTA agreement³⁹;
- Associate Lomé Convention membership⁴⁰; or
- Full Lomé Convention membership.⁴¹

³⁷ The Most Favoured Nation principle was developed within the General Agreement on Tariffs and Trade (GATT) after the second World War. With the establishment of the WTO, MFN has become a WTO principle. According to this principle, any member-state of the WTO is assured that its goods will enter the markets of all WTO members at rates of duty no less favourable than those applied to similar products of any other country. The MFN principle is designed to accelerate the pace of tariff reductions and trade growth throughout the world as well as to avoid the creation of new preferential trade blocs protected by discriminatory tariff barriers.

³⁸ The European Union offers a General System of Preferences to a number of developing countries. The GSP is a system developed within UNCTAD to encourage the expansion of manufactured and semi-manufactured exports from developing countries by making such goods more competitive in developed country markets through tariff preferences. Each industrialised nation determines its own system of preferences, specifying the goods that would benefit from preferential treatment.

³⁹ A Free Trade Area comes into existence when a group of two or more countries eliminate tariff and most non-tariff barriers among themselves, while each participating country applies its own independent schedule of tariffs to imports from countries that are not members. The predecessor of the EU - the ECSC - constituted a FTA, the EU fifteen members collectively now have FTAs with some other countries, including Israel, Tunisia, Morocco most recent also with Egypt.

⁴⁰ The Lomé Convention governs relations between 70 African, Caribbean and Pacific countries, all former colonies of the members of the European Union. Most of these countries are in Africa. Lomé evolved out of the earlier Yaounde Conventions. Founded in February 1975, the Lomé Convention has grown from an initial 46 member states into a 70 state-strong instrument of North-South co-operation. Apart from receiving development aid from the EU, the member states also enjoy preferential access to the European Union markets. The Convention makes special provisions for the ACP countries in two areas, namely trade and financial co-operation. Under trade it offers unrestricted, non-reciprocal, and duty-free access for industrial products (including coal, steel, textiles, clothing); duty reductions; and quantitative access for agricultural products. Under financial co-operation Lomé provides for massive aid packages: currently Lomé offers more aid than all other states put together. Aid is channelled through the European Development Fund (EDF) and the European Investment Bank (EIB). Mayer, M. & Kritzinger-van Niekerk, L. 1997. Towards a South African Position on the Lomé Convention. Paper presented at DBSA

⁴¹ Goodison, P. 1998. *Marginalisation of Integration? Implications for South Africa's Custom Union Partners of the South Africa-European Union Trade Deal*. Institute for Global Dialogue. Johannesburg.

From these discussion it became clear that these options were not mutually exclusive and that a combination of some of these options were under consideration. These discussions further created the impression that the EU was willing to grant South Africa an adjustment period during which it would not be obliged to open up its market to the European Union. South Africa interpreted this to translate into access to the Lomé Convention for a limited period — whereas by stark contrast — the EU intended this to mean an extended implementation period.

Several days before the April 1994 elections, the Union announced in the Luxembourg Declaration,⁴² that its General System of Preferences (GSP) were to be granted to South Africa. (The Luxembourg Declaration has often been referred to as the basis of the negotiations between South Africa and the EU. It refers to the political, economic and possible trade aspects of a future relationship.)

However, the extension of the GSP was not the only measure adopted to help South Africa as an interim measure. A number of development and technical support measures were also made available to Pretoria. This was then already indicative that any future agreement would not only look at trade liberalisation, but would include other measures to assist South Africa's fragile economy.

2.2 South Africa's Position

In stark contrast to the organised and deliberated position of the European Union, South Africa still found itself in an unstable and unclear situation.

Not many people appreciate the difficulties encountered in trade negotiations when time is of the essence and one's own national policy framework is not finalised. The new South Africa was forced to think anew about almost every aspect of society and the economy. For

⁴² (18/19 April 1994, EU Press Release: 6294/94)

example, the South African representatives could not enter a negotiating session on controversial issues like competition policy, public procurement, maritime transport or fisheries on the basis of existing policy frameworks.⁴³

However, when the new South African government took over the reins of the country, attention needed to be paid to the future trade relationship with the EU as a matter of urgency. In a move that signalled South Africa's preference for the full membership of the Lomé Convention, Trevor Manuel – who had just been appointed Minister of Trade and Industry – addressed the EU-ACP Council of Ministers and declared South Africa's desire to become a Lomé partner. It is important to note the words 'full Lomé membership' were never expressed which is indicative of the fact that South Africa was aware of the problems it could face in applying for full membership of the Convention.

In a subsequent move Pretoria commissioned a study to establish whether there would be any real concerns on behalf of the ACP countries if it were to join the Convention as a full partner.

[Pretoria] did, however, recognise ACP concerns over possible trade diversions and contracted experts to analyse the possible trade diversion effects of South African accession, with a view to establishing special arrangements in areas where current ACP exports could be adversely affected. This research revealed only limited dangers of trade diversion away from ACP countries as a result of South African accession to the trade provisions of the Lomé Convention.⁴⁴

⁴³ Smalberger, W. 2000. *Lessons learnt by South Africa during the Negotiations*. In Bertelsmann-Scott, T; Mills, G.; Sidiropoulos, E. *The SA-EU Agreement: South Africa, Southern Africa and the European Union*. SALLA. Johannesburg. pp48

⁴⁴ Goodison, P 1998. *Marginalisation of Integration? Implications for South Africa's Custom Union Partners of the South Africa-European Union Trade Deal*. Institute for Global Dialogue. Johannesburg.

South Africa received support in its endeavour for Lomé membership from the European parliament. Quoting once again from the work of Paul Goodison⁴⁵,

The External Trade Committee of the European parliament, in its report on 'South Africa's Future Relations With the European Union' argued for the:

- Negotiation of a transitional arrangement granting on a non-reciprocal basis market access equal or similar to that available under Lomé, with full account being taken of genuine EU-ACP concerns; and
- With the option of the commencement at the end of the five year transitional period of the introduction of an asymmetrical FTA agreement, which takes account of regional developments.⁴⁶

Despite the fact that the ACP countries and the European parliament were mostly in favour of South Africa's accession to the Convention, it was quite clear that full membership of Lomé was not really an option for South Africa. The European Commission has the right to negotiate trade agreements with third countries and could act contrary to parliament's suggestions.

The reasons offered were of an economic nature, arguing that South Africa's economic situation is unique. All the participants in the Lomé Convention are classified either as 'developing' or as 'least developed' nations. In contrast, South Africa is classified as an 'economy in transition', making it neither developed nor developing. Whereas South Africa is widely perceived to have a dynamic economy, which is also the powerhouse of the Southern African region, it exhibits a high degree of duality.

The South African economy displays: a relatively high GDP per capita, but continues to exhibit large inequalities of income; a diversified

⁴⁵ *Ibid*

⁴⁶ As quoted in Goodison. *Ibid*. Quoted in *South Africa's future Economic and Commercial Relations with the European Union*, Draft Report European Parliament, Committee on External Relations, may 1995, PE 212 338/B p15

production base, but one that is still highly dependent on mining (50% of export earnings); an infrastructure base better than any other country in sub-Saharan Africa, but an industrial sector which is uncompetitive in many areas after years of protection; and an acute shortage of skilled labour alongside burgeoning unemployment.⁴⁷

Although the EU recognised the 'developing' nature of South Africa's economy, it barely considered full participation in Lomé as an option for South Africa, citing the country's economic sophistication in comparison to the other ACP countries. It felt that, whereas the developing nature of South Africa should be addressed within a framework of aid, its developed nature should be accommodated in a reciprocal trade agreement.

The European Commission offered additional reasons for rejecting South Africa's full Lomé participation, including:

- the effect it might have on the other ACP countries;
- the interests of other members of the WTO;
- protection for vulnerable EU sectors; and
- the promotion of South Africa's integration in the global economy.⁴⁸

In 1995, South Africa's exports to the EU were equivalent to more than a third of total ACP exports and it was felt that South Africa would over-shadow other ACP economies. In addition, other countries, currently on the same level of development as South Africa, could (and would) rightly then demand access to the Lomé Convention as well.

However, the main reasons seemed to be fears of South African competition on the EU market. For the same reasons that 39% of South Africa's agricultural products were initially excluded from the negotiations, the EU

⁴⁷ European Commission. 1995. Commission launches a New Framework for EU-SA Relations. in Port Parole. Press Release.

⁴⁸ European Commission Directorate-General for Development. 1997. The European Union and South Africa: Building a Framework for Long-Term Co-operation.

feared South African Lomé participation: some South African products may have a comparative advantage and could damage European profits if allowed completely tariff-free onto the market.

By contrast, South Africa argued that only a small percentage of South Africa's current and potential exports to the EU could provide competition to the ACP. South Africa has only a very small agricultural export mix and the EU should therefore have nothing to fear.

In a move which seemed at the time to be an effort to sway the European Union and to strengthen its developing claim, South Africa strengthened its ties with the Southern African Development Community (SADC), the members of which all form part of Lomé. Pretoria identified the region as its priority, aiming at co-ordinating trade policy with its neighbours. South Africa also signed a Free Trade Protocol with SADC, which aims at removing tariff barriers in the region within eight years of implementation. Equivalent levels of access to the European market for both South Africa and other SADC states would have facilitated this process⁴⁹. However, the European Union remained adamant that only political participation in the Convention would be considered for South Africa.⁵⁰

Little option was left to South Africa but to enter into negotiations with the European Union regarding the establishment of an FTA. South Africa tried to play down the importance of a trade deal with the European Union, stating time and again that it considered other nations and trading blocs to be of

⁴⁹ Much of the negotiations demonstrate that the negotiating position of the EU is strengthened by its numbers: the EU repeatedly stated that they cannot deviate from their negotiating mandate, as the document had been drawn up by the 15 member countries; any deviation would have had to be re-discussed and re-negotiated with all the members. Although South Africa could not achieve full SADC integration within a couple of months, they had hoped that the Trade Protocol would have strengthened their position significantly in a similar way. However, South Africa found unwilling partners in SADC, that remain suspicious to date about integration and liberalisation.

⁵⁰ This extract was previously published in Bertelsmann, T. 1998. *South Africa and the EU: Reaching Agreement*. SAILA Reports. Johannesburg.

equal importance to democratic South Africa. As Rob Davies commented on the conclusion of an agreement between the two parties,

The EU was, however, not seen either as the only, or as the most important partner with whom to develop new trade relations. The EU was in 1994, and still is, South Africa's largest trading partner if exports and imports are added together, but neighbouring SADC countries, were, and still are, the country's largest export market. Promoting equitable and mutually beneficial co-operation and integration in the southern African region continues to be seen as the top priority. South Africa's democratic government is also aware of the importance of building new trade and co-operation relations with other countries and regions, particularly those with which apartheid limited or prevented such relations.⁵¹

However, in reality South Africa had to reach some sort of an agreement with the EU to better the meagre benefits it received from the GSP. This was important in order to support government's GEAR strategy that focuses on export led growth.

Since the EU did not view South Africa as a typical developing country, it was not willing to grant South Africa non-reciprocal access to its markets in terms of the Lomé Convention. South Africa therefore was left with the only alternative, namely to accept the EU invitation to negotiate a comprehensive and long-term relationship. As a result, then Deputy President Mbeki requested the EU to open negotiations 'with a view to establishing the closest possible relationship with the Lomé Convention.'⁵²

⁵¹ Davies, R. 2000. *Forging a New Relationship with the EU* in Bertelsmann-Scott, T; Mills, G & Sidiropoulos, E. *The EU-SA Agreement: South Africa, Southern Africa and the European Union*. SAIIA, Johannesburg. pp5-6

⁵² Links, E. 2000. *Negotiating a Long-Term Relationship*. in Bertelsmann-Scott, T; Mills, G & Sidiropoulos, E. *The EU-SA Agreement: South Africa, Southern Africa and the European Union*. SAIIA, Johannesburg. pp31-32

CHAPTER THREE: THE AGREEMENT

3.1 Getting into the Swing of Things...

In March 1995 the European draft mandate for negotiation was approved by the Commission, which will be discussed below. This draft was endorsed by the EU Council a couple of months later, but it was still unclear what the details of Europe's vision were.

And yet, Europe sought an agreement in principle from South Africa that the agreement concluded would be an FTA! Clearly South Africa had substantial difficulty in agreeing to an unclear mandate, but eventually — given the awkward position it found itself in — gave in to the European demand with the opt-out that 'nothing was agreed until everything was agreed.'

EU row looms over SA free trade: France and Germany are accused of undermining the EU's promises to support the development of a multiracial democracy in South Africa by refusing to accede to negotiations on an FTA. *The Citizen*, 26 February 1996.

It would take the European Union another year to add substance to their mandate, as this process included broad consultation amongst member states that were not all in favour of reaching a trade deal with South Africa⁵³. However, by March 1996 the European mandate was finalised. A staggering 24 gruelling rounds of negotiation and countless informal meetings were to follow. However, from the start a number of guiding principles were implicitly agreed to.

From the outset, the negotiators agreed that their deliberations should be guided by, among others, three principles — namely that the agreement be WTO compatible; that it be to the benefit of the whole of

⁵³ A number of EU members, led by France, insisted on a detailed impact study before they would consider passing the draft mandate. *Business Day* 29 January 1996, *Concern over SA trade deal setback*.

the southern African region; and that it be developmental in nature, meaning asymmetrical.⁵⁴

The EU added another two in their negotiating directives, including respect for EU common policies and coherence with other preferential agreements. This meant that the EU would not be forced to make any concession to South Africa regarding the Union's agricultural or fishing policies and that it would not treat South Africa any more beneficially than its ACP or Mediterranean partners. This left little room for manoeuvre for the South Africans. Apart from these guiding principles, the very nature of the European Union, its bureaucracy, the way decision is reached within the various bodies and the vested interests of the various member states were difficult to negotiate around.

Throughout the negotiations the EU has claimed the nature of its negotiating mandate to be unchangeable. Any major deviations from their mandate would have to be referred back to the 15 member states, a process that could prove very time-consuming. For this reason the final agreement resembled the European mandate, especially in format.

The structure of the European mandate — and the final agreement — on a long-term trade and co-operation agreement can most easily be understood if it is seen to be resting on three pillars. They are:

1. several agreements on co-operation in a number of fields: science and technology, wine and spirits, and fisheries;
2. South Africa's partial accession to the Lomé Convention; and
3. a Trade and Co-operation agreement to cover all aspects of the relationship not addressed in Lomé.

A more detailed analysis of this proposal follows.

⁵⁴ Links, E. 2000. *Negotiating a Long-Term Relationship*. In Bertelsmann-Scott, T; Mills, G & Sideropoulos, E. 2000. *The SA-EU Agreement: South Africa, Southern Africa and the European Union*. SAIIA. Johannesburg. pp32

3.2 The Co-operation Agreements

Apart from negotiating the liberalisation of tariffs for all products traded between the two parties, the EU suggested a number of co-operation agreements in the fields of science and technology, wines and spirits and the fishing industry. These agreements have nothing to do with tariff liberalisation, but rather with technology transfer, technical standards and in the case of the fishing agreement access to fishing waters. These agreements would prove the thorn in the side of the negotiations, except for the Co-operation agreement on Science and Technology that was concluded and implemented swiftly.

3.2.1 *The Agreement on Science and Technology Co-operation*

On 5 December 1996, the first mutual co-operation agreement between the two parties was signed. The agreement provides for scientific and technological co-operation between South Africa, the European Community and its member states. A joint Science and Technology Co-operation Committee will be established in order to administer the agreement. In South Africa, the Department of Arts, Science and Technology, in conjunction with the Department of Finance, is responsible for the implementation of the agreement.

Within the Fourth Framework Programme adopted by the European Parliament, South Africa has been classified as a 'developing country', which will enable it to benefit greatly from the modalities of the programme, including:

- visits and exchanges of research workers, engineers and technicians;
- participation by experts in seminars, symposia and workshops;
- scientific networks and training researchers; and
- exchange of information on practices and programmes.

As a 'developing country', the programme encourages South Africa to initially target three areas, namely sustainable management of renewable natural resources, sustainable improvement of agricultural and agro-industrial production, and health.⁵⁵

3.2.2 *The Wine and Spirits Agreement*

Port, sherry debate most serious threat to trade pact: The EU's demand that SA should phase out the use of terms 'port' and 'sherry' in the internal market has emerged as the most serious threat to concluding the EU-SA FTA before year-end. *Business Day*, 4 December 1998.

Towards the end of the negotiations the separate co-operation agreement in wine and spirits proved to be one of the major stumbling blocs in reaching a deal. A number of constituencies in Europe wanted South Africa to phase out the usage of the naming of 'port' and 'sherry' of South Africa's fortified wines. They argued that these terms refer to geographical locations in Portugal and Spain and should, therefore, be used exclusively by these two countries. South African producers have, however, used the names for generations.

It took a number of meetings between the two chief negotiators to come to a compromise on the highly publicised issue. A political compromise was eventually reached in January at Davos. Minister Erwin agreed to phase out the use of names of port and sherry in exports to third countries. South Africa will, however, be allowed to continue to use these terms on its domestic market throughout the transitional period of 12 years. After this period the use of these names would be reviewed. In return for these concessions, Commissioner Pinheiro agreed to grant the wine sector duty-free quotas for exports to the EU market and financial assistance for the restructuring of the industry.

The EU ministers, however, could still not accept the agreement and referred it back for discussion. Although Minister Erwin initially insisted that the Davos

⁵⁵ Department of Arts, Culture, Science and Technology. Press release.

agreement was South Africa's final offer, he eventually accepted a slightly watered down version. The adjustment period was lowered to 10 years and greater commitment to phasing out these terms was given.⁵⁶

3.2.3 *The Fisheries Agreement*

In addition to the wine and spirit agreement causing extreme difficulties in concluding a deal, the fishing agreement proved to be another major obstacle. The Spanish government is seeking access to South Africa's fishing waters. It, however, seeks the access without any commitments. In other words, it would like to fish and then take the fish right back to Spain to be processed. South Africa, by contrast, is only willing to grant the access if it will be to the mutual benefit of both parties. Under these terms South Africa would grant Spain access to fish in its waters, but would insist on Spain docking the fish on South African soil for processing before being exported to Spain. This would lead to employment opportunities for South Africans and the transfer of technology. In addition, South Africa would have greater control over how much Spain would fish. Currently South Africa does not have the necessary patrolling vessels or legislation in place in order to prevent over-fishing.

In a political effort to conclude the talks, agreement was reached in December 1998 that both parties would endeavour to negotiate and conclude a co-operation agreement in the fishing sector no later than the end of the year 2000. Until such time the EU will hold back on tariff concessions for South African fish exports. South Africa in turn will abolish its tariffs on fisheries products only in parallel with the EU.⁵⁷

⁵⁶ This extract was previously published in Bertelsmann-Scott, T. *The European Union, South Africa and the Free Trade Agreement*. In SAIIA. 1999/2000 The South Africa Yearbook of International Affairs. Johannesburg.

⁵⁷ *Ibid.*

3.3 Accession to the Lomé Convention

Through the European mandate South Africa's bid for full Lomé membership was finally put to rest.

However, partially due to South Africa's persistent request for full Lomé participation and partially due to the fact that South Africa was calling on transitional benefits until the FTA negotiations were concluded, the Lomé negotiations were de-linked from the overall trade and co-operation talks. (It

was envisaged that the three parts of the agreement would be concluded

simultaneously, however, this proved impossible given the different timeframes and different levels of sensitivity of the issues.) This would seem contrary to South Africa's initial stance of 'nothing is agreed until everything is agreed', however, this proved to be restricted to the FTA negotiations.

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South Africa's accession to the Lomé Convention remains effectively a political accession rather than an economic one. The main economic benefit will be the ability to tender for European Development Fund (EDF) projects in all ACP countries, which could have important economic benefits for South Africa and the region as a whole, enabling these countries to tender for contracts worth R45 billion. In addition, South Africa will benefit from the cumulation of origin clause. South Africa will further participate in Lomé projects on technical, cultural and social co-operation, regional co-operation, industrial development, and investment promotion and protection. It will not, however, be eligible for non-reciprocal trade benefits and will receive development aid separately from the Lomé Convention. (It is interesting to note that South Africa currently receives more development aid than any of the Lomé countries through the European Program for Reconstruction and Development. South Africa will be receiving R1236,75 million in the year 1998/1999.) The special protocols on bananas, rum, beef and veal, sugar, and coal and steel products will also not be applicable to South Africa.

The de-linking fell outside of the European mandate, which created the impression that the mandate was not cast in stone. It remained, however, a minor concession by Europe. After de-linking, South Africa's accession was finalised swiftly, despite protest from Spain, which feared South Africa would abandon the FTA negotiations after having achieved its main goal, Lomé. South Africa's accession to the Lomé Convention was ratified at a joint ACP-EU ministerial conference on 24 April 1997.

Spanish spanner in SA works: Spain warns that it will bloc SA's accession to the Lomé Convention if Spanish fishing boats are not granted access to South African waters. *Business Report*, 25 February 1997.

The form which South Africa's accession to Lomé eventually took, was exactly as originally proposed within the European mandate, except for the de-linking from the overall talks. The finalisation of the Lomé issue could therefore even be seen as a negotiating defeat for South Africa: it gained nothing more than it had been offered and it no longer had a bargaining chip on the table to give up during the trade negotiations. (However, in hindsight, it seemed the right thing to do as South Africa now as had a number of years of access to the Convention whilst the FTA talks were dragging on.)

A hiccup occurred with South Africa's final participation in Lomé, when the South African parliament indicated that it would refuse to ratify South Africa's Lomé accession unless Europe reviews the basis on which South Africa may participate in the 'cumulation of origin' clause.

According to the agreement on South Africa's partial accession to the convention South Africa could cumulate origin on an *ad hoc* basis. As members of the Lomé Convention, ACP countries "can co-produce manufactured goods with specified countries and still benefit from preferential access to the EU market",⁵⁸ usually paying no import tariffs. With its partial entry into Lomé, South Africa should have become one of these specified countries. However, allowing South Africa to only participate in the cumulation of origin on an *ad hoc* basis, would mean that each Lomé product with a South African input would first have to be screened by the EU, allowing Brussels to protect its own sensitive products. This would discourage any cumulation efforts within the SADC region which, in turn, impact negatively on regional integration and co-operation. The situation was settled when parliament received guarantee that the exact details of South Africa's cumulation rights would be finalised in the FTA negotiations.

⁵⁸ Linda Loxton. 3 September 1997. SA Upset by Lomé Clause. in *Business Report*, the Star.

3.4 South Africa: an Example for a Future Lomé Dispensation?

At the time it was felt that this partial, political accession of South Africa was an important indication on the future of the Lomé Convention. Considering that the EU saw the need to change Lomé due to its WTO incompatibility regarding the exclusivity of the Convention's members and the non-reciprocal nature of the relationship, South Africa's partial membership was seen as an example of how to counter these problems. Although this was always refuted by the EU, the SA-EU TDCA could not be but indicative of the things to come for the ACP.

In its Green Paper on the future of Lomé, the EU indicated that it would like to create regional free trade areas with the ACP countries, instead of continuing with current tariff preferences and aid programmes. The fact that the EU wanted to create an FTA with South Africa and at the same time continue with development aid illuminated the new thinking within the Commission.

These developments were met with a certain amount of criticism, especially given the time it has taken to negotiate the SA-EU TDCA. If South Africa, with a well established and skilled civil service, had such difficulty in concluding a deal with the EU, the ACP-EU negotiations would either take years or the ACP would be bullied into an agreement they simply did not have the human resources to oppose.

South Africa's example, however, made it clear that certain amount of difficulties existed in the EU's proposal for the future of the Lomé Convention. The EU has proposed that the old agreement of non-reciprocal, beneficial access to the EU market for ACP countries make way for an arrangement resembling free trade agreements, which have been called Regional Economic Partnership Agreements (REPA). Clearly some of the ACP countries have difficulties in accepting the proposal, as they are classified as

least developed countries and would struggle to adjust their economies to compete on an equal basis with European products. However, alternative suggestions are hard to come by, as the preferences that the Convention currently grants are considered violations of the WTO rules.

Here there is a stark contrast between the SA-EU TDCA and the REPA's suggested to the ACP: South Africa is a single country that negotiated a free trade agreement with a regional organisation. In the REPA's regions in the ACP (as yet undetermined) would have negotiate with another region, which would clearly be very time consuming.

The EU suggests that these would, however, not be classic free trade agreements, as they would include economic co-operation in a number of fields. 'Optimists stress that these REPAs would bring prices down in the ACP — benefiting consumers and importers — foster trade and other economic reforms, and make the economic environment more conducive to domestic and foreign investment. REPA sceptics fear that they would lead to the closure of many companies in ACP countries. They also suggest that unemployment would rise and revenues from import duties would fall.'⁵⁹

The ACP's greatest concern is that their members are not clearly organised into regional organisations. In the Pacific Islands there is no regional body and on the African continent there are so many overlapping organisations that it would be difficult to identify a single permanent structure.

Even where a number of ACP countries might have regional integration schemes they might not be aiming at a customs union, which would be a prerequisite for a REPA. In addition, most regions consist of both developing and least developed countries. At this point it is not foreseen that the least developed will be included in the REPAs, which makes the feasibility of these agreements questionable.

⁵⁹ ECDPM. 1999. The EC's Impact Studies on Regional Economic Partnership Agreements. (Lomé Negotiating Brief No. 5). Maastricht: ECDPM.

The Southern African Development Community (SADC) is a case in point. South Africa is classified by the EU as an 'economy in transition', whereas its immediate neighbours in the Southern African Customs Union (SACU) are classified as 'developing' and as 'least developed' countries. South Africa — and therefore potentially SACU — has reached a separate agreement with the EU. If the least developed countries of SADC were excluded from the REPA, it would leave only Zimbabwe, Zambia, Mauritius and the Seychelles to reach agreement with Europe.

As pointed out above, the Lomé Convention does not cover only the trade aspect of the relationship between the EU and the ACP. Doubts remain over the future of the aid that the EU has previously given the ACP. Since the end of colonialism European states have been contributing to the development of previous colonies and other developing countries. However, over the years only a small number of countries have been able to employ the large sums of money in favour of development. Too many corrupt officials, unfeasible projects and other factors have resulted in the perception that aid is used only to keep strongmen in place and palace. The restructuring of aid packages is therefore also proposed. In this context it is interesting to note that South African development aid from the EU is also being kept separate from the general free trade agreement, which will leave considerable room for the EU to change the nature and extent of aid given to South Africa.

The EU has also suggested good governance clauses for the future Lomé agreements. During the South African negotiations the European Union wanted to include a clause in the agreement that would allow for the discontinuation of the agreement in the event of South Africa violating the respect for democratic principles, fundamental human rights, the rule of law and good governance. The European Union traditionally includes the first three conditions in any agreement it concludes. This has led to the collapse of a number of trade talks that the EU has been involved in. Most recently, the EU failed to reach agreement with Australia, as these clauses were found

unacceptable. The inclusion of a 'good governance' clause is however a new stipulation, which is clearly aimed at the future Lomé negotiations.

South Africa, however, took exception to the inclusion of this clause, as it feared that this would lead to the unilateral definition of these concepts by the EU. In addition, it feared setting a precedent for the Lomé negotiations that could impact negatively on its partners in the region. Although all four clauses were in the end included on the deal, the agreement allows for consultation before suspension, in the event of the violation of these principles by any of the two parties.⁶⁰

In the end, the main advantage gained for the ACP from the SA-EU negotiations, is experience on the part of South Africa. Ambassador Links commented,

During the negotiating process, Pretoria learnt much about the international trading system and the intricacies of trade negotiations, and hopes to be able to share lessons learnt with the ACP states in an endeavour to assist developing countries in overcoming some of the inherent difficulties in negotiations with a large and economically powerful group of states such as the EU.⁶¹

⁶⁰ This section was previously published in Bertelsmann-Scott, T; Mills, G & Gibb, R. 2000 *The EU-SA Agreement in a Global Context*. . In Bertelsmann-Scott, T; Mills, G & Sidiropoulos, E. 2000. *The SA-EU Agreement: South Africa, Southern Africa and the European Union*. SAIIA. Johannesburg.

⁶¹ Links, E. 2000. *Negotiating a Long-Term Relationship*. In Bertelsmann-Scott, T; Mills, G & Sidiropoulos, E. 2000. *The SA-EU Agreement: South Africa, Southern Africa and the European Union*. SAIIA. Johannesburg. pp34

3.5 Free Trade Agreement

2.5.1 South Africa's Mandate

The third pillar of the agreement, is the Free Trade Agreement. Faizel Ismail,

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The free trade agreement itself has several components, consisting of:

- political dialogue;
- provisions for a free trade area;
- trade-related issues;
- economic co-operation;
- financial assistance and development co-operation; and
- social and cultural co-operation.

former Chief Director of Foreign Trade Relations in South Africa's DTI, once said that the South African negotiators are "diplomats in the service of development". This approach laid the foundations for the South African negotiating mandate.

South Africa took an equally long time to finalise its negotiating mandate, as it embark on an extensive process of consultation within government departments, institutions and civil society. (This process will be discussed in more detail in the second section.)

SA-EU diplomatic tiff puts free trade agreement at risk: The EU and South Africa clash over delays to a free trade agreement, and it appears that such a deal is now at risk. South Africa is accused of hesitancy in formulating a position for imminent talks between the two parties. *Business Day*, 19 June 1996.

Suffice to say that the South African government proposed a Trade and Development (TDA) agreement instead of the straightforward free trade area as proposed by the EU. It was not initially clear how development issues could be addressed in a trade agreement that traditionally exclusively focuses on the liberalisation of tariffs. However, the South African mandate focused on a strategy for sustainable development in South Africa and the region and proposed an asymmetrical phasing in period in both content and time.

3.5.2 Points of Contention During the Negotiations

The negotiations surrounding the FTA would take a number of years to conclude and were characterised by postponed deadlines, threats to pull out of the talks and a general feeling that the agreement would take considerable time to conclude. The main contentious issues during the negotiations tended to focus on the limited scope of the European mandate. South Africa was expecting more favourable treatment and greater coverage for its products to enter the EU market duty free.

3.5.2.1 Agriculture

One of South Africa's largest concerns was the paltry coverage agricultural products were given in the European mandate. The European Commission proposal for the agricultural sector envisaged the elimination of duties on 95% of all EU agricultural exports to South Africa within 10 years, whilst allowing the elimination of duties on only approximately 55% of South African agricultural exports to the EU.

Apart from excluding sensitive products from the FTA, South Africa's agricultural gains from the agreement are further frustrated by the EU's Common Agricultural Policy (CAP). The CAP has come under serious criticism by various countries throughout the world and not least by its own members.

The policy, formulated in the 1950s and in full operation since 1969, aims at uplifting farmers in Europe to a status equal to industrial workers and protecting them from an increasingly competitive world market. The initial objectives of the CAP were laid down in the Treaty of Rome. They included five aims:

- to raise agricultural productivity;
- to ensure a fair standard of living for the agricultural community;
- to stabilise markets;

- to assure availability of supplies; and
- to ensure that supplies reached consumers at reasonable prices.

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South Africa will be eligible for compensation in the event of EU changes to its agricultural policy that could adversely affect the balance of concessions made in the trade agreement. In addition, South Africa will have the right to challenge the EU should there be proof that increased imports of agricultural products are causing harm or threatening to cause harm to the domestic industry. South Africa further managed to increase the coverage of duty-free South Africa agricultural exports to the EU from the suggested 54% to 61%. The introduction of tariff quotas effectively means that only 27% of South Africa's agricultural products are completely excluded from the deal.

The policy may be criticised in many aspects, but its main failure arguably has been in establishing reasonable prices. Most products on the European market can be bought at a much lower price on the world market.

However, European

consumers are forced to pay increased prices in order to sustain the living standard and commercial viability of the farmer.⁶²

New GATT rules oblige the European Union to dismantle the Common Agricultural Policy by some 30%. However, due to pressure from agricultural lobbies within the EU, cuts made to agricultural aid are replaced by social subsidies. This effectively means that the European farmer feels no real cuts in aid. Farmers building blockades in the streets of Paris show just how remarkably strong the agricultural lobby still is in European politics: the list of exclusions is a direct result of the power it wields.

Breakthrough in SA-EU trade talks: Negotiators made a significant breakthrough in a final round of free trade talks on Friday, agreeing on improved terms of access for South Africa's agricultural exports to the EU. *Business Day*, 23 November 1998.

During the talks South Africa managed to increase the coverage of agricultural products substantially — 61% of agricultural imports from South Africa will be

⁶² Harrop J, *Political Economy of Integration in the European Community*. Edward Elgar Publishing Limited, 1993. pp 64-85

treated duty-free after the number of implementation years — which should be seen as a negotiating victory for South Africa.

At the conclusion of the talks, Ambassador Links commented in the following way on the agricultural side of the agreement,

While both sides have found the negotiations tough and complex, it must be remembered that this is the first FTA reached by the EU since the conclusion of the Marrakech Agreement. South Africa has had to make a huge effort to reposition its economy, to revisit its tariff structures and to meet its WTO commitments. For the EU it is also the first FTA negotiation which included agricultural products, an area of traditional sensitivity for the EU. Seen against this background, the Agreement is indeed a remarkable achievement.⁶³

3.5.2.2 *Timeframe*

Another area where South Africa managed to score certain victory was in the implementation period of the agreement. According to WTO rules, a Free Trade Agreement is allowed to contain an asymmetrical adjustment period of 10 years — which was the timeframe suggested by the EU. The period can, however, be extended by another 2 years for products of extreme sensitivity. South Africa

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Most South African companies will be allowed 12 years to adjust to the agreement, whereas automobiles and parts will remain on a reserve list without any tariff elimination or reduction for the foreseeable future. Sensitive products in textiles and clothing will be given eight years to liberalise to around a 20% tariff. By the end of the 12-year period, these tariffs will be further reduced to a level where the EU would enjoy better access than the MFN tariff as stipulated by the WTO.

proposed that all products be included in an FTA with an adjustment period of 12 years. Although South Africa did not quite manage to secure 12 years for

⁶³ Links, E. 2000. *Negotiating a Long-Term Relationship*. In Bertelsmann-Scott, T; Mills, G & Sidiropoulos, E. 2000. *The SA-EU Agreement: South Africa, Southern Africa and the European Union*. SAIIA. Johannesburg.pp34

all products, it did manage secure this timeframe for a number of sensitive South African products.

3.5.2.3 The Negative Impact on SADC and SACU

The negative impact which the Free Trade Agreement might have on SADC and SACU received attention by the South African and European negotiators alike. South Africa is aware that without an economically stable neighbourhood, Southern Africa will not be able to develop adequately. As it is often said, 'South Africa can not afford to be an island of prosperity in a sea of poverty.' However, African refugees, illegal immigrants, a continent that seems to remain in political turmoil and a massive trade imbalance are real worries to South Africa. It could not afford a deal with Europe, which according to all estimations would initially have had a negative impact on itself and a far worse effect on the region. Such an economic setback to the region would only further increase the problems currently experienced by South Africa. These problems could not be addressed in one agreement or one relationship.

South Africa had to take a multi-faceted approach to its trade relations with the world and the region. In order to harmonise trade it is currently implementing a Free Trade Agreement with the region, renegotiating the SACU formula and participating, although only partially, in the Lomé Convention. To increase its participation in the global market and to develop a tariff regime attractive to Foreign Direct Investment, South Africa negotiated a trade agreement with Europe, and is participating as a full member of the World Trade Organisation.⁶⁴ With this approach it is hoped that most development issues of the region can be addressed, whilst it leaves room for South Africa to become an active player in the global economy. The lengthy nature of the EU-SA negotiations can partially be explained by this approach. Although these negotiations did not have to follow one another, they have had to proceed concurrently.

⁶⁴ Currently South Africa is still ahead of GATT obligations on tariff reduction.

3.5.2.3.1 *The Impact on the Southern African Development Community*

Given their intent on achieving political liberation, political stability has for years been the focus of Southern African regional organisations. The transformation of the Southern African Development Co-ordination Conference (SADCC) into the Southern African Development Community (SADC) in August 1992 heralded, a new era for the regional body. Political stability of a sort had been achieved in most member states and the focus shifted to developing those member countries stricken by war, poverty and natural disasters over the past few decades. The Community was also strengthened by the accession of South Africa in 1994 and by Mauritius the following year. SADC was also joined, perhaps controversially, by the Democratic Republic of the Congo (DRC) and the Seychelles.

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In the implementation of the FTA, special attention will be given to providing support to the adjustment efforts required by the region. Safeguard measures in the Agreement can be used to protect South Africa's neighbours' industries, which will come under pressure during the implementation phase. Review clauses will also enable both parties to the Agreement to assess the implications of the tariff liberalisation. Regional co-operation will be promoted by allowing South African exports with inputs from the region to benefit from preferential treatment in the EU.

Since its inception, SADC has had a number of successes in the area of political co-ordination, and it is hoped that it might be the first African regional organisation to achieve some permanency. In order for this to be achieved, SADC is attempting to harmonise economic and trade policy through a Free Trade Area, which was implemented on 1

September 2000.

Tariff liberalisation has generally been accepted in South Africa as a difficult but necessary measure to encourage economic development and prosperity. The rest of SADC is, however, not entirely convinced. Whereas most

participants in regional organisations view regional bodies as necessary and auxiliary steps toward participation and competitiveness on the world market, most members of SADC look towards the SADC itself for protection from global movements. For this reason, South Africa has opted to open its market up to SADC products without having clear commitment from its SADC partners on how they will be reciprocating. The details of the reciprocation will only be determined during the next couple of years.

Southern Africa fears that the fragile industries in the region will suffer due to the SA-EU TDCA. Border controls are weak, so cheap European products can filter through to SADC countries. In addition, South Africa could 'steal' some Foreign Direct Investment away from the SADC countries: with its stronger and more stable economy, South Africa became even more attractive with implementation of the TDCA.

South Africa therefore pressured the European Union to provide a guarantee that the region will not suffer. As no guarantees can be given in the agreement itself - the real effects of an FTA are difficult to predict - South Africa would have liked the EU to set up a fund to compensate SADC workers for job losses and to provide investment where businesses are closed. However, it was agreed that traditional safeguard measures would be the only ones adopted to protect SADC businesses.

Despite these considerable concerns that SADC should have had, it was conspicuous by its absence. Little effort was done to lobby either South Africa or the European Union. The impression was, therefore, created that either it was only South Africa that was aware of the potential threats of the agreement to the region, or that Pretoria was over emphasising the effect to gain more concession for itself from the EU.

The EU frequently stated that it shared South Africa's vision that the region should be considered in the negotiations, however, it was difficult to translate this vision into concrete measure to assist the Southern African region. Philip Lowe, chief EU negotiator, explained how the agreement has been designed

to assist the region to develop economically without the assistance of additional aid:

One of the areas where the EC tried its best to ensure a positive regional impact is over the question of rules of origin. Here we have been very successful: diagonal cumulation has been granted for inputs coming from any of the ACP countries, and full cumulation is allowed with the BLNS, in view of the strong degree of economic integration and customs co-operation which already exists in SACU.⁶⁵

3.5.2.3.2 *The Impact on the Southern African Customs Union*

EU deal may cost SA's neighbours billions: The SA-EU TDCA may cost SACU partners as much as R3.5 billion in revenue losses a year. *Financial Mail*, 22 April 1999.

The Southern African Customs Union, which comprises South Africa, Botswana, Lesotho, Namibia and Swaziland, is one of the oldest custom unions in the world. Under SACU, as negotiated in 1969, South Africa administers duty collection and distributes shares of the common revenue pool to the other four countries according to a revenue sharing formula. More than 46% of Swaziland's national budget in the fiscal year of 1994/1995, and more than 50% of Lesotho's budget and 24% of Namibia's was derived from the SACU revenue pool.

In a trading world where tariff reductions and free markets are at the order of the day, fiscal dependence on a customs union is no longer viable. Each SACU member agrees that the present agreement has certain shortcomings, but instead of abandoning the union completely, the BLNS countries want a revised formula to be phased in so as to avoid a precipitous fall in their income. In December 1994 the revision process was initiated, but due to the lack of consensus, there is still no new deal in place. Although there seems to

⁶⁵ Lowe, P. 2000. *Main Parameters of the EU-SA Agreement*. 2000. In Bertelsmann-Scott, T; Mills, G & Sidiropoulos, E. 2000. *The SA-EU Agreement: South Africa, Southern Africa and the European Union*. SAIIA. Johannesburg.pp44

be agreement on a new revenue-sharing formula there is still no clarity on a new set of institutions and policies to underpin the formula; and although it is accepted that the BLNS should receive compensation from South Africa for effects of industrial polarisation and fiscal disruption, the scale of the compensation has not yet been agreed upon.

Under a Free Trade Agreement between South African and the European Union, the BLNS countries not only stand to lose fiscal income due to a diminishing tariff income, but unemployment is also likely to rise. With a smaller revenue pool, fragile industries may be destroyed and infrastructural development will be curtailed. The SACU countries will have to compete with European agricultural and manufactured products which, after the implementation period, would arrive duty free in the Customs Union. It is expected that the BLNS will be unable to compete. Losses incurred will not be adequately replaced by aid from Europe, as prospective losses will be eight to ten times the amount of European aid previously granted to the SACU countries.

Due to the free trade nature of the customs union, all trade deals involving South Africa should in fact be concluded with SACU as a whole, but this has proved too much for SACU to handle. Had they become co-negotiators, several of their industries would have been qualified as most sensitive and would possibly have been excluded from an FTA. Such exclusions would have resulted in high transaction costs, for example for policing to ensure that goods imported by South Africa from the EU did not percolate across their borders without having paid the full customs duties.⁶⁶

There are very few options available to SACU to replace lost income from the SA-EU TDCA. Alternative taxes could prove fatal to investment incentives. Such taxes would have to be simple, fair and based on the ability to pay. Looking to South Africa for compensation would prove fruitless. South Africa,

⁶⁶ This extract was previously published in Bertelsmann, T. 1998. *South Africa and the European Union: Reaching Agreement?* SAILA Reports. Johannesburg.

with its dedication to its own budgetary constraints, will most certainly not be willing to pour further taxes into the common revenue pool.⁶⁷

SA' objectives met in trade pact with the EU: The significance of SA's trade pact with the EU should be seen in a global context. *Business Day*, 13 October 1999.

The conclusion of the Trade, Development and Co-operation Agreement between the EU and South Africa, unfortunately ended on the sour notes of the 'port' and 'sherry' disputes, but all involved were relieved that the years and years of negotiation has finally born fruit.

Ambassador Links expressed his relief in the following way:

It is in the nature of any negotiation process that there has to be compromise. This was also the case during our negotiations with the EU, but I believe that the Agreement will be beneficial for South Africa, the southern African region and the EU. Firstly, the agreement elevates the existing relationship to a higher level and provides South Africa with a formalised relationship with the world's biggest trading bloc. This places South Africa in a special and privileged relationship with the EU when compared to many other countries. The political significance of this Agreement and of South Africa's accession to the ACP Group of States should also not be underestimated. Just as the EU is playing an increasingly prominent role in the international community *via* its Common Foreign and Security Policy, so South Africa has become a significant influence on some aspects of the agenda facing the international community. It confirms South Africa's position as a credible player on the global stage.⁶⁸

⁶⁷ Maasdorp, G. "South Africa's Regional Trade Agreements" in US- South African Economic Yearbook, 1996.

⁶⁸ Links, E. 2000. *Negotiating a Long-Term Relationship*. In Bertelsmann-Scott, T; Mills, G & Sidiropoulos, E. 2000. *The SA-EU Agreement: South Africa, Southern Africa and the European Union*. SAIIA. Johannesburg. pp35-36

CHAPTER 4: THE SA-EU NEGOTIATIONS

Regardless of whether South Africa was (and still is) democratising its foreign policy and foreign trade policy due to international pressure or due to an understanding that these processes are key to the stability of the young democracy, it was (and still remains) a long process towards the democratisation of these two policy formulations. Not only would a broad base of government institutions and departments, parliament and civil society need to be involved in this process, but all these institutions needed to be democratised in their own right.

For the purpose of this study I would like to identify four key elements of a democracy and look at how they translate into actors in democratic policy formulation. These elements are participation, representation, transparency and openness. Although the borders between these are blurred, we can understand these four to translate into parliament, government, a transparent bureaucracy and the access ordinary citizens have to policy formulation.

4.1 Parliament

4.1.1 *The Democratisation of the South African Parliament*

During the apartheid years parliament did not play a significant role in foreign policy or foreign trade policy formulation – this was more or less left to the executive. With the change to a democratic government, parliament was also given a greater role in foreign policy formulation. As Van Wyk points out,

‘Until recently it was considered that foreign policy decision-making was not a concern of Parliament, but rather the preserve of the Executive. [...] In contrast with the practice of the Nationalist government, the current parliament has taken important steps to

ensure greater transparency and accountability of various ministries, including Foreign Affairs.⁶⁹

However, the democratisation of parliament is far from perfect. This is evident from the way in which the representatives in the portfolio committee have to play two level games. On the one hand the representatives have to take their constituencies into consideration, whereas at the same time they have to play the role of international citizens making decisions on behalf of the international community. Quoting again from Van Wyk,

Foreign policy making is an inherently political process. In explaining the role of parliament in the foreign policy process, decision-makers are viewed as coping simultaneously with the pressures and constraints of their domestic political constituency as well as those of the international environment. This so-called 'two level game' must take into account the broad spectrum of domestic political actors such as political party caucuses, political opposition, and the dynamics of the Portfolio Committee on Foreign Affairs as well as international actors.⁷⁰

Apart from debates in the general assembly, two portfolio committees — Foreign Affairs and Trade and Industry — had regular meetings to discuss the developments surrounding the negotiations and for the negotiators to report back to parliament on their actions. Again Van Wyk notes that 'the restructuring and extension of the parliamentary committee system has created important opportunities for the foreign policy-making process in South Africa.'⁷¹

⁶⁹ Van Wyk, J. *Parliament and Foreign Affairs: Continuity or Change?* In SAIIA, 1997, South African of International Affairs. Johannesburg. pp189-213

⁷⁰ Van Wyk, J. *Parliament and the Foreign Policy Process.* In SAIIA. 1998/9 South African Yearbook of International Affairs. Johannesburg.

⁷¹ *Op Cit.* Continuity or Change?

The South African parliament's democratisation process is far from complete, however, it managed to play a significant role within the negotiations with the European Union.⁷²

4.1.2 *Parliament and the SA-EU Negotiations*

Dr Rob Davies who chairs the Portfolio Committee on Trade and Industry, and who often chaired the joint sessions with Foreign Affairs, played a critical role in analysing the proposed deal, searching for alternative avenues and explaining the implications of the deal to fellow parliamentarians and ordinary citizens alike. He spoke at numerous conferences and briefed parliament on developments on regular occasions.

Parliament also played the critical role of ratifying the agreement.⁷³ On the occasion of South Africa's accession to the Lomé Convention parliament refused to ratify until the European Union clarified certain elements of the deal. So in effect, parliament checked that the deal reached between the negotiators was acceptable to the people of South Africa.

Levermore *et al* note the following on parliament's role in the negotiation process:

'Firstly, it participated in the discussion surrounding the future of the Lomé and South Africa's possible entry into the African, Caribbean and Pacific (ACP) group, and was an observer at the EU-ACP joint assembly in October 1994. Following the start of the TDCA negotiations, parliament also maintained regular contact with decision-

⁷² For a more complete discussion on South Africa's parliament and suggestions for change towards a more democratic parliament see Van Wyk, J. *Op Cit.* Parliament and the Foreign Policy Process. And Van Wyk, J. *Parliament and the foreign Policy Process, 1994-1999*. In SAIIA. 1999/2000. South African Yearbook of International Affairs. Johannesburg.

⁷³ Article 31 of the South African Constitution provides for the negotiating and signing of international agreements. An international agreement binds the Republic only after it has been approved by both the National Assembly and the National Council of Provinces. In Van Wyk. *Op Cit.* Continuity or Change?

making bodies within the EU, whilst various chamber (such as Agriculture, Foreign Affairs, and Trade & Industry) were asked by government to produce commentary on the EU mandates. Similarly parliament formed a SACU parliamentary liaison committee which explored various potential impacts of the TDCA for the BLNS states. The second aspect of parliament's involvement in the statal decision-making process related to a review it undertook prior to the (South African) ratification of the agreement. The National Assembly's committees on trade and industry, foreign affairs and agriculture and land convened a half-day of public hearings on many facets of the TDCA. The final stage of parliaments involvement in the TDCA process came when it ratified the agreement in November 1999.⁷⁴

In other words parliament in many ways facilitated debate amongst various stakeholders, not only inside South Africa's borders but also including neighbouring countries that will be impacted by the agreement. One could, therefore, conclude that parliament promoted participation in policy formulation and acted democratically.

4.2 Government

During the negotiations a large number of government departments and bodies were roped in to participate, either directly with the negotiations or to comment on mandates and offers from the European Union.

4.2.1 Government Departments

The main department responsible for the negotiations was the Department of Trade and Industry, although the chief negotiator, Ambassador Eltie Links, was recruited from the Department of Foreign Affairs, which played second chair to the DTI. To the outsider it seemed as if the two departments were

⁷⁴ Levermore, R; Gibb, R; Cleary, M. 2000. *The SA-EU TDCA: An Analysis of Decision-making Procedures and Processes in South Africa*. SAIIA Report Nr15. SAIIA, Johannesburg. pp10

divided into the 'hard' and 'soft' negotiators. Whereas Trade and Industry took the hard line and were often unrelentless during talks, Foreign Affairs had to ensure that on a diplomatic level relations between the two parties remained amicable. It was also clear that Foreign Affairs tended to focus on the political implication of a deal — any deal for that matter — whereas Trade and Industry was aware that each concession that was made would have an effect on some businessman somewhere in South Africa and in the European Union.

However, as pointed out a number of other departments were also involved in the negotiations. Most importantly, the Department of Agriculture played a pivotal role in the negotiations surrounding tariff liberalisation in agriculture. In addition they had the unenviable task of having to conclude a wine and spirits and fishing agreement with their counterparts.

Another department involved was the Department of Finance. As Levermore *et al* note,

[Their participation] is mainly due to the trade liberalisation measures it advocates through the establishment of the Growth, Employment, and Redistribution macro-economic policy (GEAR).⁷⁵

Significantly, Ambassador Links was previously in the Department of Finance and therefore still maintained close links with his former colleagues.

The wide spread of government departments that were involved in the negotiations ensured that the interests of a large number of South Africans was represented during the talks. However, a glaring omission from government departments was the Department of Labour.

⁷⁵ *Ibid* p8

4.2.2 *Government Institutions*

A couple of government institutions played an important role in finalising South Africa's mandate and delivering continuous input to the negotiations. The most important of these is probably NEDLAC. As pointed out, it is a tripartite organisation made up government officials, labour organisation and business organisations. There are 19 business organisation (including Business South Africa and the National African Federated Chamber of Commerce) three organised labour movements, including COSATU. Community sectors are also represented, but only in the Development Chamber and had very little opportunity within the formal NEDLAC structure to raise their opinion.

NEDLAC itself was convinced that it played a pivotal role in the negotiations and one representative even mentioned to the author that they had a ratification right⁷⁶. It was felt that if NEDLAC did not agree with the final agreement there would be no deal. This was, however, denied by the negotiators themselves who confirmed that only parliament would be able to halt the signing of the deal once the negotiators had completed their task around the negotiating table.

Nonetheless, NEDLAC provided input to the negotiations as highly skilled people with knowledge of the impact of tariffs and free trade were given the opportunity to engage with government. It also provided an opportunity for labour to raise its concerns in a small forum that had direct access to the talks. (It is significant to note that the Department of Labour played no active role in the negotiations, which left very little opportunity for labour to air their significant doubts about the agreement.)

The Department of Trade and Industry made a specific commitment to holding report back sessions with NEDLAC after each round of negotiations.

⁷⁶ Numerous interviews with a number of NEDLAC representatives.

According to Willem Smalberger this was done in order to promote participation, accountability and the democratic process.⁷⁷

Levermore *et al* also point to the important role that NEDLAC played.

“[...] [N]umerous presentations were made in the strategy formulation stage, when South Africa began to develop its mandate. During the negotiating process, the Trade and Industry chamber met before and after each meeting between the EU and South Africa. An important sub-committee (TESELICO) was also established, and was used as a consultative forum for government trade negotiators to liaise with business and labour, whilst monitoring the bi-lateral discussion between the DTI's sectoral divisions.”⁷⁸

Another tri-partite organisation, the Agricultural Trade Forum, also met regularly to discuss the agricultural side of the talks. In retrospect the South African negotiators managed to secure somewhat of a negotiating victory in the agricultural department, the success of which should also be accredited to the ongoing talks between government, farmers and labourers.

Finally, the South African Board on Tariffs and Trade, the BTT, were extensively consulted during the negotiations. Essentially the negotiations boiled down to talks about the dismantling of tariffs and the input of the BTT was crucial. Not only did they have a superior knowledge of South Africa's somewhat complicated tariff structure, but they were also included for their knowledge on rules of origin and the impact liberalisation would have on the Southern African Customs Union (SACU).

⁷⁷ Numerous interviews with Willem Smalberger, South African Department of Trade and Industry.

⁷⁸ *Op Cit.* Levermore pp74

Levermore *et al*⁷⁹ argue further that it was at the BTT level that individuals could influence the statal policy formulation process. They sought input from a wide selection of role players and received numerous discussions on various aspects of the agreement. These submission were discussed and where deemed necessary passed on to the official negotiators.

4.3 Bureaucracy

4.3.1 *The Democratisation of the South African Bureaucracy*

In 1994 the state inherited a bulky bureaucracy comprising almost exclusively white government officials that had served the National Party government over the last couple of decades. It was clear that a radical shift needed to take place and yet the white population had the expertise on how to run the country, whereas this knowledge was lacking in the previously disadvantaged communities. However, certain steps were taken. A number of high-ranking officials were offered early retirement, whereas others left out of choice.

Fabricius argues that the Department of Foreign Affairs lost control over a number of foreign policy decisions as government wanted to keep them away from the National Party appointed Director General of Foreign Affairs, Dr Rusty Evans.⁸⁰ In addition, under the leadership of a placid minister, Dr Alfred Nzo, foreign policy decisions fell back to the executive, especially the then deputy president, Thabo Mbeki.

‘The abandonment of foreign policy to other departments is not only a loss to the DFA. The country loses too through the inefficient allocation of taxpayer’s money to fund a foreign affairs bureaucracy that has been rendered partly redundant. More significantly, it damages the co-ordination of foreign relations, since Foreign Affairs by its nature is the

⁷⁹ *Ibid* pp 76

⁸⁰ Fabricius, P. *Virtuosity versus Bureaucracy*. In SAIIA. 1999/2000. South African Yearbook of International Affairs. Johannesburg. pp217-224

only institution properly briefed and equipped to ensure that all foreign relations are harmonised for the greater national good.⁸¹

However, it was not only a question of transforming the people that worked for the state. The old system of divided government with departments for various race groups and homelands was amalgamated into one.

In the first place, the old departments of foreign affairs had to be transformed, or more accurately, the departments of the former TBVC states (Transkei, Bophuthatswana, Venda and the Ciskei) had to be amalgamated into the South African Department of Foreign Affairs. In addition, the old guard that formed part of the National Party had to be moved out of strategic positions and replaced with ANC officials. However, the entire department could not be discarded and replaced as the new government did not have the manpower to do so. Still in need of the expertise and contacts of a number of old officials, the department was slow in changing its face from dominantly white to a representative mix of the South African population.

'This process has also involved the integration of 1,900 personnel from the old DFA with 140 from the liberation movements including the ANC, as well as 415 from the nominally independent former homelands of [...] the TBVC states. The Department was subsequently downsized to a number under 1,900 today. It has encompassed the establishment of new diplomatic styles, given that white South Africa's diplomacy was principally geared to preventing and offsetting the effects of isolation, while the ANC sought to intensify the boycott and sanctions campaign as a strategy to end apartheid. The TBVC 'diplomats' had little or no international experience save for postings in each other's 'countries' and South Africa, given that they were not recognised internationally. New, transparent bureaucratic procedures and new training regimes

⁸¹ *Ibid.*

have also been constructed in line with the democratic instincts of the new order.⁸²

These changes were further complicated by international shifts in focus from realist politics to a recognition that markets mostly dominated political interactions. Mills states that,

'[I]n an age when much of foreign relations is, in essence, foreign *economic* relations, and given the need to address social inequalities through economic growth, it is inevitable that South Africa's foreign policy will be geared to this end. As Nelson Mandela put it in 1993: "The primary motivation of the ANC's foreign economic policies as a whole will be to place South Africa on the path of rapid economic development with a view to addressing three key problem areas: slow growth, severe poverty, and extreme inequalities in living standards."⁸³

This meant that the South African Department of Trade and Industry had to be incorporated in the formulation of foreign policy and indeed in representing South African interests at international missions. Although South Africa has not gone as far as Australia that now only has one ministry for both foreign affairs and trade and industry, considerable moves towards closer co-operation between these two departments have been made.

A co-operative relationship between the foreign service and other areas of government, particularly those concerned with international trade and investment, is required. For example, given the centrality of commercial issues to international diplomacy and the growing linkage between foreign and domestic policies, an amalgamation of the diplomatic arms of the South African DFA and the Department of Trade and Industry has been seen to be long overdue. [...] The outcome of

⁸² Mills, G. *SA Foreign Policy after Mandela*. In SAIIA. 1999/2000. South African Yearbook of International Affairs. Johannesburg. pp1-13

⁸³ Mills, G. *South Africa's Foreign Policy: The Year in Review* in SAIIA. 1997. South African Yearbook of International Affairs. Johannesburg. pp1-17

the Presidential Review Commission on this issue is awaited with interest.⁸⁴

The Department of Trade and Industry (DTI) has arguably been more successful at transforming the face and activities of the department towards a more representative mix of South Africans and also towards a focus on the concerns that the new ANC government was facing. Shifts towards the development of previously disadvantaged sectors of the economy were shadowed by international policies that would encourage sustainable growth and result in job creation at home. Under the very apt leadership of Minister Alex Erwin, the department underwent a radical change, but without ever losing sight of its goal and mission. The difficulties first emerged when the two departments DTI and DFA had to start co-operating and acting in cohesion on international fora and in international negotiations.

4.3.2 The Bureaucracy and the SA-EU Negotiations

Other departments that were involved in the negotiations include the Departments of Agriculture and Finance. Agriculture has gained a reputation for representing only white farmers in South Africa. The department of Finance has been somewhat better at transforming, but as in many other departments the progress has been slow.

In sum, the department in control of the negotiations, Trade and Industry, has the most representative mix of bureaucrats, whereas Foreign Affairs and Agriculture are transforming more slowly and could therefore be mistaken for representing a different interest than that of the majority of South Africans. However, the ministers in charge of the operation made sure that the officials were accountable and that their actions were as transparent as possible.

⁸⁴ *Op Cit.* SA Foreign Policy after Mandela.

The large mix of departments involved also went a long way towards representativeness of interests. Under the previous government such a deal would have almost exclusively been negotiated at executive level.

4.4 Popular Input by Civil Society

4.4.1 The Democratisation of Civil Society

'An area which has not received much scholarly attention is the role of civil society in the crafting, shaping and influencing the conduct of South Africa's foreign relations. Since South Africa's democratic transition in 1994, there were great expectations—given the ANC's avowed commitment to 'democratising' foreign policy—that civil society and its sub-species, non-governmental organisations (NGOs), would enjoy a robust and active engagement in the process of charting South Africa's place and (re)entry in world affairs.'⁸⁵

However, this has not always been the case. There seems to be some kind of caution on the part of government to be seen to side or accept input from any research organisation in South Africa that does not have a stated aim of supporting the ANC-led government. Nevertheless there is a large number of analysts in independent think-tanks that comment on foreign policy formulation.

'The institutional resources which the government can call on to help formulate foreign policy are vast compared with those of many, if not most, countries of the same size and wealth. At the ideas level, there is a fairly substantial body of university international relations departments and independent foreign policy institutes producing an impressive volume of foreign policy ideas and recommendations that are reasonably well disseminated in the media.'⁸⁶

⁸⁵ Le Pere, G. & Vickers, B. SAPSA unpublished paper.

⁸⁶Fabricius, P. *Virtuosity Versus Bureaucracy*. In SAIIA. 1999/2000. South African Yearbook of International Affairs. Johannesburg. pp217-224

Between these organisations there emerges a certain sense of rivalry for the little input government allows. This rivalry extends further towards the realms of funding. With international aid and local investments being geared towards primary service delivery little funds are left for academics and thinkers in the realms of foreign policy and foreign trade policy.

'The continued need to shape a South African foreign policy national agenda in [a national oriented] way points also to the role played by civil society institutions. It is indeed regrettable that at a time that South Africa needs independent, constructive dialogue apart from the dominant government, such institutions are battling to survive. South Africa will be poorer if it is to rely solely on government for ideas, analysis and management; and poorer still if the external debate is dominated by external, non-South African civil society institutions.'⁸⁷

4.4.2 Civil Society and the SA-EU Negotiations

Although the influence that ordinary citizens had on the negotiating process remains difficult to gauge, there was no lack of popular interest throughout the long years of negotiation. The rounds of talks received regular and well-informed media coverage and a popular radio station, Radio SAFM, even encouraged listeners to air their views on the talks. Actuality programmes on all the major television news stations hosted experts on regular occasions to discuss the details of the negotiations.

Academic interest in the talks was high from the outset, with a number of thesis's focusing on the implications of free trade between the European Union and South Africa on the South African and European economies, the future of the Lomé Convention, regional integration in Southern Africa and the Southern African Customs Union.

⁸⁷ Mills, G. *SA Foreign Policy after Mandela*. In SAIIA. 1999-2000. South African Yearbook of International Affairs. Johannesburg. pp1-13

Independent research organisations — both in South Africa and in a number of European countries — were also following the negotiations closely and even did a number of impact studies, although none of these could be conclusive due to the lack of statistical data. A number of conferences were organised in order to share expert views. The negotiators were themselves present at some of these conferences, mostly to share their expertise, but also to gain an understanding of popular opinion. Other NGO's like church organisations, were also concerned about the impact the agreement might have and commissioned their own studies and even hosted conferences to discuss the implications.

One particular conference, hosted by the Foundation for Global Dialogue (now the Institute for Global Dialogue), seemingly had a significant influence on the negotiators. The conference was held at a critical juncture when South Africa was examining the European mandate and formulating the response in the form of the South African negotiating mandate. The idea of a trade and development agreement was first mentioned at this conference, discussed amongst the various experts that were attending and subsequently became the main thrust of the South African mandate.⁸⁸

⁸⁸ In his summation of the proceedings of the conference Rob Davies notes that '[t]he third scenario is the trade and development agreement (TDA). Like everybody else I think that we all heard about this concept for the first time yesterday.' In Houghton. 1997. *Trading on Development: South Africa's Relations with the European Union*. Johannesburg.

CHAPTER FIVE: EXTERNAL INFLUENCES ON POLICY FORMULATION

After having examined parliament's, the bureaucracy's, government's and civil society's influence on the negotiations one is want to conclude that from the South African perspective the negotiations surrounding the establishment of the SA-EU TDCA were highly democratic. The process was transparent, inclusive, representative and open. However, the outcome of these talks were to a large extent a foregone conclusion before South Africa even drafted its first mandate. The reasons for this are discussed below.

5.1 Why was the outcome to a large extent a foregone conclusion?

Despite the democratic government, its transparent institutions and its widespread consultation with stake holders the outcome of the negotiations were to a large extent a foregone conclusion. The details of the talks were reduced to haggling over percentages and quotas, but the fact that the two parties would establish a free trade agreement, supported by co-operation agreements and South Africa's partial accession to the Lomé Convention was clear from the beginning. The only option South Africa had was not to conclude a deal, which really was no option at all.

Democratic and democratisation theory leaves little room to explain this, mostly as most theories accept the sovereignty of the state and regard democratic processes as mostly internal to the state. However, this can no longer be the case and there is an urgent need for a re-evaluation of theories that exclude global developments. (See Introduction and the work of William Robinson.)

Held also laments this, as he writes:

'The sovereignty of the nation-state has generally not been questioned. It has been assumed that the state has control over its own fate, subject only to compromises it must make and limits imposed by actors, agencies and forces operating within its territorial boundaries,

and by the agents and representatives of other governments and states. ... The world putatively outside the nation-state – the dynamics of the world economy, the rapid growth of transnational links and major changes to the nature of international law, for example – has barely been examined, and its implications for democracy have not been thought out at all by democratic political theorists.’⁸⁹

In his work on models of democracy Held identifies four disjunctures between the sovereignty of the state over policy formulation and the global theatre the state has to operate in, these include the world economy, international political policy formulation, international law and international culture and the environment. Two of these are of concern to this study, namely the world economy and the role of international organisations. In addition the very nature of the European Union is examined as another disjuncture to South Africa’s foreign trade policy formulation.

5.1.1 Globalisation

Identifying globalisation as one of the disjunctures, Held comments as follows:

[...] [T]he internationalisation of production, finance and other economic resources is unquestionably challenging the capacity of an individual state (whether democratic or not) to control its own economic future. At the very least, there appears to be a shift in the costs and benefits of the policy choices before governments, thereby affecting their autonomy; and a disjuncture between the idea of a sovereign state determining its own future and the circumstances of modern economies, marked as they are by the intersection of national, regional and international economic forces.’⁹⁰

⁸⁹ Held, D. 1996. *Models of Democracy* Polity Press, Cambridge.

⁹⁰ *Ibid*

With the collapse of the Soviet Union and the international shift towards democracy, globalisation emerged as a powerful international phenomenon that analysts struggle to define but which affects each and every individual on earth.⁹¹ This has been summed up by the catch-all term 'globalisation', denoting a process, which Elra Zwingle has summed up as a 'reality, not a choice'. As she has noted, 'Goods move. People move. Ideas move. And cultures change. The difference now is in the speed and scope of these changes.' Various aspects of these manifestations of discussed below:

'There has been a massive increase in global capital mobility. The share of transborder capital flows to gross domestic product (GDP) increased by a factor of 10 between 1980–92. Capital is now managed around the clock in globally integrated markets working in real time, connecting currencies, savings and investments world-wide. An estimated US\$1.5 trillion is traded world-wide each day — of which some 85% is believed to be 'hot' money, portfolio flows rather than foreign direct investment (FDI). Private investment in Africa, for example, rose from less than US\$1 billion annually at the start of this decade to US\$11.7 billion in 1996, or half of the capital flowing into the region. The level of foreign investment is now a (some would argue 'the') critical determinant of the pace of economic growth.

Trade has increased substantially. In 1963, world exports stood at US\$154 billion. This grew to US\$1 trillion in 1977, and to over US\$2.5 trillion today. The global customer, wherever located, has become king. The best buy is the key spending criterion, rather than concerns about the country of origin, local unemployment or trade deficits. This offers great opportunities to globally competitive corporations, but poses threats to those which are inefficient and no longer protected. It has become an article of faith that free trade equals economic growth through the importation of technology, and improvements in competitiveness and productivity. Studies show that developing countries with open economies grew by 4.5% annually in the 1970s and 1980s; but those

⁹¹ The following paragraphs are an extract from Bertelsmann-Scott, T, Gibb, R & Mills, G 2000 *The EU-SA Agreement in a Global Context* SAIIA, Johannesburg.

with closed economies expanded by only 0.7%. Developed, open economies grew by 2.3% annually; closed ones by 0.7%. Closed economies are defined as those with the features of high import tariff and non-tariff barriers, a socialist economic system, a state monopoly on important exports, and a big gap between official and black-market exchange rates. It is difficult to work out whether protected economies do badly because they are cosseted, or because they have unsound macro-economic practices. Yet this does not challenge the essential argument of the 'free trade growth' thesis concerning developing countries — that there is a striking correlation between export growth and overall GDP growth.⁹²

This has left little option for developing countries but to accept that the liberalisation of trade will allow them to participate in the globalisation process from which they can then reap the benefits of increased GDP activity. This is directly applicable to South Africa, a country that has a recent history of extreme isolation and now needs accelerated GDP growth in order to provide employment for the millions of poor in the country. This is also the stated aim of the South African government through the GEAR policy. Had South Africa accepted any other form of agreement with the EU than a free trade agreement, it could have undermined its GEAR strategy and its re-entry to the world economy.

'In addition, there is a growing debate around the utility of aid as a tool for upliftment. For example, it is true that much assistance given to Africa's dysfunctional states has been stolen or wasted, but then again most of what has been stolen was taken by regimes. For much of the time, such assistance would appear to have been used by the recipient states to buy influence or give business to non-governmental organisations (NGOs) or multilateral agencies, regardless of the effects on the people on the ground for whom the aid was intended. On the other hand, the international community has little understanding of the needs that aid purports to address.'⁹³

⁹² *Ibid.*

⁹³ *Ibid.*

It was clear from the outset that South Africa had little option but to enter into a sophisticated agreement with Europe on a par with relationships between equal developed partners. South Africa no longer had the choice of a relationship that would not rest on reciprocity as so many other developing countries have had in the past. It is universally accepted today that protecting developing countries from global economic activity can actually do more harm than good in the long term. South Africa, therefore, did not have the option of acceding to the Lomé Convention and could only negotiate the terms of the free trade agreement.

It is in this climate that participation in the world economy has become a prerequisite for economic prosperity and no longer the choice of governments. As pointed out free trade plays a great role in promoting globalisation. Throughout Thabo Mbeki's presidency — and in fact already during the Mandela presidency — government has been quoted as saying that South Africa has to become a global actor. It is, therefore, also that the macro-economic strategy of the government, GEAR, is focused on the liberalisation of trade and international strategies to become more competitive — which of course limited the possibilities of alternative agreements with the EU.

5.1.2 The Restrictions placed on the Negotiations by the EU

In order to understand the limited options the European Union made available to South Africa during the negotiations, it is crucial to understand how South Africa fits into the myriad of relationships and agreements the EU has with the rest of the world.

5.1.2.1 The Pyramid of EU trade relations with the world

The EU's global trade policy can be envisaged within a pyramid structure. Right at the top is the EU itself, as trade between these countries is completely unrestricted. As one moves down the pyramid, access to the EU markets becomes less and less preferential, with the Most Favoured Nation

(MFN) status — a general concession as determined by the World Trade Organisation (WTO) — at the very bottom.

European Union
European Economic Area
Central and Eastern European Countries
FTA's: Israel, Morocco, Turkey and Tunisia
Mediterranean Countries
African Caribbean and Pacific Countries
Generalised System of Preference
Other Countries: MFN treatment⁹⁴

At the time that negotiations were initiated between South Africa and the EU, Pretoria ranked very low on the pyramid, having had access only to the Union's General System of Preferences. It would, therefore, only have been natural to move South Africa higher up on the pyramid. Obviously South Africa could never become part of the EU, but it could fit into the next-best slot of a Free Trade Area.

It is, therefore, clear that when talks were initiated between South Africa and the European Union about the future of the relationship between these two parties, South Africa only had a limited amount of options. South Africa would not be granted full membership of the Lomé Convention, which basically only left two further options: the *status quo* — at the time this was limited access to the GSP with the strong possibility of extending it — or a free trade agreement. As Rob Davies pointed out the GSP had some serious limitations. 'Excluded from the agricultural GSP, for instance, will be such products as red meat, deciduous fruit, wine and grapes; that is, a number of areas where South Africa is currently most competitive.'⁹⁵

⁹⁴ Koning A, 'The EU's Trade and Development Policy' in *Trade and Development*. Cape Town: Galvin and Sales, 1997.

⁹⁵ Davies, R. 'Analysis of the negotiation process: Critical Areas, Contradictions and Commonalities.' In Houghton, R 1997, *Trading on Development*. Johannesburg

Part of the problem was that South Africa opted for 'developed' status within the World Trade Organisation and it is this organisation that provides the rules for GSP. In other words, in terms of the WTO charter South Africa was not really entitled to GSP but was granted this by special arrangement with the EU.

The second option — which emerged as the only real viable alternative option — was the negotiation of a free trade agreement. At this is then also what South Africa had to settle for.

5.1.3 *International Organisations*

With the advent of globalisation the world has also witnessed a massive increase in international organisations. Held points out that:

'The growth in the number of these new forms of political organisation reflects the rapid expansion of transnational links, the growing interpenetration of foreign and domestic policy, and the corresponding desire by most states for some form of international governance and regulation to deal with collective policy problems.'⁹⁶

One of these organisations is the World Trade Organisation (WTO), which was established on 1 January 1995, by the 128 members of GATT, through a Ministerial Declaration signed in April 1994 in Marrakech, Morocco. It is both an institution to govern international trade and negotiations, and a body of law, which contains and administers a number of legal agreements on how countries should conduct international trade, ranging in specificity from the Agreement on Agriculture to the Agreement on Import Licensing Procedures⁹⁷.

⁹⁶ *Ibid*

⁹⁷ The origins of the WTO lie in the General Agreement on Tariffs and Trade (GATT), established as the third pillar of the Bretton Woods system, alongside the International Bank for Reconstruction and Development, (or the World Bank), and the International Monetary Fund (IMF). According to the "Havana Charter" GATT was initially supposed to be an International Trade Organisation, but opposition from the US reduced it to a mere agreement.

The logic behind this was that if barriers to trade, especially tariff barriers, could be removed, less-efficient industries would no longer be protected. This in turn would encourage countries that have a comparative advantage in a certain product, to produce the bulk of it, leaving others to tend to their own particular product that enjoys a comparative advantage. According to the advocates of free trade all nations will then be better off: if there are no restrictions then the most that can possibly be produced will be produced and there will be more products to circulate on ground level.

Both South Africa and all the members of the European Union are members of the WTO. This means that a free trade agreement between these two parties had to be negotiated with the WTO rules on FTA's in mind. These rules stipulate that substantially all trade has to be included in such an agreement, which translates into more or less 90% of all trade between the two parties. This meant that South Africa could not expect any special favours from Europe within a free trade agreement. A unique relationship outside the FTA mould was also out of the question, as the WTO stipulates that any concessions offered to another country outside of an FTA, will have to be extended to all other WTO members.

In this way the negotiations between South Africa and the EU were further limited.

GATT was initially signed by 23 nations in 1947, and was a legally binding codification of rules for the conduct of trade among its member states. Its general goal was to maximise growth in world trade and the global economy through the reduction in trade barriers pursued on a non-discriminatory basis. Its primary function was, therefore, to encourage the trading nations of the world to adhere to the most-favoured-nation (MFN) principle, which involves a commitment to non-discrimination.

CHAPTER SIX: CONCLUSION

The thesis found two potential reasons *why* the democratisation of foreign trade policy is important to newly established democracies. On the one hand it is important in order to attract foreign direct investment and to become an active player in the global economy; and on the other it facilitates the consolidation of democracy through consultative policy formulation processes. The process of democratising a country's foreign trade policy should bring the state closer to a form of government — a democracy — that has three defining characteristics, namely consultative policy formulation and debate over policy decisions and a government that is responsive to the needs of its citizens.

6.1 The Impact of Parliament, the Bureaucracy, Government and Civil Society

In the introduction to this thesis it was stated that four variables would be used to evaluate *whether* South Africa's foreign policy formulation has been democratised. The four identified were participation, transparency, openness and representation as they translate into the functions of parliament, the bureaucracy, government and civil society.

The thesis examined the roles these institutions and civil society played during the EU-SA TDCA negotiations and how they themselves have been transformed since the inauguration of South Africa's first democratically elected government. The thesis concludes that huge steps have been taken during the first five years of democratic South Africa to transform the state apparatus.

Despite the constraints of having inexperienced parliamentarians, the South African parliament ensured a good level of participation and transparency primarily through its own transformation. Secondly, the efforts of individuals in the foreign policy and trade and industry portfolio committees have contributed to an interested and well-informed parliament that regularly scrutinised the actions of the negotiators. This in turn enhanced participation

and transparency. However, it is doubted that without these individuals that the same amount of participation and transparency would have been achieved. These characteristics should perhaps rather be attributed to Rob Davies, than the institution.

The arduous task of transforming the bureaucracy has been high on the government's agenda since 1994. The departments that were involved in the negotiations (the Departments of Foreign Affairs, Trade and Industry, Agriculture and Finance) have not equally transformed their civil servants into a more representative mix of South Africans. However, DTI, that *de facto* led the negotiations, has been applauded for its swift and effective transformation. Although DFA and the Department of Agriculture were falling short of a truly transformed bureaucracy during the negotiations an adequate level of representation had been achieved. This also contributed to a transparent process.

The inclusion of a large number of government departments and institutions in the negotiations ensured a large degree of representation. However, the exclusion of the Department of Labour was a serious omission and creates the impression that mere lip-service was paid to the concerns labour raised in the NEDLAC forum. Nevertheless, the NEDLAC process ensured a high level of transparency, as each round of talks was discussed with labour, business and civil society.

Traditionally civil society has been excluded from the foreign policy formulation process, however, a remarkably high level of civil society participation was noted during the SA-EU TDCA negotiations. This openness has provided an interesting precedent for future policy formulations in South Africa. Future studies could focus on other areas of policy formulation and test whether the EU-SA TDCA negotiations were unique in their democratic nature, or whether this has become a characteristic of South African policy formulation. It is suspected that the EU-SA TDCA was a unique process as no other foreign trade policy formulated attracted as much public attention or scrutiny.

Despite this relative positive report card on the South African negotiating team, it has to be noted that there was limited scope for far-reaching participation. The bulk of trade negotiations is concerned with tariff lines and complicated international rules, which could only have been dealt with by experts. South Africans could contribute to the general framework of the agreement, but officials in the Department of Trade and Industry determined the actual content.

If we reconsider the guiding definition used in this thesis to define democracy, and evaluate its three elements (public participation, public contestation and responsive decision makers) against the context of the negotiations, one has to place a question mark over the responsiveness of parliament, the government and the bureaucracy. Whether free trade is in the best interest of the millions of un- and underemployed citizens of South Africa, is debatable. Although the outcomes of free trade are not strictly predictable (and it is most often argued that there are great opportunities in the TDCA), South Africa can expect the closure of a number of companies. The benefits of free trade are also not expected to rapidly trickle down to grass-route level and will predominantly benefit those that are already economically self-sufficient.

Why did the South Africa government embark on such a consultative approach to the negotiations if the end result was a foregone conclusion and not in the interest of its main constituency? This is a difficult question to consider, as the answer must lie somewhere between the governments own ignorance of the rules of the global system and a misplaced belief that South Africa could bend these rules; and the government's efforts to consolidate democracy internally by consulting broadly on economic policy.

6.2 The Democratisation of South Africa's Foreign Policy

In the introduction it was argued that globalisation has contributed to a world-wide trend in democratisation. Although one would like to conclude that this has been a positive development, William Robinson argues that this is only an

extension of US economic hegemony. Democratic forms of government promote participation in the global economy, that in turn benefits economic powers in the developed nations.

Although there is much truth in this argument, it is equally true that a democratic state remains a form of government that can guarantee freedom and civil rights, and therefore remains attractive. Whereas globalisation and its proponents predominantly remain interested in the aspects of democracy that promote open markets, internal consolidation of democracy is of utmost importance to the state's citizens. To ensure participation, debate and informed policy formulations is in the interest of a government that is concerned with its own survival.

States therefore pay attention to the democratisation of the state apparatus as this process is essential to the stability of any democracy. Mass consultation on economic policies has been identified as key to the consolidation of newly formed democracies and in the globalised world we live in this also implies the democratisation of foreign and foreign trade policy.

However, this is not unproblematic. Globalisation has limited the options for domestic economic policy and has virtually closed the door on all other options but free trade for foreign trade policy. No matter how inclusive foreign trade policy formulation is, the rules of the game have been set and actors are only allowed to read their lines. This leaves little room for governments to be responsive to their citizen's needs.

This is not a very satisfactory conclusion given the enormous resources spent on ensuring that the negotiations surrounding the SA-EU FTA were conducted in a democratic manner.

If we were to consider the second Hypothesis proposed in the introduction to this thesis — that the democratisation of foreign trade policy is a crucial element in the consolidation of democracy in new democratic states — then the time and resources spent were not all in vain. Consulting on such a broad

base has given South African's a feeling of ownership over the agreement and has heightened the awareness of the possibilities it holds for businesses in the country. In addition, the knowledge gained through widespread consultation can be effectively put to use in future negotiations and in promoting South Africa in the global economy.

It has also kindled the interest in scholarly work on developing countries' relationships with those of the developed world. This research will especially benefit South Africa in the years to come in talks with the WTO and other trading partners. The length of the negotiations has also had the benefit that a number of officials have gained great experience in negotiating international agreements. Although they were initially on a steep learning curve, the negotiators have done well in securing a number of benefits for South Africa in the agreement.

Although the possibilities were limited, there are some real opportunities for South Africans in the agreement. The process by which the agreement was negotiated, although complicated, lengthy and perhaps without tangible benefits, has brought South Africans closer together in an understanding of one another's needs, which is ultimately key to the consolidation of democracy.

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