
The Lome Convention in the Next Millennium: Modification of the Trade/Aid Package and Support for Regional Integration

Hale Sheppard

I. Introduction

A. *History/Intentions of Lome*

In 1975, the nine member-states of the European Community¹ (EC) and the forty-six countries of the Africa-Caribbean-Pacific (ACP) area signed the first Lome Convention, an agreement based on "a residual sense of responsibility for the colonial past"² which intended to aid the evolution of these former dependent territories into the world economy.³ When signed, both sides viewed Lome as a step in the right direction. The EC saw it as an opportunity for "setting the tone and testing the waters" for subsequent North-South economic arrangements.⁴ The ACP States, for their part, judged the accord as "a landmark achievement, a breakthrough and a vindication for the [lessor-developed countries'] call for a New International Economic Order."⁵ The original objectives of Lome demonstrate a desire for an effective cooperation, a partnership-like relationship: "The Community and its Member States . . . and the ACP States . . . hereby conclude this cooperation Convention in order to promote and expedite the economic, cultural and social development of the ACP States and to consolidate and diversify their relations in a spirit of mutual solidarity."⁶ Moreover, with the goal of integrating the ACP nations into the world economy, the Convention promoted the concept of sustainable development. The EU vowed to promote, for instance, "the ACP State's efforts to achieve comprehensive self-reliant and self-sustained development based on . . . social values, their human capacities,

their natural resources and their economic potential."⁷ The basic innovations of the first Lome included, among others, trade preferences and financial assistance for the former colonies.

With respect to the former, three key principles underlie the Lome trade preferences: (i) stability-preferences are granted for extended periods; (ii) contractuality-preferences are agreed to jointly, and, thus, cannot be modified unilaterally; and (iii) non-reciprocity—the ACP countries are not obligated to extend reciprocal preferences to EU exports.⁸ Several protocol arrangements were established in order to insure stable prices for basic agricultural staples to Europe, namely bananas and sugar.⁹ Furthermore, a set of non-reciprocal trade rules were developed according to which 99.5% of products from the ACP nations enjoyed duty-free access to the EU market.¹⁰ Regarding the latter, financial aid programs were implemented by two principal means: the European Development Fund (EDF) which receives direct contributions each five years from European Union member-States, and by the European Investment Bank (EIB).¹¹

According to the terms of the Lome, this agreement must be renewed every five years or it naturally terminates.¹² Notwithstanding the continuous existence of this trade and aid package for nearly a quarter of a century, it is inevitable that the Lome agreement, especially

Hale Sheppard is a third year law student at the University of Kansas School of Law in Lawrence, Kansas.

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in terms of trade preferences, will be drastically modified as a consequence of numerous factors, including (i) a recent decision by the World Trade Organization (WTO) declaring the current Banana Protocol illegal, (ii) the interest of the EU in directing its development aid to Central and Eastern European States, (iii) the end of the Cold War, and (iv) the phenomenon of the globalization and liberalization of the international economic system. As a result of this forthcoming modification, numerous ACP countries, in particular the banana-producing Caribbean nations, claim that they will suffer grave ramifications, i.e. "economic collapse, mass migration...and a big increase in drug trafficking."¹³

In order to fulfill the original objectives of the Lome – that is, in order to promote the goal of facilitating the post-colonial adjustment of the ACP nations while adhering to the principles of "equality between partners [and] respect for their sovereignty, mutual interest and interdependence"¹⁴—the EU is currently attempting to restructure this Convention amid adverse circumstances. The purpose of this article is to detail the precarious situation in which the Caribbean States encounter themselves, to explain the factors necessitating the modification of the Lome Convention, and to compare the possible impacts of the various options set-forth to date. Subsequent to such analysis, this paper then advocates the division of the Lome nations into regional areas which will enjoy continued protection under a regime of differentiated reciprocity.

B. Focus on Caribbean—Banana Regime

Of the sixty-nine members of the ACP

nations, fifteen are located in the Caribbean.¹⁵ For these countries, many of which consist of small islands, bananas are vital to their economies. It is argued, in fact, that bananas are the "only legitimate year-round crop that can viably be cultivated there to provide a regular weekly income to small farmers."¹⁶ One reason is that the fruit is able to produce again within a short period after the destruction caused by the natural disasters, i.e. floods and hurricanes, to which the region is regularly subjected. Moreover, due to the fact that the banana crop has a nine-month cycle, fields can be rapidly established, thereby providing employment and foreign exchange earnings to the zone.

The Windward Islands (Dominica, St. Lucia, Grenada and St. Vincent), former colonies of the United Kingdom, represent four small¹⁷ Caribbean nations that survive, in large part, by exporting bananas to the EU under the auspices of the Lome Convention. Banana exportation plays a significant part in the economy of the Windward Islands, namely in the increase of foreign exchange earnings, employment, savings and government revenues.¹⁸ In Dominica, for instance, the banana industry has been labeled as "critical" to the economy.¹⁹ According to the World Bank, any adverse change in the trading environment would have a "major impact" on Dominica, an island in which 30% of the total population already lives below the poverty line.²⁰ Similarly, in reference to the island of St. Vincent, the World Bank has predicted that a change in the banana industry would cause unemployment, reduced foreign investment, major financial difficulties for the Banana Growers Association, and other "devastating

effects.”²¹ It has been claimed that, in addition to the financial considerations, the survival of the banana trade is a “prerequisite to the preservation and enhancement of human rights and democracy.”²² The ratio of banana exports to total agricultural exports displays the extent of the “dependence” that the Windward Islands have on the banana trade. In 1990, for example, 78.3% of the total agricultural exports of the Windward Islands consisted of bananas, a percentage attesting to the fact that the Windward Islands’ dependency on bananas is “more pronounced than in other banana-producing countries.”²³ The employment statistics, furthermore, corroborate this dependency: over 52% of the actively working population is directly employed in the banana industry.

For the best production, bananas require rich alluvial soils, humidity and constant high temperatures. While bananas are produced in Windward Islands and throughout the Caribbean, this region suffers disadvantages, in both geographical and economic terms, in comparison with the competitors in Central America.²⁴ The higher production costs are attributable to several factors including hilly or mountainous growing areas, poor soil conditions, independent farmers, subjection to natural disasters, higher wages, and more expensive shipping costs due to the absence of economies-of-scale.²⁵ In an attempt to compensate for the elevated production costs in the Caribbean, the Lome concedes certain trade preferences to this region.

Prior to 1993 there existed twelve national

systems within the EU, concerning the treatment of imported bananas. These systems were divided into four main categories ranging from a complete ban on the importation of the fruit, to no prohibitive tariffs.²⁶ In response to the lack of conformity, the EU offered Council Regulation 404/93 (the new Banana Regime) in July 1993, which pledged that “[i]n respect of its banana exports to the Community Market, no ACP States shall be placed, as regards access to its traditional markets and its advantage on those markets, in a less favorable situation than in the past or at present.”²⁷ Accordingly, the ACP countries were permitted to import up to 30% of the EU banana consumption in its totality without paying duties.

On the contrary, the non-ACP producers, i.e. the trans-national fruit companies located in Central America and various South American countries, were subjected to a

two million-ton quota, a sizable tariff,²⁸ and a new licensing system.²⁹ As a result of this preferential trade access, the Caribbean islands, for a period of time, benefited in various ways. In the Windward Islands, for instance, the foreign export earnings “fueled the banking system and other credit institutions including those providing home loans, and . . . promoted a continuous flow of funds for savings, consumption, investment and education.”³⁰ In addition, the evident “multiplier effect” of such earnings improved the local governments’ fiscal position, leading to investments in roads, water, electricity, and airports.³¹ The benefits, however, are in serious jeopardy of being lost or substantially

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II. The Inevitable Modification of Lome

A. Legal Basis—GATT/WTO Decisions

As World War II ended, many nations seemed determined to establish a series of institutions related to international economic relations, including the General Agreement on Tariffs and Trade (GATT).³² This instrument, which dealt primarily with lowering tariffs on the transnational exchange of goods, was intended to be a multilateral trade agreement which would "gradually bec[o]me the focus for international government cooperation on trade matters."³³ The GATT functioned effectively during the next five decades; however, due to the increasing challenges generated by, among other factors, the greater interdependence of national economies and the global growth in trade and services, the shortcomings of the GATT became apparent.³⁴ As a result, during the 1994 Uruguay Round of GATT discussions, the World Trade Organization (WTO) was formed. The WTO charter, signed by 124 governments and the EU, is completely institutional and procedural. However, all of the provisions from the 1947 GATT as well as numerous substantive agreements resulting from the annexes produced at the Uruguay Round are incorporated into the WTO.³⁵ In simplified terms, the purpose of the WTO is to "facilitate international cooperation concerning trade and economic relations, and [to] fundamentally change the GATT . . . to accommodate the vast new terrain of trade competence."³⁶

With these global trade entities in mind, those parties adversely affected by the implementation of the Banana Regime in 1993 react-

ed strongly. Several Latin American nations, for instance, launched a complaint before the GATT, calling for the formation of a dispute panel to investigate the legality of the new Regime.³⁷ Specifically, according to Article I(1) of the GATT, each member must extend Most Favored Nation (MFN) status to *all* other members. This MFN treatment, in other words, means non-discrimination and equal access to the markets for *all* GATT members. The panel,³⁸ in brief, held that the benefits of the EU fruit policy were restricted to the ACP nations, thus constituting an unacceptable disparate treatment under GATT terms.³⁹

Despite this decision, due to the need for "consensus" voting under the GATT,⁴⁰ the EU managed to block the adoption of the Panel decision.⁴¹ Furthermore, the EU, in conjunction with the Caribbean Banana Exporter's Association (CBEA), contended that the 1993 Regime was protected by a waiver from GATT non-discrimination rules, thus exempt from such legal challenges.⁴² The GATT provides, in pertinent part, that in exceptional circumstances, the Contracting Parties may waive an obligation imposed upon them provided that such a decision is approved by a two-thirds majority of the vote.⁴³ The Lome IV was indeed sheltered by such a waiver⁴⁴ and, as a result, a derogation from the obligation of providing MFN treatment to all members of the GATT should be permitted for the EU and ACP States until February 29, 2000, the date on which the Convention expires. Despite this waiver under the GATT, however, the banana dispute was far from being resolved, and the adversely affected parties sought relief from two additional institutions: the United States

Trade Representative (USTR) and the WTO.⁴⁵

Pursuant to Title III of the US Trade Act of 1974, the USTR has extensive authority to address illegal, unfair and discriminatory foreign practices which restrict US exports. In this case, based on a petition of Chiquita, the world's largest banana producer, the USTR initiated an investigation under § 301 of the Trade Act.⁴⁶ According to this Act, if the USTR determines that the rights of the USA under any trade agreement are being denied or any act, policy or practice of a foreign country (i) violates the provisions of any trade agreement, or (ii) is "unjustifiable" and burdens or restricts USA commerce, then the USTR shall take the appropriate action.⁴⁷ After analyzing the Banana Protocol which was, according to Chiquita, prejudicial to US commerce, the USTR was prepared to impose various retaliatory measures against the EU. The European group rightfully signaled, however, that such a unilateral measure would constitute a violation of the recently adopted WTO Dispute Settlement Understanding (DSU).⁴⁸ Therefore, with the objective of accelerating the resolution of the conflict, the USTR, backed by four of the largest banana-producing countries in Latin America, filed an official complaint before the WTO with two precise demands: (i) a larger quota for Latin American fruit, and (ii) changes in the licensing system.⁴⁹

In April 1997, the WTO Dispute Panel ruled that the EU's banana import regime violates the trading rules and, as a result, the EU was directed to "bring the regime in line with its obligations under global trade accords."⁵⁰ Specifically, the EU measures which were found to be inconsistent with the WTO rules include: (1) the granting of import licenses for

Latin American bananas to British companies as opposed to American companies, (2) the imposition of unequally burdensome requirements for imports from Latin America than from other nations, and (3) the discriminatory allocation of access to the EU market not using past levels of trade as a criteria.⁵¹ Unlike the earlier decisions under GATT rules, appellate body rulings of the WTO are binding unless *all* members decide by consensus to *reject* them. Moreover, according to the Dispute Settlement Resolution clause of the WTO, if the Appellate Body finds that a certain practice is violative of an established trade agreement, it "*shall* recommend that the Member concerned bring the measure into conformity with [such an] agreement."⁵² Therefore, despite the persistent protests of the Caribbean banana producers,⁵³ based on this recent WTO holding, it is evident that the current Banana Regime favoring the Caribbean islands will not be extended.

B. Other Reasons

"This is the last [Lome] Convention as we have come to know them."⁵⁴ This statement by Joao de Deus Pinheiro, EU Commissioner, illustrates that, in addition to the aforementioned WTO ruling, there seems to be a clear decline in the European interest for the ACP nations. Many factors have contributed to this lessened interest in ACP developmental aid, namely the conclusion of the Cold War, the dissolution of the Soviet Empire, the importance of liberalization and globalization following the conclusion of the Uruguay Round, the formation of the EU Single Market, as well as the continued existence of the rigid social and economic structures in some ACP states.⁵⁵ A number of these factors are discussed in detail

in the following pages.

1. *Diminishing Sense of Common Interest*

When the first Lome was signed in 1975, there existed strong historical and obvious bonds between the former colonies and the nine EEC members states; however, the rationale for such an interdependent relationship is sometimes viewed now as "historical links that are now out of date."⁵⁶ The EU now has fifteen members and the newcomers have had little sympathy for idea of Lome, seeing it as a "post-colonial relic."⁵⁷ As one commentator put it, the colonial era has irrevocably terminated "and with it the 'golden handshakes' that were once expected, proffered and accepted all around."⁵⁸ The terms of any future interest of the EU in the ACP nations, consequently, are more likely to be determined by political, economic and security

interests rather than by "general solidarity."⁵⁹

The international environment of the 1990s is significantly different from that of the 1970s when the first Lome was signed. For example, the earlier notion of the "new international economic order" designed to redistribute the wealth to benefit the developing countries, is no longer discussed. In addition, decolonization, one of the fundamental issues of the 1960s, no longer appears of great import. The few remaining dependent territories of developed countries "show little sign of seeking independence."⁶⁰ Thus, the one thing that many people seem to agree on about development theory is that it has reached an impasse, a

stalemate or a crisis.⁶¹ Even senior western politicians concede that the whole arena of development cooperation is characterized by "confusion among donors, competing priorities, and a lack of direction and political will."⁶²

2. *Poor Results*

Critics have claimed that Lome is part of the problem instead of the solution. Specifically, it is suggested that Lome "perpetuates ACP dependence on the EU, promotes paternalism and clientelism rather than a partnership, and [instead of] allowing the ACP a say in the use of development resources, the EC takes the lead in most decision-making and implementation."⁶³

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Furthermore, over the last twenty-five years, the impact of the non-reciprocal preferences and the protocols offered to the ACP countries has been disappointing. The ACP

share of the EU market, for instance, dropped from 6.7% in 1976 to 2.8% in 1994,⁶⁴ and the majority of ACP nations have failed to diversify their exports, thus still relying on a few principal products.

The quintessential example of such disappointment involves sub-Sahara Africa, a region where the socioeconomic performance has been considerably inferior. The per capita GDP, for instance, grew an average of .04% annually from 1960 to 1992, compared with 2.3% for the rest of the developing countries.⁶⁵ Moreover, the region scored poorly in the areas of health care, income, nutrition, education and access to drinking water. Other notable prob-

lems include rapid population growth, low food production, economic mismanagement, political instability, armed conflicts, and environmental damage such as deforestation and soil exhaustion.⁶⁶

3. *Aid Fatigue*

Public opinion in the EU increasingly questions why it should provide aid to the ACP nations when, at the same time, its own society confronts serious economic and social problems. Dieter Frisch, a former Director General for Developmental Policy at the EU, explained that he is "not sure the ACP states realize just how low they have fallen in the EU's foreign policy priorities. . . . They're much lower than the eastern Europe, the Mediterranean states and even Asia."⁶⁷ The new economic constraints, it is argued, force all States to implement radical reforms. The EU countries, for their part, must increase the competitiveness of their economies, reform social systems, resolve the high unemployment rate, and deal with social exclusion.⁶⁸ Such national concerns "may lead both countries and individuals to turn in on themselves."⁶⁹ The final aid package of 13.3 billion ECU's in the 1990 Lome was about 20% higher than previously allocated; however, during the 15-month long negotiations that preceded the deal, many EU states made it clear that they wanted to reduce aid spending to the ACP nations.⁷⁰

4. *Redirection of Development Aid*

In addition to the above-mentioned factors, the trend in EU aid has been to help the newly-emerging democracies of Eastern Europe join the EU. The aid allocations historically reserved for poverty alleviation programs in the ACP countries, therefore, are now being "zealously diverted to Eastern Europe

and the Mediterranean to promote privatization and democracy."⁷¹ The EU is drafting agreements, in particular, with thirteen middle-income countries that espouse reciprocal free trade as the final goal. Four agreements have been made with countries from the Mediterranean (Israel, Turkey, Malta, Cyprus) and nine others involve Central European nations (Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and Slovakia).⁷² To put it in simple terms, the EU member states now have varying interests, normally in connection with their history (Latin America and Spain), proximity (Central Europe and the Mediterranean), or economics (Asia).⁷³

III. Policy—All Interested Parties Support Caribbean Integration

Notwithstanding the various factors necessitating the inevitable modification of the Lome agreement, the attitude that prevails among the principal parties involved—the EU, the ACP nations, and the United States (as petitioner of the WTO)—is one of compromise. The situation, in other words, is one which entails a modification, not the termination of Lome. From the perspective of the EU, in the words of Joao de Deus Pinheiro, EU Commissioner, the goal is clear:

[T]o revitalize ACP-EU relations; open new horizons and boost the chances of success. ACP-EU relations are still a key part of the Union's identity. The post-colonial era is coming to an end, but our responsibilities towards the ACP countries continue...On the threshold of the 21st century the ACP countries

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are looking forward...to real prospects for development. But, at the same time, the...government structures in these countries is under severe strain. This is not the time to slacken [the] efforts or downgrade the quality of [the] partnership.⁷⁴

In regard to advancing its own interests, the EU has enumerated several areas in which it has an interest in promoting. First, the EU procures to increase peace and stability, thereby avoiding the marginalization of entire communities, political destabilization and disintegration of nations, by developing the legal systems in the ACP nations. Second, in order to promote solidarity, the EU seeks to battle extreme poverty, while protecting civil, political, social and cultural rights. Third, in terms of economic development, the EU proposes to aid the ACP countries, particularly those currently outside the economic order, in developing their internal capacities in order to guarantee the basic conditions necessary for sustainable development. Finally, with the intention of preserving the environment, the EU claims that it will lobby to establish a legal framework which will, in turn, fortify global environmental protection objectives.⁷⁵ With the above strategy, the EU intends to deal with the major changes in world affairs while simultaneously fulfilling its historical obligation to its former colonies. As one Commissioner put it, "Europe cannot claim to be a player on the world stage without a responsible strategy towards...the South, and in particular those most at risk of poverty and marginalization."⁷⁶

Similar to the attitude adopted by the EU, the USA has announced that, notwithstanding the recent WTO decision declaring the Banana

Regime illegal, it does not want the EU to terminate all assistance to the Caribbean; rather, it would ask the EU to bring its banana regulations into conformity with the agreed rules of international trade.⁷⁷ The USTR has stated, in fact, that it respects the commitment undertaken by the EU in its Lome agreements to promote development of the former colonies and, therefore, does "not object to a continuation of tariff preferences for the Windward Islands and other ACP banana-producers."⁷⁸ The main purpose of the WTO complaint, as explained by the USTR, was to "convince" the EU to negotiate an acceptable regime, and not that of allowing U.S. based multi-national fruit companies to completely dominate the market vis-à-vis a global competition absent of necessary regulations.⁷⁹ According to the USTR, the EU Banana Regime has, in effect, created a disincentive for solving fundamental problems such as competing in the forthcoming global marketplace generated by the wave of economic liberalization.⁸⁰ As an initial step to an economic integration, the USTR has suggested that, with the \$300 million that the EU annually collects in tariff revenue from banana imports from Latin American countries, it could expand its diversification program by: (1) developing human resources in the Windward Islands through education, (2) explore alternatives such as information technologies, and/or (3) finance pilot projects for alternative crops.⁸¹

Finally, the ACP countries, preoccupied by the "new fashionable and much-touted panaceas" of globalization and liberalization,⁸² fear that the following areas could be in jeopardy in the case of a drastic adjustment of the Lome Convention. They are concerned about,

precisely, attempts to diminish aid flows under the pretext that aid is not being effectively used; the loss of trade preferences; and the erosion of the benefits associated with various commodity protocols such as sugar, beef and bananas.⁸³ Consequently, in the spirit of optimism used by both the EU and the USA, the ACP nations have set-forth simple "wishes," including: (i) a workable Convention unencumbered by conditionalities, (ii) provisions which truly support the private sector and facilitate business development; and (iii) a more efficient, less bureaucratic system for dealing with the processes affiliated with the distribution and application of EU aid.⁸⁴

IV. Trade Arrangements—Weighing the Conflicting Views

A. *The European Union*

In spite of such apparent unanimity for the improvement of the Lome, as of this date, none of the groups has set-forth a plausible solution, i.e., one that is acceptable to the other two groups. Since the Lome IV is scheduled to terminate on February 28, 2000, time is of the essence. Thus, in the following pages, the four principal options under investigation by the EU, and the corresponding reactions to each, are discussed.

1. *Option #1—Status Quo*

The preservation of the current non-reciprocal, differentiated, contractual, uniform scheme centering on strict market access for ACP products has been proposed. One advantage of extending the current approach is that, vis-à-vis the contractual characteristics of the trade accord, the ACP states are provided with long-term security and the assurance that the ACP trade relationship is still of top priority

for the EU.⁸⁵ In addition, with respect to certain agricultural commodities, the EU would be able to provide access subject to precise limitations which facilitate the absorption of such products in the EU market. On the other hand, since this plan permits differential preference to the ACP nations, in order to be valid under the WTO, it would need to obtain a 'waiver' which, in turn, would necessarily be reviewed annually.⁸⁶

This option, in the absence of an extended waiver for the Lome, is currently and will continue to be incompatible with Article I(1) of the GATT, the Most Favored Nation principle. Specifically, since the ACP bananas receive special preferences pursuant to the Lome, the concept of parity underlying both the GATT and the WTO is disregarded. The implausibility of the prolongation of the status quo is confirmed, moreover, by the panel decisions rendered against the Banana Protocol by the GATT (1994) and the WTO (1997).⁸⁷ In addition, the latter panel ruling, in contrast to the decision handed-down by the GATT, was "accepted" by the EU.⁸⁸

2. *Option #2—Integration into a GSP on a Unilateral Basis*

This option involves the removal of the trade preferences of the Lome, thereby converting it into solely an aid package. Accordingly, trade would be excluded from negotiations and the decisions regarding the concessions granted by the EU would be unilateral; that is, they would not be the object of discussion with the ACP countries. The Least Developed Countries (LDCs) from the ACP nations would be grouped together with non-ACP LDCs,⁸⁹ and the preferences granted to this group could be enlarged to match the level

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of Lome preferences, with non-reciprocity.⁹⁰ This option, furthermore, would incorporate the more-advanced developing countries into a normal General System of Preferences (GSP) arrangement while, on the other hand, the ACP LDCs are combined with non-ACP LDCs to receive an "upgraded GSP" status.⁹¹

The principal advantage of this option is that, as long as the special commodity protocols such as the 1993 Banana Regime are either eliminated or provided to *all* developing countries, the trade policy of the EU would be in conformity with the WTO regulations. However, disadvantages associated with this option include the weakening of the concept of "partnership" set forth in the Lome Conventions, thus reducing it exclusively to its political and aid dimensions. Moreover, it will decrease the preferential margin received by the more-advanced ACP countries under the Lome due to eradication of the commodity protocols.⁹² This option would, in effect, "terminate the special treatment that the ACP countries have had since the inception of the arrangement in 1975."⁹³

3. Option #3—Uniform Reciprocity

The third option entails the requirement that all ACP countries extend reciprocity, after a transitional period, to EU exports. In other words, in exchange for open access to the EU market and the non-existence of tariff duties, the ACP nations would be obligated to extend these same privileges to EU products, thereby forming a Free Trade Area (FTA). The main purpose of such an FTA, mindful of the benefits of a closer economic integration between the economies, is to "facilitate trade . . . and not to raise barriers to trade of other contracting parties."⁹⁴

This option, similar to the previous two, has several problems. First, the formation of an FTA would require the forced consolidation of both LDCs and developed nations, two groups which are characterized by "extreme divergence" in terms of levels of advancement.⁹⁵ Such a uniform reciprocal arrangement would, in fact, not even attempt to establish some type of more-favorable treatment for the countries at the lowest levels of development. A second problem involves a conflict with the language of the GATT, namely the necessity that all FTAs "facilitate trade between the *constituent territories* and not raise barriers to trade."⁹⁶ According to this provision, three non-contiguous and extremely diverse regions (i.e., African, Caribbean, and Pacific countries), or two separate continents (Europe and Africa), are unable to form an FTA under the GATT.⁹⁷ Finally, the viability of the implementation of such a plan in itself is questionable. It is difficult, for example, to conceive that *all* ACP nations can reach an agreement regarding a single plan, mindful of distinct trading patterns, varying needs for national restructuring, etc.⁹⁸

4. Option #4—Differential Reciprocity—The Division of Lome into Regional Agreements

A fourth option would be to replace the Lome Convention with a set of regional agreements, characterized by variable reciprocity between the EU and three homogenous groups of ACP countries, i.e., Africa, the Caribbean, and the Pacific. This differential treatment would have all the benefits of the uniform reciprocity model, while allowing for the disparate levels of integration, development, needs and conditions of distinct ACP coun-

tries.⁹⁹ Thus, for each individual ACP region a specific plan for free trade with the EU best-matched with its particular situation would be defined. Moreover, provided that the trade accords cover a "substantial part of the trade" of each country and do not exclude any major sector, this option would be in full compliance with the WTO.¹⁰⁰

The major criticism involves the issue of timing, i.e., such a trade relationship with the EU can only begin after each regional group has, among itself, managed to form a reciprocal FTA. For some regions, such as the Caribbean which has the long-established Caribbean Community agreement (CARICOM), such a hurdle presents little difficulty. On the other hand, in Africa, the groups (i) have just recently adopted constituent agreements, or (ii) have instruments in place which function inadequately.¹⁰¹ It has been argued, furthermore, that none of the regions is prepared to establish an FTA with the EU, "not now and certainly not by the year 2000."¹⁰²

B. The ACP Nations

Notwithstanding the options raised by the EU, the ACP nations, particularly those banana-producing States in the Caribbean, have as of this date not offered counter-proposals. Rather, they have maintained their position that any change will provoke a major crisis in the region. According to the Caribbean Banana Export Association (CBEA), for instance, without the Banana Regime, "the Caribbean trade in bananas would not survive" and the outcome

for the area would be "disastrous."¹⁰³

Specific negative ramifications for the region in the event of the eradication of the Regime include, among others, (i) major loss of jobs which would generate social and political unrest, (ii) adverse repercussions for the tourist industry, (iii) an inability to service foreign debts, (iv) an increase in drug trade, and (v) increased illicit emigration to the U.S.¹⁰⁴ In the words of George Williams, High Commissioner for Dominica, the removal of preferential trade access would constitute "a potential life or death issue for the Caribbean banana industry."¹⁰⁵ The Dominican claimed, moreover, that the undeniable part of the situation is that

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Caribbean producers will be forced out of the EU market—thus the "US companies [will] be among the main beneficiaries of our demise."¹⁰⁶

In a similar fashion, representatives from the St. Lucia Banana Growers Association have labeled the WTO action a "diabolical campaign" and an "economic warfare against a defenseless people."¹⁰⁷ If the banana industry is destroyed, the organization claims, the Windward Islands will be left with "no alternative but misery, strife [and] suffering."¹⁰⁸ Negative repercussions from the WTO decision will affect not only the banana producers themselves; rather, the entire region will be prejudiced. The collapse of the Windward Island fruit industry would prove disastrous for non-producers in the region who rely on the islands to provide them with ready markets for their own products. Representatives from Trinidad and Tobago, for example, claim that there is a

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direct relationship, a "clear link" between all of the Caribbean countries.¹⁰⁹

In addition to warning of the negative effects of a modification of the Regime, various groups contend that the main solutions offered by the EU constitute unviable alternatives. With respect to a mere increase in financial aid couple with the dismantling of the Regime, the CBEA claims that since the world market is dominated by three large companies (Chiquita, Dole and Del Monte), the Caribbean nations, even with additional aid, would lack the resources necessary to engage in a battle for market position.¹¹⁰ Furthermore, it is argued that economic aid, by itself, cannot compare with market returns as a basis for sustaining the banana industry because it eliminates the incentive to increase productivity. Also, income from conventional aid development does not filter down to the farm level with the same effectiveness as income earned by growers themselves from fruit production.¹¹¹ In short, substituting aid payments for the Banana Regime represents "replacing trade . . . with subsidized idleness."¹¹²

With regard to forced diversification, the USTR has urged the Caribbean growers to change to areas in which they have a comparative advantage. The Windward Islands argue, however, that other alternatives which could provide comparable employment or income are nonexistent, for various reasons. First, they contend that any alternative crop would confront the same disadvantages of terrain, climate and size of plantations. Second, in order to be profitable, any substitute product would require access to the major markets, the majority of which are already "entrenched in competition."¹¹³ Third, other exports would be

dependent on a regular shipping service which can only be insured by the volume of banana sales. Diversification constitutes a complicated solution since, as of this date, 'banana boats' have served as the sole transportation link at a reasonable cost.¹¹⁴

Notwithstanding the unfeasibility of the possible solutions for the banana-producing countries, the region has acknowledged that the process of Caribbean adjustment is inevitable. In accordance with declarations of local officials, "[t]he Caribbean must recognize the fact that for its own survival and long-term growth, it . . . must respond to global economic conditions[,] as daunting as they may be."¹¹⁵ Although the region has announced its readiness to "pull [its] own weight within the international community," the smaller islands have recognized the fact that, as vulnerable economies, they are in need of substantial "assistance" in making the appropriate modifications.¹¹⁶

V. Conclusion: Regional Integration— The Most Feasible Solution

Subsequent to the analysis of the four possible options offered by the interested parties to date, it seems clear that one idea is, by far, the most plausible: the regionalization of Lome. This regional approach involves the fortification of regional collaboration within the ACP in order to, among other things, augment their attractiveness to foreign investment capital, increase productive capabilities, enlarge their internal market and, in light of the new trend in globalization, enhance their international market competitiveness.¹¹⁷ This option is in accordance with the current trend for region-to-region agreements, and it would benefit both the ACP and the EU. The ACP nations, for



example, would maintain access to the European market while the EU, for its part, would eventually benefit, after a transitional period, vis-à-vis reciprocal advantages. Moreover, the WTO is more apt to approve such an arrangement, especially if the transition period lasts less than 12 years.¹¹⁸ According to this scenario, the ACP producers would experience increased competition with EU goods in ACP markets due to the reciprocity element of the Free Trade Area, yet another factor which makes regional agreements more likely to withstand the scrutiny of the EU and the WTO.¹¹⁹

The ACP group is not an economic nor a political entity, and the individual member States are too small to attract significant foreign investment or to negotiate conditions which would facilitate sustainable trade relations with the larger developed countries. Thus, amid the recent trend of globalization and the EU's decreased desire to provide assistance to the ACP nations, "regionalization of the EU-ACP relations makes sense."¹²⁰ Among other things, this option acknowledges the fact that not all the ACP nations were able to take advantage of the Lome commodity protocols, financial aid and trade preferences for various reasons. Given the geographical, cultural and political diversity of the ACP states, subregional agreements with the EU have been described as a "tempting proposition [which makes] practical sense"¹²¹ provided that such a reorganization does not cause competition or divisiveness within the ACP.

The need for a differentiated approach is clear considering the drastic variations in the dependence on the EU market for export revenue. In Africa, for instance, the dependency

on the EU market is 46%, in the Caribbean it is 18%, and in the Pacific it is approximately 23%.¹²² The dependency rate, furthermore, fluctuates substantially within the regions themselves.¹²³ This need for differentiation is even more apparent based on the growing heterogeneity of the ACP group. The wide diversity of conditions prevailing in the ACP, it has been argued, creates tensions which weaken their negotiating position towards the EU, while also diminishing the effectiveness of the ACP institutions. This internal disparity and its effects have revealed themselves in inter-ACP divergence: Representatives from ACP nations with a "good track record" commonly express their frustration at the EU for consolidating them with a group of "bad performers."¹²⁴

The advocates of regionalism stress the undeniable fact that "the interests of the EU ha[ve] change[d] and therefore the Lome partnership should change."¹²⁵ As a result, it has been argued that regionalization would be better suited to manage the specific interests of individual ACP countries and regions in order to: (i) restructure and diversify production, (ii) reorient ACP exports destined primarily for the EU, (iii) insure industrialization and competitiveness in order to effectively participate in global trade, (iv) develop national and regional markets, and (v) enhance South-South cooperation.¹²⁶ In terms of the business sector, it has been acknowledged that, when aggregated, the contribution of small businesses in micro-states can be significant. Development in this area would, as a result, promote self-reliance and greater equity in resource allocation and distribution, thereby contributing to the concept of good governance.¹²⁷

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Despite wide-spread support among the ACP nations for a regional approach, such a reorganization, a "break-up of the geography," has faced three major criticisms.¹²⁸ First, smaller ACP states fear a reduction in bargaining power, which was one of the original reasons behind the formation of the group. In particular, it has been argued that, in the case of the smaller islands, without the ACP cohesion, the region would "simply slip into oblivion if it had to deal with the EU . . . separate[ly]."¹²⁹ Second, some ACP experts claim that regionalization would prejudice the established dialogue structure. The division of the group, for instance, would require a new communications framework, as well as generate increased bureaucracy at the Commission level.¹³⁰ Finally, it is claimed that regionalization would destroy the, albeit not always harmonious, intra-ACP collaboration which presently exists. Opponents of the division allege that, as of this date, the diversity of the group has allowed a "valuable sharing of experiences, of systems of governments and of cultures," thereby removing the artificial barriers which existed between the groups prior to 1975.¹³¹

Despite such opposition, the majority view in the Caribbean and the Pacific is in favor of regional integration.¹³² In particular, the view of the Windward Islands is that "the tide of trade globalization is unstoppable and gaining momentum, [thus they] may easily be swept away by it, if [they] attempt to swim against its current."¹³³ The idea of regional integration is

quite pragmatic, especially in the case of the Caribbean region. The most encompassing definition of the Caribbean area includes thirty-seven countries, namely fifteen independent ACP countries in the Caribbean proper, two Dutch territories, five UK territories, three French overseas departments, two U.S. territories, Cuba and nine countries on the South and Central American coast. This group has demonstrated that it is anxious to form alternative trade alliances in order to preserve "national sovereignty . . . in the face of economic, cultural and technological" power of other powerful countries.¹³⁴ Moreover, this pursuit of increased integration has historically

been the region's primary concern. During the last decade, for example, the liberalization of the world economy has constituted an incentive to form various regional groups, such as the Organization of East

Caribbean States (OECS), the Association of Caribbean States (ACS), and the Caribbean Community (CARICOM).¹³⁵ Admittedly, the region has several problems, i.e. highly diverse levels of development, an inherent vulnerability in island States, fragmentation of economies, drugs, migratory flows and rapid political changes. None of the the above, however, constitute major problems of governance which would jeopardize a regional agreement with the EU and, additionally, the homogeneity of the Caribbean countries in itself could arguably justify the division of the ACP. They all have, for instance, (i) special difficulties in macro-economic management

Despite such opposition, the majority view in the Caribbean and the Pacific is in favor of regional integration

due to substantial market dependence and price fluctuations; (ii) high costs of diversification due to the geographic limitations; and (iii) a high unit cost of infrastructure because of technical indivisibilities in minute societies.¹³⁶

Without a doubt, the Lome Convention has accepted the rigorous task of improving the conditions of some of the world's poorest and most-troubled nations. Despite its failures to date, in order to, among other things, fulfill its original goal of "promot[ing] and expedit[ing] the economic, cultural and social development"¹³⁷ in the Caribbean banana-producing countries, the EU should continue to "keep its hand to the plow."¹³⁸ The recent decision by the WTO judging the current Banana Regime illegal could prove, in the absence of the rapid development of a feasible alternative such as regional integration, disastrous to the Caribbean islands. The Caribbean must expect that any post-Lome agreement shall be in accord with the WTO rules, thus the removal of trade preferences seems imminent. What is necessary, in this case, therefore, is the continuance of both preferential trade and financial aid while the instrument suitable for each region, i.e. Lome V, is drafted. In other words, while it is acknowledged that "it is better to teach a man how to fish than to give him a fish . . . he must be given a fish while he is being taught to fish."¹³⁹ As Randall Robinson, Executive Director of Trans Africa, summarized it, "[t]hese countries [the Caribbean banana-producing nations] have done everything right. They are . . . staunch allies of the United States. They are stable . . . politically . . . their literacy rates are in the ninety percentile and political prisons are unheard of."¹⁴⁰ Due to the precarious situation in which the small

Caribbean developing states find themselves; therefore, it would be most compatible with the principles of Lome to adopt a special-interest approach to development that is region specific.

Notes

1. In 1975, the member-states of the European Community included Germany, Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands and the United Kingdom.
2. European Commission, *Green Paper on Relations Between the European Union and the ACP Countries on the Eve of the 21st Century - Challenges and Options for a New Partnership* (visited Apr. 2, 1998) <<http://www.oneworld.org/euforic/greenpap/chap2.htm>>. (hereinafter *Relations*).
3. European Commission. *Development: Bilateral and Development Cooperation Relations with Africa, the Caribbean and the Pacific. "What Are the Current Justifications for Development Aid?"* (visited Apr. 2, 1998) <<http://europa.eu.int/en/comm/dgO8/faq/en-faqO8.htm>>. (hereinafter *Development*). It is argued that North-South interdependence is not merely economic; rather, it involves issues such as drug abuse, immigration, overpopulation, the environment and AIDS. If the richest countries, it is suggested, want to avoid suffering the consequences of the crises affecting the least-developed countries, it should adopt an attitude of solidarity and support developmental efforts. To the contrary, in the future, they will find themselves paying much more, in human and economic terms, than it would have cost to take present action to avoid subsequent disaster.
4. Olufemi A. Babarinde, *The Lome Conventions and Development: An Empirical Assessment* 6 (1994).
5. *Id.*
6. *Development*, *supra* note 3. In addition to its alleged commitment toward a partnership, the original Lome also stressed the importance of the concepts of sovereignty and self-determination. "AC-EEC cooperation...shall be exercised on the basis of the following fundamental principles: equality between partners, respect for their sovereignty, mutual interest and interdependence; and the right

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of each State to determine its own political, social and economic policy options."

7. Lome Convention, Part IV, Article 4 (1990).

8. *Relations*, *supra* note 2, at 7.

9. Anthony Payne & Paul Sutton, *Dependency Under Challenge: The Political Economy of the Commonwealth Caribbean*, 211-13 (1984). When the Lome was negotiated, a few major commodities accounted for close to the entirety of the exports from the Caribbean to Europe. In particular, three commodities (sugar, bananas and rum) constituted nearly 80% of total exports. As a result of this commodity concentration, several documents called "protocols" were negotiated separately. These protocols included, among other things, both expansive and protective features.

10. Anthony Gonzales, *Caribbean-EU Relations in a Post-Lome World*, Friedrich Ebert Stiftung Institute (EU Development Policy Working Papers No. 2, (1996)) (visited Apr. 2, 1998)

<http://www.oneworld.org/euforic/fes/2gb_gon.htm>.

11. William E. Kosar, *The European Development Fund: The Lome As Applied and Interpreted*, THE INTL. CONSTRUCTION L. REV., Lloyd's of London Press, Oct. 1996, at 424-25. The EIB approves and funds industrial, tourism and infrastructure projects. The EIB will also lend capital; however, this commercial financing is restricted to energy fuels of mutual interest to both the ACP and the EU.

12. In 1975, the EU signed the first Lome Convention with the participation of 46 independent States. Lome II, which lasted from 1980 to 1985, was signed by 65 states. For its part the Lome III, which ruled during the following five-year period (1985-1990), enjoyed the participation of an additional four States. Lome IV, after its mid-term revision, is scheduled to reign until the year 2000.

13. *WTO to Rule Chiquita Complaint: Caribbean Producers Prepare to Defend EU Market Access Latin American Weekly Report*, May 23, 1996. Officials for the Windward Island producers (St. Lucia, Vincent, Grenada and Dominica) have used these arguments in an attempt to persuade the USA to drop its case before the WFO.

14. *See Development*, *supra* note 2.

15. The Caribbean signatories to the Lome Convention include: Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, St. Christopher and Nevis, St. Lucia, St. Vincent & the Grenadines, Suriname, Trinidad

and Tobago.

16. The Caribbean Banana Exporters Association (CBEA), *Caribbean Bananas*.

<<http://www/cbea.org/cbea/carib/bancarib.htm>>.

17. The Windward Islands have a combined area of 2,100 square kilometers and a population of 426,000.

18. Michael B. Joseph, *Post-Lome IV Arrangements Must Mirror the Principles and Instruments of Lome: A Perspective From the Banana Sectors of the Windward Islands*. European Center for Development and Policy Management (ECDPM) (Working Paper No. 18, 1997) (visited Apr. 2, 1998)

<http://www.ecdpm.org/ecdpm/pubs/wp18s_gb.htm>.

19. The Caribbean Banana Exporters Association (CBEA), *Caribbean Bananas: Dominica* (visited Apr. 2, 1998) <<http://www.cbea.org/cbea/carib/donidnica.htm>>

20. *Id.*

21. The Caribbean Banana Exporters Association (CBEA), *Caribbean Bananas: St. Vincent and the Grenadines* (visited Apr. 2, 1998)

<<http://www.cbea.org/cbea/carib/stvinc.htm>>.

22. Joseph, *supra* note 18.

23. *Id.* The degree of dependence on bananas of the Windward Islands is unmatched anywhere in the world. In Ecuador, the world's largest banana exporter, for example, the fruit constitutes a mere 5% of the Gross Domestic Product.

24. William Duliforce, *EC Tries to Straighten Out Banana Problem*, FIN. TIMES, Oct. 18, 1990. Production costs are significantly higher for the ACP banana producers than for their Latin American competitors. For the former, the farms are usually individually owned and consist of two-acres. For the latter, in contrast, the farms enjoy the support of foreign investment—hence the name "dollar bananas"—and plantations are generally larger than 12,000 acres. In Latin America, bananas cost a maximum (in 1993) of \$468 per ton to produce while in the ACP countries, the cost averages around \$744 to produce the same quantity.

25. *See generally*, The Caribbean Banana Exporters Association (CBEA), *Caribbean Bananas* (visited Apr. 2, 1998) <<http://www.cbea.org/cbea/carib/stvinc.htm>>.

26. *See EC Commission Plan For Banana Imports Is Rejected by Germany, Other EC Members*, INTL. TRADE REP., Oct. 28, 1992. The EU was marked by four distinct approaches regarding banana importation from the Latin American countries: (1) United Kingdom and Italy



imposed strict quotas, (2) Belgium, the Netherlands, Luxembourg, Denmark and Ireland had a 20% customs duty, (3) Spain, Portugal, Greece and France banned all banana imports from Latin America, and (4) Germany imposed neither import quotas nor prohibitive tariffs.

27. European Union Council Regulation 404/93, Protocol 5 (1993).

28. See *EC Farm Ministers Agree on Banana Import Duties*, INTL. TRADE REP., Feb. 17, 1993. According to the terms of the 1993 Banana Regime, 2 million tons of Latin American bananas could enter annually at a duty level of 100 European Currency Units (ECUs) (\$117) per ton.

29. European Union Council Regulation 404/93, 1993. According to the quota allocation system, there were three types of licenses: (1) A licenses - 66.5% of the quota was awarded to operators involved in historical trade of third country bananas; (2) B licenses - 30% of the quota was granted to operators who had, over the last 3 year period, marketed EU or traditional ACP bananas; (3) C licenses - 3-5% of the quota was given to new operators who began marketing third country bananas in 1992 or later.

30. Joseph, *supra* note 18.

31. *Id.*

32. Terence P. Stewart, *The World Trade Organization: Multilateral Trade Framework for the 21st Century and US Implementing Legislation*, American Bar Association, 1996. The GATT was never intended to be an organization. In fact, it entered into force in 1948 in a "provisional" manner due to the fact that the USA refused to ratify the International Trade Organization.

33. *Id.* at 6.

34. *Id.* at 7. Some notable problems with the 1947 GATT include: (1) provisional application, (2) defects in the dispute settlement procedures, and (3) a lack of institutional provisions which necessitated constant improvisation.

35. Joseph D. Dennin, *Law & Practice of the World Trade Organization*, Ocean Publications, Inc., 1996. Unlike the former GATT negotiating rounds, the Uruguay Round procured to bring under the WTO rules various new ambits, including trade in agricultural products, trade in increasingly important services, trade-related investment measures, and trade-related aspects of protection of intellectual property rights.

36. Stewart, *supra* note 32, at 10.

37. *U.S. Stand Behind Position on Steel Duties at GATT Council Meeting*, International Trade Reporter, March 31, 1993. The five GATT member countries (Colombia, Costa Rica, Guatemala, Nicaragua, Venezuela) and, in addition, Panama, Honduras and Ecuador, requested the formation of a panel to investigate the banana dispute in 1993.

38. Institute for International Legal Information, "The Dunkel Draft" *From the GATT Secretariat*, 1992, at p. S2-S3. According to Article XXII of the GATT, each Contracting Party must give "adequate opportunity for consultation" regarding any representations made by another Contracting Party concerning measure affecting the operation of the GATT taken within the territory of the former. If, however, the consultations fail to settle a dispute within 60 days, the complaining party may request the establishment of a dispute panel under Article XXIII:2.

39. *GATT Panel Says EC's Banana Import Regime Discriminates Against Latin American Nations*, International Trade Reporter, June 2, 1993.

40. Stewart, *supra* note 32, at 33. According to Article 23(2) of the GATT, a panel holding was not enforceable unless all members, including the party against whom the decision was made, agreed to adopt it. Thus, although actions in violation of the GATT were always challengeable under Article XII, this ability of the losing party to block the adoption of an adverse decision signified that nations could take unilateral action with, in effect, nearly absolute impunity.

41. *Latin American Nations Ask GATT to Adopt Panel Report On EC Banana Duties*, International Trade Reporter, July 28, 1993. The EU delegates argue that they were unable to accept the decision of the First Panel because it concerned a former policy which was superseded on July 1, 1993.

42. Frances Williams, *WTO Ruling Could Ruin Poor Banana Economies*, Financial Times, Sept. 10, 1996 - London, Edition 1.

43. General Agreement on Tariffs and Trade, Article XXV(5).

44. *GATT Chairinan Talks on Selection of First Head of Two*, International Trade Reporter, Dec. 14, 1994. The EU won the required 2/3 vote of GATT members for a waive of the application of GATT rules to the Banana Protocol of the Lome IV.

45. Guy de Jonquieres, *EU Banana Policy 'Perverse*

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and Inefficient' Says World Bank, Financial Times, Jan. 20, 1994. According to the terms of the WTO, if a party establishes that the preferential treatment is being applied inconsistently with the reasons for which the waiver was granted, then, irrespective of such a waiver, any member of the WTO may bring the matter before the dispute mechanisms of the WTO.

46. *EU to Defend Banana Rules From US. Attack*, The Reuter European Community Report Sept. 28, 1995.

47. Trade Act of 1974, Title III. Relief From Unfair Trade Practices, Chapter 1. Enforcement of US Rights Under Trade Agreements and Responses to Certain Foreign Trade Practices. Sec. 301. According to part C of this section, the USTR is authorized to, among other things, (i) suspend, withdraw, or prevent the application of benefits of trade agreement concessions, or (ii) impose duties or import restrictions. In this case, due to the fact that Chiquita is incorporated in Cincinnati, Ohio, the USTR was justified in initiating the action.

48. *Europe Rejects U.S. Action in Banana Dispute*, Food & Drink Daily, Jan. 11, 1995. Leon Brittan European Trade Commissioner, pointed-out the irony of the proposed U.S. action. In particular, he found it contradictory that the U.S., who claims that the Lome IV is inconsistent with the obligations of GATT, would attempt to use retaliatory measures under § 301, which are, in the same manner, a violation of the GATT rules.

49. *U.S. Complains Again to WTO: St. Lucia Accuses Chiquita of Trying to Destroy Industry*, Latin American Regional Reports: Caribbean, Feb. 29, 1996. Before the WTO, the USTR was supported by the world's largest exporter of the fruit, Ecuador, as well as Guatemala, Honduras and Mexico.

50. Wesley Gibbings, *Regional Officials Examine WTO Ruling*, Inter Press Service, April 7, 1997.

51. Brendan McGrath, *WTO Ruling on Bananas May Hit Fyffes*, The Irish Times, May 24, 1997.

52. Dispute Settlement Understanding - WTO, Article 19(1)(emphasis added). Once the Panel report is adopted, the party concerned shall notify its intentions with respect to the implementation of the adopted recommendations. If immediate compliance is thought impracticable, the party shall be afforded "reasonable time" to comply. The DSB, for its part, will maintain a strict surveillance until the issue is resolved.

53. The Caribbean Banana Exporters Association, *The WTO Threat: Background to the Dispute*.

<<http://www.cbea.org/cbea/wto/index.htm>>. The Caribbean nations dependent on the export of bananas have enumerated four complaints with regard to the WTO panel: (1) The panel allegedly does not include any person with an expertise in the problems of less developed countries; (2) The panel did not allow the ACP governments the right to participate in the hearing despite their interest in the debate; (3) The panel expelled from the hearing accredited representatives of the Caribbean governments; (4) The ACP was not permitted to see the interim report of the Panel, which was submitted to the main parties for comment.

54. European Center for Development Policy Management. *Beyond Lome IV: Exploring Options for Future ACP-EU Cooperation*. Policy Management Report No. 6. (1996). Quoting EU Commissioner Pinheiro, Joint Assembly, Dakar, Feb. 1995.

55. Severine M. Rugumamu, *The Green Paper: Myths, Facts and Neglected Details*. European Center for Policy and Development Management. Working Paper No. 24 (1997).

56. *Traders Critical of Commission Green Paper on EU/ACP Relations*, European Report, July 23, 1997.

57. European Center for Development Policy Management. *Beyond Lome IV: Exploring Options for Future ACP-EU Cooperation*. Chapter 3 - Redrawing the Map: The Scope for Differentiated Approaches (1996).

58. George Huggins, *Commentary on the Green Paper on Relations Between the European Union and the ACP Countries*. European Center for Development Policy Management no. 28 (1997).

59. *Id.*

60. Marjorie Lister, *Europe's Policy in Perspective*, Department of European Studies, University of Bradford - European Development Policy Study Group - Discussion Paper No. 2. (January 1997).

61. *Id.*

62. Dipankar De Sarkar, *Welcome to the Era of Development Non-Cooperation*, Inter Press Service.

63. *Id.* at 1.

64. European Center on Policy Development Management. *Beyond Lome IV: Exploring Options for Future ACP-EU Cooperation*. Chapter 4 - Revitalizing ACP-EU Trade Cooperation. Policy Management Report No. 6. (1996).

65. European Commission. *Green Paper on Relations Between the EU and the ACP Countries on the Eve of the*

- 21st Century - Challenges and Options for a New Partnership. Chapter III - Socio-Economic Change in ACP States: Limiting Factors and Potential. (1996).
66. *Id.*
67. Shada Islam, 'Aid Fatigue' Clouds EU-ACP Lome Pact, Inter Press Service.
68. European Commission. *Green Paper on Relations Between the EU and the ACP Countries on the EVE of the 21st Century - Challenges and Options for a New Partnership* - Chapter I: Global Changes Affecting ACP-EU Relations. (1996).
69. *Id.*
70. Shada Islam, *EU Seeks New Ways To Revitalize Trade and Aid Policy*, Inter Press Service.
71. De Sarkar, *supra* at note 62. See also, Niccolo Samo and Dipankar de Sarkar, *Europeans Want to Give More Aid, As EU Gives Less*, Inter Press Service, April 23, 1997. It is claimed that increasingly in this decade, EU aid has been directed toward Central Europe "at the expense of ..the poorest counties of Africa and Asia."
72. Winston C. Dookerman, *Choices and Changes: Reflections on the Caribbean*, Inter-American Development Bank (1996), at p. 189. In addition to these agreements, the EU has recently initiated talks concerning the possibility of a free trade agreement with MERCOSUR.
73. European Center for Development Policy and Management (ECDPM), *Beyond Lome IV: Exploring Options for Future ACP-EU Cooperation* - Chapter 3: Redrawing the Map - The Scope for Differentiated Approaches. Policy Management Report No. 6. (1996).
74. European Commission, *Green Paper on Relations Between the EU and the ACP countries on the Eve of the 21st Century - Challenges and Options for a New Partnership*. (visited Apr. 2, 1998) <<http://www.oneworld.org/euforic/greenpap/fore.htm>>.
75. See European Commission, *Green Paper on Relations Between the EU and the ACP countries on the Eve of the 21st Century - Challenges and Options for a New Partnership*. (visited Apr. 2, 1998) <<http://www.oneworld.org/euforic/greenpap/chap4.htm>>.
76. European Commission, *Green Paper on Relations Between the EU and the ACP countries on the Eve of the 21st Century - Challenges and Options for a New Partnership*. (visited Apr. 2, 1998) <<http://www.oneworld.org/euforic/greenpap/chap1.htm>>.
77. *U.S. & Banana Policy: Goals for Reforming the EU's Banana Regime*. Prepared by the USTR, Oct. 10, 1996 - as produced by Carolyn Gleason, counselor for Chiquita, of McDermott Will & Emery, Washington D.C.
78. *Windward Island Banana Alternatives*, (visited April 2, 1998) <http://www.ustr.gov/reports/banana1996/banana_alternatives.html>.
79. *U.S. Banana Policy*, *supra* at note 77. The USTR outlined four principal goals associated with such legal action: (1) to promote economic growth in the Western Hemisphere, (2) to remove the unnecessary discrimination in the EU banana regime, (3) to persuade the EU to honor its international treaty obligations, and (4) to reform the EU banana regime in accordance with the concept of global equity.
80. See *Windward Island Banana Alternatives*, *supra* note 78.
81. See *id.*
82. European Center for Development Policy Management. *Beyond Lome IV: Exploring Options for Future ACP-EU Cooperation. Annex la - Are Globalization and Development Mutually Exclusive?* (visited Apr. 2, 1998) <http://www.oneworld.org/ecdpm/pubs/pmr6_gb.htm>.
83. See *id.*
84. See *id.*
85. See European Commission, *Green Paper on Relations Between the EU and the ACP Countries on the Eve of the 21st Century - Challenges and Options for a New Partnership*. (Visited Apr. 2, 1998.) <<http://www.oneworld.org/euforic/greenpap/chap.5.htm>>.
86. See *id.* at 15.
87. See Rosiland H. Thomas, European Center for Development Policy Management, *The WTO and Trade Cooperation Between the ACP and the EU: Assessing the Options* (visited April 2, 1998) <http://www.oneworld.org/ecdpm/pubs/wp16_gb.htm>.
88. David Jessop, *This Week in Europe*. Sept. 26, 1997. Although the EU previously was able to unilaterally block the decisions by the GATT declaring the prevailing banana regime illegal by refusing to "adopt" them, due to the dispute settlement structure of the WTO, the EU saw itself obligated on Sept. 24, 1997, to "accept" the WTO dispute panel ruling.
89. Shada Islam, *No Hopes for Asian, Latin American in EU Trade and Aid Treaty*, Deutsche Presse-Agentur, June 5, 1997. The EU Commissioner, Joao de Deus

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Pinheiro, explained that the Lome would not be extended to include other Least Developed States located in Asia and Central America. Pinheiro said that it is simply a question of responsibilities and that the Lome "is a historical relationship [based on former colonialism] that the ACP group does not want to change."

90. See European Commission, *Green Paper on Relations Between the EU and the ACP Countries on the Eve of the 21st Century - Challenges and Options for a New Partnership* (visited Apr. 2, 1998)

<<http://www.oneworld.org/euforic/greenpap/chap.5.htm>>.

91. Thomas, *supra* note 87. (In 1979, the GATT members adopted the agreement entitled "Differential and More Favorable Treatment, Reciprocity and Fuller Participation of Developing Countries." This act, among other things, created a permanent legal basis for preferences in favor of developing countries, despite the MFN-status requirement of Article I(1), provided that a GSP must be offered to all developing countries.)

92. See European Commission, *supra* note 90.

93. Thomas, *supra* note 87.

94. See General Agreement on Tariffs and Trade, April 15, 1994, Art. XXIV, 33 I.L.M. 1161.

95. Thomas, *supra* note 87.

96. General Agreement on Tariffs and Trade, *supra* note 94.

97. See Thomas, *supra* note 87. (The interpretation of the literature of this provision has found that "constituent territories" was intended to include "neighboring countries or at least identifiable and economically contiguous customs territories.")

98. European Commission, *supra* note 90.

99. *Id.*

100. General Agreement on Tariffs and Trade, Part III, Article XXIV, paragraph 2.

101. See Thomas, *supra* note 87. (Africa currently has two major agreements: (1) the Common Market for Eastern and Southern Africa (COMESA), and (2) the Southern African Development Community (SADC). Neither of these groups, argues the author, is functionally at the level necessary to even consider amplified integration with the EU on a regional basis.)

102. *Id.*

103. The Caribbean Banana Exporters Association, *The WTO Threat: Consequences for the Caribbean* (visited Apr. 2, 1998)

<<http://www.cbea.org/cbea/wto/carib2.htm>>.

104. *Id.*

105. Geneva WTO Hearing *Life or Death Issue for Caribbean Banana Growers*, July 22, 1997. This fruit has been categorized as the "backbone of the economies" of the Windward Islands, a region where up to 90% of primary exports, 70% of foreign exchange earnings and 60% of employment are dependent upon the industry.

106. *Id.*

107. Brook Larmer, *Brawl Over Bananas*, NEWSWEEK, Apr. 28, 1997.

108. *Id.* With respect to the drug trade, about 40% of the cocaine and heroine sold in the U.S. comes through the Caribbean. Thus, if no viable alternative for banana production is found, a "big problem with drugs" is predicted.

109. Wesley Gibbings, *Caribbean-Trade: Regional Officials Examine WTO Ruling*, INTER PRESS SERVICE, Apr. 7, 1997.

110. The Caribbean Banana Exporters Association, *The WTO Threat: Unviable Alternatives* (visited Apr. 2, 1998)

<<http://www.cbea2/wto/altern2.htm>>.

111. See *id.*

112. *Id.*

113. *Id.*

114. EU Regime Vital for Caribbean Banana Industry Claims New Study, Feb. 17, 1997. The study conducted by experts from the University of Reading in January 1997 found that, in fact, there are no simple or obvious alternatives if the Caribbean is to continue to produce bananas.

115. Wesley Gibbings, *Caribbean-Trade: Region Looks to Lome V*, INTER PRESS SERVICE, Apr. 8, 1997.

116. *Id.*

117. Evelyn Sandra Pangeti, *Reactions on the Green Paper on Relations Between the European Union and the ACP Countries on the Eve of the 21st Century* (visited Apr. 2, 1998)

<http://www.oneworld.org/ecdpn/pubs/wp27_gb.htm>.

118. European Center for Development Policy Management, *Beyond Lome IV, Exploring Options for Future ACP-EU Cooperation*, ch. 4 - Revitalizing ACP-EU Trade Cooperation (visited Apr. 2, 1998)

<http://www.oneworld.org/ecdpn/pubs/pmr64_gb.htm>.

119. See *id.*

120. Pangeti, *supra* note 117.

121. Patricia Bynoe, *Contribution to the Analysis of "Green Paper on Relations Between the European Union and the ACP Countries on the Eve of the 21st Century"*



(visited Apr. 2, 1998)

<http://www.oneworld.org/liaison/reaction/byn_gb.htm>.

122. European Center for Development Policy Management, *supra* note 118.

123. *See id.* (In the Caribbean countries, the rate of dependency on the EU market of St. Lucia is 70%, while that of St. Vincent is less than 60%. Similarly, in the Pacific, Vanuatu relies on the EU market for 53% of its exports while in Africa, Niger, and Uganda are all superior to 75%.

124. European Center for Development Policy Management, *Beyond Lome IV, Exploring Options for Future ACP-EU Cooperation*, ch. 3 - *Re-drawing the Map: The Scope for Differentiated Approaches* (visited Apr. 2, 1998)

<<http://www.oneworld.org/acpsec/gb/lome/future/confut-gb.htm>>.

125. *Conclusions of the Workshop on ACP Perspectives on Future ACP-EU Cooperation* (visited Apr. 2, 1998)

<<http://www.oneworld.org/acpsec/gb/lome/future/confut-gb.htm>>.

126. *See id.*

127. Joseph, *supra* note 18.

128. European Center for Development Policy Management, *supra* note 124.

129. *Id.*

130. *See id.*

131. *Id.*

132. *Pacific Concerns Resource Center's Contribution to the Pacific ACP States Senior Officials Meeting on the Future of the Lome Convention, Forum Secretariat Headquarters, Suva, 21-22 July 1997* (visited Apr. 2, 1998) <<http://www.oneworld.org/euforic/eurodc/prcsu-va.htm>>.

133. Joseph, *supra* note 18. It has been argued that "shocks that can be contained in the tea cups of large states wreak havoc to small island states." A special interest, therefore, should be given to the banana-producing region of the Windward Islands.

134. European Commission, *Green Paper on Relations Between the European Union and the ACP Countries on the Eve of the 21st Century - Challenges and Options for a New Partnership* (visited Apr. 2, 1998)

<<http://www.oneworld.org/euforic/greenpap/chap3.htm>>.

135. *See id.*

136. Gonzales, *supra* note 10.

137. European Commission, *supra* note 6.

138. Lister, *supra* note 60.

139. Joseph, *supra* note 18.

140. *Id.*