How did David prepare to talk to Goliath?

South Africa's experience of trade negotiating with the EU

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Discussion Paper No. 53
September 2004

ecdpm
European Centre for Development Policy Management
Centre européen de gestion des politiques de développement

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'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 yet finalised. The new South Africa was forced to think anew about almost every aspect of society and the economy'
(Smalberger, 2000: 48)

September 2004

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Acknowledgements

This paper is the result of a case study mission and interviews conducted by the authors with key South African actors involved in the South Africa-EU trade negotiation process. We are grateful for the time, patience, openness and most precious insightful comments contributed by officials from the South African Department of Trade and Industry (DTI); the Department of Foreign Affairs; the Department of Agriculture; the National Treasury; the Secretariat of the Southern African Development Community (SADC); the South African missions to the EU in Brussels and to the World Trade Organization in Geneva; members of the South African Parliament; and experts from South African research institutions. Private sector and social actors involved in the negotiations, including members of the National Economic, Development and Labour Council (NEDLAC), and other non-state actors provided equally valuable insights.

We also thank Heather Baser, John Maré, Vincent Roza, Stefan Szepesi and Kathleen van Hove for their help on the case study and comments on this paper. Earlier versions of the paper were presented at the ECDPM-iLEAP workshop *How to Strengthen ACP Capacities for Economic Partnership Agreement Negotiations?* Brussels, 24 November 2003 (www.ecdpm.org/cb01), and at the European Community Studies Association of Southern Africa conference *The Relationship between Africa and the European Union*, University of the Western Cape, Cape Town, 22–23 January 2004 (www.uwc.ac.za/ECSA-SA/conf2004_prog.htm).

We gratefully acknowledge the financial contributions of the Swedish Ministry of Foreign Affairs, the UK Department for International Development (DFID) and the Swiss Agency for Development Cooperation (SDC) to this programme.

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Executive summary

Expanding globalisation and increased North-South trading arrangements have led many developing countries to wonder whether they are capable of negotiating new trade regimes that will foster their development. Their lack of experience, combined with their insufficient capacity and generally weak bargaining power might prevent them from effectively defending their interests, particularly in harsh trade negotiations with highly developed countries and regions.

Yet when in 1994 post-Apartheid South Africa finally had the opportunity to rejoin the international community, this is exactly what it did: it negotiated a trade agreement with its key strategic and economic partner, the European Union (EU).

This study documents the experience of South Africa in devising and pursuing its development-oriented trade strategy, in organising itself and in mobilising its limited capacity to conduct negotiations on a free trade agreement with the EU.

This paper reviews the way South Africa organised itself to prepare for and conduct the negotiations on the Trade, Development and Cooperation Agreement (TDCA) with the EU. It identifies the key roles played by strategic considerations, high-level political leadership, strongly coordinated intra-governmental relations, broad consultation with parliament, economic and social actors, dedicated technical preparation and targeted lobbying strategies.

The paper also outlines some difficulties South Africa encountered in its preparations and dimensions in the negotiating process that could have received greater attention. These include the need for greater anticipation of the European decision-making process, proactively influencing the European negotiating mandate at an early stage, more systematically lobbying EU member states to support the South African position, capitalising on political and moral arguments during the negotiations, thoroughly preparing for the final stages of the negotiations where 'power plays' tend to dominate, better integrating the concerns and expectations of the subregion and ensuring capacity retention strategies are in place beyond the negotiations.

Though focused on the specific case of South Africa, the paper offers general insights and lessons for how developing countries can effectively prepare for and conduct trade negotiations.

Acronyms

ACP	African, Caribbean and Pacific
ACTSA	Action for Southern Africa
ANC	African National Congress
AWEPA	Association of West European Parliamentarians against Apartheid
BLNS	Botswana, Lesotho, Namibia, Swaziland
BSA	Business South Africa
CAP	Common Agricultural Policy
COSATU	Congress of South African Trade Unions
DG	Directorate General (European Commission)
DTI	Department of Trade and Industry
EDF	European Development Fund
EU	European Union
FDI	Foreign Direct Investment
FEDUSA	Federation of Unions in South Africa
FRIDGE	Fund for Research and Industrial Development
FTA	Free Trade Area
GEAR	Growth, Employment and Redistribution (programme)
GDP	Growth Domestic Product
GSP	General System of Preferences
GATT	General Agreement on Tariffs and Trade
IDC	Industrial Development Corporation
IGD	Institute for Global Dialogue
JPA	Joint Parliamentary Assembly (ACP-EU)
MERG	Macro-Economic Research Group
NACTU	National Council of Trade Unions
NAFCOC	National African Federated Chamber of Commerce
NEDLAC	National Economic, Development and Labour Council
NEF	National Economic Forum
NGO	non-governmental organisation
NIEP	National Institute for Economic Policy
RDP	Reconstruction and Development Programme
SA	South Africa
SACU	Southern African Customs Union (Botswana, Lesotho, Namibia, Swaziland and South Africa)
SADC	Southern African Development Community
SAIIA	South African Institute of International Affairs
TDCA	Trade, Development and Cooperation Agreement (between the EU and South Africa)
TEC	Transitional Executive Council
TIPS	Trade and Industrial Policy Strategies
WTO	World Trade Organization

1 Introduction

The spread of globalisation and the rise of North-South trading arrangements have led many developing countries to wonder whether they are capable of negotiating new trade regimes that will foster their development. Their lack of experience, combined with insufficient capacity and generally weak bargaining power, might prevent them from effectively defending their interests, in particular in harsh trade negotiations with highly developed countries and regions.

Yet when in 1994 post-Apartheid South Africa finally had the opportunity to rejoin the international community, this is exactly what it did: it negotiated a trade agreement with its key strategic and economic partner, the European Union (EU).

This study documents South Africa's experience in devising and pursuing its development-oriented trade strategy, in organising itself and in mobilising its limited capacity to conduct negotiations on a free trade agreement with the EU. Beyond South Africa, the case provides insights and possible lessons on how developing countries can effectively prepare and conduct trade negotiations.

2 From international isolation to credible partner

After decades of international isolation, South Africa held its first universal suffrage elections in April 1994. The victory of Nelson Mandela and the African National Congress (ANC) constituted the definite end of Apartheid. The regime change marked a drastic shift in South Africa's foreign policy, in both political and economic terms. After an era of economic and diplomatic sanctions, the new government faced the task of reintegrating the country into the world community by redefining South Africa's international relations.

Within these relations, the EU is a key strategic partner. Besides the historical ties between South Africa and some prominent EU member states, the EU has played an active role in promoting and supporting the democratisation process and providing development assistance. Moreover, the EU has been South Africa's most important trade partner and the country's prime source of foreign direct investment (FDI).

Consequently, the EU was the first major trading partner with which South Africa sought to establish preferential trade after 1994. Intensive and difficult negotiations took place between South Africa and the EU from 1995 to 1999. These culminated in both trade and development assistance relations being laid out in the Trade Development and Cooperation Agreement (TDCA), which provisionally entered into force in January 2000.

The TDCA seeks to establish a free trade area (FTA) between the parties, covering 90 per cent of the products traded between the two partners. It also contains specific provisions on development cooperation. The agreement's trade coverage is asymmetric. The EU, being the more developed partner, will liberalise 95 per cent of its imports from South Africa, while the latter will free only 86 per cent of imports from the EU from customs restrictions. A 12-year transition period is foreseen to allow for gradual trade liberalisation before the TDCA is fully implemented.[1]

The road to the TDCA was travelled in different stages. Initially, South Africa sought access to the trade provisions of the fourth Lomé Convention. In December 1994, it proposed a 'Lomé-minus' option that would provide market access preferences similar to those enjoyed by the African, Caribbean and Pacific (ACP) countries, while not entitling the country to use the commodity protocols and the European Development Fund (EDF). The EU rejected this request, arguing that South Africa's economic structure did not match those of the ACP countries and its membership could jeopardise the future of the Lomé Convention. Instead, the EU offered South Africa 'qualified' membership of the Lomé Convention. The offer consisted of access to the 8th EDF and participation in the political

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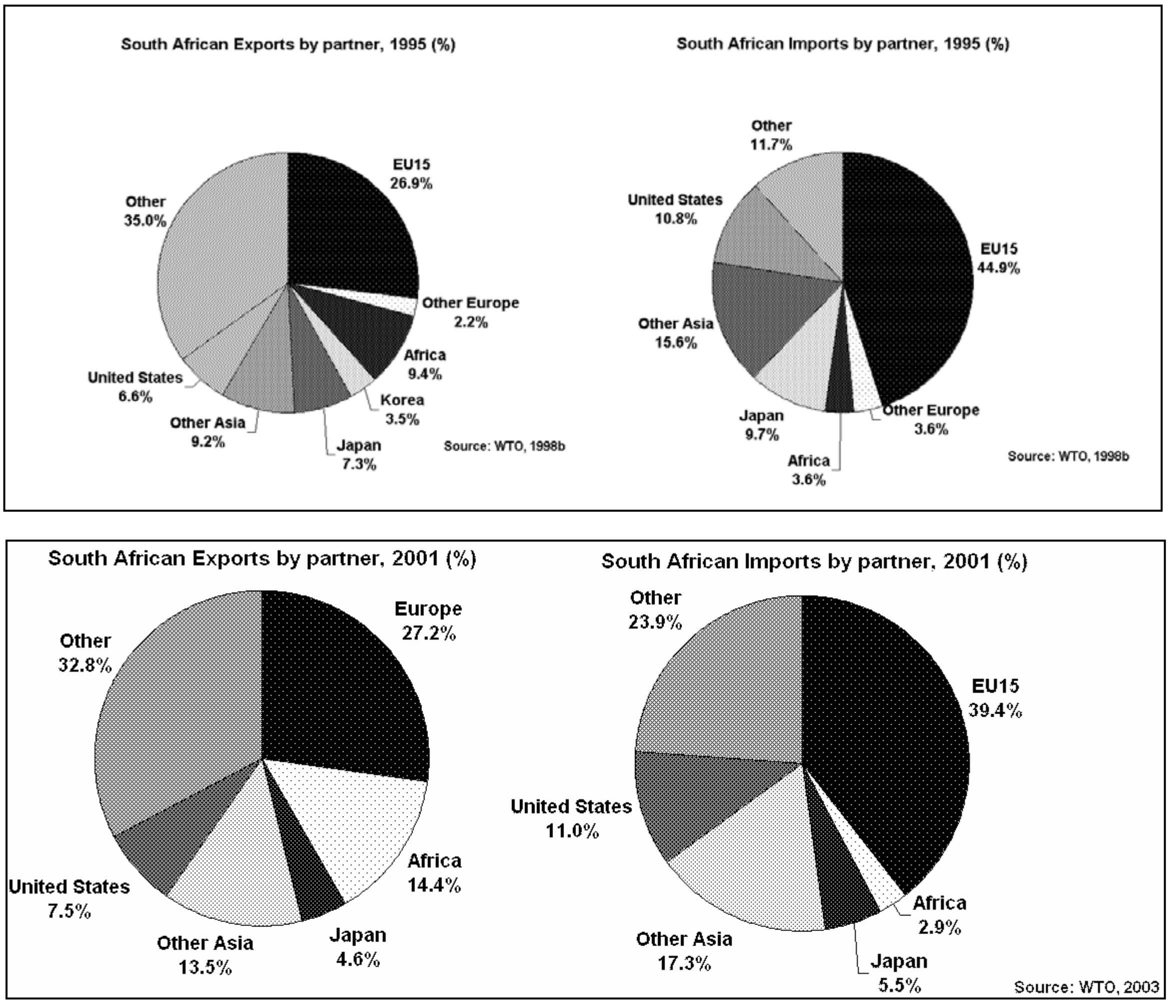
[1] Though an overall assessment of the impact of the TDCA remains to be done (for instance as part of the official review of the TDCA due by 2005), trade flows between the EU and South Africa increased sharply in the first two years after the agreement came into force. South Africa's exports to the EU rose by 35 and 22 per cent, respectively, in 2000 and 2001. In the same years, imports to South Africa from the EU increased by 20 and 6 per cent. From 1999, South Africa's trade surplus with the EU nearly tripled to 3.6 billion euros in 2001 (Eurostat).

dialogue established by the Lomé Convention. As for trade, in June 1995 the EU proposed starting bilateral negotiations on an FTA between the two partners.

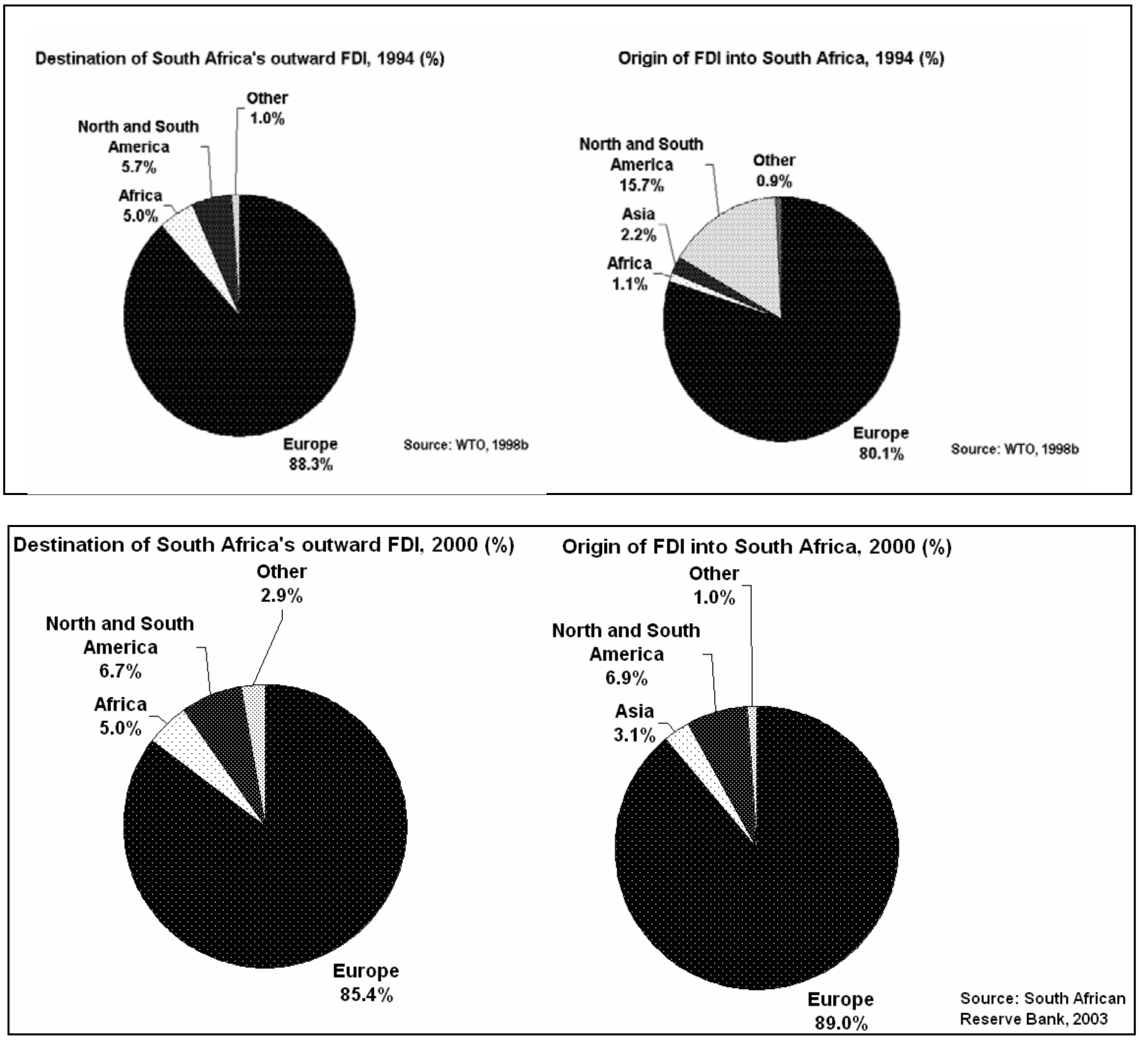
Figure 1: South Africa's main trading partners (1995 and 2001)



Though an FTA was not South Africa's first preference, the government accepted the offer in September 1995 and both parties started preparations for bilateral trade negotiations. Detailed negotiations began in October 1997, and a first stalemate was reached after an EU proposal in January 1998. The proposal failed to take into account the regional implications of an eventual agreement for South Africa's partners in the Southern African Customs Union (SACU). In the talks on agriculture, the EU was accused of 'turning the asymmetry principle on its head' by restricting and back-loading South African access to EU markets, while front-loading access for its own products. Ongoing disagreement over a parallel agreement for wine and spirits further delayed the conclusion of the TDCA.

The purpose of this paper is not to describe the content of the TDCA negotiations or its outcome. It should be sufficient here to review the main steps of the negotiating process, as presented in Annex 1 (see also Andriamananjara and Hillberry, 2001; Graumans, 1997; and Perry, 2000). Instead, the reminder of the paper focuses on the process of conducting the trade negotiations, as experienced by South Africa with the EU.

Figure 2: South Africa's main investment partners (1994 and 2000)



Box 1: Economic situation

South Africa's economy is by far the largest and most diversified of the continent. In line with international trends, real GDP growth slowed from 3.4 per cent in 2000 to 2.2 per cent in 2001. Though per capita GDP averages US $3,000, income inequality is high, with half of the population living below the poverty line. Within the economy, manufacturing has traditionally accounted for a large part of production but has been challenged by increased global competition in the last decade. Today, the service sector is the economy's largest, with rapid growth in financial services and tourism. In exports, mining (gold, diamonds and coal) and, to a lesser extent, fruits and wine are the most important foreign exchange earners.

3 South Africa: a model for trade negotiations?

3.1 A conducive governance context

Trade negotiations are a complex process that requires a number of basic governance conditions to ensure the necessary coherence of views across the highest political levels, the various technical ministries involved and the large variety of actors and stakeholders inside and outside of government. Trade negotiations with the EU started while South Africa was in full transition. The old Apartheid regime was about to disappear and the new ANC political leadership was confronted with enormous challenges. In a 'divided' country in full transition, it had to show leadership, responsibility, a sense of compromise and ability to ensure strong coherence in negotiating policies and strategies. At the same time, it had to mobilise the best capacities the country could muster, both human and financial, to ensure a positive outcome.

Four crucial elements played a role in the way South Africa conducted the trade negotiations:
- high-level government leadership;
- a working democracy with respect for strong social partners and opposition;
- a match between old and new political generations;
- a lead role by the Department of Trade and Industry (DTI).

High-level government leadership. Nelson Mandela was the personification of a worldwide respected, strong visionary providing charismatic leadership. Internally, this was crucial in bringing all of South Africa's key players onto the same wavelength. Externally, strong visionary leadership helped create goodwill on the EU side. President Nelson Mandela took a personal interest in the negotiations and was strongly committed to conclude the negotiations successfully before the end of his term.

A working democracy with respect for strong social partners and opposition*.* There was strong commitment amongst the highest political levels (particularly within the DTI) to negotiate the TDCA in an inclusive and participatory manner. Information was transmitted, dialogue was organised and views were shared. In the end, a range of societal groups were left with the strong conviction that they had been involved in one way or another in shaping South African trade policy with the EU.

Match between old and new political generations*.* A Transitional Executive Council (TEC) was established prior to the elections of 1994, which brought the ANC to power. The task of this small committee was to manage and facilitate the delicate transition from the old regime to the new one. The TEC was composed of politicians and officials from the De Klerk administration, members of the ANC political intelligentsia and key economic actors. Many TEC members occupied key positions in the post-Apartheid regime and became involved in the South Africa-EU negotiations. Though there were different views and perspectives on South Africa's relationship with the EU and how to manage it, participants worked together towards South Africa's integration into the world community. The ANC provided strong leadership and coherence for the new strategy. But ANC members were also willing to learn from the experiences and proposals of members of the old regime when these added value. At the more technical level, there was a good match between the experience and technical competences of officials from the old Apartheid regime, who still occupied quite a dominant position at the start of the negotiations, and a dynamic but relatively new generation of young ANC intellectuals pulled together from different institutions. These relations, however, were not devoid of occasional dissension.[2]

Lead role by the Department of Trade and Industry. Throughout the negotiating process South Africa benefited from the leadership of competent and well respected ministers with strong personalities at the head of the DTI. Minister Trevor Manuel, who was in charge of the DTI until April 1996, provided the initial impetus for the new South African economic development and trade strategy, including the negotiations with the EU. He subsequently moved to the Ministry of Finances. For the second, more technical stage of the negotiations, Minister Alec Erwin took up the lead. His management of the negotiations was uncontested by his fellow ministers and political opponents. He also provided leadership for the

[2] On trade matters, some ANC members sought more asymmetrical preferences, while some officials from the old regime favoured full reciprocity.

coordination mechanism established within the government and with key non-governmental actors. Erwin appointed some of the best South African senior trade negotiators to his team. Between 1996 and 1999, under his leadership, the DTI became a model department with particularly strong offices for multilateral and industrial policies. The recognised competence of the DTI both in intellectual and management terms led to quick agreement that the DTI should run with the ball as chief negotiating body.

Overall, government leadership ensured a strong sense of shared South African values and interests to fight for in the negotiations with the EU. This provided the necessary alchemy to build a strong, coherent policy and negotiating strategy in the initial negotiation phases, between the old and new regime and between government and various categories of non-governmental players.

3.2 A strategic approach to trade negotiations

The strategic approach adopted by South Africa in its trade negotiations with the EU has to be put in its historical context. Since 1994, South Africa has been faced with the challenge of correcting the inequities resulting from the Apartheid regime. To do this, a programme to transform the South African economy was required, to stimulate economic growth and promote social development (see also Bertelsmann-Scott *et al.*, 2000b; Hirsh, 1997; Ismail, 1997).

Even before its accession to power following the April 1994 elections, the ANC began defining a development strategy for the country. The TEC was put in place to prepare a smooth transition to the new regime.

South Africa was guided by the principles of integration into the global system and development of stable and predictable relationships with strategic partners. Its first priority has lain in deepening its ties with African countries, principally by negotiating regional trade agreements with its neighbours, with the Southern African Customs Union (SACU) and the Southern African Development Community (SADC). At the same time, South Africa's strategic objective was and remains to anchor its economy in the world economic system and to deepen and enhance the predictability of its relations with major economic powers. To stimulate its economic growth and development, South Africa considered it imperative to lock in its relations with the EU, which had traditionally been its main economic partner (e.g. Davis, 2000). As such, not only would the largest market in the world be open to South African exports, but increased stability in economic relations would stimulate the flow of investment and the transfer of technology towards South Africa (see also Graumans, 1998; Hirsch, 1997; Ismail *et al.,* 2002).

South Africa initially sought only preferential treatment from the EU, in line with that received by the ACP countries under the Lomé Convention. This was seen as consistent with South Africa's integration into SADC, whose other members all belonged to the ACP group. Provided that South Africa did not seek to benefit from EU development aid under the existing EDF and from the commodity protocols, the potential negative effects on other ACP countries would be limited. The EU was committed to support the economic and social development of the new South Africa. Yet because of its nascent economic power and the growing size of its market, South Africa had more commercial interests in the EU than other ACP countries. The EU therefore offered only extremely restricted conditions under the Lomé Convention, to which South Africa was admitted in 1997 as a 'qualified member' only, being excluded from the trade and aid dimensions of the ACP-EU partnership. Instead, the EU proposed negotiating a cooperation and (reciprocal) free trade agreement with South Africa (see also Bertelsmann-Scott *et al.,* 2000a; Davis, 2000; Houghton, 1997; Perry, 2000).

The EU proposal for a preferential trade relationship with South Africa based on reciprocity forced the South African government to adjust its strategy and pay more attention to analysing the costs and benefits that an FTA would bring. More broadly, it compelled the government to consider its policy prospects for trade and economic development (see also Smalberger, 2000). A new trade strategy was widely debated, both within the government and across South African society, particularly regarding the appropriate level of trade liberalisation (and thus the extent of asymmetrical liberalisation within an FTA). The formulation of trade policy was thus well integrated with development strategy in South Africa.

'Effective trade negotiations...should be an extension of coherent, focused, industrial strategy' (Draper, 2003: 22).

In September 1994, the new government adopted the Reconstruction and Development Programme (RDP), which provided a new general policy framework for the socio-economic transformation of South Africa for the well-being of all. This was followed in June 1996 by the Growth, Employment and Redistribution (GEAR) programme, which defined the macro-economic framework required. The overall objective was to move away from import substitution industrialisation towards a sustainable competitive industrial sector. Besides sound macro-economic policies based on fiscal discipline and monetary stability, competitive industrialisation was to encompass better training of workers, a more flexible labour market, fewer demand-side interventions (e.g. protection, subsidies), market-led supply-side support (e.g. for technology, training and investment) and facilitation of exports (Hirsch, 1997; Ismail *et al.*, 2002).

In this context, trade policy was perceived as a key instrument to enhance South Africa's international competitiveness. With the final phase of the Uruguay Round concluded in 1994, South Africa became more involved in the multilateral trading system and embarked on reforms of its trade regime. The then-new government introduced a five-year trade liberalisation programme. Trade promotion measures were complemented by tariff rationalisation and a reformed incentives structure (Cassim *et al.*, 2002; Draper, 2003; WTO, 1998a&b).[3] Having rooted its trade policy reform in the system of the World Trade Organization (WTO), negotiation of a free trade agreement with the EU and of a similar agreement with SADC were other means to anchor the country's trade policy reform process. A trade agreement with the EU was also intended to create confidence and bring in foreign investors (in particular, but not only, from the EU). Not least, the trade platform aimed to stimulate domestic productivity and competitiveness. The TDCA included the aid dimension, in addition to trade, with the EU contributing to the country's socio-economic development.

A noteworthy characteristic of the South African experience is that the trade negotiations with the EU were integrated into a more comprehensive trade policy reform process. More importantly, the new trade regime was perceived as only one element (or rather one instrument) of a broader development strategy. This explicit link between trade negotiations and overall development policy played a determinant role in the coherence of the South African approach, in the coordination mechanisms put in place and in the formulation of its policy objectives.

4 South Africa's key players in the negotiations

Having established the strategy and policy rational behind its trade negotiations with the EU, the South African government turned to conducting the negotiations. In this it faced several handicaps. First, it had no experience in negotiating preferential bilateral agreements. In contrast, the EU was experienced in international trade negotiations, mainly within the context of the General Agreement on Tariffs and Trade (GATT), and with European countries and neighbours. EU institutional mechanisms were already well established, with responsibility for trade policy and hence negotiations falling to the European Commission, in particular its Directorate General (DG) for Trade.

Second, South Africa was in the midst of a momentous transition, restructuring its economy, social arrangements and institutions. The post-Apartheid regime was only just emerging. South Africa's democratically chosen new political leaders were challenged to integrate representation of segments of the population previously denied access to official positions. Ensuring a smooth democratic transition was paramount. At the same time, a new constitution had to be drafted and new institutional arrangements developed. This was not the most conducive and stable environment in which to conduct major trade negotiations.

[3] Measures included the binding of 98 per cent of tariff lines, an average reduction of industrial tariffs by one-third by 2000, the rationalisation of the number of tariff lines, the ratification of quantitative restrictions and the abolition of export subsidies by July 1997 (Draper, 2003; WTO, 1998a). For a thorough review of South Africa's overall trade policy, including at the multilateral level, see Cassim *et al*. (2002).

Third, the end of Apartheid meant a cultural shift towards a more equitable society, based on genuine democracy. As a consequence, consultation amongst a range of societal actors – from government officials, politicians and parliamentarians to businesses, farmers, trade unions and civil society – became a key element of the development approach, to foster national cohesion by means of a truly democratic and inclusive process. In this domain too, in the absence of previous experience, a new institutional framework and new practices had to be established.

4.1 Intra-governmental relations

The decision to start trade negotiations with the EU was first and foremost a strategic choice by the South African government in the context of its development objectives (see section 3.2). Political leadership came from the highest level, from Nelson Mandela and Thabo Mbeki, which gave the government an overall sense of priority and direction.

The Cabinet Committee. Negotiations were prepared and conducted under the close political guidance of the Cabinet Committee. This body grouped the ministers of trade and industry, foreign affairs, finance, agriculture and environment (in charge of fisheries). All these departments were, to various degrees, directly concerned with the negotiations.

The Department of Trade and Industry. Leadership throughout the negotiation process came from the DTI, as mandated by the Cabinet Committee. Trevor Manuel, Minister of Trade and Industry until April 1996 (when he was nominated Minister of Finances), provided the initial impetus for trade reform and leadership in the start-up phase of the negotiations.[4] His successor, Alec Erwin, led the negotiations to a successful conclusion. The uncontested political leadership of the DTI, combined with its strong technical expertise, proved crucial in ensuring the general coherence of the South African stance throughout the negotiations.

More broadly, the DTI served as the lead department for the formulation and implementation of trade policy and for the pursuit of industrial strategy. However, in conducting trade (and industrial) policy, the DTI often had to rely on specialised expertise from other departments (Draper, 2003). This was the case in the TDCA negotiations. Hence, throughout the negotiations, the DTI worked in a range of capacities:

- leading the negotiations;
- focusing technical expertise on trade in non-agricultural products;
- ensuring inter-departmental coordination by organising working groups and regular meetings with other departments directly or indirectly involved (e.g. transport, tourism, parastatals);
- animating and facilitating dialogue and coordination with political and non-state actors;
- conducting the negotiations.

The Department of Foreign Affairs*.* The Department of Foreign Affairs coordinated the international negotiations. This required linking with South Africa's embassies within the EU and with the South African mission to the EU in Brussels. In this respect, first Ambassador Niel van Heerden and then Ambassador Eltie Links (a former director of the South African Treasury), were instrumental in the conduct of the negotiations with the European Commission and in linking with EU member states. Though the Department of Foreign Affairs did not intervene directly in technical trade issues, it did provide political and diplomatic oversight for the negotiations.

Representatives of key departments (e.g. the DTI and the Department of Agriculture) were assigned to the South African mission in Brussels to facilitate the technical preparations. They were to directly engage their respective departments in Pretoria with the aim of achieving greater coherence in the South African negotiating position. Regular technical meetings were also held with the European Commission's South African Task Force to pave the way for the more formal negotiations at the ambassadorial level and for the plenary negotiating sessions at the ministerial level.

The South African mission to the EU also liaised with the ACP Secretariat and with individual members of ACP group, particularly with the SADC group ambassadors. It also regularly met European

[4] Incidentally, Trevor Manuel was also the former head of the Macro-Economic Research Group (MERG), which in effect was the ANC's economic think-tank. He brought with him many experts who became top officials of the post-Apartheid regime.

parliamentarians in Brussels and Strasbourg to lobby support for the South African positions in the negotiations.

Other departments. Other departments were given responsibility for the trade chapters that fell directly under their competence.[5] The National Treasury provided technical input to the negotiations and was in charge of the development dimension, especially the chapter on development cooperation. The Department of Agriculture took charge of the agricultural chapters. To supplement its limited internal capacity and provide for a consultative process, a group called the Agricultural Trade Forum was established (see section 4.5). Negotiations on fisheries were prepared by the Department of Environmental Affairs and Tourism.

Technical working group. The technical preparations for the negotiations were in the hands of a working group composed of representatives of the departments concerned, such as those mentioned above, and the RDP office. The DTI coordinated the work of this inter-departmental group.

The negotiating team. South Africa's ambassador to the EU, based in Brussels, assumed the overarching coordination role and as such officiated as the public figure of the negotiations. However, the effective lead negotiators came from the DTI, first Faizal Ismail and then Basle Sibise, two highly skilled and respected officials. Ismail and Sibise were supported by technical experts from within the DTI and other relevant departments. The negotiating team was in constant contact with the political leadership, specialised departments and other institutions in South Africa. This ensured the negotiators access to domestic technical input, which prevented them from having to rely solely on their own expertise. It also kept them connected with domestic constituencies and interests.[6]

4.2 Parliament

South Africa was a country undergoing a democratic revival. The revamping of institutional arrangements and the drive for a more equitable society – to be enshrined in a new constitution, consultative processes and, in particular, in democratic representation of the people – therefore played a central part in the trade negotiations. The South African parliament was assigned a key role in the development of the country, including trade matters. It was thus closely involved in the TDCA negotiating process.

A committee to monitor trade issues was formed with representation from both houses of parliament: the National Assembly and the National Council of Provinces. This committee was regularly briefed by government throughout the negotiations. It also held public hearings at which the National Economic, Development and Labour Council (NEDLAC) and other interest groups could present views and set parliamentary debates. By posing questions and submitting reports and recommendations, they influenced a number of South African positions. Parliament, however, remained mainly engaged in issues of principle and provided limited input on details.

Members of parliament, such as Rob Davies, played an indirect role in the negotiations through their participation in the ACP-EU Joint Parliamentary Assembly (JPA). The Assembly provided opportunities for South African representatives to lobby EU member states via their JPA representatives. Personal connections maintained by South African parliamentarians with members of parliamentary committees in some EU member states (especially South Africa's traditional partners) may have marginally influenced the negotiations.

The government was required to report progress in the negotiations to both houses of parliament. Nonetheless, parliament had no means of forcing amendments to the negotiated agreement; it was empowered only to ratify the agreement.

Parliament was given a more prominent profile in subsequent trade negotiations, and it is now regularly consulted on trade policy matters. In the WTO ministerial conferences, the South African delegation

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5 Note that in South Africa, ministries are officially referred to as 'departments'.

6 Distance and insufficient communication between home-based political and technical insights and Geneva-based negotiators is a persistent problem for many developing countries in WTO negotiations.

includes members of parliament (as well as representatives of the business sector) in addition to government officials, with each member responsible for a specific issue.

4.3 Economic and social actors

South Africa has a longstanding tradition of strong intermediary bodies amongst social and economic actors. A key challenge of the negotiations was to integrate the views of these actors into the process. In addition to its powerful trade unions, South Africa's well organised corporations and strong agricultural lobbies played a major role in the TDCA negotiations.

Private sector*.* South Africa's private sector has many faces: large corporations, exporting industries, non-trading sectors, medium-sized entities and small business. Various, sometimes competing, intermediary bodies represent this range of interests.
The large South African industrial and financial groups (e.g. the steel and automotive industries) have long-held business interests in the EU. They were therefore eager for South Africa to reintegrate into the world community and used both formal and informal mechanisms to influence government policy in this direction. The chief executives of large businesses met on a quarterly basis with key government departments to discuss economic policy. At the same time, the larger companies could afford to remain close to the chief negotiators in both the South African and the Brussels negotiating corridors to lobby for their positions.

A key concern of South African exporting businesses was to improve market access for their products. With the EU being a major world market, negotiating an FTA with the EU became a priority. Most of these companies possessed enough in-house expertise and capacity to effectively defend their interests and articulate specific technical positions for the negotiations.[7] The agricultural sector, in particular, seems to have been able to garner influential support from well organised European importers' associations. This support proved helpful in monitoring proposals on legislation and tariffs.

Less active during the TDCA negotiations were the non-trading sectors (e.g. livestock, cereals). In general, these sectors possess less expertise and are less organised. As often is the case, their attitude was quite defensive, and they were less willing to explore new opportunities. Protectionist interests expressed themselves more in principles and generic terms than through specific technical inputs aimed to influence the negotiating process. The trade unions tended to support the concerns of import-competing industries regarding trade liberalisation.

With regard to medium-sized private sector bodies and small business, entities such as the South Africa Chamber of Business (SACOB) and the National African Federated Chamber of Commerce seem to have had limited impact on the negotiating process. Some observers felt that these organisations had a 'narrow understanding' of trade issues, which was not always helpful in keeping a global perspective on South Africa's interests in the trade negotiations.

The trade unions*.* South Africa has a long tradition of strong and well organised trade unions. Umbrella organisations such as the Congress of South African Trade Unions (COSATU), the National Council of Trade Unions (NACTU) and the Federation of Unions in South Africa (FEDUSA) participated in the negotiating process at two levels:

- via a cross-sector tripartite consultative forum including government, business and labour (organised under the auspices of NEDLAC);
- via ad hoc sectoral consultations outside the NEDLAC framework.

Though the trade unions did produce occasional analyses and submissions for parliament, they did not contribute in any substantive way to shaping the trade agreement. Instead, the unions insisted on receiving specific resources to build their capacity to produce analyses and labour-informed positions. They also wanted to be part of the South African delegation during the various negotiating rounds.[8]

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7 On agricultural issues, for instance, sectors like fresh fruits (citrus, grapes, apples and pears), wine, subtropical juices and canned fruits managed to provide the South African negotiators very technical inputs.

8 For a more detailed perspective from trade unions on their involvement in the trade negotiations with the EU, see COSATU (1999).

However, the government tended to engage more regularly with employers in bilateral sectoral meetings, excluding the trade unions from these talks.

4.4 Public opinion and civil society

Trade negotiations usually hinge on technical aspects that render the process inaccessible to non-experts. More importantly, trade policy generally attracts little attention until its direct effects become known or felt. Those directly involved in the negotiations on the South African side (i.e. government, parliamentarians and experts, economic and social partners) therefore had to exert significant effort during the process to raise awareness among the public at large on the issues at stake.

Civil society organisations such as the Institute for Global Dialogue (IGD) were instrumental in steering the trade policy debate and facilitating dialogue between trade specialists and a larger audience.[9]

Non-governmental organisations (NGOs) also provided concrete input to the trade debate through direct contacts with government officials and technical experts. By being better informed, some NGOs were prepared to provide useful contributions when consulted. They also played a connecting role between those close to the trade negotiations and the public at large. The government exerted special effort throughout the negotiations to 'bring along' and gain the support of NGOs and other non-state actors in the process; these actors, in turn, aimed to fulfil a checks-and-balances role.

Use of the media became a sensitive issue during the negotiations. The media's natural tendency was to focus on the bad, highlighting potential difficulties in the negotiation process and in the trade liberalisation strategy. The government seems to have had no specific public relations strategy to counter this. Yet strong political leadership at the highest level of government, combined with the active involvement of some key members of parliament and the participation of private and social actors, may have helped stimulate public debate on the prospects of stronger economic ties with the EU.

On the whole, however, the trade negotiations failed to capture the attention of the public at large, except perhaps at key moments such as the launch of the negotiations and their delayed conclusion.

4.5 Institutionalised mechanisms of public-private dialogue

In its trade negotiations with the EU, South Africa reserved a pivotal place for consultation between government, the private sector and trade unions. This took place largely through NEDLAC and the Agricultural Trade Forum. Figure 3 summarises the stakeholders in South Africa's negotiations with the EU.

NEDLAC: a vehicle for multipartite dialogue. Following a 1992 report on the implications for South Africa of reductions in industrial protection, a gradual initial pace was set for the trade liberalisation process. Subsequently, in October 1992, the National Economic Forum (NEF) was established to allow public-private consultation on economic reforms and socio-economic issues. This body, created to facilitate economic restructuring during the transition to the democratic post-Apartheid regime, brought together business representatives, trade unions and government.

Among its trade-related achievements, the NEF was instrumental in assessing the GATT Trade Policy Review of South Africa in June 1993 and, by September 1993, in shaping South Africa's trade offer at the Uruguay Round negotiations.

Building on these successes, the new ANC government created the National Economic, Development and Labour Council (NEDLAC), a statutory quadripartite consultative body comprising government, labour, the private sector (employers) and civil society. Funded by the Department of Labour and starting operations in February 1995, NEDLAC became South Africa's primary institution for social dialogue on issues of economic and social policy. It is subdivided in chambers, including one on trade and industry.

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9 See for instance the workshop proceedings by Houghton (1997).

In preparation for and throughout the trade negotiations, NEDLAC played a major role as information source and forum for dialogue. Under its Trade and Industry Chamber, the Technical Sectoral Liaison Committee was created in January 1996 to follow the trade negotiations and make recommendations on general principles and technical details. The government regularly reported to the committee on progress in the negotiations, and through the committee, businesses and trade unions provided comments and inputs on proposals.

Box 2: The National Economic, Development and Labour Council

NEDLAC has four constituencies, each of which has developed coordination mechanisms through which they provide contributions to the Council:

- **Government** constituencies interact with the Council mainly through the Department of Labour from which NEDLAC is financed. The departments of finance, public works and trade and industry also play a central role.
- **Organised business** is represented mainly by Business South Africa (BSA) and the National African Federated Chamber of Commerce (NAFCOC).
- **Organised labour** interacts with NEDLAC mainly from under the umbrella of the Congress of South African Trade Unions (COSATU), the National Council of Trade Unions (NACTU) and the Federation of Unions in South Africa (FEDUSA).
- **Civil society** constituencies are represented by the South African Youth Council, the National Women's Coalition, the South Arican National Civics Organisation, the Disabled People of South Africa and the National Co-operatives Association of South Africa.

Source: www.nedlac.org.za

The inclusive, transparent and representative character of NEDLAC is broadly acknowledged. The formation of the Council was a major step forward, as previous structures under Apartheid limited consultation mainly to big companies. In the trade negotiations with the EU, South Africa's government leadership used NEDLAC in three main capacities:

- *as a channel for information exchange* through which the government (mainly DTI) could regularly inform social partners as to the state of the negotiations;
- *as a critical advisory body* for government, providing a unique opportunity for social partners to react and provide inputs to the negotiating process;
- *as an instrument for 'interest mediatio'* to sort out differences amongst the social partners and between the social partners and government.

Initially, government tended to deal directly with the private sector. But it soon saw the advantages of resolving differences of opinion within NEDLAC. This helped mould a coherent vision while saving time, particularly because the private sector was not always able to speak with one voice.

That the government took NEDLAC seriously was reflected in the structure of the DTI, where a special office was set up to maintain relations with NEDLAC. The DTI also provided some research funding to NEDLAC.

Through the Technical Sectoral Liaison Committee, NEDLAC contributed to analyses of the South African protection (tariff) structure and to the identification of sensitive sectors and products (e.g. clothing and textiles, motor vehicles and parts). This research fed directly into the design of South Africa's tariff offer to the EU. The committee also contributed proposals on non-tariff barriers and on trade-related issues such as rules of origins, competition, government procurement, customs procedures and standards.

The Agricultural Trade Forum. Formal consultation mechanisms for public-private dialogue were not restricted to the industrial sectors. A close cooperation structure was set up within agriculture as well.[10]

To supplement the limited capacities of the Department of Agriculture and to improve consultation, the government established the Agricultural Trade Forum in 1997. This forum provides technical inputs and a platform for the exchange of views on agricultural issues in the negotiations. It comprises all agricultural

[10] Note that the services sector was not included in the TDCA negotiations.

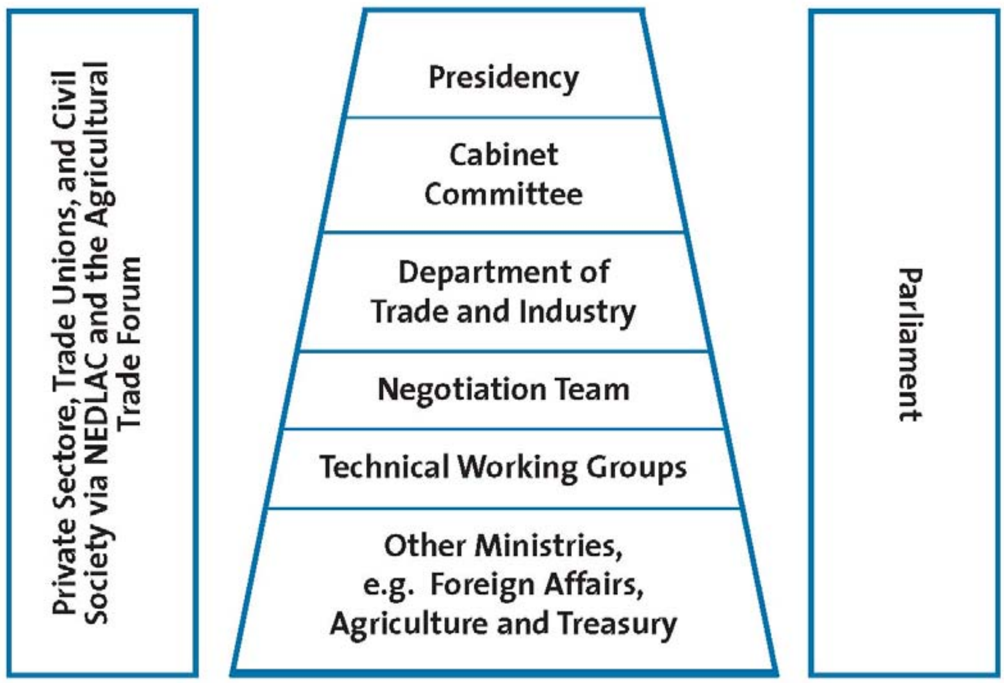
players, initially including commercial farmers, associations of small farmers and large export companies. Later, associations representing agricultural labour and the various provinces also joined. The forum covers all major agricultural products and enterprises, including grain, horticulture, fresh fruits, wine and food processing.

The Agricultural Trade Forum – some 30 to 40 participants strong including representatives from the DTI – met about every six weeks throughout the negotiations. Product-specific subgroups were created to provide focused technical input. The inclusion of the agricultural sector, particularly the large exporting companies (e.g. fresh fruits, wine) provided the negotiators concrete examples of possible impacts of the proposals being made. For its part, the government (through the DTI and the Department of Agriculture), centred its efforts on the tariff analysis and other trade-related technical issues. This complementarity between the government and the agricultural sector enabled South Africa to better prepare for the negotiations. Interestingly, to enable the government to be open and discuss politically sensitive issues with the agricultural representatives, all forum members had to sign a confidentiality agreement.

The Agricultural Trade Forum offered a useful platform for the agricultural sector to express and defend its interests. Nonetheless, non-exporting sectors, such as livestock and cereals, were less active (if at all), and therefore tended to be excluded from the consultation process.

The structure of the forum has been maintained beyond the TDCA negotiations, and it still works smoothly in the context of the WTO and other bilateral trade negotiations.

Figure 3: Stakeholders in South Africa's negotiations with the EU



5 Key components of the negotiating process

5.1 Clear identification of strategic interests

The new South Africa envisaged tailoring its trade policy to its national developmental prospects, as discussed in section 3.2. Its initial approach focused on obtaining better access to the EU market, to be provided under the Lomé Convention's trade preferences regime. The EU's rejection of this proposal meant that South Africa had to consider opening its market to EU products under an FTA. This shift in policy forced the South African government to look even closer at its core economic interests, putting even greater emphasis on consultation amongst economic and social actors (in particular, via NEDLAC). But South Africa's core principle of basing trade policy on economic development policy remained.

The South African experience is somewhat exemplary. Its move to integrate the new South Africa into the world economy and anchor its economic ties with key strategic partners was inspired by a core group of ANC political leaders and intellectuals. With the election of Nelson Mandela, members of this avant-garde were assigned to various ministries (e.g. the DTI, the National Treasury, the Department of Foreign Affairs) and institutions (e.g. within parliament). They also occupied prominent positions in trade unions, associations and research institutions. This ensured that the strategic objectives being pursued via trade policy were promulgated in a coherent manner by various actors throughout society. In addition, some actors in the old regime (e.g. civil servants, diplomats, private sector leaders) were committed to implementing the new government policy for the betterment of the nation as a whole. Many were eager to see South Africa reintegrate into the international community. The combination of these forces proved instrumental in the effective pursuit of South Africa's strategic objectives, including those related to its relations with the EU.

Broad consensus on the potential benefits of trade for South Africa's development did not pre-empt a lively debate on desirable trade orientations for the country, including within the ANC. Gaining preferential access to the EU market under the Lomé Convention would have stirred little controversy. However, the spectre of reciprocity in opening trade, in particular, reciprocity with a world economic power, did generate serious concern. Protectionist tendencies were in play throughout the negotiations. But strong commitment prevailed – to rejoin the world community, to build up solid economic ties with the EU, to stimulate the competitiveness of South African industry and to attract FDI to support development – under strong and sustained political leadership.

After identifying the main principles to be pursued during the negotiations, the government concentrated most of its efforts on identifying what the country's specific interests were (see also Sudworth and Van Hove, 1998). The process adopted for negotiating the FTA can be summarised as follows:
- general impact assessment of an EU-South Africa FTA;
- identification of South Africa's strategic interests in terms of exports to the EU market and opening of the domestic market to imports from the EU;
- detailed sectoral analysis, in cooperation with the private sector and social actors;
- coordination and consensus-building exercises within the government and with economic and social partners;
- negotiations with the EU and (formal and informal) lobbying;
- ratification and implementation of the agreement.

5.2 Technical preparations

Trade negotiations are, first and foremost, a technical process. While core principles, clear identification of broad interests and the pursuit of a coherent political and development strategy provide the logical framework and overall guidance for the process, trade negotiations are determined by technical arguments. Technical preparation must therefore underlie the positions and proposals at the negotiation table.

Negotiation positions are won or lost mainly on the basis of the technical arguments put forward. This meant that the sympathy the new South African regime enjoyed in Europe did little to shape the specific positions taken by the European Commission and the EU member states during the technical trade negotiations, though it did contribute to create an atmosphere of goodwill. Solid technical arguments, based on hard facts, specific economic interests and compatibility with WTO policy and legal principles, generally prevailed over good intentions and generic (unspecified) development concerns. In trade negotiations, as the saying goes, 'the devil is in the details'.

‘There is no substitute during tough negotiations for a good argument and proper preparation’
(Smalberger, 2000: 49).

Preparations for negotiations therefore start with solid research and analysis on all potential components of an agreement. In this regard, a research ‘value chain’ for trade negotiations can be devised, centred on four elements:

- a strategic competitive analysis;
- sector- and industry-specific detailed analyses;
- in-depth knowledge for negotiation management;
- detailed negotiation inputs.

The strategic competitive analysis. The first link in the research “value chain” for trade negotiations is a strategic competitive analysis. This serves to identify the core reasons for undertaking the negotiations and their specific objectives, which depend on the strategic political and economic objectives of a country. Based on these objectives, an overall assessment can be made of the potential impacts of an eventual trade agreement. In general, too much emphasis is often placed on macro-economic impact studies at this stage (based on partial or general equilibrium models). The results of such studies rely heavily on crude assumptions about the state of an economy and possible negotiation scenarios. Besides, negotiations are driven primarily by political decisions, as in the case of the TDCA, not by generic macro-impact studies.

In assessing the value of impact studies, it is useful to distinguish between the process of conducting such studies and their outcomes. Impact studies may shed light on issues being thrashed out by the negotiators. They may help identify key areas where impacts could be larger than expected or where more preparation is needed. Even more valuable is the potential of such preliminary studies for enhancing institutional knowledge to back-stop the negotiations. Though the general outcomes of impact studies tend to be of little help to policymakers, such studies may serve to identify strategic competitive interests, generally confirming or disproving perceptions. They may also help nuance pre-existing knowledge and highlight possible unforeseen side-effects of a proposal.

Most of all, impact studies serve a political purpose, perhaps supporting a position taken by policymakers and negotiators in the media or with partners. Studies may also raise the profile of the negotiations, stimulating national debate amongst experts, public officials, business representatives, social actors and the public at large.

Specific detailed analyses*.* The second link in the research value chain is sector- or industry-specific detailed analyses. Government departments often already possess detailed information on official trade flows, domestic tariff lines and structure and domestic regulations. However, practical information on trade, such as impediments and opportunities for exports and imports, transaction costs and competitive effects at the sectoral level, mainly rest with the private sector. Detailed analyses conducted in close cooperation with the private sector can unearth such details (see also section 4.4). In this respect, it is worth noting that for the private sector to have an effective impact on the technical preparations, and hence on the content of the negotiations, it must put forward well structured arguments presented in written documents, rather than simply making broad verbal statements at meetings and workshops. Here again, it is the technical value of the argument that is of the essence.

‘We learned that rules of origin are not only about customs control, but more importantly, about economic development, jobs and investment’
(Smalberger, 2000: 50).

In-depth knowledge for negotiation management*.* To successfully manage the negotiation process, it is important to know who the key players are in the negotiations, how they are organised and what resource providers and political forces are in play. At the domestic level, negotiators need to be trained. In the case of the TDCA negotiations, study tours to Brussels were organised, as well as dedicated workshops on European matters for the South African negotiation team. These experiences gave them insight into the institutional functioning of the EU and its main policy and decision-making mechanisms.

In more recent trade negotiations (e.g. South Africa's negotiations with the Mercosur region), South Africa organised technical missions to the partner countries for their officials, including from DTI (both sector specialists and staff from the relevant geographical units). Supplemented by desk studies and political-economic analyses, such "fieldwork" can provide invaluable insights into the functioning and interests of a partner region or country. Since the TDCA process, South Africa has established links with the research community and the private sector to stimulate the flow of information for trade-related decisions and negotiations.

The DTI has further developed its own internal capacity, creating an economic research and analysis unit and setting up institutions such as the Industrial Development Corporation (IDC) and the Trade and Industrial Policy Strategies (TIPS). These institutions conduct impact studies, tariff simulations and other analyses. The government relies on input from other organisations as well:

- the Institute for Global Dialogue (IGD), in particular, for its facilitating role in consultations amongst civil society, NGOs and social actors;
- the National Institute for Economic Policy (NIEP), which is the successor of the Macro-Economic Research Group (MERG), for macro-economic and sectoral trade analyses (e.g. on textiles and agriculture);
- to some extent, the South African Institute of International Affairs (SAIIA).

International trade experts and lobbyists with close ties in the new South Africa have also been called upon as complementary resource persons.

Detailed negotiation inputs*.* Technical analyses must be fed into the process throughout the negotiations, to provide continuous support to the negotiators and help them promptly assess any proposals tabled by the negotiating partner. Timeliness is of the essence at this point. Sufficient analytical capacity must be in place to respond in a rigorous and timely manner.

Several primary factors affect a government's level of preparation and responsiveness at the negotiating table: its internal structure for policy analysis, its degree of coordination with sources of information and analysis outside of the government and abroad (including embassies) and the priority given to technical analysis by policymakers and negotiators.

TIPS has proven to be a valuable independent institution facilitating academic research. Its aim is to foster policy-oriented research on trade, industry and regulation in South Africa and throughout southern Africa. By mobilising the academic community, TIPS has played a clear role in boosting the government's research capacity. However, critics among public officials complain that TIPS research output is too academic and not sufficiently policy oriented. In particular, they say that not enough effort is made to derive concrete and practical policy recommendations.

This ivory tower syndrome is a recurrent problem in efforts to inform policy debate. While academics can provide useful insights, the connection with policy practice often remains loose. In this respect, it is helpful to distinguish between *research* and *analysis*. Research should address fundamental issues and shed light on principles and core questions, systematically and based on sound theory and empirical work. This can be done mainly outside the government, by universities, think-tanks and organisations such as TIPS. Policy analysis is then carried out to evaluate the practical economic and policy implications of specific policy scenarios and identify possible concrete actions and recommendations. In South Africa, the trade policy analysis task rests mainly in government departments, primarily the DTI. It was therefore crucial for the departments concerned, in particular the DTI, to possess the internal capacity to interpret the results of academic research and translate relevant information into practically oriented policy briefs and documents.

5.3 Coordination mechanisms

During the TDCA negotiations, the uncontested leadership of the DTI and the institutional coordination mechanisms set in place were effective safeguards to prevent inter-departmental tensions from rising too high and disrupting the negotiation process.

The coordination between Pretoria and the South African mission to the EU in Brussels seems to have worked efficiently at both the political level and the technical level. South Africa's ambassador to the EU was instrumental in linking with the EU negotiators, with officials from the European Commission (specifically, from DG Development and DG Trade) and with those from other EU institutions such as the European Council, the European Parliament and some EU member state representations in Brussels.

Yet despite its highly visible profile, the role of the South African mission was limited to representing and partially coordinating the negotiations in Brussels. The technical and strategic drive came from Pretoria, with the DTI and its negotiators playing a catalyst role. In theory this division of tasks was assumed to allow for a great degree of coherence and to ensure quality in the negotiation process. In practice, however, the structure led to inevitable tensions amongst the parties, principally between the DTI and the Ministry of Foreign Affairs. In fact, several government officials felt that trade negotiations should not be led by ambassadors without skills or technical knowledge in negotiating trade agreements. Whatever the case, the ambassadors' representative and facilitating role proved crucial throughout South Africa's negotiations. It therefore seems worthwhile to involve ambassadors in such processes.

5.4 Broad-based consultation

The consultation mechanism with non-state actors was a key feature of the EU-South Africa negotiations. It contributed to keeping all partners informed and provided opportunities for general and specific inputs to be provided to the negotiations, especially technical inputs.

At the early stages of the negotiations, government, through the DTI, tended to consult almost exclusively and directly with the individual large private sector interest groups. Gradually it became clear that to ensure the required input and support for the process, broad-based consultation with the whole range of social and economic partners was desirable. NEDLAC, as the primary platform for public-private dialogue, proved to be an interesting set-up by which the DTI could regularly consult with the social and economic partners. However, in the eyes of some of the players in the negotiations, the South African model of public-private dialogue also has its shortcomings.

Public-private dialogue: does it make a difference? In a well functioning public-private dialogue, a 'healthy' tension exists between government, the private sector and non-state actors in general. Effective consultation, however, requires that all actors' views be considered in the policymaking process and, where feasible, integrated into negotiation positions. Some key non-state actors openly complained about their lack of impact on the final results, arguing that 'government pretends to listen but does what it wants to do' (see also COSATU, 1999).

Predominance of informal channels over formal mechanisms? Despite NEDLAC being a strong institutional multi-partite platform for dialogue, a lot of informal dialogue outside the NEDLAC framework influenced the outcome of the negotiations. Several direct channels of communication existed between large private sector interests and technical staff within the various departments. Gradually, this contributed to a *de facto* erosion of the role of NEDLAC.

NEDLAC: too large to be effective? Many actors considered having only a single forum through which the trade negotiations could be discussed to be a handicap. NEDLAC was perceived as too large, representing too many sectors (exporting, import-competing and non-trade sectors, industries of different size, etc.) and too many actors (government, private businesses, trade unions) with divergent interests, thus limiting its effectiveness.

Post-negotiation: NEDLAC co-opted by government? According to some, NEDLAC gradually became a political instrument and is now too heavily influenced by the government. Moreover, its relationship with the government has become increasingly based on informal contacts. Loss of transparency is seen as a major challenge, perhaps even compromising NEDLAC's future independence and credibility. Already, some in the business community and in trade unions no longer perceive NEDLAC as a key participatory platform for preparing negotiation positions.

Despite these critical comments, a mechanism such as NEDLAC can be valuable in promoting democratic decision making, ownership and cohesion of views on negotiating stances, as the South African experience exemplifies. By providing an institutional platform for dialogue, NEDLAC was occasionally able to generate valuable technical input for the TDCA negotiations; it was also instrumental in building consensus in South African society throughout the process.

5.5 Lobbying and negotiating strategy

Influencing the position of the negotiating partner remains a key component of successful negotiation, and South Africa made dedicated efforts in this respect. Its lobbying and negotiating strategy targeted key players that were crucial to the eventual outcome of the negotiations.

Targeting within the European Commission. From the start of negotiations, South Africa made a clear choice to deal mainly with DG Development (officially in charge of the TDCA negotiations) and DG Trade within the European Commission.

Selective attention to EU member states. Overall, South Africa made little attempt to systematically lobby the EU member states. For instance, its ambassadors to the EU member states were not mobilised. A notable exception was the United Kingdom, which, because of its special relationship with and sympathy for South Africa, was the object of dedicated lobbying efforts by South African officials, politicians and other actors.

Informal contacts*.* The South Africans established generally good informal personal relations with their EU negotiating partners. This was the case at the ministerial level, between the South African Minister of Trade and Industry and the EU commissioners for trade and development, and at the level of the chief negotiators. These informal contacts helped create a better understanding of the respective positions.

Support within the European Parliament. South Africa succeeded well in mobilising sympathy and support within the European Parliament, which is known to have a strong development orientation. Hearings and visits by South African delegations, including President Mandela himself, were instrumental in building alliances and increasing political pressure in favour of South Africa's strategic interests and positions during the TDCA negotiations.

European public opinion. South Africa was able to build sympathy and support among the European public. The moral weight of President Nelson Mandela in Europe created goodwill and sympathy amongst civil society organisations, the private sector, NGOs and politicians dealing with South Africa.

It is important to note that while this political and public sympathy benefited South Africa in its negotiations, it was not automatically transferred to the technical, interest-rigged negotiation table. This led some South African negotiators to observe that negotiation arguments are won on their technical merits rather than on moral grounds. As a result, while ministers can provide strategic and moral leadership, the day-to-day management of the negotiations must be carried out by a competent negotiating team with the support of technical specialists from the departments concerned. In other words, gaining sympathy in the partner's mind is no substitute for a thorough strategic and technical preparation.

'Trade negotiations with the EU involve hard bargaining, in which professed concerns to promote development and greater equity in trade relations with developing countries are often swamped by [...] 'commercial haggling by wealthy Europeans' '
(Davis, 2000: 11).

Domestic lobbying and the use of media. The government's institutional consultation process, active involvement by South Africa's parliament and participation of domestic interests (mainly the private sector and civil society) served to raise awareness and gather domestic support for the trade negotiations. In this respect, the media played a role in informing the wider public and promoting the public debate. The government's strategy stimulated a virtuous cycle of strong public-private interaction, communication strategy, media coverage and public debate.

6. Lessons learned and a general framework for other developing countries

6.1 Neglected dimensions in the negotiating process: what could have been done differently?

Negotiations are won on a solid foundation of visionary leadership, high-calibre arguments and analyses, thorough understanding of national interests and strong coordination mechanisms within government and with a multitude of actors and stakeholders. This case study suggests that South Africa did quite well in most of these respects during its negotiations with the EU.

However, with hindsight, key actors in the process on the South African side recognise that, in some areas, things could have been done differently. Here seven lessons are raised that might have ensured an even more satisfactory outcome.

Lesson 1: better anticipation of the European decision-making process. South African negotiators were not always prepared for the complexity of European decision making related to the negotiating process. In particular, the EU's solid coordinated agenda and its strong institutional memory proved formidable elements of the EU strategy. Regarding the first aspect, the various DGs within the European Commission, along with the difficulty of reaching agreements among 15 member states, meant that the European decision-making machinery needed time to get into gear. But once a decision had been taken, it was very difficult to change.

Regarding the second aspect, the EU's institutional memory proved a strong asset throughout the negotiations. The EU side made extensive use of modern communication systems and digital data storage and retrieval, as well as statistical and technical data, to back up its positions. South Africa had no such system to call upon.

Lesson 2: proactively influencing the European negotiating mandate. Once a mandate on trade negotiations is approved by EU member states – after a laborious and time-consuming process through various levels of the European machinery – there is little room for the Commission to move beyond that mandate. This meant that the EU mandate predetermined to a large degree the whole negotiating process with South Africa.[11] By the same token, during the TDCA negotiating process Commission negotiators often hid behind their mandate to defend sometimes inflexible positions. Their attitude was partly driven by a legitimate concern about the political accountability of the European Commission towards the member states. However, it sometimes also served as a pragmatic negotiating tactic to limit the number of concessions the EU would have to grant to its negotiating partner. In this institutional context, it would have been useful for South Africa to have invested more in lobbying the EU member states at the early stages of the discussion on the draft EU mandate, certainly *before* its finalisation and approval.

Lesson 3: better integration of regional concerns and expectations. The SACU member states, which are linked to South Africa in a customs union, have expressed some bitterness about the TDCA negotiating process. Their main criticism is that throughout the negotiations they were hardly consulted on issues that have major effects on their economic development.

Lesson 4: stronger focus on lobbying EU member states. Except for the UK, and to a lesser extent Ireland and the Nordic countries, South Africa invested little effort in lobbying individual EU member states. At first, this seemed to be a wise decision to keep the process manageable. After all, it could be argued that the European Commission (DG Development) was entrusted with the chief responsibility for negotiating the TDCA on behalf of the EU. However, as the negotiations progressed, and certainly in the final stages, member states began to defend their own specific protectionist interests. For instance, Italy and Greece

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[11] For good surveys of the EU's internal decision-making mechanism for external trade policy, see for example Woolcock (2000), Meunier (2000), and Meunier and Nicolaides (1999). Concerning the implications of this mechanism for the European Commission's external positions, see Forwood (2001).

defended their wine and spirits industry. In this sense, and with hindsight, South Africa was not sufficiently organised to deal with increasing complexity as the negotiations progressed. For instance, South African embassies could have played a role in lobbying individual EU member states in their capitals.

Lesson 5: dealing with European negotiating 'power plays'. Leaders of post-Apartheid South Africa were convinced that strong relations with the EU were of key strategic importance. The EU's discourse towards South Africa also strongly emphasised equity concerns and a commitment to support post-Apartheid development in the country. However, at the negotiating table, the EU proved a tough negotiator, strongly driven to defend its own economic interests. According to some of the South African negotiators, the EU used the whole range of negotiating tactics to exercise pressure on South Africa. The relatively young South African negotiating team was unused to such hard negotiating practices. With hindsight, it could have made a more effective use of the moral weight of Mandela and the new democratic development process under way to obtain concessions.

Lesson 6: readiness for the final stages of negotiations. The final stages of negotiations require extreme prudence and vigilance to guarantee the best possible outcome. Some South African negotiators felt 'it went too fast at the end' and that at that stage too quick concessions were made to the European side. As a rule of thumb, they suggested, 'keep your cards to your chest' and only give in at the end if you are sure of getting something back.

Lesson 7: retaining capacity beyond the negotiations. Trade negotiating capacity is very vulnerable. Though the process of building capacities can be a long haul, capacities can be lost quickly. This is precisely what seems to have happened in South Africa, with key officials moving to different functions within the government or simply leaving the public sector.

6.2 A framework for the preparation of the negotiation process[12]

It is impossible in such a short paper to discuss all of South Africa's rich experience in trade negotiations with the EU. Nor would it possible, let alone desirable, to replicate the experience. But our encapsulated discussion does offer some useful guidance for other developing countries. Foremost is that a comprehensive strategic framework should be in place before embarking on trade negotiations. A number of basic questions can help guide the creation of this framework, preparing negotiators for the process at hand.

What? The first question is simply 'what?' The answer will determine the scope of the negotiations. What issues should be covered and which should be left out? What are the implications for the economy, for the social development of the country, for domestic strategy and for international relations and commitments with other countries, regions and the multilateral systems (this would include geostrategic considerations)? What are desirable outcomes for the negotiations?

These questions should be asked not only in preparing for the negotiations but also throughout the negotiation process. Answers must be constantly updated, to ensure that the approach adopted is coherent.

- *The RDP and the GEAR programme provided the overall policy framework within which South Africa could formulate its new trade policy.*
- *At first, South Africa sought simply to benefit from the EU trade preferences enjoyed by the ACP countries under the Lomé Convention. Only later did it accept the EU proposal to negotiate an FTA.*
- *During the trade negotiations, South Africa had no interest in an agreement on fisheries.*
- *Regarding development cooperation, South Africa wanted to obtain sector support.*

How? The second question is 'how?', in particular, how to address the issues identified for negotiation and how to mitigate any potential negative effects. Responding to the 'how' question implies development of a negotiation strategy and tactics in accordance with key national objectives. These will have to be constantly adjusted during the negotiations, as strategy and tactics are not static concepts. Lessons must

12 This section draws heavily on the invaluable insights of Shahid Rajie and Israel Kidane-Mariam.

be learnt and approaches adapted. Possible supporters for the domestically agreed positions will also need to be identified, both within the region and internationally.

- *South Africa formulated its trade policy strategy in accordance with its development objectives.*
- *A negotiating team was set up, led by the DTI, in cooperation with the Department of Foreign Affairs.*
- *South African policymakers, members of parliament and diplomats linked with EU institutions and organisations (e.g. DG Development, the European Parliament, the JPA, 'friendly' EU member states, lobby groups from the EU business community and European NGOs). Countries and associations that had campaigned against Apartheid proved most supportive during the TDCA negotiations. Examples of these were the Association of West European Parliamentarians Against Apartheid (AWEPA) and Action for Southern Africa (ACTSA).*

Who? Another important question concerns who should participate in the negotiations and, in particular, which domestic institutions should belong to the core group preparing and conducting the talks. Relevant institutions may include a coordinating body, ministries, and representatives from the business community, agricultural interests, trade unions and social actors such as civil society, think-tanks and research institutions.

- *In South Africa, the Cabinet Committee and the working groups played an overall coordination role. The DTI generated and coordinated most technical input and provided the leadership required to conduct the negotiations and maintain a coherent approach across issues and over time throughout the process.*
- *Institutions such as NEDLAC and the Agricultural Trade Forum provided a platform for consultation with the private sector and other non-state actors. Think-tanks like TIPS, the IDC and the NIEP provided much-needed technical research and expertise.*

With whom? Negotiations are not conducted alone, but with a partner sitting at the other side of the negotiating table. To conduct successful negotiations, it is important to know the negotiating partner: their agenda, institutional arrangements, negotiating mandate and political, economic and social conditions. Understanding the strengths and weaknesses of the partner and the partner's room for manoeuvre can be invaluable at the negotiating table, for instance, to help determine how far a negotiating point can be pushed.

- *Though the mandate given to the European Commission largely pre-determined the outcome of the TDCA negotiations, the Commission nonetheless often hid behind the assumed rigidity of some EU member states to avoid making concessions.*
- *South Africa's negotiating team attended a seminar at Johns Hopkins University in Bologna to learn about the EU system and negotiation principles within the EU.*
- *In agriculture, negotiations were conducted product by product. When assessing market access to South Africa, the EU used net weights, while South African negotiators assumed that the references were to gross weights, leading to serious misperceptions.*
- *South Africa was able to access informal information in some cases from within the European Commission and from supportive EU member states.*

Where? The 'where?' refers not only to the physical place where the negotiations take place (normally alternating between the capitals of the respective partners), it also relates to where regular updates and experience-sharing exercises will be held at the national level. Monthly meetings can be organised with the main protagonists in the negotiations. This keeps all those concerned up to date on each stage of the negotiations. Such consultation and sharing of information may enable negotiating parties to uncover possible trade-offs, usually within sectors, but also across issues at times.

- *The chief negotiators from South Africa were based in Pretoria and remained in constant contact with their constituency (e.g. government departments, parliament, the private sector and social actors).*
- *A permanent presence in Brussels was ensured by the South African ambassador to the EU, who played a key role throughout the negotiations.*

- *Ministry officials from, for example, the DTI and the Department of Agriculture, were posted to the South African mission in Brussels.*
- *The European Commission attempted to use development cooperation as a means to gain concessions on other (trade) issues.*

When? The timeframe of the negotiations constitutes a key ingredient for success. Clear understanding must be reached with the partner as to when the negotiations will begin. Internal milestones must be identified to allow adequate preparation at each stage. Negotiators must understand the time constraints and pressures faced by the partner and adjust the negotiating strategy accordingly.

- *Regular consultation and cooperation with private and social actors (e.g. via NEDLAC) and linkages with research expertise provided timely input for the formulation of positions throughout the negotiations.*
- *South Africa did not make a concerted effort early-on to influence the mandate given to the European Commission by the EU member states. As a result, the negotiators found that it was often too late to significantly alter rigid EU positions.*

6.3 In sum

No preparation for international trade negotiations can ever be entirely satisfactory. In fact, improvement and adaptation of any strategy should always be sought. Nonetheless, South Africa's experience illustrates that, despite numerous constraints and drawbacks, it is possible to prepare adequately for trade negotiations, even with a partner that is much more powerful economically and politically. The key underlying successful completion of trade negotiations is strong political commitment to 'prepare and then prepare even more'.

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Annex 1: Chronology of events in EU-South Africa negotiations

1994	South Africa receives access to EU General System of Preferences (GSP).
1994	South Africa asks for the Lomé-minus option: preferential market access, but no EDF allocations.
1995, June	EU rejects request and proposes a twin-track approach: 'qualified' membership of the Lomé Convention and negotiations for a bilateral FTA agreement.
1995, September	South Africa accepts the EU's offer to negotiate an FTA. In particular, it stresses that the FTA should take into account South Africa's trade liberalisation and economic restructuring efforts and be consistent with SACU policy.
1996, March	General EU proposal on principles are as follows: • WTO compatibility; • liberalisation of 90% of bilateral trade within 10 years; • differentiation and asymmetry; • compliance with the EU Common Agricultural Policy (CAP); • exclusion of effectively 40% of South Africa's agricultural exports. South Africa's share of duty free exports to the EU would rise from 75% (in 1996) to 94% in 2011.
1996, August	South Africa signs the SADC Protocol, of which Article 28 (2) implies that any preference granted to the EU by South Africa must be extended to all SADC members.
1996, November	EU issues the Green Paper on Future ACP-EU relations. Although denied by the EU, some observers note that the FTA negotiations with South Africa could set a precedent for new trade relations with other ACP countries.
1997, January	After wide consultations with parliament, non-sate actors and the BLNS countries (Botswana, Lesotho, Namibia and Swaziland), South Africa responds with an assessment of the EU proposal from March proposing a Trade and Development Agreement with the following elements: • a longer phase-in period for South Africa; • more openness on the EU side; • BLNS concerns addressed; • no linkages between different agreements (e.g. on fisheries and trade).
1997, February–April	Finalisation of terms of South Africa's qualified accession to the Lomé Convention. Spain initially vetoes the accession because of worries that the proposed linkages between different agreements (fisheries) were undermined by the EU negotiating team. Pressure by other member states convinces Spain to lift the veto and South Africa joins the Lomé Convention after ratification in April 1997.
1998, February	**Negotiation stalemate after first detailed EU proposal:** • 40% of South Africa's agricultural exports remained excluded, including certain key products, (apples, pears, oranges, wines and cut flowers); • negative impact of the CAP not covered; • regional impact on BLNS countries not covered; • EU accused of 'turning asymmetry on its head'.
1998–99	Detailed negotiations; final agreement seriously protracted by southern EU member states' concerns over parallel agreement on wines and spirits (in particular, the use of traditional names).
1999, March	**Conclusion of negotiations:** • 95% of tariffs on South African exports eliminated; • for EU exports, the figure is 86%; • transitional period of 12 years for South Africa, 10 years for the EU; • 27% of South African agricultural exports remain excluded from liberalisation; • South Africa tariff elimination for industrial products heavily back-loaded; • primacy of trade relations within southern Africa (SACU and SADC) recognised; • no direct compensation for BLNS fiscal revenue losses; • certain flexibility in rules of origin; • transitional safeguard measures optional for South Africa.
1999, October	Signing of the Trade, Cooperation and Development Agreement (TDCA).

2000, January	TDCA comes into force.	
	Main products excluded on the EU side:	Main products excluded on the South African side:
	Agriculture 1. Beef 2. Sugar 3. Some dairy 4. Sweet corn 5. Maize and maize products 6. Rice and rice products 7. Starches 8. Some cut flowers 9. Some fresh fruits 10. Prepared tomatoes 11. Some prepared fruits and fruit juices 12. Vermouth 13. Ethyl alcohol 14. Some fish	*Agriculture* 1. Beef 2. Sugar 3. Some dairy 4. Sweet corn 5. Maize and maize products 6. Barley and barley products 7. Wheat and wheat products 8. Starches 9. Chocolate 10. Ice cream
	Non-agriculture 1. Unwrought aluminium	*Non-agriculture* 1. Petroleum and petroleum products 2. Some chemical products 3. Some textiles 4. Automotive
	Total of 304 tariff positions, representing 3.4% of total imports from South Africa.	Total of 120 tariff positions, representing 10.9% of total imports from EU.
Sources: Perry (2000) and Graumans (1997, 1998).		

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ISSN 1571-7577

The ECDPM gratefully acknowledges the financial contributions of the Swedish Ministry of Foreign Affairs, the U.K. Department for International Development (DFID) and the Swiss Development Cooperation (SDC) to the programme on 'Sharing experiences on building capacity for trade negotiations'.

Within this context the ECDPM produced two other case studies on the Caribbean (ECDPM Discussion Paper No. 54) and on Mercosur (ECDPM Discussion Paper No. 50). These publications are available at: www.ecdpm.org/cb01