

**THE NEGOTIATION PROCESS OF THE EU-SA
TRADE, DEVELOPMENT AND CO-OPERATION
AGREEMENT: A CASE OF REFERENCE FOR THE
SOUTH?**

A thesis submitted in partial fulfillment of the requirements for the
degree of

Master of Arts in International Studies

By

MORGENIE PILLAY

December 2002

TABLE OF CONTENTS

Acknowledgement	iv
Glossary	v
Preface	vi
CHAPTER 1 INTERNATIONAL NEGOTIATION & BARGAINING: A THEORETICAL FRAMEWORK	1
1.1 The Nature of Negotiation & Bargaining	1
1.2 International Negotiations	3
1.2.1 The impetus for international co-operation & negotiation	3
1.2.2 The asymmetrical nature of North-South negotiations: The role of power in negotiations	7
1.2.2(a) Power & Negotiations	9
1.2.2(b) Bargaining Power	15
1.2.3 International Negotiations and Domestic Politics	18
1.3 Negotiation theory	19
1.3.1 Realism and Liberalism: Competing Paradigms informing International Relations (and Negotiation) theory	21
1.4 Conclusion: The theoretical dynamics behind the SA-EU negotiations	23
CHAPTER 2 THEORIES ON THE NEGOTIATION PROCESS & STRATEGIES	26
2.1 The Negotiation Process: phases	27
2.2 Negotiation Strategies: tactics & manoeuvring	31
2.2.1 Agenda	31
2.2.2 Authority	32
2.2.3 Back Channels	32
2.2.4 Concession making	32
2.2.5 Delay	35
2.2.6 Haggling	35

2.2.7	Linkage	35
2.2.8	Power	35
2.2.9	Precedent	38
2.2.10	Threats & Ultimatums	38
2.2.11	Proposals & Arguments	38
2.3	The theoretical framework on the internal and external dimensions to the negotiation process	41
2.3(A) (i)	Putnam's framework for two-level games	42
2.3(A) (ii)	The role and importance of domestically formulated win-sets to the external negotiation	43
2.3(B) (i)	A framework for three-level games	47

CHAPTER 3 THE SA-EU NEGOTIATING PROCESS: PRENEGOTIATION ACTIVITY & REACHING AGREEMENT 49

3.1	Institutional Background: The European Union and South Africa	50
3.2	The Diagnostic Phase: two level and three level games	53
3.2.1	EU Council Discussions for negotiating directives	53
3.2.2	South African Discussions for negotiating directives	59
3.3	The Formula Phase: a level-one game in search of general principles	65
3.4	The Detail Phase: a level one game working towards a settlement	68
3.5	Conclusion: The findings and implications	78

CHAPTER 4 ASSESSING THE SOUTH AFRICAN APPROACH TO NEGOTIATIONS WITH THE EU: A CASE OF REFERENCE FOR THE SOUTH? 81

4.1	Findings on the South African approach to negotiations	81
4.2	Insight for the South on conducting trade negotiations with the EU	90
4.3	Strengthening the South's negotiating capacity	96

Appendix	102
Bibliography	105

ACKNOWLEDGEMENTS

The author wishes to acknowledge the support and help of her lecturers and supervisor at the International Studies Unit at Rhodes University, The Mellon Foundation for affording her this opportunity to pursue her postgraduate studies and the interviewees: Mr. W. Smallberger (Deputy Director Bilateral Trade at the Department of Trade and Industry) and Ms. R. Torppa (from the EU Commission to South Africa) for their assistance.

GLOSSARY

ACP	AFRICAN, CARRIBEAN, PACIFIC COUNTRIES
BLNS	BOTSWANA, LESOTHO, NAMIMBIA, SWAZILAND
DTI	DEPARTMENT OF TRADE & INDUSTRY
EU	EUROPEAN UNION
FCO	FOREIGN AND COMMONWEALTH OFFICE
FTA	FREE TRADE AGREEMENT
GATT	GENERAL AGREEMENT ON TRADE AND TARIFFS
GEAR	GROWTH, EMPLOYMENT AND REDISTRIBUTION PROGRAM
IDZ	INDUSTRIAL DEVELOPMENT ZONES
MIDP	MOTOR INDUSTRY DEVELOPMENT PROGRAM
NAFTA	NORTH AMERICA FREE TRADE AREA
REPA	REGIONAL ECONOMIC PARTNERSHIP AGREEMENTS
SA	SOUTH AFRICA
SACU	SOUTHERN AFRICAN CUSTOMS UNION
SADC	SOUTHERN AFRICAN DEVELOPMENT COMMUNITY
SDI	SPATIAL DEVELOPMENT INITIATIVE
TDCA	TRADE DEVELOPMENT & CO-OPERATION AGREEMENT
WTO	WORLD TRADE ORGANISATION

PREFACE

The conclusion of the historic Trade, Development and Co-operation Agreement (TDCA) between South Africa and the European Union has been hailed as a significant foreign policy milestone for the post 1994 South African government. The agreement, particularly the free trade component that has come to hold centre stage, is synonymous with the neo-liberal paradigm (i.e. globalisation and the free trade diaspora¹) being articulated internationally. President Thabo Mbeki of South Africa and the Trade and Industry Minister, Alec Erwin have many times expounded that the impetus for global growth must come from the development of emerging economies. Inextricably linked to this assertion is that improved market access is at the cornerstone of any effective policy to develop and integrate into the world trading system. A free trade agreement –FTA- thus forms an integral part of such a policy framework as it is designed to significantly reduce trade barriers and tariffs and facilitate greater trade. The EU-SA Agreement is deemed unique for no other country has “such a privileged relationship with the worlds largest trading bloc and politically was expected to provide a positive stimulus to the post-2000 Lomè negotiation process between the EU and the African, Caribbean and Pacific (ACP) nations”².

It was reported that South Africa “punched above its weight in talks”³ with the EU, which by implication suggested that South Africa despite its’ lack of “power” managed to exert influence during the negotiations. Thus, in light of the fact that these negotiations were asymmetrical in nature (because the interacting parties are considered to have divergent power structures), an analysis of the negotiation process between South Africa and the EU is most worthwhile and warranted. Since if the final outcome was an emergent product of the bargaining process, then an analytical examination of the sequence of demands and

¹ The “free trade diaspora” refers to the formulated theories and arguments that advocate a liberal free market theory, which asserts that global welfare, will be maximised if all individuals are allowed to buy, sell and invest as and where they choose, with no obstacles in their way by the existence of national boundaries. Here the role of the state is confined to the maintenance of the conditions, which allow individual competition for resources to continue on a stable and equitable basis. Economic theories of the world market formulated by the classical political economists like Adam Smith, David Ricardo, and David Hume, inform many of the premises that underlie support for free trade. Free trade refers to a trading system between two or more economies, in which goods are imported without restrictions such as tariffs. Attempts at creating free trade and common markets can be achieved either via the formation of free trade areas or custom unions. Free trade areas refer to an economic union between states where the members agree to abolish tariffs and other restrictions on stipulated goods between themselves but vis a vis the rest of the system they continue to maintain the structure of their independent existing tariffs. On the other hand a customs union refers to a form of interstate integration in which states agree to abolish tariffs among themselves and also maintain a common external tariff in respect to third parties falling outside the union. This advocacy of free trade is what is termed the “free trade diaspora” and is associated with the principles of economic liberalisation, which underpinned GATT and its successor the WTO’s rationale.

² Laidler, M. *Never before have so many barriers been broken*, in *Business Day*, 13 October 1999

³ Dlodlu, J. *SA punched above its weight in talks: inexperienced SA showed EU negotiators a thing or two during the recently concluded trade negotiations*, in *Business Day*, 13 October 1999

offers that were made, is required in order to determine their interrelationship to the final outcome.

Thus, the goal of this thesis is not to weigh the costs and benefits of what the FTA will amount to for South Africa but instead, aims at analysing in context of negotiation and bargaining theory the negotiation process that resulted in the concluded agreement. The chief hypothesis being that, it is the manner in which negotiations are approached, [i.e. the supporting theoretical view a party holds be it a zero sum (*bargaining approach*) or a mixed motive game (*problem-solving approach*)] which informs the behavioural approach of the negotiator. As the ensuing negotiation process influences the negotiators choice of tactical options, which can determine the type of outcome that emerges.

The identification of the tactics and strategies employed by the South African negotiating team is based on a subjective analysis of the process, by comparing and contrasting the evolution of the articulated demands and arguments of the team. Efforts to obtain an official response from the Department of Trade and Industry about South Africa's tactics were unsuccessful, since these could not be disclosed for it would undermine their effective employment in future negotiations. Furthermore, official minutes and notation from negotiating rounds were unavailable, making the endeavour to objectively identify such negotiating tactics more difficult. However, it was possible during the interviews conducted, to get officials from each side to "unofficially" comment about the tactical strategies of the opposing party. For instance, in the interview with the EU official⁴, comments about the South Africa's negotiating style were tacitly obtained.

Overall the conclusions drawn about South Africa's negotiating style and tactics were arrived at by analysing a number of reports (that closely followed the evolution of the negotiations) and then paralleling this case study's findings with the conjectures made by the theoretical frameworks (i.e. works by Putnam, Zartmann and Churchmann) about how negotiations proceed. In the final analysis, the findings of this case are intended to provide insight for the south about how to approach any future trade negotiations with the North (or more specifically with the EU).

⁴ Interview with Rikka Torppa, Economist at the EU Commission in SA, Pretoria, August 2000, 4:15pm

Chapter 1

INTERNATIONAL NEGOTIATION & BARGAINING: A THEORETICAL FRAMEWORK

This chapter delineates a theoretical framework, which will later inform an examination of the negotiation process between South Africa and the European Union in regards to their Trade, Development and Co-operation Agreement. The phenomenon of asymmetrical international negotiation between North and South and where the impetus for co-operation stems from will be extensively discussed here. The development of negotiation theory in context of the Realist and Liberal paradigms will be explored, as these are the two most prominent theoretical foundations utilized for coming to terms with the phenomenon of International Co-operation and negotiation.

1.1 THE NATURE OF NEGOTIATION & BARGAINING

Negotiation is an interactive process between parties directed at reaching a durable agreement based upon common interests. The purpose is to resolve conflicting interests despite dividing differences, which is achievable through the establishment of common ground and the creation of alternatives. These alternatives are important for they perpetuate flexibility in negotiations, without which there would be rigidity and resulting deadlock. Thus the joint creation of alternatives helps to establish a common ground through which to approach the relationship. During negotiations there is an exchange of information through the communication of strategies and techniques. Since negotiation is defined as a process (emphasis being on process) it implies that negotiations proceed through various phases that could be repeated over time.

The terms bargaining and negotiation imply different conceptualizations. Bargaining is an agreement on terms of give and take, whilst negotiation is defined as “to confer with another with a view to compromise or agree”⁵. There are

⁵ Pienaar, W.D. & Spoelstra, H.I.J. *Negotiation: Theories, Strategies and Skills*, Juta & Co Ltd, Kenwyn South Africa, 1996 Pg.5 Other related terms for negotiation and bargaining include: (1) **Persuasion**, which refers to the

two types of negotiation, classified according to the objectives of the negotiating parties: the *integrative model* of negotiation under which the parties aim to equalise their gains and losses and where both parties have the objective to walk away with at least the perception of having gained more than they could through an alternative approach. The *distributive model* of negotiation on the other hand is a “win-lose” model, according to which parties go into negotiations with the objective to win for themselves regardless of the other side. Their actions are likely to be manipulative and offensive rather than co-operative and compromising.⁶

Another way to classify negotiations revolves around the content of the negotiations. The *package type* refers to the tendering of a proposed agreement. In this type of negotiation it is assumed that the power base of the initiator exceeds that of the other party. Packaged negotiation is often far more rigid and a tougher type of negotiation. Then, there is the *progressive summarisation type*, where the agenda proceeds through different stages, and agreement is reached on small sections that slowly and progressively move towards the final agreement.

As a result there are two contending analytical approaches to negotiations and bargaining. The first group is those influenced by the tradition of economics, in terms of which negotiations are viewed as a “game” with its own set of “players” and “rules”. Falling under the school of thought named Game Theory, a deductive method of analysis is usually employed with a strong emphasis on bargaining strategies utilised by rational individuals. It is an approach concerned with determining how men should behave than the ways in which they actually do behave⁷ and is an approach that is more concerned with mathematical calculations than empirical verification.⁸In contrast to game theorists, is the work

communicative behaviour intended to change, modify or shape the responses, attitudes or behaviour of the receiver. The important aspect about persuasion is behavioural change by choice and not force. (2) **Lobbying** usually occurs where one party tries to pressurize (directly or indirectly) the other into accepting its point of view. Lobbying includes influencing a person or persons influential enough to advance an issue or viewpoint. (3) **Talks** refer to “informal” meeting wherein parties will collect information and explore each other’s point of view. Talks may involve a process of attempting to convince parties to limit their negotiation ranges from “what I want” and “what do you want”, to “what is the least you will take” or “what is the most I can offer”.

⁶ *Ibid.* Pg. 13

⁷ Bartos, OJ. *Process and Outcomes of Negotiations*; Columbia University Press, New York, London; 1974, Pg4

⁸ The so-called Prisoner’s Dilemma and Nash’s bargaining game are two of the main games expounded under this paradigm. These games, especially Nash’s bargaining game, provide a useful framework for discussing negotiation, since it involves payoff matrixes that can be used to describe a conflict of interests. These matrixes describe compactly and simply, the conflict of interest between the interacting parties. However as these matrixes require mathematical configuration, it is suffice to merely highlight their utility; its reconstruction here is beyond the functionality of this thesis.

of Zartmann & Bermann⁹, which focuses on giving advice on “**how** to negotiate successfully?” Their practical guides informed by a wide array of case studies favours the inductive method. Underlying this didactic approach is the belief that negotiation can be taught through the mastery of certain methods and principles.

1.2 INTERNATIONAL NEGOTIATION

International negotiation is viewed as a tool in the management of external relations and as Thomas Hughes¹⁰ stated foreign policy involves the management of contradictions. The decision to negotiate should take account of the facts of the situation, objectives (what should be done) and policy alternatives (what can be done). The purpose of negotiations are to reach *agreements*, reaching such agreement however, requires compromise and co-operation.¹¹

1.2.1 The impetus for international co-operation and negotiation

Where the impetus for international co-operation stems from and how such catalysts may inform the negotiation process, is what we now focus on, as this is pivotal to understanding “what” propelled South Africa and the European Union to co-operate. The theoretical debate between realists and liberals in explaining order amid anarchy and the impetus for international co-operation is our point of reference.

As states are autonomous and independent there is an interest-based logic for the creation and maintenance of international regimes¹², which serve to circumscribe national behaviour and so shape international interactions. The Trade, Development and Co-operation Agreement between South Africa and the EU may be viewed as a regime as there are certain rules and procedures which define and govern the relationship between the two parties in regards to trade, political and economic development and social co-operation¹³.

⁹ Refer to Zartmann, I.W. and Bermann, M.; *The Practical Negotiator*, Yale University Press, 1982

¹⁰ Wagner, R.H.; Practitioners’ views of International Negotiation, in *World Politics*, 32:1, 1979

¹¹ These can serve four purposes: (1) resolve disputes; (2) demonstrate values, e.g. non-aggression pacts; (3) distribute resources, e.g. fishing quota agreements; (4) administer relationships, e.g. airlines agreements. However many negotiations do involve more than one purpose and the appropriate strategy can vary with the purpose of the agreement.

¹² A regime is a framework of rules, norms expectations, decision making procedures and prescriptions around which actor expectations converge in a given issue area. . This framework is based upon recognition of a common perceived need to establish cooperative relations based upon the principle of reciprocity. Refer to Rittberger, V. & Mayer, P.; *Regime Theory and International Relations*, Clarendon Press, Oxford, 1993

¹³ To regulate the parties’ relationship the agreement makes provision for the establishment of a dispute resolution body (Article 104) and a Co-operation Council (Article 97).

However, before we can make assumptions about the behavioural pattern of South Africa and the EU, the identification of what factors and by implication which theoretical framework influenced the parties into co-operating is required. Only with such information, can we then proceed to define their behavioural pattern during the course of negotiations.

The Europeans were basically in the process of redefining their economic and political relationship (Lomé Partnerships) with the ACP countries and in their “self-interested” calculations South Africa (the door to Southern Africa), is the gateway to a market of 180 million¹⁴ people. Thus, increasing economic and political co-operation with South Africa and eventually SADC, and jointly establishing a free trade zone is what can be described as a common interest decision since both the EU and SADC would arguably benefit from the accessing of each other’s markets. Because the TDCA epitomises a preferential trade agreement, it was arguably seen as a far better alternative than the pareto-deficient¹⁵ outcome that would have been achieved if the parties did not co-operate.

One of the main factors prompting South African co-operation with the EU was to jointly negotiate better access to the EU market for its’ goods and services. Furthermore, the rise of regional groupings and international trade blocs propelled both the EU and South Africa into cementing their political and economic ties with each other, in order to avoid being marginalized in accessing international markets or gaining market share. This “trade/market race” can be viewed as a dilemma of common aversion.¹⁶

Stein’s¹⁷ argument that regimes arise because actors forgo independent decision making in order to deal with the dilemmas of common interests and common aversions, are supportive of these conclusions about where the impetus for EU-SA

¹⁴ *The Last Great Market* in IHK Aktuell, Issue No.8, August 1999 Note 180 million may not sound like much, but when it comes to market share every bit counts

¹⁵ Pareto-deficient outcomes are decisions that if taken independently and not jointly, will result in an outcome, which is a far less rewarding with the party preferring another outcome instead of such a pareto-deficient one.

¹⁶ Dilemmas of common interest arise when independent decision making leads to “Pareto-deficient” outcomes in which actors prefer another given outcome to the equilibrium outcome. Dilemmas of common aversion occur where actors have a common interest in wanting to avoid a particular outcome.

¹⁷ Stein, A.A. Why Nations Co-operate: Circumstance and Choice in International Relations, Cornell University Press, Ithaca & London, 1990

co-operation stemmed from. They did so out of self-interest, since jointly accessible outcomes were more preferable as opposed to those that are reached independently.¹⁸ This presumption about the existence of the dilemmas of common interests and aversions, assumes that self-interested actors do indeed have things in common. This is very much a liberal view of self-interest, as it suggests that actors focus on their returns and compare different outcomes with an eye to maximising their own gains.¹⁹

The motivation behind regime formation may be interest based however; there can also be a structural base to regime formation. Stein argues that the behaviour of the actors is best explained by constellations of preferences that are in turn rooted in other factors whose foundations are structural. His argument is that whilst interests may determine regimes, the distribution of power should also be viewed as one of the determinants of interests and therefore, also of regimes. In other words, a state's degree of power in the international system may also account for its preferences. Thus, the distribution of power between states determines the context of interaction, the preferences of the interacting states and also the prospect for international regime formation.

Structural motivations therefore, should be recognized as constituting a determinant of those different patterns of interest that underlie regime formation. Arguments that focus on the returns to explain an actors motivations and behaviour in negotiations are not satisfactory because states do not act in a vacuum, or make decisions that have international ramifications without considering the international system in their evaluations. Such arguments, which assume that states calculations involve assessing only the payoffs associated with various strategies, are devoid of the elements of context and circumstance²⁰. In such analysis the focus is on the question of payoffs, which are viewed as generating specific games in situations that have no particular dynamics. Thus the

¹⁸ The need to solve the dilemmas of common interests and aversions provides two different bases for international regimes, which also helps explain certain differences between regimes. Regimes established to deal with the dilemmas of common interests differ from those created to solve the dilemma of common aversions. The former require collaboration (specifying strict patterns of behaviour), whilst the latter co-ordination.

¹⁹ An alternative conception is that of competitive self-interest where actors seek to maximise the difference between their own returns and those of others. This decision rule, of difference maximisation is competitive whereas a decision criterion of self-maximisation is individualistic and when applied by an actor it transforms a situation into one of common aversions, it implies a constant sum world in which an improvement in one actor's returns can come only at the expense of another.

²⁰ As they are assuming that states choose options that are divorced from the contextual landscape.

assumptions made about how states evaluate and compare payoffs are done so with no reference to other information about the circumstances in which states choose between co-operation and conflict. The analysis of any foreign policy decision must however; incorporate some knowledge of the status quo and how the outcomes being compared will affect it, for it is at the heart of the process of making distinctions between gains and losses. It is therefore, not enough to know the rank order of the preferences, for their actual value also matters. Therefore, where actors stand and whether they stand to gain or lose matters immensely²¹, since aside from assessing how negotiators bargain in regards to payoffs, there is also the issue of “non-traditional gains”²².

In the EU-SA negotiations the elements of context and circumstance were evident. Ahwireng & McGowan²³ point out that the agreement could be viewed as a mechanism which provided non-traditional gains for South Africa by resolving what was then its’ current “political and time-inconsistency problems”²⁴. This political and time inconsistency problem refers to South Africa’s “circumstance” in the period 1994 / 1995. South Africa during this time was in the process of a very sensitive political and economic transition, which had major implications for its’, yet to be confirmed international status as a stable, democratic and economically viable and investment friendly country. The negotiations with the EU were seen as an international image making opportunity, which would demonstrate its commitment to democratic principles and a liberal market economy.

Moreover, these negotiations must be considered in context of the current international North-South dialogue proliferating multilateral institutions, like the WTO, where southern countries are pushing for a transformation (i.e. the rewriting of the rules governing member relationships) in these institutions and regimes. South Africa as a rising middle power and through coalition groupings (as member of NAM, CAIRNS, G-South, and AU) is advocating for these changes. Therefore, the manner in which it approached its relationship with the EU and the expectations it may have had about what should emanate from such discussions

²¹ Ibid. Pg 88-95

²² The term non-traditional gain refers to certain side rewards other than those pay offs directly sought by the party that arise out of the negotiations.

²³ Ahwireng, O.R. & McGowan, P.J. ; *The EU-SA Free Trade Agreement* in South African Journal of International Affairs; Vol6 Iss.2 Winter 1999, Pg.111

was clearly linked to its ideals in regards to international north-south dialogue.

1.2.2 The asymmetrical nature of North-South Negotiations: the role of power in negotiations²⁵

North-South negotiations are generally contentious because of the asymmetry of power between the parties. For it's reasoned that since power determines capability, with capability determining influence and influence determining outcome therefore, without power one cannot favourably influence outcomes to ones own advantage. In most efforts to analyse international negotiation, the focus has been on cases in which there was relative symmetry between the actors rather than asymmetrical cases.

It has become accepted rhetoric in discussing north-south dialogue that the south is the loser in negotiations with the north because of this structural power inequality inherent in their relationship. This section challenges this “There is no alternative” (“TINA”²⁶) syndrome thinking on north-south relationships, by representing that a strategic and analytical analysis of the SA-EU negotiation process, can provide insight into the potential the south has in influencing negotiated outcomes. As it will become evident, a repertoire of tools and a conceptually altered view of power, provide the south with formidable opportunities to effectively engage with the north during trade negotiations. This case study will dissect the negotiation process to reveal the windows of opportunity present in the process, which southern countries can utilise to strategically inform their preparations for negotiations.

Negotiation analysis is concerned with explaining outcomes. Explaining outcomes involves searching for causation, since negotiation outcomes are the result of a causal process. According to Habeeb²⁷ if explaining outcomes involves searching for causation, explaining causation involves seeking a notion of power, and thus

²⁵ This section on the asymmetrical nature of international negotiations has been included for two reasons. Firstly this case study (i.e. the negotiating power and skill between SA and the EU) exemplifies the asymmetry. Secondly because this case study is tied to the larger body of diaspora on north-south negotiations, and intends to act as a point of reference for southern negotiating parties in their interactions with the EU.

²⁶ Imported this term from an article by Y.Tandon; *Cuba defiant: Report of Conference on globalisation*; in SEATINI Bulletin, Vol.3, No.2; 31 January 2000.

²⁷ Habeeb, W.M.; Power and Tactics in International Negotiations: How weak nations bargain with strong nations; John Hopkins University Press, Baltimore, 1988
Pg.10

power should be the principal focus of negotiation analysis. The focus here then, is to theoretically explore the effect of this asymmetry on (1) each actor's ability to apply political power, (2) the choice and success of each actor's tactics and (3) the outcome of the negotiation.

It is the assumption that a negotiated outcome is a function of each side's power that accounts for the lack of serious analysis of asymmetrical negotiations. The political science concept of power in international theory has no accommodation for asymmetrical negotiations. Since by the classical "power politics" theory, the stronger actor²⁸ will by definition prevail in any encounter with a weaker actor²⁹. This way of thinking has been a major hindrance to the analysis of asymmetrical negotiation and explains the lack of a useful framework in international relations, with which to analyse the asymmetrical nature of power in the international system.

According to Habeeb it is the dynamics at work in such asymmetrical negotiations, which account for the outcomes achieved. The major determining factor of a negotiated outcome is *how* states, especially the weaker ones, negotiate under conditions of asymmetry³⁰. As a result the traditional view of power in negotiation needs rethinking, and by exploring asymmetrical negotiations and explaining how the weak negotiate with the strong, the TINA syndrome thinking on north-south negotiations can be overhauled to establish that "successful" outcomes can be actively sought pursued and achieved by southern negotiating partners. However, whilst there are no specific works, which are aimed at a formulation of a theory of asymmetrical negotiations, there have however, been some general points written by theorists commenting about "small states" in international relations.

Barston³¹ noted that if a small state occupies territory of strategic importance to the stronger one, it might be able to exercise bargaining influence disproportionate to its objective capabilities. This suggests that the "field of play"

²⁸ That is the actor with the greatest resources and capabilities

²⁹ According to this classical reasoning, only when there is symmetry in power, is the negotiation worth studying.

³⁰ Conditions of asymmetry refers to situations, not only in which there is an imbalance in power resources but also in which "control relations" are unequal, and where unequal costs from the failure to agree, combined with unequal capability to modify the structure of the bargaining relationship.

³¹ in Habeeb, *Ibid.* , Pg.5

may be as important in negotiations as the actor's respective resources and capabilities. Bjøl argued that a small states ability to resist doing what a stronger actor wants it to do is a critical source of weak actor power, even if it does not have the ability to persuade the stronger actor to do something. Thus the weaker actor's ability to hold out, or to ignore a demand made by the stronger state, may allow it to achieve its preferred outcome. Fox³² asserted that small states are often able to concentrate their entire attention on the specific issue being negotiated whereas; larger stronger actors must generally spread their attention over a more varied system. Fox concluded that this concentration could result in a more favourable outcome for the weaker actor.

Therefore, challenging the TINA thinking on north-south negotiations requires a shift in focus away from the traditional (constricting) conceptualisations on power, which emphasizes the overall fixed power (structural power) of the actors. Instead, each particular bilateral relationship with its own "fluctuating" power structure should be analysed on a case-by-case basis because power structures can vary from issue to issue especially in face of asymmetrical dependency³³. Therefore, countries need to carefully examine their bilateral relationships and sketch a blueprint of the pre-negotiation issue power balance.

1.2.2(a) Power & Negotiation

Whilst negotiation analysis is concerned with explaining outcomes, the process of explaining such outcomes itself involves searching for causation, since negotiated outcomes are the result of a causal process. Power is the label for this causal relation. The variable of power will be theoretically explored in brief, since developing a comprehensive conception of power that sufficiently illuminates what happens in the causal process that leads to an outcome is the main prerogative at this point.

Power may be defined as a possession, something that actor A has over actor B, or it may also be defined as an ability, i.e. A's ability to cause B to change his behaviour. However, these conceptualisations on power add nothing to our understanding of the relationship between A and B. The problem with defining

³² Ibid.

³³ Refer to discussion on issue specific power

power as a possession or ability is that, such a definition views power as a static concept. Habeeb suggests that it is much more useful to **view it as a process, which by definition is not static**. It is only after adopting such a conceptualisation of power that we can attempt to anticipate for the possibility of weak countries accomplishing negotiating “victories” over the strong.

Power is the process by which actor *A* causes *B* to change his behaviour. However, to say power is a process does not define what power is. In order to define power, one needs to inquire about those characteristics and components, which distinguish it from other processes. The most important component of power is resources – both aggregate and issue-specific. Power can be the result of having resources however; resources alone do not cause outcomes, since they are merely used to create outcomes. Power thus lies between its source (resources) and its result (outcomes). Since it is that which creates outcomes, the power process is characterised by change, reflecting the changes³⁴ that have occurred during the power process. These changes are caused by the behaviour of the other actor, behaviour that is made possible by the existence and use of resources. Therefore power is the way in which actor *A* uses its resources with actor *B* so as to bring about changes that allow its preferred outcomes to dominate instead of *B*.

This causal definition of power focuses attention on the process of change, and the end result (the outcome). As this definition is relational it leaves open the possibility that *B* may also be achieving at least some preferred outcomes. This is important since negotiation implies a relationship and reciprocal power, for if only one side evidenced power in a relationship, then that side could achieve its preferred outcomes unilaterally. Unilateral achievement of outcomes is not a characteristic of negotiation, but this is not to say that each side possesses equivalent power in negotiations, or to deny that one side achieves more of its’ preferred outcomes than the other.

However, emphasizing resources alone does not explain the advances, which is the essence of the negotiation process. Similarly emphasizing actor skill and ability does not place the negotiation in the context of the overall relationship of the

³⁴ These include changes in the actors’ positions, values, attitudes, objectives, and expectations

actors, as it focuses on isolated moves and tactics without looking at the sources of these moves or the underlying capability to perform certain tactics. In order to foster better understanding of north-south negotiations, a definition of power must allow for both the structural (resources) and behavioural (ability) components of power.

1.2.2(a)(1) **Aggregate Structural Power** Aggregate structural power refers to an actor's resources, capabilities, and position vis-à-vis the external world as a whole.³⁵ It is this conception of power, which is generally used to characterise and perpetuate the "TINA" syndrome in regards to north-south negotiations. Aggregate structural power is not only concerned with identifying national resources, but also national potential; i.e. the general ability of a state to actualise its' resources. This actualisation of resources measures the general potential, i.e. the ability to organise resources efficiently and adopt concerted international policy but however, fails to discuss the dynamic interactive process (i.e. behavioural power³⁶) behind negotiations.

Furthermore, since aggregate structural power is measurable, it describes the position of the actor in the international system, in terms of the hierarchical delineation of the international system into great, medium and weak powers. The concept of aggregate structural power is relevant, because the picture it provides of the structure of the international system is necessary for the analysis of power in international negotiation, since these negotiations do not occur in a vacuum but within the international system. Aggregate structural power also describes the composition of an actor's total resources, resources that often serve as the foundation for negotiation tactics. However, it does not sufficiently analyse the power structure of specific issues and is therefore deemed inadequate for analysing trade negotiations. This is not to deny that aggregate structural power is not useful in providing an overall "picture" of the actor's position in the international system. However, it is of less use in analysing the role of power in international negotiation, since as Habeeb rightly points out, it describes the aggregate power structure but not the power structure of issues and relationships,

³⁵ Refer to Ray Clines' "calculus of national power" formula, in which he has identified the determinants of aggregate structural power, for purpose of measuring a state's aggregate structural power

³⁶ Habeeb, *Ibid.* Pg. 17

because what may function as a power resource in one policy-contingency framework may be irrelevant in another. Therefore the only way to determine whether something is a power resource or not is to place it in the context of a real or hypothetical policy-contingency framework (by determining its issue specific power)³⁷

1.2.2(a)(2) **Issue Specific Structural Power** Issue specific structural power is concerned with an actor's capabilities and position vis-à-vis another actor in terms of a specific mutual issue. Issue specific structural power, which focuses on the power structure of a relationship, is particularly relevant for the analysis of international negotiation³⁸. In attempts at developing a picture of the power structure of an issue-specific relationship, there are two paradigms, which offer an account of how to analyse the power structure of an issue specific relationship. These include (a) the paradigm of interdependence and (b) that of social exchange.

Interdependence³⁹ defines a relationship characterised by mutual dependence, where each actor is dependent upon the other for the achievement of preferred outcomes. This paradigm is appropriate for analysing negotiation relationships, since negotiators are dependent upon the other to the extent that each can unilaterally withhold agreement, prolong the process, or even end it. An interdependent relationship implies that both parties would incur costs if the relationship ended, but this does not imply that such costs would be equal, as the actors may not be equally dependent upon each other. Thus one actor may be in a stronger position than its partner on a particular issue. It is reasoned that a less dependent actor in a relationship often has a significant political resource,

³⁷ In context of the aggregate structural power premise, we should in context of analysing South Africa's behaviour and interaction with the EU, bare in mind that it is considered to be a middle power internationally. This middle power status therefore has implications for how we come to terms with its interactions with the EU

³⁸ According to Thibaut and Kelley (in Habeeb, Pg.21) the advantage of the issue specific definition of power is that such relationships are not static and each actor is capable of increasing its power or decreasing its dependency by a number of means: i.e. developing other alternative relationships, reducing the other actors alternatives, improving its ability to deliver outcomes to the other actor, building up the value of its product and reducing the opponent's ability to improve his/her ability to deliver or build up the value of its product.

³⁹ Note Interdependence has a limited utility in analysing north-south relationships, because can we really say that ACP countries have an interdependent relationship with the EU or does the term dependence more adequately describe such a relationship, since the interdependence between them is of a asymmetrical nature. Thus whilst the interdependent paradigm may be useful for characterising SA-EU relationships, it is deficient in sufficiently describing relationships between ACP countries to the EU, and since the SA-EU outcome has implication for the ACP grouping and we are attempting to conclude general "lessons" of negotiating that they can learn from such a case study, we should therefore acknowledge their dependent relationships. Reference to the dependence framework will follow in a later section.

because of the changes in the relationship which it may be able to initiate or threaten⁴⁰. According to the interdependence paradigm, the balance of power within the issue area will determine the outcome in that issue area, irrespective of the condition of the aggregate balance of power between the actors. It is reasoned that different issue areas often have different political structures that may be more or less insulated from the overall distribution of economic and military capabilities.⁴¹

Richard Emerson analysed the power structure of a dependent relationship in terms of **social exchange theory**, and postured that one can determine the asymmetrical nature of a dependent relationship if one knows:

- (1) *the magnitude of A's interest, desire or need for outcome x (Emerson terms this A's motivational investment in x)* For example, the size of South Africa's interest or desire for acceding to Lomè and establishing a FTA was much bigger than that of the EU.
- (2) *the extent of control of x by B*, i.e. the EU had the prerogative whether or not to grant a preferential trade agreement to SA
- (3) *the ability of A to find alternatives for x and or for B*⁴² The alternatives available to SA were limited, the EU is its largest export market despite there being other potential markets of equivalent or greater size(i.e. China/NAFTA) however, none would offer such a comprehensive trade and aid program equivalent to the Union's.

Making the above three determinations for both actor A and B will reveal the power structure of their interdependent relationship. Moreover, any change in the above mentioned characteristics would subsequently change the relationship's power balance. Emphasis here is on the issue specific relationship, which conceptualises that power is based on the sources of power each actor derives from the relationship. Explanation for outcomes is based on the dynamics of actor behaviour within the parameters of their relationship. The power balance of an issue specific relationship is determined by three variables: alternatives⁴³,

⁴⁰ These changes will be less costly to it than to the partner.

⁴¹ This discussion on dependence is to be discussed in greater detail under the section on bargaining power.

⁴² Habeeb, *Ibid.* Pg. 20

⁴³ Alternatives represent an actor's ability to gain its preferred outcomes from a relationship, other than that with the opposing actor. The availability of alternatives may thus increase an actor's issue power by decreasing its dependence

commitment⁴⁴, and control⁴⁵. These three variables are to the specific relationship what material resources are to the aggregate structural relationship.

Structural power then can be analysed at two levels: the aggregate level and the issue specific level. Structural power however, simply describes a situation as it shows how this situation might provide one actor with a power capability. But this structural power alone cannot explain outcomes. Keohane and Nye⁴⁶ write: “Power measured in terms of resources or potential may look different from power measured in terms of influence over outcomes. We must therefore, look at the “translation” in the political bargaining process. This “translation” process is what is known as behavioural power.

1.2.2(a) (3) ***Behavioural Power*** Behavioural power is concerned with the behaviour of the actors: the process by which they manoeuvre and use their resources, both aggregate and issue specific to achieve preferred outcomes. In negotiations, behavioural power is revealed by the actors’ tactics, which are the means by which an actor exercises power. As Christer Jonsson⁴⁷ explains the exercise of power entails the conveyance of a message through signals, often a combination of verbal statements and non-verbal acts.

Negotiation tactics are a means of communicating preferences, but also used to persuade and pressure the other side to meet certain preferences. Tactics operate at the issue specific level, as their objective is to alter the issue power balance, since it is the issue power balance, which can remarkably determine negotiation outcomes. They succeed by altering or modifying the issue power balance – that is by altering each side’s respective alternatives, commitment, and control within the relationship. Thus the process of negotiation itself, involves moving from one issue power balance (the pre-negotiation balance) to another issue power balance (the outcome balance) by the mutual practice of tactics.

on the other actor. Conversely a lack of alternatives may weaken an actor’s position by increasing its dependence on the opponent.

⁴⁴ Commitment, refers to the extent and degree to which an actor desires and or needs it’s preferred outcome and is based on the values the parties attach to the various possible outcomes.

⁴⁵ Control as a determinant of issue specific power balance is defined as the degree to which one side can unilaterally achieve its preferred outcome despite the costs involved in doing so.

⁴⁶ in Habeeb, *Ibid.* Pg. 23

⁴⁷ in Habeeb, *Ibid.*

Persuading an opponent of a tactic's credibility involves convincing him or her that one has the ability and will to carry out a threat, pursue alternatives or build coalitions. This credibility is in part achieved by the existence of structural power resources, but also involves persuasive argumentation at the negotiating table. The resources of aggregate structural power, translated by the tactics of behavioural power, can indirectly serve to alter the issue power balance and thus affect outcomes however; aggregate power resources accomplish this role only when effectively translated by tactics. Aggregate structural power alone does not determine outcomes, thus it is the case studies in which there is an aggregate structural power disparity between the actors (like in this case study), that are the most useful for highlighting the role of the issue power balance and tactics – behavioural power – in contouring a negotiating victory for the weaker party.

1.2.2(b) Bargaining Power

In reference to the forgoing discussion on power, we can at this point establish that despite their lack of structural power, the south can pursue and attain bargaining power. Such power is not only based on the dependence of others on it but is also based on the pre-negotiation issue power balance, their tactics and behavioural power. The bargaining power of each party is therefore determined by the other's dependence on them, not its own dependence⁴⁸ on that party. Dependence refers to the degree to which parties have a stake in the bargaining relationship. High stakes, which are essentially grounded in the resource context of the relationship of the parties, are taken to indicate that bargainers attribute considerable importance to maintaining the bargaining relationship.⁴⁹ However, since the dependent relationship is not constant but variable it may and can be manipulated in the course of bargaining. Bargainers negotiate not only the specific issues at hand but also the nature of their dependence on each other, and as such a theory of bargaining must provide a framework that grasps not only the essential components of the dependent relationship but also capable of relating to the tactical action present at the bargaining table.

Bacharach and Lawler's theoretical offering on the relationship between

⁴⁸ Dependence varies according to: (a) the commitment to the benefits at stake in the relationship and (b) the availability of the benefits at stake from "other" parties aside from the current one.

⁴⁹ Bacharach & Lawler, *Ibid.*, Pg 59

dependence and bargaining power, proposes that an increase in the dependence of bargainer A on B, increases B's bargaining power. ***Thus a party's bargaining power is not based on its own dependence, but on the other party's dependence.*** The two most prominent dimensions of dependence include: the degree to which parties have alternative outcome sources and the degree of commitment to the outcomes at stake. This is derived from a basic tenet of social exchange theory – namely that social relationships, of whatever type are based on the degree to which the outcomes received in the relationship are highly valued and not available in alternative relationships. A party's alternatives are determined by the availability of similar or substitutable outcomes from other relationships. Parties may be highly dependent on each other but may differ significantly in their dependence regarding various issues.

Another dimension to dependence relates to the commitment of the parties to the outcomes at hand, and the value ascribed to the outcomes at stake.⁵⁰ Chamberlain and Pen⁵¹ portray bargaining as an exchange in which the parties need resources controlled by each other. The bargaining power of a party is grounded in the other's dependence on the party for certain resources. The other's dependence is based on the alternative outcome sources of the other party. What this indicates is that the bargaining power of A is positively related to B's aspirations and negatively related to the number and quality of the alternatives available to B. Commitment also affects bargaining power, as a greater commitment makes one more dependent on the opponent, thereby giving the opponent more bargaining power.⁵²

Bacharach and Lawler treat dependence and bargaining power as nonzero sum in character. Their framework allows for the possibility that both parties can increase their bargaining power, thus rejecting the assumption that an increase in one

⁵⁰ Note there are three ideas on commitment in the bargaining relationships: commitment to the relationship, commitment to a line of behaviour or tactical position, and commitment to the outcomes or issues at stake in bargaining. The third constitutes the commitment dimension of dependence.

⁵¹ In Bacharach & Lawler, *Ibid.* ; Pg 62

⁵² Two other hypotheses also suggested by the assumption include: (a) that high commitment may also motivate greater tactical effort. A party with high commitment to the outcomes at issue has every reason to push strongly in the negotiations, while a party with less commitment might be more inclined to yield to a party with greater commitment to the outcomes. (b) The motives for such yielding by the higher power party may be a response to strong unmitigated pressure by the lower power opponent, who must overcome the power implications of high commitment by greater tactical effort or an attempt to convey an image of benevolence, reasonableness, or altruism and therefore improving the ongoing relationship of the parties and enabling the higher power party to exact concessions on other issues.

party's power decreases the other's power and that the total power in a relationship is not constant, but may vary. This argument supports our contestation of the TINA syndrome thinking on north-south negotiations

In addition, this framework is an alternative to the aggregate structural power argument, as it stresses the tactical aspects of the bargaining process. It fosters an understanding of how parties translate structural or environmental conditions into tactical action and how this tactical action affects the power relationship in the long run. Bacharach & Lawler⁵³ contend that bargaining power is the key to the coding operations and to the interrelationship between the bargaining context, bargaining process and bargaining outcomes. It is therefore, pivotal for a theory of bargaining to place power at its centre when offering a framework for analysing how bargainers themselves come to understand and act within their bargaining situation. Bargaining as a game of managing impressions or manipulating information, places emphasis on tactical action, i.e. the manner in which bargainers bluff, argue their positions, attempt to deceive or manipulate each other and make power plays to gain advantage. This emphasis on tactical action advocates that there is a relationship between bargaining power and tactical action and that bargaining power is the product of bargainers' specific actions and the bargaining context.

A theory of bargaining power should thus, identify the dimensions of power bargainers use to classify, and interpret specific contextual and environmental conditions, when developing their tactical action. The task of the bargaining party should be directed towards (1) convincing its opponent that it controls resources, which the opponent needs and (2) that it is willing to use its power. It is these manipulative actions that ultimately determine a party's bargaining power.⁵⁴ The task of the South African bargainer was therefore, to transform contextual and environmental conditions into a cognitive presentation of bargaining power. Our aim in Chapter 3 will be to capture this activity.

⁵³ Bacharach & Lawler; *Ibid.* Pg.42

⁵⁴, *Ibid.*; Pg50

1.2.3 International negotiations and domestic politics

The general trend has been that international negotiation is viewed as a facet of foreign policy making and the domain of international relations, to the exclusion of domestic politics and policymaking. As a result the study of international negotiations has to a great extent concentrated on inter-state negotiations to the detriment of acknowledging how these international negotiations interact with domestic politics. But the negotiation of a bilateral international agreement simultaneously involves negotiation both between and within the states involved. Since different interest groups would discuss what sort of benefits they expect from an international trade agreement and the price they are prepared to pay for it. In order to reach an acceptable agreement, which can be ratified by the national constituents, the interests and demands from these domestic groups have to be taken into consideration.⁵⁵

This undoubtedly has obvious implications for the distinction that is traditionally made between policy - which is the internal legislative or political aspect of external relations - and negotiation (diplomacy) as the executive aspect, which is best left to diplomats. Negotiation however, is increasingly being broadly defined by governments and negotiators to be part of a wider process of public policy making⁵⁶. Government officials no longer think of the negotiating process as a truncated phenomenon divorced from mainstream social policy. This emphasis on internal negotiations and the relevance attached to the role and scope of the participation of special interest groups is consistent with other evidence concerning the increasing politicisation of foreign policy. This politicisation has turned the foreign policy bureaucracy into an arena where domestic interests get reconciled with foreign policy interests⁵⁷.

⁵⁵ Note that these assumptions about simultaneous interstate and intrastate negotiations are conditional upon the character of government of the parties in question, since these assumptions are based on liberal institutionalism and notions of public penetration and participation, which vary from country to country. Therefore these assumptions are not universal in application and that their application to other case studies should be done on a case-by-case basis depending on the institutional set up present in the parties under question.

⁵⁶ As it will be pointed out in later discussions, viewing the negotiation process as interlinked with domestic and foreign policy, has its advantages for it can complement tactical options and strategies of negotiators. For example national policy frameworks and prerogatives can act as vital substantiations for denying compromises or to force your negotiating opponent to alter / weaken their demands.

⁵⁷ There is an internal and external dimension to international negotiations and in order to explore this interaction between domestic politics and international negotiations and their implications for negotiated outcomes, a detailed discussion of Robert Putnam's theoretical framework on the two level character of international negotiations, follows in Chapter 2.

1.3 NEGOTIATION THEORY

The development of negotiation theory, over recent decades has been organised around two major paradigms: bargaining (which views the process as zero sum in nature) and problem solving⁵⁸. The modern era of theorising about international negotiations began with Thomas Schelling's *Strategy of Conflict* in 1960 Anatol Rapoport's *Fights, Games and Debates* in 1960, and Ikle's *How Nations Negotiate* in 1964. All of these early works had in common their foundation in the theory of non-zero-sum, or mixed-motive, games, in which parties have both competitive and co-operative options available⁵⁹. According to Nash & Schelling, a bargaining problem refers to a situation where there are multiple self-enforcing outcomes that the parties would prefer instead of a "no agreement" however; they disagree in their ranking of the preferable agreement. Their approach is based on the assumption that all negotiations involve situations where parties seek, in Ikle's classic phrase, "the realization of a common interest where conflicting interests are present." Ikle stated that nations that have no conflicting interests have nothing to negotiate about and nations that have no common interests have nothing to negotiate for. The interplay of common and conflicting interests determines the substance and goals of negotiation and where such a mixture is at work, it tends to shape the negotiating style of parties.⁶⁰

These early works treated negotiations as a mixed-motive game, but were eventually divided into: those that emphasized the competitive nature of the negotiation process (namely, the effort to advance the interest of the nation relative to its rivals) and those that highlighted the more co-operative effort to enlarge the joint interests of both parties simultaneously.⁶¹ It was further noted

⁵⁸ Hopmann, P.T *Two paradigms of negotiation: bargaining and problem solving* in Annals of the American Academy of Political and Social Sciences, Vol.542 November 1995 Whilst for the bargaining paradigm, indicators of flexibility includes concession rates, initiation of new proposals and other soft behaviours, whereas for the problem solving perspective, flexibility is usually indicated by a search for better, mutually beneficial solutions to problems that satisfy the needs, identities and interests of all parties. According to Hopmann empirical research generally reveals that bargaining behaviours are used more frequently in international negotiations than is problem solving and that this may be explained by the dominance of the realist paradigm of international relations, within which most diplomats are socialized.

⁵⁹ Reliance on formal game theory was more explicit and extensive in the work of both Schelling and Rapoport, whereas Ikle integrated this theoretical orientation with more traditional international relations theory and an extensive set of illustrative cases from the real world of international diplomacy.

⁶⁰ Ikle, F.C., How Nations Negotiate , Harper & Row Publishers, New York , 1976 , Pg.2

⁶¹ The key aspects of the negotiation process were characterized by bargaining, in which (1) initial offers are made by each party to the other, (2) commitments are made to certain positions in an effort to hold firm, (3) premises of rewards and threats of sanctions are issued to induce other parties to make concessions, (4) concessions are made as one party moves closer to another, (5) retractions of previous offers and concessions are issued as parties draw apart, and (6)

that, whilst the inequality of resources, bargaining skill, and ability to exercise influence may lead to asymmetrical outcomes, in virtually all cases, however, the outcome will fall somewhere between the opening positions of the parties. This process of bargaining has often been summarized as one that produces agreement through concessions and convergence. This paradigm became the dominant approach to the topic of international **negotiations** during the 1960s and 1970s.⁶²

Rapoport went beyond this simple model of bargaining to introduce the concept of "debate," which he defined as the joint search for "empathetic understanding" between individuals and for a "domain of validity" where their interests and understandings overlapped. It was only through a process of developing mutual understanding and seeking mutual gains that, Rapoport believed fundamental conflicts between different belief systems could be resolved peacefully. In his effort to expand bargaining theory, Rapoport laid the foundation for a second perspective on international **negotiations**, which has since been termed the "problem-solving" paradigm.⁶³

Richard Walton and Robert McKersie drew a distinction between these two paradigms i.e. "distributive bargaining" and "integrative bargaining."⁶⁴ In a mixed-motive game, distributive bargaining refers to that aspect of bargaining in which the interests of the parties are in basic conflict and in which each party tries to win for itself the largest possible share of whatever value is being divided. By contrast, integrative bargaining refers to a situation in which the parties may jointly enlarge the benefits available to both, so that both may gain from the creation of a larger amount of value to be shared by them.

Generally, negotiators exhibit two distinct behavioural patterns, according to Murray. The stereotypical competitive negotiator is a zealous advocate: clever, tough, thorough, articulate, unemotional, demanding, aggressive and unapproachable. The problem-solver is also thorough and articulate, but in

finally, when the dynamics of concession making overcome the pressures to diverge, the parties tend to converge upon agreement somewhere between their opening offers.

⁶² Hopmann, Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

addition: personable, co-operative, firm, principled, concerned about the other sides' interests, and committed to fairness and efficiency. The differences between these recognised patterns also suggest that negotiators who exhibit either type of behaviour are operating under different assumptions about the nature of the negotiating environment⁶⁵.

Each competing view has a distinct impact on the behaviour of negotiators who align themselves to either one. The competitive negotiator would have a narrow perspective on the negotiation, but broad and flexible standards for selecting strategies and manipulating the process. He/she aims at maximum returns, and considers the needs of opponent only when usable to achieve this maximum return and therefore, will behave co-operatively only if it helps to achieve this maximum end. As the focus is on winning, they aim to control the negotiating process for proper manipulation and to defend against the opponent's tactics. The problem-solver negotiator, on the other hand, holds a broad perspective on the negotiation, with rigid limits on acceptable strategies and conduct⁶⁶.

1.3.1 Realism and Liberalism: Competing Paradigms informing International Relations (and Negotiation) Theory

The two major competing paradigms that have appeared in the analysis of international negotiations parallel in many important respects the two paradigms that have divided international relations theory, namely, realism and liberalism (pluralism). Indeed, there is a strong correspondence between the central concepts of bargaining theory and most realist approaches to larger international relations theory, whereas the problem-solving paradigm is closely linked in basic assumptions and concepts to the liberal orientated school of thought on international relations. Of all the distinctions made between the competitive and

⁶⁵ The competitive negotiator views the negotiating environment as one controlled by egocentric self interests. This environment is characterised with limited resources presenting competing sides with an either-or choice. The goal is victory, to win more than the opponent. The negotiating atmosphere here is divisive, tense, game-like and transactional. To the problem-solver the negotiating world is controlled by enlightened self-interest. These negotiators are aware of the limited availability of resources, but each values it differently, as a result the distribution system is fundamentally integrative in nature, with each party maximising joint gains based upon their individual value preferences. The goal is a mutually agreeable solution one that balances fairness and efficiency.

⁶⁶ Some of the key behavioural elements for the problem solver include: (1) maximising own returns within the larger context of others interests, (2) considering needs, interests and attitudes of the other side, (3) is competitive but not antagonistic (4) concentrates on the substance of the problem, (5) considers negotiation and other voluntary processes as superior and the first choice as opposed to non-voluntary methods (i.e. adjudication).

problem solving approaches to negotiation the most important of these is the distinction between relative (pursuing gains at the expense of others in zero-sum competitive pursuit) and absolute gains (a co-operative search for joint gains i.e. positive-sum solutions).

The bargaining approach focuses primarily on states and their aim to achieve specific national interests. Generally, these interests are assumed to be fixed and unitary. Bargaining tactics are largely competitive with states making commitments to reinforce their offers and demands. They may manipulate information to disguise their true preferences in order to gain settlements that are unilaterally favourable to their own interests. They will forgo agreements that tend to produce benefits that are greater than the status quo or if their potential competitors are perceived to be gaining more from the agreement. The **problem-solving approach** to international negotiations is generally associated with liberal institutionalism. According to this perspective, the goal of negotiation is to solve common problems that parties face. Whilst this approach emphasizes parties' intentions it does not dismiss the importance of interests. It argues that, whilst the intention of all parties is to realise their interests there are however, norms and institutions that condition these interests. Problem-solving sees obstacles to agreement arising not only because of abstract state interests but also because of the perceptions and interests of important political and economic actors within the state. Thus it stresses that negotiations are and can be affected by important domestic actors found within the state.

The problem-solving approach employs non-confrontational debating techniques, is open to persuasion and is oriented towards qualitative goals - i.e. achieving a fair and durable agreement. Furthermore, it's believed that international regimes via a set of norms, creates the atmosphere of co-operation that governs the context of negotiations. These institutions may be called upon to mediate disputes or assist in the collective implementation, verification, and enforcement of agreements. Thus the interests and the negotiating behaviour of states may be constrained by the institutional context within which negotiations take place. For example, negotiations between the SA and the EU on **trade** issues occurred within the context of the WTO and was thus conditioned by the history, set of prior agreements, and institutional structures set in place by such a system.

Contrary to assumptions, bargaining states do not enter most *negotiations* as unitary, independent, and autonomous actors. Since, they are frequently participants in international institutions that limit their sovereignty and constrain many aspects of their behaviour, both in *negotiations* themselves and in the implementation of negotiated agreements.

1.3 CONCLUSION

The SA-EU negotiators were clearly driven by their pre-determined national interests, thus verifying the liberal presumption that states are egoistic and self-interested. But despite this individualistic self-interest, there was an impetus for co-operation motivated by their interdependent relationship and the need to avoid a “suboptimal” outcome. Some Union member states, as we shall see in the proceeding chapter, were competitive in their approach whilst the revisionist Commission adopted a problem solving approach.

However, if each side was driven by individual self-interests; then the question remaining is: how did South Africa and the European Union reconcile their individual interests to reach the final agreement. It’s premised that the negotiation process played a pivotal role in contouring an outcome that was mutually acceptable. In using the term “negotiation process” we include not only the domestic policy making process⁶⁷ but also how negotiations are approached and conducted⁶⁸ by each side. However, to analyse and explain these outcomes requires a capable framework.

In the search for this capable framework it surfaced that theorists are divided between proponents of competitive and problem-solving theories; with competitive theorists claiming a closer approximation to the actual experience of negotiation. Whilst problem-solving theorists assert the prescriptive superiority of their framework in terms of outcomes, it is professed that the competitive theory describes reality more accurately. As a result of these competing frameworks, the question then arose *which of these best explain realities in the negotiation setting?* During the course of research it was found that in general, the theoretical

⁶⁷ The institutional set up / internal decision making structures

⁶⁸ For example what tactics and strategies are employed

frameworks espoused to account for international negotiations, cannot be applied neatly. Since the underlying premise informing these frameworks was that they were written in context of conflict and conflict resolution. This questioned its' application to the field of trade (which in this century of globalisation dominates national and international agendas) suggesting that we explore the applicability of these theoretical frameworks to other fields of co-operation. Logically it was anticipated that international trade dictates interdependency amongst actors and therefore we assumed that economic/trade negotiations were most likely to be driven by liberal not realist tenets.

However, we cannot study such a complex process without having some framework for gathering and analysing the data. Heeding the words of Bartos that we must “choose theories that can become “models” of the negotiation process”⁶⁹; the proceeding framework for negotiation analysis delineated below is a subjective consolidation of a number of competing views on the process. The major issue faced was whether the theoretical principles developed and tested in controlled laboratory contexts (i.e. game theory) can systematize or organise some real-world empirical content. Because as it was understood, the experimental – laboratory – context is best for testing or building theory, while empirical models can be used to expand and elaborate preliminary ideas developed by experimentation.⁷⁰

Therefore, when using the espoused frameworks to analyse the SA-EU negotiation process and outcome, we should heed the warning of Hedley Bull that: “the very intellectual completeness and logical tidiness of the model building operation lends it an air of authority which is often quite misleading as to its standing as a statement about the real world”⁷¹. In order to ensure the framework’s usefulness as an analytical tool we must, on a case by case basis, pay rigorous attention to their unique characteristics. For if the analysis diverges from the framework it is the framework that should give way, since it has been created to guide analysis and to assist organise data⁷².

⁶⁹ Bartos, O.J. Process and Outcomes of Negotiations; Columbia University Press, New York: London, 1974, Pg. 73

⁷⁰ Bacharach, S.B. and Lawler, E.J. Bargaining: Power, Tactics and Outcomes; Jossey Bass Publications, San Francisco, 1981, Pg 86

⁷¹ in Habeeb, W.M.; Power and Tactics in International Negotiations: How weak nations bargain with strong nations; John Hopkins University Press, Baltimore, 1988, Pg. 23

⁷² Ibid.

This being so, a number of various theoretical frameworks have been collated in order to analyse and organise information about the negotiation process and to postulate a linear relationship between the demands, offers and outcomes. Whilst, it is anticipated that the following framework may not delineate the actually observed process with a hundred percent accuracy, the case study does have the potential to be utilized as a baseline model, with which to analyse the process of trade negotiations between north and south.⁷³ Furthermore, as these negotiations were part of wider process of public policy making (both inside SA and the EU), the negotiation process cannot be divorced from mainstream social policy making. This politicisation turned foreign policymaking into an arena where domestic interests got reconciled with foreign policy interests, and therefore, any attempt to analyse such a process must also scrutinize the internal negotiations⁷⁴.

⁷³Bacharach and Lawler assert that we need not resign ourselves to having separate theories for the separate facets of bargaining. Their framework, which conceptualises bargaining power as multidimensional, affords the analyst the opportunity to classify and correlate the disparate environmental and structural conditions that underlie bargaining.

⁷⁴ Chapter 3 will evaluate internal decision-making procedures both inside SA and the EU and their impact for negotiating directives and on the final agreement.

CHAPTER 2

THEORIES ON THE NEGOTIATION PROCESS & STRATEGIES

The manner under which negotiations are conducted contours the character of the final outcome emanating from such a process. This causal link between process and outcome therefore demands the thorough analysis of such a process. This chapter intends to delineate theories on negotiation process and tactics, which will later inform our analyses of the SA-EU negotiation process. As this negotiation process had both an internal and external dimension, it by implication also corroborates the link between domestic and international politics and foreign policy⁷⁵.

By analysing the bargaining interaction, the premise that the negotiation outcome is an emergent product of the bargaining process, will be established. If this linkage between process and outcome is feasible, then it warrants analysing the process for the explanatory power it may hold to understanding the final outcome. The intention, ultimately in context of this theoretical framework on the negotiation process, is to analyse the interaction between the South African negotiators and their European counterparts, and to posture propositions about the nature of their interaction, and how each side via the process, were able to contour the final outcome.

This analysis of the negotiation process will entail examining the sequence of demands and offers and their interrelationship to the outcome. In utilising a paradigm that studies negotiation predictively, by posturing that present events are a result of a “push” provided by events viewed as causes, we will analyse the dynamic nature of such a process. This affirms our premise that there is a direct link between the SA-EU negotiation process and the outcome that emerged.

In determining which side was more successful, it is the criteria employed to

⁷⁵ For example the internal preparations endured, the role of domestic influences on the expansion or contraction of winsets and the impact of internal institutional and decision making structures on the process

define such success that first needs elaboration. The alternatives to judging success⁷⁶ include: (1) the minimalist approach, which concludes that reaching agreement itself suffices to success; (2) success is determined by whether parties achieved their stated goals, (3) whether learning had occurred in the relationship. When it came to judging the “success” of the SA and EU negotiators, an assessment of the similarities and differences between the original aims of the Commission’s Proposal⁷⁷ and South Africa’s⁷⁸ proposal was made in context of the outcome found in the TDCA. It is according to: (a) weighing the respective needs of each side for an agreement, to (b) asking who has achieved the best alternative to the agreement and (c) examining the shape of the learning curve ⁷⁹(learning refers to the need to rethink the terms of the existing game – its goals, procedures, values and to consider new alternatives) that this assessment is based on. Therefore, looking for/at the gap between what was desired to what has actually ensued and assessing whether the results indicate a movement towards the parties longer term goals, are the indicators that were used to judge the success of the SA-EU negotiators.

2.1 THE NEGOTIATION PROCESS: Phases

In analysing the SA-EU negotiation process, we must ask what created *the potential for Negotiations*, i.e. what factored as the stimulus for negotiation. In respect to the SA-EU case there were a number of possibilities to consider, these included: (1) policy restructuring within the EU, and its post Lomè proposal for Regional Economic Partnership Agreements (REPA’s); (2) the political transformation in South Africa and its full accession into the world economy⁸⁰ and (3) the ideological contouring of the Neo-liberal agenda on the policies of both parties and their alignments to the “free trade” diaspora.

Secondly, what did the *Preparations* entail? At the start of the negotiations, negotiators were faced with establishing objectives and what their opening offers should consist of. Other issues contemplated included: information on the issues

⁷⁶ Ravenhill, J.; *Negotiating the Lomè Conventions: A little is preferable to nothing*. In Positive Sum: Improving North-South Negotiations; Zartmann, I.W. (Ed.); Transaction Books; US, UK; 1987, Pgs. 237-243

⁷⁷ As found in the first EU Negotiating Mandate dated October 1995

⁷⁸ As found in the submissions and limited parliamentary reports made in SA during 1995 – 1996

⁷⁹ Rothstein, R.L.; *Commodity Bargaining: the Political Economy of Regime Creation*. In Positive Sum: Improving North-South Negotiations; Zartmann, I.W. (Ed.); transaction Books; US, UK; 1987, Pgs. 16-17

⁸⁰ i.e. the global repositioning of the country is an imperative for the ANC led government

at stake, the implications of ones' objectives, the agenda, the tactics to be employed to direct the negotiations, the conflicting interests of either side and the makeup of the group of negotiators.

The preparation of objectives included stating all the goals that are to be achieved in the negotiation, determining their priority and evaluating the possible trade-offs amongst them. In theory each negotiator's objectives will have a "real" base (the least that he would be willing to accept) and an "inspiration" base (the maximum he could possibly obtain). The aspiration base and real base could be different for each issue at stake. Negotiations involve the movement of both parties from their aspiration bases to their real bases. As each party makes concessions and moves towards its real base, resistance to any further concessions also grows. Thus taking the decision to enter into negotiations implied that there was a willingness by both the SA and the EU to move from their aspiration bases towards a real base⁸¹.

The identification of issues entailed, earmarking those matters of substance that will be discussed with the opponent, or any other aspect over which there could be potential disagreement. The issues could then be ranked in terms of their priority, with such a ranking system aiding the negotiator when agenda planning. It is important that one obtains information on the opponent because you will need to know their objectives, their needs, their previous negotiating behaviour, their constituents, their position on the international hierarchy and their power base. Negotiators would also have had to prepare themselves properly for the practical side of the negotiations, i.e. the composition of the negotiating team, the composition and presentation of the agenda, the alternatives to be proposed, the way the problem(s) were to be defined, the timing of the negotiations, and the way the climate can (was to) be influenced.⁸²

Thirdly, in what way was the ***for climate negotiations influenced***. There is usually a generality in the process, though not in the content therefore, once the

⁸¹ It is however, worthwhile, to bear in mind that the aspiration base and real base in reality are not fixed positions, but a flexible zone open to alternatives.

⁸² Planning has three dimensions: strategic, administrative and tactical. Strategic planning is concerned with long-term goals. Administrative planning involves getting the negotiating team and information where they are needed so that negotiations run smoothly, and tactical planning simply seeks to get the best possible results at the bargaining table.
Pg.44

process of negotiation starts from then on everything that happens between negotiators will influence the outcome in some way or another. The initial stages of negotiation are crucial for the establishment of perceptions that may determine the conduct and outcome of the process. This so-called initial “climate” was the result of actions or perceived actions by contributors to the process. The European Unions’ stern approach, towards South Africa’s developmental needs and accession to Lomè, critically set the tone for reciprocity to be the underlying principle that would condition any emergent outcome.

Simplistically the negotiation process could be viewed as a series of offers, demands, and concessions, in which two sides work towards an agreement. This is reflective of the generally accepted offer-counter offer view of the process, developed by the Concession/convergence School of analysis. It focuses on how each party reacts to the other’s concession behaviour. Zartmann critical of this Concession approach argued that, it did not reflect the reality of a negotiation process. He challenged its’ conception of negotiation with the “formula-detail” framework. Arguing that, instead of a process of convergence through incremental concessions from specific initial positions, negotiation is a process of finding the proper **formula** and implementing **detail**. Negotiators seek a general definition of the items under discussion; these are conceived and grouped in a manner that fosters joint agreement. Once agreement on a formula is achieved focus then shifts to the specifics of issues and concessions. The formula-detail approach developed by Zartmann and Berman presents negotiation as a three-stage process: the diagnostic phase, the formula phase, and the detail phase.⁸³

The *diagnostic phase* refers to the pre-negotiation activity that leads to the desired settlement. During this phase each side explores the cost and benefit of a negotiated solution and may recognise that changes have occurred in the nature of their relationship or that relative power positions have changed. Thus a perceived or real change in the structure and nature of the actor’s system may have occurred, leading to a questioning of old norms, or to the introduction of new issues and actors; either of which may convince the parties that new solutions are

⁸³ This framework adequately characterises the SA-EU negotiation process since the SA negotiating teams first step was not to respond to the EU proposal by compiling its own proposal, but instead chose to hold discussions on identifying general guiding principles that would inform the overall negotiations.

in order. At some moment during the diagnostic phase, a “turning point” is reached when each side perceives that the other is serious about finding a negotiated solution, coming to the realisation that it may be willing to “lose” a little to “win” a little rather than to risk losing all in a non accommodating approach.

The *formula phase* of negotiations is characterised by a search for general principles or a formula. Zartmann and Berman define formula as a “shared perception or definition of the conflict that establishes the terms of trade, the cognitive structure of referents for a solution, or an applicable criterion of justice”. A shared perception of the conflicting objectives is the single most important element of a formula, for without it the two sides would remain stalemated. The ability of referents to relate to secondary or underlying values⁸⁴ that give meaning to items under discussion forms a critical aspect of negotiations. Another important characteristic of the formula is the establishment of a criterion of justice, which is often the key element for tying the formula together.

This approach does not entail the horse-trading associated with the offer-counteroffer conceptions of negotiations. Instead of demanding and conceding points, the parties rather attempt to define: what exactly is to be negotiated? What are the boundaries of a fair and just solution? What are the underlying principles and shared values that will guide each side’s demands and concessions? The outcome is the acceptance of a mutually agreeable formula by all parties.⁸⁵ The *detail phase* consists of searching for an agreement on the details, in order to implement the general framework as set out during the formula phase. It is during this phase (of intense and hard negotiations) that the parties send signals (offers and demands), make concessions, exchange points, arrange details and work towards a settlement.⁸⁶

⁸⁴i.e. development concerns, the “SADC first principle” or principles and norms of the WTO

⁸⁵ Such a formula may or may not be a formal agreement. Zartmann and Berman point out that in most instances (during their case studies) parties found a formula and used it to guide ensuing bargaining over details.

⁸⁶ Take note that the *formula detail approach* is merely a framework for understanding a complex and dynamic process, and it may not be as neat or distinct in reality. It is meant merely to provide a guide to what happens from the beginning of the process and offers a basis to answering earlier posed questions of: how do negotiations start? What prompts each side to move away from stalemate? How do the parties determine what issues are to be negotiated and the boundaries of the negotiation? Furthermore take note that progress from one phase of the negotiation process to another is not automatic, but result of a turning point. Two types of turning points have been identified: those that occur after an impasse or stalemate and those that occur after a crisis (i.e. a threat to the continuation of the negotiations).

As the chief premise is that the negotiation process plays a pivotal role in contouring an outcome that enjoins the interests of both the parties, we therefore require a framework with which to analyse and explain the process of these negotiations. The proceeding section intends to: (1) discuss the tactics available to negotiators and (2) as a component of the international negotiation process, to carefully analyse if and how domestic policy making (i.e. the institutional set up / internal decision making structures) reverberates onto international negotiations.

2.2 NEGOTIATION STRATEGIES: TACTICS AND MANOEUVRING

Whilst negotiation is the tool for resolving disputes and conflicting interests, tactics provide the means by which negotiators can pursue outcomes that are somewhat different from that which the power relationship hierarchy may suggest. Such tactics therefore, have the potential to improve ones virtuosity in bargaining. This section discusses relevant negotiation tactics and manoeuvrings that are available to negotiators.⁸⁷

2.2.1 Agenda The issue of the agenda is of consequential importance in any negotiation process, since negotiators actively seek advantages by attempting to control the content and ordering of issues on the agenda. Negotiators may thus strategically opt for an incomplete agenda, i.e. one that contains omissions, thus allowing for the element of surprise. Or advantage can be sought from the order in which items are to be discussed, for example, whether to address an issue early or late is related to the fact that energy declines with time or as deadlines approach, therefore increasing the chances for issues discussed later to be resolved more quickly and less carefully.

The ordering of the agenda is inter-related to how much can be conceded on each issue. For example, a negotiator may want unimportant issues settled first so large concessions can be made and compensation (“reward”) requested later in the interest of “fairness”.⁸⁸ According to Neale, Huber and Northcraft⁸⁹ the manner

⁸⁷ Note Snyder and Diesing recognise that bargaining skill – “virtuosity in bargaining” may lead to an outcome somewhat different than what the power relations structure may suggest.

⁸⁸ Churchman, D.; Negotiation: Process, Tactics, Theory; University Press of America Inc.; Lanham; 1995; Pg.8

⁸⁹ Ibid. Pg 83

in which objectives or decisions are framed have considerable impact on the outcome of bargaining and negotiations and therefore, can too be viewed as a tactic. Framing refers to a process of defining the problem in such a way that it reflects issues of possible consensus rather than issues of dispute. Since problem-solving largely depends on how the problem is defined and understood, framing is an essential process of summarizing the common ground on problem definition. One could therefore frame a “threat” as “just a warning” or disguise “threats and opportunities” as “strategic issues”.

2.2.2 Authority Negotiators often have limits on their authority to conclude an agreement as there may be domestic institutional requirements (i.e. constitutional / parliamentary ratification procedures) of approval. Therefore, it is important to understand how much authority your opponents have on each component of the deal being negotiated, so as to know who has to be influenced in order to grant the concessions sought. Besides having limited authority can be utilised as a credible delay tactic during negotiations or as a justification when denying capacity to make such concessions.

2.2.3 Back Channels Back channels are off-the-record discussions held outside the formal negotiating process involving high ranking bureaucrats (who are outside of the main negotiating team). These are often used to overcome deadlock in sensitive issues or as a face-saving device.

2.2.4 Concession Making Under the terms of the problem-solving approach to negotiations, negotiators should be prepared to make concessions. Therefore, when preparing for negotiations, negotiators should at least set their deadlock and accordingly establish their win sets (bargaining range) on each issue and plan their concession strategy. By knowing the importance of each concession to their own goals they would know what they must gain in return. Furthermore, by knowing how important your concession is to the opponent one could also calculate how much one can get in exchange for it. As a result concessions should be conditional in order to prevent them from becoming one-sided.

Concession making however, should not be assumed to be a sign of weakness or lack of power but can also be viewed as a tactical manoeuvre which is wielded to achieve certain ends. The term ***tactical concession*** denotes that such a concession is a tactical mode of action calculated to manipulate the behaviour or cognition of the opponent.

There are two perspectives on understanding the relationship between concession behaviour and bargaining power: (a) the choice perspective and (b) the information perspective. According to the *choice perspective*, concession behaviour is the choice between moving toward an agreement or not to. Concessions are thus determined by their environment and their utility function and can be the result of a tactical manipulation of the attached costs and benefits. The concern with the bargaining outcome is manifested in the treatment of bargaining power as an outcome i.e. the nature of the settlement, and the relative rate of concessions, which are taken as empirical indicators of power.

In comparison the *information perspective* suggests that concessions are cues from which the opponent infers a party's aspirations, expectations, and intentions and therefore, are modes of tactical behaviour. According to Siegel and Fouraker,⁹⁰ a party infers the other's aspirations by evaluating the other's concession behaviour as either tough or soft. If a party makes a very small or no concession, the opponent will attribute high aspirations and a tough image to that party. As a result, the opponent may be forced to reduce its aspirations or to make a greater concession. Thus a party's tough concession stance could lower its opponent's aspirations, enabling it to exact more concessions⁹¹. Research⁹² accords general support to the notion that it pays to be tough, and a number of social psychological experiments have tested the prediction that tougher concession tactics exact more concessions than softer ones.

The principal differences between the choice and information perspectives are that they imply different approaches to power, power as an outcome and power as

⁹⁰ In Bacharach & Lawler, *Ibid.* ; Pg 82

⁹¹ There were instances, to be discussed later, where SA adopted a hardnosed approach and as a result the EU had to back down on its demands.

⁹² Bacharach & Lawler, *Ibid.* ; Pg. 89

tactical action. Furthermore, they suggest different points of emphasis for the tactical analysis of bargaining. The choice perspective emphasizes that the cost-benefit calculations, is what determines concession behaviour whereas, the information perspective emphasizes that concession behaviour itself is a tactical mode.

The question then arising is whether and how a party's varying degree of bargaining power affects its ability to adopt tough or soft concession tactics⁹³ Bacharach and Lawler's⁹⁴ framework on bargaining power is useful for analysing tactical concessions. Their discussion on power perceptions articulate that the type of image adopted by the bargainer guides parties efforts to estimate their own and the other's bargaining power, suggesting that these power images have implications for tactical concessions. Bargainers apparently adopt an image of the power relationship along a continuum of zero-sum to variable sum principles. This image is based on dimensions of dependence that determines the criteria bargainers use to inform their power perceptions and thus make power judgments. A zero-sum image indicates that bargainers treat power solely in relative terms. That is, they judge one party's power only in relation to the other's because an increase in one party's power is linked to the decrease in another's power.

In contrast, the variable-sum image (*which lends support to our claims in this case study that the south can negotiate successfully with the north in the field of trade and economic partnerships*) indicates that parties treat each other's bargaining power as independent variables and that individual power alters the effects of relative power. The basic idea is that both parties can increase their own power without necessarily decreasing the opponent's power. For whilst zero-sum imagery implies that total power in the relationship is constant, variable-sum imagery implies that total power is not fixed nor constant and that the power of a party is based on the other's dependence. Therefore, a party's concession behaviour is a function of its own dependence on the other, not the other's dependence on it.

⁹³ This is an important question to address since it could shed light on whether or not the respective bargaining power of the EU and SA affected their adoption of tough and or soft concession tactics during the negotiation process, and in the final analysis what impact, if any, did such tactics have on the outcome.

⁹⁴ Bacharach & Lawler, *Ibid.*, Pg. 84

On how best to extract concessions from the opponent the variable-sum perspective advises bargainers to manipulate their own power by increasing the opponent's dependence on them. Thus, if we accept this fixed conceptualisation of power as postured by a zero sum image, then we cannot presume for any possibility of the south negotiating successfully with the north. Because since the power relations are fixed according to aggregate structural terms, there is no effective way for the south to challenge the north. Therefore, in rejection of this zero-sum image (TINA), it is the variable-sum approach which is endorsed by this case study.

2.2.5 Delay In the need to slow down the pace of negotiations, negotiators may introduce delays in order to buy time for thinking, consulting, analysing proposals, or to wear a hole into the oppositions negotiating tenacity.

2.2.6 Haggling Haggling consists of alternating concessions until agreement or deadlock is reached. Haggling is a process, with settlement usually half way between the first offers and is often preceded by verbal fencing to manoeuvre the opponent into making the first offer. If you cannot trap your opponent into making the first offer, trying to gain compensation or deadlock may be an option.

2.2.7 Linkage Issue linkage is the inclusion of additional issues not directly related to the issue under negotiation. Linkage requires negotiators who value two or more issues differently; in which case increasing the possibility to “make the pie bigger”⁹⁵. The more issues there are, the greater the number of possible linkages. Therefore it may complicate the agenda by adding or subdividing issues and creating trade-offs. The basic technique is to offer a large concession on low priority items and in return to obtain large concessions from opponents on items of high priority.

2.2.9 Power Negotiators must assess the source and extents of their power compared to their opponents, and use this accordingly. There are three dimensions to power: structural power, issue specific power and behavioural power. This case study endorses the variable

⁹⁵ Ibid. Pg.34

sum definition of power and assumes that southern negotiators have the tactical ability to acquire power, which can be used for the ends of acquiring influence.

John Odell⁹⁶ based on a number of bilateral trade negotiations case studies between the United States and Latin American States, argues that in attempting to explain the weaker states victories, it is “the type of strategy” that was employed by such governments that we ought to analyse. Odell’s analysis identifies three strategies in particular: (1) that the weaker states often took advantage of the pluralist system in the US, by building domestic allies within the US this aided in the fight for their cause. (2) In cases in which the Latin American state possessed a commodity of particular importance to the US or represented a market of significant size to US exporters, the threat of retaliation often resulted in an enhanced negotiation outcome and (3) That Latin American states often came to the negotiating table with careful technical preparation and made persuasive technical arguments.

The objective of this discussion on power is to firmly establish and substantiate later propositions about the nature of South Africa’s success in negotiations with the EU. The intention is to analytically explore these asymmetrical negotiations (the process) in order to draw conclusions that the “successful”⁹⁷ outcome sought by the weaker actor, cannot be left to chance or to the goodwill of the stronger actor but is an outcome that can be actively sought, pursued and achieved.

I.W. Zartman in his work: *The Politics of Trade Negotiations between Africa and the European Economic Community* fosters recognition for the situational relevance of power, posturing that the aggregate power position of a state cannot be directly translated into relevant and available power for any given situation. Zartman focuses on how convergent viewpoints are combined to produce a common agreement, and therefore rightly spotlights the process of negotiation. His assumption that **power is relative and situational** as opposed to aggregate and absolute encourages research into how power should be defined and analysed in a negotiation framework. His assumptions are important because

⁹⁶ *Ibid.* Pg.7

⁹⁷ “Successful” in the term being implied here refers to an outcome that is mutually acceptable, in which both negotiators contributed constructively to achieving the final outcome (i.e. having the ability to alter the views of the opponent) as they preferred it to be.

they substantiate our later assertions about South Africa's approach to negotiations. As we are asserting that South Africa, (contrary to structural power beliefs, which predict that because of its lack of power it would be the loser in negotiations) did manage to attain some of its goals, we are acknowledging that weak states do obtain victories in negotiations with strong states. As such, our main task from here on will be directed towards understanding how this can be accomplished.

In attempting to comprehend how South Africa managed to successfully negotiate with the EU we are pressed to ask the following questions: To what degree was the nature of a particular issue-power balance independent of the aggregate power balance between the actors? Was the use of a particular tactic a bluff or was there a credible resource backing it up? Therefore, was the change in a particular issue power balance the result of a credible tactic, or the realisation of an aggregate power disparity between the actors? And which component of power was the most important in determining the outcome? In light of the assertion that aggregate structural power alone does not determine negotiation outcomes, our analysis of this case study is anticipated to elucidate the role of issue specific power and behavioural power (tactics) in asymmetrical negotiations.

According to Zartmann, there are three principal sources of a weak states' power: (a) Weak states can provoke an encounter by influencing agendas and raising points; (b) they can put forward their needs, thus pinning moral obligations on the strong; (c) weak states have the power to agree, and conversely, the power to withhold agreement.

The implications bargaining power has for tactical options, depends on the bargainers' image of the power relationship, along a zero-sum cum variable-sum continuum. It is this image which determines whether and how bargaining power is utilised in making tactical decisions. Bacharach and Lawler's analysis offers three broad conclusions. Firstly, that parties use their own dependence on the opponent as a basis for deciding how tough or soft to be in negotiations. Secondly, different dimensions of bargaining power can have qualitatively different effects on concession tactics. Thirdly, the total power in the bargaining relationship enhances tactical concessions and lays the groundwork for more co-operative or

integrative bargaining⁹⁸.

2.2.10 Precedent Negotiators may at times argue that they cannot possibly meet the opponents' demands, as it would mean that they would have to make the same concession to others. Thus the tactical employment of precedent, can serve to substantiate the avoidance of making certain concessions.

2.2.11 Threats and Ultimatums Threats and ultimatums suggest undesirable consequences or a penalty if a proposal is not accepted. A threat is weaker than an ultimatum and may be a bluff whereas, an ultimatum states what the recipient must do.

2.2.12 Proposals & Arguments Arguments are the justifications, explanations or rationalisations that parties give for the positions they take.⁹⁹ Bacharach and Lawler suggest that the mode of argumentation employed reflects the bargainers' image of the power relationship. A tactical approach to argumentation utilizes argumentation as a means of: negotiating the definition of issues; justifying offers and counteroffers and establishing or changing the opponent's perception of the power relationship.

If bargainers adopt divergent definitions of an issue, they often will have difficulty in agreeing on the specifics of a settlement. However, divergent definitions sometimes produce redefinitions that actually facilitate the task of constructing an agreement. Thus, the nature of each party's definition and its consequences for the bargaining outcome is a relevant area of analysis since it would facilitate understanding how the parties came to agree. The proceeding discussion provides a framework with which to analyse the arguments raised by SA during the course of its negotiations with the EU, in respect to those issue areas where it had managed to win "victories".

As the parties may have had different interests on how issues were to be defined¹⁰⁰, we need to carefully analyse *how* they may have chosen to define issues

⁹⁸ Integrative bargaining involves a redefinition of issues in a manner that enables parties to engage in a co-operative effort rather than competitive give and take.

⁹⁹ Bacharach and Lawler, *Ibid.* ; Pg.157

¹⁰⁰ There are three dimensions to issue definition: the scope of the issue, isolation or interrelation of issues, and the relationship between the issue and the outcomes. Firstly, on the scope of the issue, some issues are relatively specific and have well defined implications for both parties; however there may be issues that have wider ramifications.

and *whose* definition was likely to have prevailed and why? Therefore, how bargaining power affected the ability of a party (i.e. South Africa) to have its' definition accepted by the opponent (EU) is a pervasive question. Bacharach and Lawler's dependence framework, may address this question. They propose that the more costs a party associates with meeting the other party' demands, the greater the likelihood that it will define bargaining in single-issue, distributive terms however; the fewer costs a party associates with meeting the other party's demands the greater the likelihood that it will define bargaining in integrative terms (multiple issue).

But these propositions alone do not provide a basis for predicting which party's definition will prevail in the event of a conflict, since the outcome of such a conflict would be a function of the parties' relative bargaining power as defined by the parties. Meaning that, the more importance a party (i.e. EU) ascribes to the resources (fishing rights to access South African waters) from the opponent, and the poorer its alternative opportunities for securing such resources, the more leverage the opponent (SA) has to dictate the conditions (i.e. the issue definition) under which it will consider surrendering some of its resources. This reasoning leads to the proposition that the greater a party's relative power, the greater the likelihood that its' definition of the issue will prevail¹⁰¹.

Bargainers may ground their ***power arguments*** on resources, dependence or

Secondly, looking at the relationship among different issues, bargainers can adopt a single-issue or multiple-issue approach. A single-issue approach treats an issue in isolation from other issues, whereas a multiple-issue approach stresses packaging or grouping of issues. Thus bargainers relate single and multiple-issue strategies to their bargaining power and select that approach from which they expect the greatest power advantage. The approach taken by the bargainers also has consequences for the types of argumentation: i.e. consensual or non-consensual. If bargainers consensually define the relationship as a single issue, argumentation will be concentrated; if both use multiple-issue definitions, trade-off argumentation ensues. However if both bargainers adopt a multiple-issue approach, their trade-off argumentation is likely to stress the relation of qualitatively different issues. The translation of one issue into terms that make it comparable to another issue is a complex matter, and as comparing the "value" of a concession on one issue to a concession on a separate issue is even more difficult. In consensual cases, the argumentation focuses on whether to link issues, with one party arguing for linkage and the other arguing for separate, isolated treatment of a particular issue. Issue linkage arguments differ from trade-off arguments. In trade-off argumentation, the issues are already linked, and the debate is not whether to draw linkages among issues but how to do so. In issue-linkage argumentation, the debate is over whether or not to package issues together. Finally, the third characteristic of issues definition deals with the prospective payoffs or outcomes associated with the issue. Each party expects to receive some benefits from an issue. Bargainers might define an issue as distributive in nature and as a result the argumentation over the issue is likely to be competitive or they might define an issue in integrative terms as a result the argumentation is more co-operative. Competitive argumentation implies that bargainers do not accept the legitimacy or validity of the other's bargaining stance or supporting arguments. Co-operative argumentation assumes mutual acceptance of each other's most basic arguments, as the focus of such argumentation is on the synthesis or compatibility of their positions on the issues.

¹⁰¹ This is particularly true in respect to SA acceding to partial Lomè membership on the terms of the EU, with the EU outmanoeuvring South Africa.

sanctions.¹⁰² As power arguments attempt to manipulate the other's perception of the power relationship, it is the dimension of the dependence that dictates the general mode of argumentation to be employed. This can be done by manipulating the other's commitment or manipulating the opponent's perception of its alternatives. The dependence framework thus implies that party's code their bargaining power in terms of dependence and use the dimensions of dependence to identify points of vulnerability upon which they develop their tactical arguments.¹⁰³

Normative Arguments justify or explain bargaining behaviour in terms of commonly recognised standards of behaviour. There are three types of normative arguments that are generally relevant to bargaining: (1) *equality appeals* involve an equality norm, which provides the basis for arguing in favour of equal outcomes or payoffs. It implies that a concession should be evaluated in terms of whether it represents a commitment to equally divide the payoffs at stake. Such appeals provide a justification for arguing that the power relationship should not be the criterion for constructing a fair agreement.

(2) *Equity appeals*, implies a concern with both inputs and outputs. An equity norm leads bargainers to compare the ratio of inputs to outputs implied by the proposals of each party. This leads to the argument that it is the respective input of parties that should determine the distribution of outputs. (3) A *Responsibility appeal* is based on a norm that implies that need should serve as the criterion for evaluating bargaining proposals. It simply states that, those in need warrant assistance. Responsibility norms are viewed as the only hope for bargainers in highly disadvantaged positions. Thus the equality, equity and responsibility

¹⁰² Whilst the resources are those being negotiated or exchanged at the bargaining table, the dependence dimension reflects the overall control over resources with regard to a particular issue or the whole range of issues under negotiation. Sanctions represent the probability that the resources available will be used in a punitive manner.

¹⁰³ There are four identified modes of power argumentation: (a) coalition arguments (which are essentially offensive arguments), where one of the parties may attempt to convey its capacity to form coalitions with others outside the immediate relationship, and as such, such coalitions could alter the dependence relationship by providing a broader range of alternatives for the invoking party and simultaneously limiting the alternatives to the party being challenged. (b) Threat to leave arguments (essentially a defensive tactic), where one of the parties threatens to abandon the relationship. (c) self-enhancement arguments (also offensive in character), where a party argues to the other that its contribution to the relationship are high enough to warrant a better agreement and modifications to the demands being imposed on it. (d) Priority arguments (also a defensive tactic) are those that manipulate the opponent's impressions of a party's priorities and thereby communicate the party's commitment to different issues in the bargaining relationship. Defensive arguments are designed to change the opponent's perception of a party's dependence - that is improving a party's own dependence situation. In contrast, offensive arguments attempt to manipulate the opponent's impression of its own dependence - that is attack the opponent's situation.

arguments imply different ways of distributing payoffs, and parties select those normative arguments that best serve their interests.

What the above points suggest is that, the nature of the arguments and the issue specific power balance, especially during the earlier stages of bargaining, plays a much more critical role in shaping the eventual bargaining outcome than believed. Bacharach and Lawler in regards to the relation between bargaining power and normative argumentation, posture: firstly, that the greater the difference in bargaining power, the greater the tendency for the higher power party to use equity appeals and for the lower power party to use equality or responsibility appeals. Secondly, if the difference in bargaining power is very large, the lower power party will use responsibility appeals; if however, the power difference is not large the lower power party will use equality appeals. Thirdly, if the total bargaining power in the relationship is very high, both parties will use equality appeals.

Bargainers thus, select normative arguments in concert with their interests. The success of their normative arguments is likely to be affected by their definition of the issues. The persuasiveness of normative appeals is strongest when the issues are couched in broad terms, when trade-offs are of prime concern, and when bargainers are prepared to exaggerate the co-operative elements of their relationship. Normative principles are less persuasive when issues are treated independently, in specific terms, and appear distributive to bargainers. South Africa may have been highly aware of this and therefore opted to influence the agenda with their normative arguments on equity being strategically utilised in establishing the guiding principles of differentiation and asymmetry.

2.3. A THEORETICAL FRAMEWORK ON THE INTERNAL AND EXTERNAL DIMENSIONS TO THE NEGOTIATING PROCESS

The study of international negotiations has to a great extent concentrated on inter-state negotiations to the detriment of acknowledging how these international negotiations interact with domestic negotiations. The negotiation of a bilateral international agreement involves simultaneous negotiation both between and within the states involved. Different interest groups discuss what sort of benefits

they expect from such an agreement and what “price” they are prepared to pay for it. In order to reach an acceptable agreement, which can be ratified by the national constituents, the interests and demands from these domestic groups have to be taken into consideration.¹⁰⁴

In respect to the SA-EU TDCA negotiations, we cannot analyse and explain the outcomes of the negotiation, without reference to and a framework with which to understand the process of the negotiations. As this is one of the main interests of this thesis the proceeding section will attempt to shed some theoretical insight about how the domestic discussions within EU member states influenced the negotiations within the European Union. As well as defining how the domestic discussions within SA, probably impacted on the South African negotiating teams interface with the EU. The intention behind this section is to concentrate on examining in what manner domestic negotiations can reverberate onto international negotiations, i.e. do they and to what degree do they influence the “strategies” (responsible for contouring outcomes) employed by negotiators.

A. (i) Putnam’s framework for two-level games

Robert Putnam’s¹⁰⁵ “two-level game” theory constitutes an expository conceptual framework for analysing the interaction between national (domestic politics) and international negotiations. The negotiator, (who is a national representative), is the key person in uniting the domestic and the international political arenas. On the national game board the domestic interest groups lobby the government to adopt policies that they consider favourable. On the international game board national governments seek to maximise their own ability to satisfy domestic pressure whilst simultaneously trying to minimise the adverse consequences of foreign demands. An understanding of these two level games is important for this case study, since it illuminates the pre-negotiation activity of each party. These pre-negotiation events do mould eventual outcomes by determining the content and size of negotiating directives. And as Chapter 3 will argue, the influence of

¹⁰⁴ Note that these assumptions about simultaneous interstate and intrastate negotiations are conditional upon the character of government of the parties in question, since these assumptions are based on liberal institutionalism and notions of public penetration and participation, which vary from country to country. Thus we must heed that these assumptions are not universal in application and that their application to other case studies should be done on a case-by-case basis depending on the institutional set up present in the parties under question.

¹⁰⁵ Putnam, R.D. *Diplomacy and Domestic Politics: The Logic of two-level games* In International Organisation, 42 (3), Summer 1988

internal preferences and tradeoffs amongst members within the EU did contour the eventual negotiated outcome received by South Africa.

According to Putnam¹⁰⁶ the politics of many international negotiations can be usefully conceived as a two-level game. *Level I* refers to the process on the international arena and *level II* to the national discussions. The negotiator is the link between the two levels. His/her main task at *level I* is to compose an agreement, which will be ratified at *level II*. At *Level II* the negotiator has to coordinate the different domestic opinions in order to reach a somewhat representative and unified domestic view that can serve as a term of reference in the negotiations at *level I*. There is likely to be prior consultations and bargaining at *level II* to hammer out an initial position - negotiating directives - for the *level I* negotiations. As the *level I* negotiations proceed and new issues appear, the negotiator has to go back to *level II* to consult with domestic constituents in order to make sure that the negotiated agreement will be accepted for ratification at the end of the process. Further significance of level II procedures for the level I negotiation process is that if these decisions were taken democratically they give the negotiators claims and arguments at level I an air of legitimacy that must be respected. (*Refer to Illustration 1(in Appendix) for schematic overview of the two levels and three level games that can be viewed within the EU-SA negotiating process*)

Putnam notes that in many negotiations, the two level processes may be iterative, as the negotiators try out possible agreements and probe their constituents' views.¹⁰⁷ In more complicated cases, the constituents' views may themselves evolve in the course of the negotiations. Nevertheless, the requirement that any *level I* agreement must, in the end, be ratified¹⁰⁸ at *level II* imposes a crucial theoretical link between the two levels.

(A) (ii) The role and importance of domestically formulated win-sets¹⁰⁹

¹⁰⁶ *Ibid.* Pg.434-435

¹⁰⁷ *Ibid.* Pg.434

¹⁰⁸ Ratification refers to any decision process at *level II* that is required to endorse or implement a *level I* agreement, whether formally or informally. And the only formal constraint on the ratification process is that since the identical agreement must be ratified by both sides, a preliminary *level I* agreement cannot be amended at *level II* without reopening the *level I* negotiations.

¹⁰⁹ The term win-sets refers to the set of all possible external agreements that would "win" - gain the necessary majority among the different interest groups. To reach an external agreement the acceptable outcomes of the different internal

on the external negotiation

Putnam asserts that the contours of the *level II* win-sets are very important for understanding *level I* agreements. Firstly, *larger win-sets make achieving Level I agreement more likely*.¹¹⁰ By definition, any successful agreement must fall within the *level II* win-sets of each of the parties to the accord. Thus, agreement is possible only if those win-sets overlap and the larger each win-set, the more likely they are to overlap¹¹¹. The second reason why win-set size is important is that *the relative size of the respective level II win-sets will affect the distribution of the joint gains from the international bargain*. The larger the perceived win-set of a negotiator, the more he can be “pushed around” by the other *level I* negotiators. Conversely a small domestic win-set can be a bargaining advantage since it allows one to say: “I’d like to accept your proposal but I could never get it accepted back home.”

In view of this pivotal role that win-sets play during the course of negotiations it is a worthwhile to discuss under what circumstances is the size of win-sets affected. As Putnam points out, there are three determining factors of special importance. These include: (a) Level II preferences and coalitions (EU members preferences) (b) level II institutions (EU institutions) and (c) level I negotiators’ strategies.

(a) The size of the win-set depends on the distribution of power, preferences, and possible coalitions among level II constituents.

Putnam asserts ¹¹² that there are principles that are capable of determining the size of win-sets. Some constituents may face low costs from “no agreement” whilst others higher costs, as a result the former will be more skeptical of *level I* agreements than the latter. For example, in the EU the size of the win-set (and thus the negotiating room of the *level I* negotiator) depended on the relative size of the “isolationist” forces (who oppose international co-operation) and the “internationalists” (who support co-operation).¹¹³

constituencies must converge. It has been postured that the larger the win-sets the greater the chances are that they will overlap, and if a negotiator has a larger win-set he has more room to play with and better possibilities to compromise.

¹¹⁰ Putnam, R.D., *Ibid.* Pg. 435-437

¹¹¹ Conversely the smaller the win-sets, the greater the risk that the negotiations will break down Then there is also the concern of “deliver-ability”, i.e. each of the parties has to be careful not to promise more than they can deliver.

¹¹² *Ibid.* Pg.442-448

¹¹³ Refer to discussion in Chapter3

Thus assuming¹¹⁴ that all eligible constituents participate in the ratification process, participation rates do vary across groups and issues and this variation often has implications for the size of the win-set. For example, when the costs and or benefits of a proposed agreement are relatively concentrated, it is reasonable to expect that those constituents whose interests are most affected will exert special influence on the ratification process. The various groups at *level II* are likely to have quite different preferences on the several issues involved in a multi-issue negotiation. As a general rule it is proposed that the group with the greatest interest in a specific issue is also likely to hold the most extreme position on that issue. However, if each group is allowed to fix the *level I* negotiating positions for “its” issue, the resulting package is almost sure to be “non-negotiable”.

Therefore, the chief negotiator must facilitate and manage trade-offs. In understanding how these tradeoffs arise, *issue linkage* offers an understanding into how domestic and international politics can become entangled. Say for example that a majority of constituents at *level II* oppose a given policy - i.e. trade liberalisation for the risks entailed, but some members of this majority would be willing to switch their vote on that issue in return for more jobs in (i.e. other export industries). If bargaining is limited to *level II*, then the trade-off is not technically feasible but, if the chief negotiator can broker an international deal that delivers more jobs, he can in effect, overturn the initial outcome at the domestic table.

This strategy works not by changing the preferences of any domestic constituents, but rather by creating a policy option that was previously beyond domestic control. Hence, these types of issue linkage at *level I*, which alter the feasible outcomes at *level II*, are referred to as synergistic linkages. According to Putnam,¹¹⁵ economic interdependence multiplies the opportunities for altering domestic coalitions (and thus policy outcomes) by expanding the set of feasible alternatives and in effect creating political webs across national boundaries. Thus synergistic linkages become more

¹¹⁴ Our assumptions are based on the presence and degree of liberal institutionalism in the country under study

¹¹⁵ *Ibid.* Pg.448

frequent as interdependence grows.

(b) The size of the win-set depends on the *level II* political institutions

Ratification procedures clearly affect the size of the win-set. Separation of powers arguably imposes a tighter constraint on the win-sets and whilst this may increase the bargaining power of negotiators it can also reduce the scope for international co-operation. Other domestic political practices affecting win-set size include; strong discipline within the governing party¹¹⁶ which is argued to increase the win-set by widening the range of agreements for which the *level I* negotiator can expect to receive backing. The discussion on “state strength” and “state autonomy” is relevant here, for the greater the autonomy of central decision makers from their *level II* constituents the larger their win-set and thus the greater the likelihood of achieving international agreement. However, according to Putnam¹¹⁷, it also implies that the stronger a state is in terms of autonomy from domestic pressures, the weaker its relative bargaining position internationally becomes.

(c) The size of the win-set depends on the strategies of the *level I* negotiators

The larger a level *I* negotiators’ win-set, the more easily he can conclude an agreement, but also the weaker his bargaining position vis-à-vis the other negotiator. This fact is seen to propose a tactical dilemma. For example, one effective way to demonstrate commitment to a given position in level *I* bargaining is to rally support from one’s constituents, on the other hand, such tactics may have irreversible effects on constituents’ attitudes and thus may hamper the subsequent ratification of a compromise. Conversely, preliminary consultations at home intended to soften up constituents in anticipation of ratification, can at times undercut a negotiators ability to project an implacable image abroad to his counterparts.¹¹⁸

¹¹⁶ Like is the case in South Africa

¹¹⁷ *Ibid.* Pg. 448-449

¹¹⁸ *Ibid.*

(B) (i) Framework for three-level games¹¹⁹

A core factor of the two-level game is that there is one person who links the domestic and the international arenas together. On the EU side, at both *level III* and *level II* the national representative was the core person, however at *level I* it was the Commission who acted as the national representative¹²⁰. Torppa explains, as there were three game boards on the EU side, it supports describing the case as a three-level rather than in a two-level game. JW Knopf's¹²¹ "three-and-three" framework allows us to analyse the negotiation process at all three levels.

The set of negotiations that occurred within each EU member state, can be referred to as *level III*. The negotiator of each member state was the national representative, whose task it was, to consult with his/her domestic constituents and hear what it was they were willing to offer to South Africa and also what kind of benefits they expected from South Africa. Proceeding from this, the *level II* negotiations at the Council Level where the fifteen member states had to agree on a common negotiating directive, which was to serve as a guideline, for the Commission, in its negotiations with South Africa. The national representatives of the fifteen member states had to reach an agreement, as each negotiator tried to comply with as many of his domestic demands as possible. When agreement was reached, a negotiating directive was forwarded to the Commission who then (on behalf of the members) entered into the final level - *level I*- of negotiations with South Africa. Although the Commission had the mandate to negotiate on behalf of the EU, the agreement had to be ratified by the national representatives at the Council level. If the agreement fell within community competence, ratification at the Union level would have been suffice however, in issues of mixed state competence - as in this case - it meant that it had to be ratified by each national parliament.

¹¹⁹ Putnam acknowledges that many institutional arrangements require several levels of ratification, thus multiplying the complexity of win-set analysis. And is well aware that his analysis of a two-level game may not capture the whole negotiating process, for example, he refers to negotiations involving the EU in which the two-level analysis is not applicable since one has to look both within the union and the member states to understand such negotiations. As a result several attempts have been made to enlarge the two level games.

¹²⁰ And in spite of the core negotiator changing through the negotiation process this did not break the connection between the international and the domestic level.

¹²¹ Knopf, J.W. *Domestic - International Interaction in the INF Talks in International Organisation*, Vol. 47, No.4, 1993

These negotiations within the EU did not follow a neat chronological pattern but occurred more or less simultaneously. The negotiations however, can be divided into two phases. The first phase was when the member states negotiated the negotiating directives, which the Commission employed when negotiating with South Africa. During this time there were also simultaneous discussions occurring within member states about what pressures to put on the Union negotiations. The negotiations between South Africa and the EU did not start before the negotiating directives were ratified by all the member states of the Council. The second phase was when South Africa and the EU were negotiating, and all three levels were simultaneously engaged. When analysing the *level II* negotiations held at the Council level we should note that these negotiations were not immune to the negotiations held at the other two levels. As the negotiations within each member state set the terms of reference for their negotiators' external behaviour in the Council. Torppa¹²² explains that even though at the time of the Council discussions on the negotiating directives at *level I* negotiations had not yet started, the wishes made by South Africa regarding the content of the future agreement influenced both the Commission's proposal as well as individual member states directives¹²³.

¹²² Torppa, R. Negotiations at three levels: case study in EU/SA negotiations, University of Bordeaux IV, May 1998, Pg13

¹²³ An additional dimension to consider is the bilateral relationship between particular member states (UK, Norway, and Switzerland) and South Africa, since these special relationships would have undoubtedly molded that members' position.

CHAPTER 3

THE SA-EU NEGOTIATING PROCESS: PRENEGOTIATION ACTIVITY AND REACHING AGREEMENT

The focus here is to deliberate on the nature and character of the SA-EU negotiation process; this in the final analysis is geared towards providing insight for southern countries in their negotiations with the EU or the north in general. In reference to Zartmann's *Detail Formula approach*, this analysis of the EU-SA negotiation process will be guided by three identifiable phases: the diagnostic phase, formula phase and detail phase. It further examines how the internal institutional make-up of the negotiating parties reverberated onto negotiation activities. During the prenegotiation activity the negotiating directives were drawn up, these were a vital component to South Africa's and the EU's pragmatic approach to the negotiations. Therefore, they cannot be ignored when the intention is to prove that ***how you negotiate has much to do with whether you "win" or "lose"***. It's premised that the internal processes of the EU played a significant role in contouring the final Trade, Development and Co-operation Agreement.

We demarcate the formula phase of the negotiations, where South Africa's insistence procured the general principles that were to guide the rest of the negotiations. A discussion of the detail phase, explores how the parties via the employment of various tactics and negotiating strategies worked towards a settlement in regard to a number of divisive issues. In summary, we examine the findings of this case study and evaluate their implications for the premise "that how you negotiate has much to do with whether you win or lose". For if this assessment: ***that the process determines outcome*** is accurate, then there surely should be general tactical aspects of the process which can be isolated for purposes of providing insight for other negotiations of a similar nature.

3.1 INSTITUTIONAL BACKGROUND¹²⁴: THE EUROPEAN UNION AND SOUTH AFRICA

When the EU attempts to negotiate an agreement of economic and monetary implications with a third party, it is the Commission who puts forward the proposal for prospective agreements. The Council in turn votes upon this proposal and when accepted the Commission is granted a mandate to negotiate with the third country on behalf of the fifteen member states. The main task of the Commission is to co-ordinate the positions of the member states and because of the institutional character of the EU, the commission attempts to develop a proposal that corresponds to “European interests” and not merely to the lowest common denominator of the national interests.

The Commission presented its’ proposal to the Council who then deliberated on it. This process was entirely initiated by the Commission and therefore, was viewed as holding an effective mediating role, since it had the power of deciding when and in what form a proposal was brought forward. The Commission’s proposal was first presented to the Council Working Group, where most of the bargaining amongst members occurred. These discussions were led by the *presidency*¹²⁵ of the EU, whose task it was to co-ordinate the different opinions of member states. When the working party finalised its work the document was given to the Committee of Permanent Representatives - COREPER - which discussed those issues that the working party had not been able to reach decisions on. It tried to clear out most disagreements so that only the most difficult and sensitive matters were left for the Council of Ministers.

The negotiating directives stated that the Commission was the main negotiator with South Africa. As the Council had to accept the final agreement between the EU and SA, the Commission had to negotiate with member states in order to assure an outcome that was acceptable to all of them¹²⁶. However, after the domestic negotiations at level III; the national representative was rather

¹²⁴ The intention behind this discussion on institutional background is an attempt to foster an understanding of how the EU and South Africa work in regards to decision making. An understanding of this process is pivotal to realising what is possible and what is not because the institutional set up and decision-making process is inextricably linked to how international negotiations proceed.

¹²⁵ In discussions about the EU-SA negotiations, much emphasis has been put on which country was holding presidency, since it was believed that special bilateral ties would have implications for concluding a favourable agreement with SA.

¹²⁶ The negotiating directives and the final agreement, as we know it was mixed in nature and deemed beyond Community competence and therefore requiring the ratification of all national parliaments.

constrained by the domestic positions. Once member states had agreed around a position for the Union, the room for the Commission to manoeuvre also declined. As a result, the Commission in its talks with South Africa was constrained in its ability to possibly change positions, which required a long process all the way back to the different domestic groups in each member state.

An additional dynamic to consider is EU voting procedures, since it is alleged that these structures are executed to predetermine negotiated outcomes. According to Jupille,¹²⁷ analyses of EU international bargaining cases have failed to appreciate how the decision making process and especially the shift within the EU from unanimity to qualified majority voting has affected European bargaining positions and international outcomes. The EU can decisively shape international outcomes by concentrating the weight of its fifteen member states on a single substantive position (the EU “common position”) rendering such a position critical to any internationally negotiated agreement. The implication of this is that, any analysis of the EU-SA negotiations must consider the internal EU deliberations (i.e. domestic and regional institutional factors) when attempting to comprehend the emergent outcome.

The importance of decision-making rules to the content of EU common positions is unquestionable, and can be linked to the contouring of outcomes. There are two decision-making rules within the EU: (1) unanimity, which implies that every member can veto proposed changes to the status quo. Under unanimity, bargaining power redounds to those most willing to veto proposed changes to the status quo. (2) Qualified Majority voting, means that proposals must receive a qualified majority of approximately 70 percent of member states’ population weighted votes to pass¹²⁸. Therefore, we need to take heed of how EU rules shaped the content of common positions and the way in which the EU common position with the weight of the member states shaped the SA-EU negotiated outcome. The general rule being: whilst EU unanimity rules will tend to drag international outcomes toward the status quo, the qualified majority vote permits more

¹²⁷ Jupille, J; *EU bargaining positions and International Outcomes*; in *International Organisation*; 53,2, Spring, 1999, Pgs.409-425

¹²⁸ Currently sixty-two of the eighty-seven votes (71.3 percent) constitutes a qualified majority and votes are distributed according to the population count in each member: France, Germany, Italy and the United Kingdom each have ten votes; Spain eight votes; Belgium, Greece, Netherlands and Portugal, five votes each; Austria and Sweden four votes each; Denmark, Finland and Ireland, three votes each; Luxembourg, two votes

revisionist international outcomes. Therefore, where the EU decides by qualified majority and where the Commission has at least moderately revisionist preferences, international outcomes will then tend to be revisionists¹²⁹. The EU has a powerful institutional armoury which is managed to deliver predetermined results, asserts Smallberger¹³⁰. If this is the case then it has some obvious implications. For one thing, the process cannot be divorced from any endeavour to comprehend or predict outcomes emanating from such a set up. Therefore where such structures exist, institutional memory and an understanding of the complexities of relevant decision making structures, should serve any opposing negotiating team well in their interface with the EU¹³¹.

The institutional arrangements in South Africa in regards to the negotiation and ratification of international agreements, is different from that in the EU. The executive branch of the South African government is tasked with the responsibility of policy formulation and implementation. For these negotiations top decision makers dealing with the EU were derived from the majority party in government. As a result of this party **government**¹³² which defined the character of the executive; the policy decisions emanating from such an institutional set up were formulated within the echelons of the party system.

The task of negotiating with the EU was bureaucratically assigned to the Department of Trade and Industry. Other departments involved included: Finance (Fiscal), Agriculture (Agricultural exports and Fisheries) and Foreign Affairs, also included were select committees from parliament (*these were the Parliamentary Portfolio Committees on Trade & Industry, Foreign Affairs, Agriculture and also the National Council of Provinces select committees on Economic and Foreign Affairs*).

The key domestic player's government consulted with included labour and

¹²⁹ This was the case in respect to South Africa.

¹³⁰ Smallberger, W. *Ibid.* Pg.49

¹³¹ Smallberger, W. *Ibid.* Pg.48

¹³² Party Government refers to a government that is overwhelmingly dominated, influenced and penetrated by a single party. In such a government, decision making occurs within the majority party candidates, because as the executive they hold the mandate to exercise the designated power in the decision making arena, policy making is thus an area which they co-ordinate and control. This model of a party government is often referred to as the "fusion model" and refers to a situation where the party chooses out of the legislature the executive branch of the government and where the relationship between the government and party is close.

business. This was achieved via NEDLAC, which set up a Technical Sectoral Liaison Committee - TESELICO - that examined relevant aspects of the TDCA and made recommendations to government. Sticky issues were discussed here before concession could be made to the EU. In fact business and labour were central to the development of South Africa's offer to the EU. South Africa also held external consultations with the regional bodies of SADC and SACU, with who they were in the process of negotiating a SADC FTA.

3.2 THE DIAGNOSTIC PHASE: LEVEL-TWO & LEVEL-THREE GAMES

3.2.1 EU Council discussions for negotiating directives

During negotiations at the Council level regarding the compilation of the negotiating directive for the commission, the Commissions' behaviour was regarded as internal behaviour, whilst the strategies of the national representatives were considered external behaviour. (Refer to Illustration 1) Torppa points to a number of different strategies of the players and indicates that these were due to the three level nature of the game.

The role of internal political institutions was central to how these discussions evolved because with an institutional understanding of how the Union works one can hypothesise about what is possible - i.e. what agreements can be achieved within such an institutional set up. Torppa indicates that, the institutional set-up within member states is of significant importance for how that country deals with European issues. The arrangements for linking the national representative with the Union's capital vary from country to country. This difference, most striking between the United Kingdom and Germany, can be shown to have influenced UK and German positions during the negotiation process.¹³³

According to Nugent¹³⁴, the UK has a centralised governmental system, which facilitates the process of quickly and effectively coming up with a national position¹³⁵. As a result of this environment, Torppa asserts that, during Council

¹³³ Torppa, R. Negotiations at three levels: case study in EU/SA negotiations, University of Bordeaux IV, May 1998, Pg.15

¹³⁴ Nugent, L., The Government and Politics of the European Union, Duke University Press, Durham, 1994, Pg. 415

¹³⁵ In addition their co-ordinating mechanism like the UK Permanent Representation to the European Communities (UKREP) and the EC departments of the foreign and Commonwealth Office (FCO), is well integrated in the system of linking London and Brussels together. These organisations control the overall development of the EU, and make sure

discussions regarding the negotiating directives, the UK was always the first to express its opinion. But this could also be partly attributed to the fact that the UK had vested interest in the issue because of its bilateral & historical ties with South Africa. This efficacy arguably gave the UK a greater advantage in discussions. As it allowed it to play ringleader during the formation of coalitions with other countries, who held similar views as it did.¹³⁶ This leads us to another interesting factor, concerning the EU Presidency. These negotiations were said to be coloured by which country was holding the EU presidency at “breakthrough moments”. For example, in 1998 the UK held the EU Presidency and informed sources in both South Africa and the EU believed that for historical and political reasons, the UK’s new labour government was genuinely committed “to go the extra mile” and therefore, there was a window of opportunity for South Africa to secure at that time the best deal possible.¹³⁷ UK revisionist policy towards South Africa was further evident when its Foreign Office Minister Peter Hain came out in support of controversial statements made by President Mbeki in regards to objections raised by Italy and Greece to the trade deal. Hain said these objections were tarnishing the image of the Union. He further stated: “ I find it hypocritical that leaders of Europe bask in the glory of being photographed alongside Nelson Mandela and are now renegading on an agreement signed in good faith”¹³⁸ Clearly the UK was pressuring European heads of state with normative arguments to make good on their promises.

But how and to what degree did the internal preferences among members reverberate onto the negotiation process? As discussed earlier, Putnam states that the more consequential an issue is for the internal constituency the more likely there is to be heterogeneous preferences within the group. For instance, the issue of including trade related issues in the TDCA was a volatile political issue for member states. Groups within the Union disagreed about the issues at stake, as a result of this division; there emerged two factions within the Union - the “protectionist” South and the “developmentalist” North.

that ministers have issued clear guidelines to the representatives in the Council. UKREP and FCO also have the power to give instructions themselves, this way the representatives never risk being without directives and can always take a definite position immediately.

¹³⁶Torppa, R. *Ibid.* Pg.16

¹³⁷ Sudworth, E. and K van Hove , European Union-South Africa Trade Negotiations: Insights into an ACP-EU Negotiating Process , ECDPM Working Paper No.57 , April 1998 found at http://carryon.oneworld.org/ecdp/pubs/wp57_gb.htm

¹³⁸ Mbeki slates EU trade betrayal, in Sunday Tribune, 1 February 2000

This division was not only peculiar to the SA-EU negotiation, since according to Zartmann's ¹³⁹ assessment in most foreign policy issues, regarding free trade or development aid, there is a clear North-South division within the Council. The North (including the UK, Denmark, Sweden, Ireland and Germany) apparently has a long tradition in development aid policies and as such they tend to attach more importance to these issues. The Southern countries (which includes Spain, Italy, Portugal, Greece and to some extent France) on the other hand, prioritise their economic needs, instinctively fearing competition for it would severely risk their own production lines. The major point of contestation between these two coalitions circled around the "status" of South Africa.

The view of the "northern" coalition was that in many respects South Africa was poor and in the need of much assistance. The "Southern" coalition however, considered that the SA economy set it in a different league from ACP countries. They feared letting South Africa into the European market since it has a much larger and diverse agricultural sector which is believed to be much more competitive than ACP countries.¹⁴⁰ Initially, northern countries supported the Commission's proposal of a trade agreement that would lead to an eventual free trade area, preferring a fast negotiation process in order to make South Africa and themselves to benefit as soon as possible. Despite this affiliation for generosity toward SA, they failed to thoroughly question why the proposal did not suggest a complete accession under the Lomè Convention.¹⁴¹

Initially, during discussions amongst EU member states, the protectionist "South" favoured a trade agreement with South Africa on the condition that there was an exclusion of the whole agricultural sector. The finalisation of such an exclusive arrangement would have not only been in violation of GATT principles but was also entirely unacceptable to the "northern" coalition. Denmark pointed out that, the pro-FTA countries had already made a major concession by accepting that the trade articles under Lomè were not offered to SA. The Commission also affirmed the importance of giving an attractive proposal without too much exclusion to South Africa. Eventually the southern countries realised that the total exclusion of

¹³⁹ Zartmann, W.I. Europe and Africa: The New Phase, Lynne Rienner Publishers Inc., Boulder, 1993, Pg.45

¹⁴⁰ Ibid.

¹⁴¹ Commission Document: Negotiation Session of the Southern African Working Group 4/4/95 in Torppa, R. Ibid.

the agricultural sector was impossible, Spain and Greece called for a detailed list of all the products that would not be subject to trade liberalisation. Austria¹⁴² then proposed wine as one of these products.

On the question of an agricultural exclusion list, member states had differing approaches. The UK and the Commission were of the opinion that no details could be fixed before entering negotiations with South Africa. They also rejected a proposal from the French Presidency that the issue should be left outside the initial proposal, to be discussed only after negotiations with South Africa were underway. This French approach was an attempt to control the agenda. We can only speculate about the use of this double dealing approach by the French. They probably envisioned that such a tactic would not only secure South Africa's commitment to the agreement. But also as a means to undercut South Africa's counter approach of employing a sectoral approach to resolve the sensitive agricultural issues (i.e. removing it from the trade liberalisation agreement, like fisheries and spirits).

Issue linkage formed an integral part of the negotiation process, especially when parties had to reach compromises on what issues to deal with when solving divisive issues through package deals. For instance during negotiations in the Southern Working Group, additional issues¹⁴³ were linked to the original proposal made by the Commission.¹⁴⁴ These amendments made by the Southern African Working Group - SAWG - fostered the enlargement of the EU negotiating mandate thus giving the Commission more alternatives to play with. The Commission accepted linkages with issues that were important to those member states that were antagonistic on other issues therefore, making it easier later on to cajole these member states into making concessions on other issues.

During talks about the accession of South Africa to Lomé two other sets of

¹⁴² Austria is one wine producing country within the union that does not have the same competitive capacity as France or Italy and would be hurt by any further competition on the wine market. Commission Document: Negotiation session of the SAWG 4/5/94

¹⁴³ Commission Document: Negotiation Session of the Southern African Working Group 4/5/95 in Torppa, R. Ibid. On the request of Germany, the convertibility of the currency for international payments between the two parties was included in the directive

¹⁴⁴ Commission Document: Negotiation Session of the Southern African Working Group 19/5/95 in Torppa, R. Ibid. France called for a clause on future co-operation links with the Reunion region and Greece asked for a clause on maritime transport

negotiations - i.e. the EU and ACP were engaged in midterm review of Lomé IV and the EU-MERCOSUR negotiations - were underway. Torppa¹⁴⁵ notes the evident impact of these negotiations on the discussions in the SAWG. For example during the first SAWG France agreed with the protectionist opinions of Spain and Italy regarding the FTA with South Africa, however at latter SAWG meetings it amended its stance. Torppa¹⁴⁶ notes that the general understanding of this change was that France wanted to increase the budget of the European Development Fund - which finances aid programs to the ACP states - before the conclusion of Lomé. Thus by showing a generous attitude in the South African negotiations, it hoped that the other countries, especially the UK would be generous in the Lomé negotiations. Spain too made an explicit statement of a similar nature. When Spanish representatives realised that they would have to accept more trade concessions towards South Africa than they actually wanted, they referred to the MERCOSUR proposal, which they favoured for the same colonial ties as France favours ACP countries.¹⁴⁷ Spain postured to other members that it would be generous to South Africa on condition that the others showed the same goodwill in the MERCOSUR negotiations.

Thus the multilateral nature of these negotiations involved a richer range of negotiating behaviour and whilst the strategies presented in Putnam's theoretical framework are based on two level games this does not undermine their applicability to this three level game. In fact unique strategies emanated from the EU three-level game board conditioning the negotiation process. Member states at level-two used the strategy of leaving some of the more complicated decisions to level-one. In the course of domestic negotiations, within each member state different groups had to agree around a win-set that would set the terms of reference for the national representatives at the Council level. Since in Council negotiations, it is less important to come up with a united position, as some issues may be left open for discussion between the Commission and the aggrieved party. This tactic was used by member states when they failed to agree on what should be included in the trade agreement. The northern coalition wanted to postpone the decision, because they hoped South Africa would put the needed amount of

¹⁴⁵ Torppa, R. Ibid. Pg.13

¹⁴⁶ Ibid. Pg.14

¹⁴⁷ Commission Document: Negotiation Session of the Southern African Working Group 31/5/95

pressure on the Commission and indirectly on the southern coalition, so that in the end a far reaching agreement (as envisioned by their coalition) with no exclusion of agricultural products would be accepted.

During the three-level game the methods of influencing other parties of significance were greater than in the two-level game. For the negotiations at level II could influence parties both under them at level III and above them at level I. Thus parties at level III had direct contact with level I and thus attempted influencing each other's preferences. For example the bilateral contacts between the member states and South Africa during the course of Council negotiations are highly probable to have influenced the way in which such member states acted during negotiations.

The level I negotiator used the Unions "*international reputation*" to unite the interests of the different member states. The Commission's coordinating role was complemented by the fact that it could use the opinions of South Africa to unite its' member states. And even though member states had a difficult time in trying to agree, but as members of the EU, it was argued to be in the best interest of the Union that it has a generous foreign aid policy, which maintains its international reputation.¹⁴⁸

In the end the final negotiating directive approved by the Council converged to a considerable extent with the first proposal made by the Commission. From this it can be argued that the Commission managed to achieve a very generous proposal, which coincided with its proposal and most of the requests made by South Africa. With the only opposition to the Commission's proposal coming from the southern member states, it (the Commission) could pursue its own interests (these coincided with the revised South African interests). Therefore it can be argued that the proposal of the Commission must have been more far-reaching and generous than that of any of the win-sets of the member states. The Commission did not have to act as coordinator between the northern and southern coalitions, as it and the northern group already held convergent views on certain issues. As a result only the southern coalition had to be severely persuaded.

¹⁴⁸ Torppa, R. *Ibid.* Pg20

What these internal dynamics indicate is that the linking of separate international negotiations under the rubric of EU development policy allows for greater horse-trading and “generosity” amongst member states. These issue linkages obviously facilitated the coordinating process of the Commission, since with the more alternatives at hand the greater the chance to satisfy some of the member states demands¹⁴⁹. However even though issue linkage was effective within the internal EU system there was a downside for international negotiations since it can render external negotiations slow and perplex. The institutional set-up in the EU and the role of internal preferences on the Commissions negotiating directive, conveys that as part of the EU negotiating arsenal, is the tactic of impressing on your opponent that because of your institutional structures your position is fixed. That you have no ability to make further concessions, since member states and their constituencies must be continually consulted, as they ultimately hold the power of ratification.

3.2.2 South African Discussions for Negotiating Directives

South Africa entered negotiations with the EU at a time when its national policy framework was under evolution. It was therefore argued that South African representatives could not enter into negotiating session on controversial issues like: competition policy, public procurement, maritime transport or fisheries on the basis of existing - or lack thereof - policy frameworks. Smallberger¹⁵⁰ notes that assessing the causal relationship between trade policy and industrial policy was rather complicated and policy makers were faced with the question of whether or not trade policy should determine industrial policy or should industrial policy determine trade policy. Thus South African policy makers were faced with, determining the extent to which its’ internal policies determine or condition the state of its foreign policies.

Identifying South Africa’s industrial policy objectives were pivotal to how these trade negotiations were to proceed. These negotiations should be viewed in

¹⁴⁹ A point that is collaborated by Putnam’s assessment that heterogeneity in win sets makes reaching agreement more probable.

¹⁵⁰ Smallberger, W. *Lessons learnt by South Africa during the negotiations* in The EU-SA Agreement: South Africa, Southern Africa and the European Union, Bertelsmann-Scott, T.; Mills, G.; Sidiropoulos, E. (Ed.), South African Institute of International Affairs, 2000 Pg. 48

context of the program of trade reform and industrial restructuring (the Growth, Employment and Redistribution Strategy - GEAR framework) underway in South Africa. As part of its' economic transformation the government has adopted policies, which seek to reposition and re-integrate the South African economy within a rapidly changing global economy.¹⁵¹ The move toward a FTA with the EU is intended to contribute towards this restructuring and also at consolidating the strategic links with the economies of the member states of EU, securing a preferential market access for South African products and providing certainty and added leverage for foreign investment into the South African economy.

The process of formulating the negotiating directives for the South African negotiating team was difficult since there was no referent mandate, as GEAR did not precede negotiations with the EU¹⁵². Smallberger¹⁵³ maintains that the time frame for engagement was limited and as a result the South African negotiating team could not wait for the national policy framework to unfold, so they had to engage with the Europeans. This forced the team to keep many balls in the air at the same time, which had the advantage of allowing them to follow an integrated approach, by restructuring their relations with both the EU and SADC simultaneously.

Initially South Africa proposed an accession to the Lomè Convention, which has at its core the principle of non-reciprocity. Meaning that since South Africa would not have to open its markets to European producers it did not have to do any cost-benefit analyses or consult with affected stakeholders. However, EU denial of full Lomè accession changed all this. As South Africa had chosen to restructure its' industrial base using tariff reductions as an instrument, it was nevertheless viewed as logical for the negotiating team to look seriously at the European proposal. The South African government had to seriously evaluate whether Lomè membership would boost its industrial and trade requirements. Concern arose that Lomè membership would have investment consequences and lead to a downgrading of

¹⁵¹ This necessitates the establishment of globally competitive economic enterprises. The move toward global competitiveness has to be accompanied by regional economic cooperation that advances a broad and integrated process of industrialisation and modernisation of the South African economy.

¹⁵² Refer to the chronology (in the appendix) which indicates that the post 1994 South African government lacked an appropriate policy framework with which to tackle the negotiations with, as a result, it delayed responding to the EU mandate, until the end of 1996, by when it had the guidance of the GEAR framework.

¹⁵³ Smallberger, W. Ibid. Pg.49

South Africa's "developed" status¹⁵⁴. Initially then, the ANC government wanted recognition for South Africa's developing status, thus reflecting its regional identity. However, the proposal that emanated from the commission bore the imprint of the DGI, which viewed South Africa from a developed rather than developing perspective. This division between the DGI and the DGVIII (who shared in the developmental concerns for SA) discouraged a regional approach towards South Africa and as a result denied it full Lomé membership.

This rejection raised concerns for inter-regional joint production schemes. Holland remarks on this apparent paradox in the EU's behaviour. That whilst the EU looked to South Africa to act as an engine behind regional economic development but to deny it Lomé membership dissuades the emergence of regional joint enterprises. The revised South African approach to the negotiations, regarded that trade negotiations should have industrial policy as its starting point and overall objective. In the end national strategic trade policy won out to foreign policy objectives like the articulated "*African Renaissance*". Especially with regard to the trade negotiations, an official source at DTI remarked that, the African Renaissance played no role whatsoever. The negotiations were hard-headed, driven exclusively by national interests. In retrospect then these trade talks were highly technical leaving no room for the *African Renaissance philosophy* of the sidelined Foreign Affairs office¹⁵⁵.

An examination of limited parliamentary reports on discussions held between the executive (i.e. the Minister of Trade and Industry and his representatives) and these committees reveal that in comparison to the role of the national representatives in the EU (who played a pivotal role in negotiations between their constituencies and the supranational Commission) the South African discussions were merely briefings to keep parliament abreast of developments on the negotiating front and also to provide these committees with the opportunity to forward questions and any other concerns about issues under discussion in the negotiations. Domestic constituencies in South Africa were not empowered to be more consistent or meaningful in shaping the direction of the agreement, because

¹⁵⁴ M. Holland; *South Africa, SADC and the EU: Matching Bilateral with Regional Policies*; in *The Journal of Modern African Studies*; Vol33 No.2, 1995

¹⁵⁵ Main, L & Skinner, C. *South Africa, Africa and the EU: Negotiating an African Renaissance?* in *Indicator SA*; Vol. 15 No.2, 1998

this mandate lay in the hand of the executive (cabinet), which is the national representative of the majority of the domestic constituencies.¹⁵⁶

Thus these discussions were merely in accordance with the participatory ideals of democracy (transparency and accountability) and however, cannot be characterised as internal negotiations whereby the executive bargained and negotiated with other relevant national players. The concern of SA negotiators was with identifying relevant groups, maintaining their support and reconciling groups opposed to its policy. This is why it held consultations with identified domestic stakeholders. Internal negotiations and bargaining was more likely present in the bureaucratic process of interdepartmental co-ordination, where an interdepartmental negotiating structure was established for devising a common negotiating strategy.

The Trade and Industry Chamber of NEDLAC set up a technical sectoral liaison committee (TESELICO) to support government negotiators in preparing South Africa's mandate for the free trade agreement and evaluate the implications of EU proposals on South Africa's economy. This technical committee embarked on a detailed consultation process, whereby Business South Africa, represented by the Afrikaanse Handelsinstituut, Textile Federation, SACOB, SEIFSA and SA Agricultural Union consulted with all the Business SA constituencies. Submissions were made to these portfolio committees by the: National Association of Maize Millers & National Chamber of Milling, the South African Chamber of Business (SACOB), and also by the Afrikaanse Handelsinstituut (AHI). The SACOB submission made some important recommendations, for example, that the South African approach to the EU offer should be on the basis of economic strategy and not on political expediency. And it urged that the preliminary negotiations should not focus too greatly on tariff cuts, but rather on important principles, which should set the agenda for the negotiations. The AHI submission also made some interesting points i.e. that contrary to the EU mandate which indicated that SA

¹⁵⁶ Explicit support for my observation can be found in the "Submission on Preparation of a South African Mandate for Negotiation of a bilateral trade Agreement with the European union" made by the Portfolio Committees on Agriculture, Water Affairs and Forestry; Foreign Affairs and Trade and Industry. The explicit wording in the document: "we feel *obliged* to comment on the detailed negotiating mandate of the EU.....it is *not* our intention in this document to *attempt to prescribe* in detail how our negotiating team should act in the negotiations, *nor offer advice* on how particular products should be treated in an agreement. Rather we are *concerned* with general principles and broad strategic direction."

should become a signatory to the WTO's Plurilateral Agreement on Government Procurement, SA should decline this because it was important for SA to have the freedom to negotiate its own rules and regulations regarding government procurement. It further added that a Maritime Protocol as part of the FTA was not advisable since there were ongoing fragile negotiations regarding the formation of the Indian Ocean Rim Association for Regional Co-operation and development of a Zone for Peace and Co-operation in the South Atlantic, as such these should be concluded before including specific rights to a third party from outside the region.

Labour held consultations with all trade unions and labour related constituencies whilst government consulted with SACU and SADC partners on the proposed FTA. There was great contention about the degree to which, SADC and SACU concerns about the implications of the SA-EU FTA on their economies, was catered for in the final agreement. In the course of drawing up its mandate and in discussions with the EU, South Africa was challenged by the need to reconcile the anticipated dividends of the FTA with its regional obligations and commitments.¹⁵⁷ The scope of involvement and the role of these regional and domestic stakeholders were curtailed. SADC and SACU had *briefing sessions*¹⁵⁸ and when the draft text of the TDCA was being prepared they were invited to make submissions on elements that would negatively impact on their economies.

Highlighting the scope of involvement and the role of these stakeholders¹⁵⁹, awards recognition to the fact that their inclusion in the negotiation process by the means of consultation, not only meets domestic obligations of transparency, but also that the making of recommendations aids in the designing of the directives that are to guide negotiators. Therefore, the involvement of key stakeholders was important for the contingent planning that created the flexibility needed for accommodation during the course of negotiations that were underwritten by

¹⁵⁷ SADC and SACU concerns ranged from: fears of trade diversion, with cheap EU products displacing their products on the South African market, revenue loss from tariff cuts and their sensitive products and industries which could not face EU competition.

¹⁵⁸ For the SACU countries, these briefings were incorporated into the agenda of SACU standing meetings which were and are held quarterly. These briefings were typically to update them about the negotiations and to obtain feedback from SACU. For the SADC countries, the SADC ambassadors based in Pretoria were invited to the DTI and briefed on quarterly bases.

¹⁵⁹ The reason for examining the scope and involvement of national and regional stakeholders was to assess whether their involvement in the negotiation process, can be earmarked as a tactical move, which can allow negotiators to: (a) stall and buy time in negotiations or to (b) credibly invoke pluralist arguments in order to fend off concession making demands

problem-solving principles.

One of the reasons why the negotiation process was so protracted - covering a period of almost five years - was because the South Africans had to tailor policies and mandates, which would suit their needs. And of the five year period, only about 18 - 20 months involved hard negotiations. A greater part of the negotiation period was about defining goals, frameworks and the guiding principles of the negotiations. The South African's made a strategic decision to link its relationship and affairs with the EU closer to trade than aid and as a result the negotiations were made the prerogative of the Department of Trade and Industry and not the Department of Foreign Affairs. The South African's adopted a sectoral approach¹⁶⁰ towards the issues to be encompassed in the agreement, and as a result these were delegated to the relevant bureaucratic sectors. It was these sectors that engaged in the preparatory work of researching positions and coordinating the relevant interests for its sector.

Our discussion has been premised on the belief that in order to understand the process of a negotiation (which in turn determines outcome) we should acknowledge that there is both an internal (i.e. the domestic or national decision making process) and an external (i.e. international negotiation process) facet to the process.¹⁶¹ This assertion has been discussed in length in the forgoing sections, and is perceived to have played a significant role in respect to this case study, because of the institutional processes present within both the EU and South Africa. The character of these institutional processes purport to support the assertion that the international negotiating process, as seen here, cannot be conceptualised as a truncated phenomenon divorced from mainstream social policy. In this case domestic interests were reconciled with foreign policy interests, this is clearly evident with firstly; South Africa's GEAR programme and it's foreign policy objectives of trade liberalisation and accessing international markets and its consultations with the relevant internal and external stakeholders and secondly; by the EU's level II and level III negotiations, which attempted to

¹⁶⁰ This is closely tied to the progressive summarisation type of negotiations (discussed in chapter1), where the agenda proceeds through different stages, with parties slowly moving toward final agreement.

¹⁶¹ Note the internal and external facet to international negotiations is conditional and only comes into play, depending on the institutional process (i.e. liberal institutionalism) present in the countries under question. Refer to Footnote 55
Pg.25

co-ordinate domestic, international and Union interests.

The proceeding section will pinpoint the areas where South Africa was “successful” in altering the EU’s position, and *theoretically try to come to terms with how SA could have possibly managed to alter EU member mandates*. Apart from hypothesizing about the tactics utilised by the South Africans and the arguments that were compiled and put forward, one certainly cannot ignore the glaring fact that South Africa obviously lacks the structural power with which to influence the EU. We intend therefore, to identify the variables other than structural power, which empowered its efforts at reconfiguring the EU position.

3.3 THE FORMULA PHASE: IN SEARCH OF GENERAL PRINCIPLES

This section examines the preliminary negotiations, in which the *founding principles* and the *nature of the agreement* were discussed. This phase of the negotiations is indicative of the South African approach, which opted to first structure the situation by defining frameworks and guiding principles. Initially South Africa and Union members had contrasting ideas on the nature and direction of their co-operation as a result a number of talks were held in order to reach consensus on a number of principles. These were:

- a) The trade agreement should be developmental in nature, meaning asymmetrical¹⁶². By being both “asymmetrical” and “differentiated”, means the agreement should be constructed in such a way that the weaker partner has more time to implement less onerous tariff phase downs than the stronger partner. This developmental dimension was strongly emphasized by South Africa as an underlying principle, which in essence applied a normative argument grounded on equity appeals which classified SA as the “junior” partner. This difference in status was expected to result in different time frames for liberalisation and the extent of trade to be liberalised. This was however, not always readily appreciated by the EU, who saw South Africa equal in many sectors. The principle of asymmetry in both product coverage and timing eventually became the leitmotif of the negotiations because of South Africa’s insistence.

¹⁶² The principle of asymmetry referred to the approach that the EU as the developed partner in the relationship should open up its market faster and to a greater extent than South Africa, the developing partner.

- b) South Africa further insisted that the SADC trade protocol which provides for the negotiation of an FTA in SADC within eight years; must be considered since an FTA with the EU would have to allow for a margin of preference for products from SADC countries seeking access to the South African market over competing products from the EU, at least for a period of time.

This South African argument was based on an insistence of the “SADC first principle” (or what is known as sequencing), whereby South Africa argued that that EU-SA economic relations could not take precedence over the finalisation and effective implementation of this SADC trade agreement which was agreed to prior to the EU agreement. However, it needs to be pointed out that there was a glaring paradox inherent in the invocation of the “SADC first principle”. According to the SADC Trade Protocol, it allows SADC member states to maintain existing bilateral trade agreements and establish new ones, to the extent that if such agreements allow for better access to regional markets they can supersede trade agreements reached under the SADC FTA. This means that in the final analysis SADC members have the ability to arbitrarily decide whether or not to implement the SADC FTA.¹⁶³ Consequentially, this loophole brings into question the commitment of its members, to the SADC regional agenda.

Thus the invocation of the weak “SADC first principle” by the South Africans must be open to scrutiny. Like why would they choose to play a flawed move and moreover why did the Europeans buy the argument. The reasoning behind South Africa’s motive may have had to do with WTO rules. As Keet¹⁶⁴ notes the registration of SADC with the WTO as regional trade grouping, secured a limited but exploitable space for South Africa to justify and defend preferential treatment for regional trading partners and pressurise the EU to make good on its frequently declared word that it

¹⁶³ Lee, M.C.; *SADC and the Creation of a FTA in Southern Africa*; African Studies Program, Georgetown University Washington DC; Prepared for presentation at the African Institute of South Africa 40th Anniversary Conference on “*A United States of Africa?*” Pretoria, SA, May 30 - June 2 2000, Pg.17

¹⁶⁴ Keet, D.; *Rallying the Region SA-EU Negotiations Continue*; in *Southern Africa Report*; June 1997, Pg.33

supported integration and development in southern Africa.

A statement by the Portfolio Committees on Agriculture, Water Affairs & Forestry; Foreign Affairs; and Trade and Industry in which it stated that: “these negotiations should be approached in a spirit which recognises that sentiment and expressions of solidarity often have very little impact on bargaining over commercial interests, giving real content to the EU’s often professed desire to assist South Africa in its efforts to promote democracy, development, economic growth and regional integration should be seen as something to be striven for , rather than something that can be assumed a priori”¹⁶⁵. This indicates that South Africa’s regional identity was not a given but had to be actively pursued and reinforced.

The employment of the “SADC first principle” then was a calculated argument employed to pressurize the EU to: (a) practice what it preaches about its commitment to integration and development and (b) to demand the preferential treatment that is accorded to it as a regional body under WTO provisions. South Africa’s success at altering the terms with the EU, relied on its’ ability to construct convincing arguments, that was founded on broader public support nationally and regionally. In respect to the EU buying a false argument, they probably had no choice, because if they refused in face of the paradox, it would have been a slap in the face of the principles of liberal institutionalism and regional integration, which are cornerstones of their foreign policy.

- c) The agreement would have to contribute positively to promoting economic growth and development in both South and Southern Africa and hence, be a trade, development and co-operation agreement.¹⁶⁶ It was anticipated that the EU-SA FTA would impose adjustment costs both on vulnerable sectors in South Africa and the rest of SACU. Efforts were directed at securing significantly better terms of access for agricultural

¹⁶⁵ Submission on Preparation of a South African Mandate for Negotiation of a Bilateral Trade Agreement with the European Union made by the Portfolio Committees on Agriculture; Water Affairs & Forestry; Foreign Affairs; and Trade & Industry, 1998.

¹⁶⁶ In Bertelsmann-Scott, T.; Mills, G. and Sidiropoulos, E. (Eds.); The EU-SA Agreement: South Africa, Southern Africa and the European Union; South African Institute of International Affairs, 2000, Pg.8

products as the region has a comparative advantage in this sector. This involved a significant negotiating effort by the South Africans to establish principles like asymmetry and differentiation.

South Africa therefore, first directed its efforts towards defining these negotiating principles that would guide the rest of the negotiations (this is an example of agenda setting, whereby the principles are first established before negotiating separate issues). The FTA aspect of the TDCA between SA and EU had broader issues with ramifications for SADC members and the BLNS states. As a result some of the early jockeying at the bargaining table involved debate about the scope of issues. Therefore, whether or not to define an issue in broad or specific terms can be a calculated tactical decision. The South Africans strategically opted for separate agreements on wine and fisheries, as they might have believed that this would enhance their relative bargaining power. Since it's generally argued that single-issue bargaining facilitates certain trade-offs that would reduce the cost of the overall settlement.

3.4 THE DETAIL PHASE: A LEVEL-ONE GAME WORKING TOWARDS A SETTLEMENT

Apparently, the EU dominated the FTA negotiations, as it was its' mandate that predetermined to a large extent the outcome. However, there are claims that South Africa punched above its weight in talks with the EU¹⁶⁷, managing to secure some negotiating victories that went beyond the parameters of the EU negotiating mandate. The following discussion intends to critically evaluate these claims by attempting to identify these "areas of success" and making conjectures about the manner in which they were achieved. This will entail examining the conflicting interests and evaluating the lines of argument or tactics utilised by each side during the course of negotiations. The intention is to: (1) analyse the process by which the outcome emerged, and (2) establish which side got a final agreement that was closest in principle to its proposal. By analysing the bargaining interaction, the premise that the bargaining outcome was an emergent product of the bargaining process, will become evident. Therefore, if this linkage between

¹⁶⁷ SA punched above its weight in talks, by John Dlodlu, in Business Day, 13 October 1999

process and outcome indeed proves to be, it warrants a critical analysis of the process, as it holds the explanatory power for understanding the final outcome.

The areas of contention¹⁶⁸ or conflict that arose when negotiating the FTA included:

a. *The Agricultural Sector and the question of exclusion lists.* During negotiations criticism was directed at the coverage of South African agricultural exports in comparison to EU coverage. For instead of excluding all agricultural products a priori and then negotiating which products would be included in the deal, the EU included all agricultural products, but drew up a list of those products considered highly sensitive by member states. This list became unnaturally long and was arrived at by asking individual member countries to notify the Commission of their respective sensitive agricultural products.

South African negotiators had the arduous task of trying to negotiate the removal of certain products from the list. Pretoria's negotiators, apparently, soon came to the realisation that it was extremely difficult to remove any item from the list, and that individual products had to be negotiated with individual member countries and not the EU commission.¹⁶⁹ South Africa also placed certain sensitive products – sensitive in a regional context – on the list.¹⁷⁰

Agriculture was by far the most contentious area because the principles and mechanisms of the EU common agricultural policy (CAP) are not compatible with trade liberalisation. However, the EU negotiating team was under the strict directive of ensuring that they preserved the key concepts of CAP, notably that of Community preference and maintaining existing mechanisms for export refunds and minimum entry prices. Given the extent to which the EU's common

¹⁶⁸ Another issue that came under the spotlight was EU insistence to include a clause that would allow for the discontinuation of the agreement in the event that SA violated respect for democratic principles, fundamental human rights, rule of law or good governance. South Africa, however took exception to the inclusion of this clause, fearing that it would lead to the unilateral definition of these concepts by the EU. In addition, it has been suggested that SA wanted to avoid setting a precedent for the post Lomé negotiations that would impact negatively on its region partners. Although all four clauses were ultimately included in the final agreement, it does allow for *consultation* before suspension in the event of the violation of any principle. SA insisted that there is *objectivity in the test for breach* of the essential element of the agreement *without the risk of unilateral action* or the balance of economic or political interests becoming the determining factor.

¹⁶⁹ Note that this interaction between SA and individual members contradicts the Unions approach to trade negotiations.

¹⁷⁰ Sensitive products include: sugar, wheat, beef, furthermore liberalisation in products such as textiles have been backloaded, therefore occurring only at the end of the transitional period.

agricultural policy constrained the opening up of their agricultural sector, the EU did manage to meet the concerns of South Africa notably through tariff quotas for sensitive products like canned fruits (60000 ton), cut flowers (900 ton) and juices (5000 ton).¹⁷¹ The introduction of these tariff quotas was important in that it made inroads into the EU exclusion list.

In addition, an Agricultural Safeguard Clause was negotiated, it affords South Africa countervailing measures, should there be proof that the influx of imported agricultural products are causing harm or threatening to cause harm to the domestic industry. More importantly, the infamous “exclusion list” was transformed into the “reserve list” which will be re-examined in the review period. The South Africans were also able to reduce the EU’s exclusion list from coverage of 46% to 38% of agricultural products to be covered by the FTA, and if we take into account the tariff quotas, then, in actuality it has been reduced to 26%.

An interesting move made by the South Africans was a statement issued on 19 March, 1998, to the WTO Committee on Agriculture supporting the actions of Chile and other members urging the WTO Committee on Agriculture to address the problem of subsidies paid to the canning industry by the European Union.¹⁷² This lends further support to our premise on behavioural power, i.e. that part of a negotiators tactical repertoire should include participating in multilateral forums, in this way it can bring international pressure to bear upon the opponent rather than relying solely upon unilateral confrontation.

b. *Industrial Sector.* The EU’s liberalisation schedule for industrial products illustrates that South Africa’s negotiators secured a higher degree of access to that market both in terms of coverage and timing of tariff reductions. It is anticipated that by year six on entry into application of the agreement, 99% of South Africa’s industrial exports to the EU market will enter duty free. This has created considerable export potential for the South African industrial sector

¹⁷¹ Bertelsmann-Scott, T. *Ibid.*, Pg.42

¹⁷² “South Africa’s market share of canned peaches in Japan declined from 38% in 1983 to 18.3% in 1995, while the market share for Greece grew from 0.6% to 27.8% over the same period. It is understood that the Greek canned peach industry is the primary beneficiary of subsidies paid to EU producers of canned peaches. Furthermore as a result of declining earnings from exports to the EU, the largest South African exporter of canned peaches has withdrawn from the EU market leading to the closure of a major canning factory, with the accompanying loss of 2,200 jobs. A loss South Africa can ill afford in the face of unacceptably high unemployment levels.”

considering that approximately 86% of South Africa's total exports to the EU consists of industrial products. On the other hand, South Africa's tariff schedule also illustrates that it will offer less generous market access to EU industrial exports, as the tariff phase down will occur over a longer period of time. This negotiated outcome was a result of South Africa's insistence that the agreement should be asymmetrical in both timing and coverage.

South Africa further sought exceptions to the provisions by identifying the two key industrial sectors of automobiles and clothing & textiles as highly sensitive. Maintaining consistency with internal policies was a major concern for the South African side. Thus, the EU had to seriously tone down their expectations in the automotive and textile sectors, where South Africa was and is undertaking major restructuring programmes like the Motor Industry Development Programme (MIDP). Automobiles and component parts will remain on the reserve list without tariff elimination. This position will only be reassessed with the Motor Industry Development Program review in 2003. This understanding was achieved by utilising the "policy linkage" strategy, which proved useful in swaying the negotiated outcome.

But the role of vested German Industrial interests in the South African automotive and component sector is also worth some consideration. According to statistics 48.9 %¹⁷³ of total South African components are exported to Germany. However, we should be wary that an undisclosed percentage of this is intra-industry trade. After FTA talks between South Africa and the EU were initiated, European car manufacturers have since stepped up their investment in South Africa for financial reasons. The impact of the MIDP on component manufacturing has led to a surge in European automotive investment. For example, Fiat of Italy began exporting components and as a result, it earned enough export credits via the programme to import fully built-up cars "for free".¹⁷⁴ As a result, the export of components has trebled with manufacturers producing anything from leather seats, to tyres and catalytic converters, which are then shipped off mainly to the UK and Germany. Thus because of the export incentives offered by governments

¹⁷³ Statistics for year end 1998, found in Automotive Industry, by Lani Holtzhausen, in Engineering News, 19-25 March 1999

¹⁷⁴ "Export or die", say European car makers in SA, by Nicol Degli Innocenti, in Business Day, 27 January 2000

MIDP coupled with the feature of intra-industry trade and the rent seeking behaviour of the European industrialists, it is sound to argue that this is what may have provided the South African negotiators with an upper hand (i.e. the issue specific power).

Moreover, South Africa has a comparative advantage in automobile manufacturing and assembling, as it offers cheap electricity, natural resources, affordable land and a direct export route to the Far East. This MIDP gave the South African government a carrot which not only attracted European industrial investors¹⁷⁵, but, may have also motivated these parties with vested interests to lobby and influence their respective countries mandate on this issue. In fact, considering the strong vested interests of the German industrialist, it would be no surprise if South Africa's armaments deal with Germany and the resulting counter trade were also somehow tied to Germany's revisionist approach, in the FTA talks, towards South Africa. Taking into consideration Germany's influence within the Union, one cannot ignore that the toning down of demands in sectors¹⁷⁶ in which it has vested interests, would have probably been haggled out internally between it and other members.

c. *Parallel Agreements: the Science and Technology Agreement, the Wine & Spirits Agreement, and the Fisheries Agreement**. Apart from the trade and co-operation negotiations, three separate agreements were and are still to be* negotiated. A Science & Technology Agreement was reached in December 1996; discussions on Fisheries are however ongoing. A fatal turn in the negotiations was the introduction of the concept of *conditional linkages* by the Europeans, which stated that until these parallel agreements have been finalised, any agreement would be blocked. This was especially true in the case of fisheries with Spain insisting on simultaneous agreement. South Africa counter argued that reaching a fisheries agreement would be impossible until it¹⁷⁷ had finalised a national fisheries policy. The Government produced a

¹⁷⁵ South Africa is Germany's main African partner. Two thirds of German direct investment on the continent goes to South Africa. There are approximately 400 German companies in South Africa; these include naming a few BASF, Bayer, BMW, DaimlerChrysler, Siemens, and Volkswagen.

¹⁷⁶ Earmarked sectors include: Automotive, component production, pharmaceuticals, mining and engineering, and the global systems mobile network.

¹⁷⁷ Note this is a very sensitive issue in South Africa, and the Food and Allied Workers Union called a special meeting, since it was concerned that SA was even talking about fisheries with the EU.

White Paper - May 5, 1997 - on the issue and stated that the process initiated by the paper needs to be completed before agreement with the EU can be concluded. In 1999 during the \$4.2 million arms package discussions, Spain even attempted to link the arms deal with fishing rights.

When contextualising the social exchange paradigm on issue-specific power to the Fisheries issue, one can clearly see how the magnitude of European interests (Europe has a major interest in securing access to African waters in face of depleting fish resources and the race to find new fishing grounds¹⁷⁸) and the need to promptly conclude such an agreement was played off by South Africa against its' extent of control over such an outcome (by linking the issue to its national prerogative to develop an adequate fisheries and environmental policy) and the limited ability of the EU to find an equivalent alternative to the rich South African waters. The power structure of this issue specific relationship (relating to fisheries) was determined by the three variables: alternatives, commitment and control.

South Africa however, consistently maintained that it was prepared only to enter into a technical and scientific assistance agreement on fisheries and that *access rights* were not open for discussion. The gesture of the policy paper appeared to have had temporarily satisfied the Europeans, since it was taken to be an indication of South Africa's serious intention to restructure its' fishing policy and bilateral fishing relationships. In retrospect then, South Africa's ability to contour and reconfigure the EU position, was not handicapped by its lack of structural power, since its' tactical behaviour was not grounded in structural power. However, the issue of access has not gone away.

On the Wine & Spirits front, there was major contention over the use of term like "port" and "sherry". Spain and Portugal with the backing of their "Club Med" allies: Italy, France and Greece - insisted that an agreement on wine and spirits was a *sine qua non* to an overall agreement. It was demanded that South Africa phase out the words "port" and "sherry" from its' fortified wines, as they referred to geographical locations, and thus falling under the protection of intellectual

¹⁷⁸ Refer to "Let us cast our nets in your waters, say EU officials" found at www.fm.co.za/01/0216/busaf/bbusaf.htm

property rights as determined by the World Trade Organizations' TRIPS agreement.¹⁷⁹

South Africa should have been more skeptical about this claim to “geographical indications”, since it may not have been a cut and dry case about intellectual property rights alone. Austria who first put wine on the agenda was the only one to have had a valid cause in respect to infant industry protection. The others jumped on the bandwagon, probably trying to extend the definition of intellectual property for market share reasons. If these protectionist motivations driven by fear of competition and losing market share are true, then South Africa and other countries that are affected by these claims, must work together in proving this, as it is a general guide in WTO deliberations that a party cannot invoke a WTO rule for protectionist ends. If they can prove this, they stand a good chance of getting a WTO ruling¹⁸⁰ in their favour,

To fight of these claims, South Africa could have taken the hard-nosed approach by insisting that the EU's argument was flawed, as it was predicated on a principle that was not yet a legal component of the rules governing the international trading system. It could have said that, since the issue of “geographical indications” was still under review in the WTO, it would not allow itself to be used to set a precedent that goes beyond the current multilateral conventions and disciplines agreed to in the WTO. Furthermore, South Africa should have initiated via NEDLAC for South African businesses and related constituencies to embark on an aggressive trade mission that would market the “attractiveness” of South African wine (in terms of quality and cheaper prices) to earmarked consumer groups and lobbies. This approach would have been conducive in assimilating the support of European consumer lobbies, which could have swayed some members' restrictive positions.¹⁸¹

¹⁷⁹ SA, EU agree on wine, spirits deal, in Business Day, 13 June 2000 In 1999 SA exported approximately 22% of its so-called “good drinking wine” production. The UK is South Africa's largest export market, accounting for 40% of all wine exports, while the Netherlands follows in second place

¹⁸⁰ Note the Wine & Spirits Agreement hinges on the understanding that the WTO will be the final arbiter of whether product names should be protected in the global trading arena. The EU would like to see, in the context of the new WTO talks, additional levels of protection under geographical indications in the WTO's agreement on trade-related aspects of intellectual property rights.

¹⁸¹ Take for example the report “*An Italian change of direction is made on the road to Stellenbosch*”, by John Fraser, found in Star Business Report, 15 November 2000. It details the visit by Enrico Letta Italy's trade minister to South Africa and his visit to the Meerlust Estate outside Stellenbosch. Not only did he indulge in tasting the locally made wine and grappa, but also caught a hands on view of the minute grappa distillery that could never pose a serious threat to the industrial scale grappa producers of Italy, as they fear it would. Taking this very late occurrence in consideration

Instead, the wine issue proved to be a major stumbling block to reaching agreement. It was only in early 1999 that Minister Erwin and Commissioner Pinheiro, utilising the tactic of back channels¹⁸², were able to reach a compromise on the port and sherry issue at the World Economic Forum meeting in Davos. The compromise, which saw South Africa conceding to EU demands, contained the following main elements: (1) a phase out clause for the South African use of the names *port* and *sherry* in exports to third countries. (2) South Africa would continue the use of the names *port* and *sherry* on its domestic market throughout the transitional period of twelve years (with the definition of SA domestic market including all of SACU). (3) The South African wine sector would enjoy a duty-free quota and financial assistance for restructuring of the industry.

Eventually, South Africa *conditionally*¹⁸³ conceded on making a concession that legally speaking it was not obliged to. But, did South Africa give in because it could not withstand EU pressure or could the move have been a tactical concession. Sibisi's¹⁸⁴ comments on this issue suggest that South Africa conceded because it was regarded as necessary, in order for the proper functioning of the FTA. Furthermore, that the negotiations needed to be concluded and ratified as quickly as possible, so that the concessions made would be more significant if South Africa could feel the benefits sooner. It is quite obvious from these comments¹⁸⁵ then, that the concession was not one of weakness but perhaps a tactical concession, which according to the choice perspective reflected the weighing up of the cost and benefit of the concession in face of saving the entire agreement. South Africa also decided to take advantage of the EU offer of a financial package, which will allow the government to achieve its national policy objectives of restructuring the wine industry and allowing for greater black

with the above suggestions, SA could have actively pursued efforts at transforming European attitudes towards South African produced wines and other agricultural products.

¹⁸² The negotiating tactic of back channels refers to off-the-record discussions held outside the formal negotiating process, and are often used to overcome deadlock in sensitive circumstances. However negotiators involved in back channel discussions may be deprived of needed technical advice and thus must be able to skilfully combine this tactic with the formal process if they are to secure the best deal. Note this tactic was also used in Seattle at the fringes of the WTO meeting, where Erwin and his Finnish, Spanish and Portuguese counterparts discussed the issue.

¹⁸³ Note the concession has an important escape clause that the undertaking would be subject to developments inside the WTO, where wide ranging international rules on copyright in the wines and spirits industry are expected to be hammered out in the future.

¹⁸⁴ Sibisi, B.; SA-EU Trade, Development and Cooperation Agreement: Briefing, presented to the Trade & Industry and Foreign Affairs Portfolio Committees; Economic Affairs Select Committee Joint Meeting, Parliament of South Africa, 17 September 1999

¹⁸⁵ Also refer to Grappa and ouzo misted over benefits of EU pact, by Dave Galloway, in Business Day, 12 April 2000
Booze rocks EU-SA marriage, by Tom Nevin, in African Business, December 1999

empowerment.

However, despite the concession, there still appeared to be conflict over certain terms and the above provisional agreement reached at Davos was denied endorsement.¹⁸⁶ In a bid to put pressure on South Africa, Spain had frozen a package of loans from the European Investment Bank, and also made threats to block a multi-annual EU aid package¹⁸⁷. But, by December 1999, Finland¹⁸⁸ the then current holder of the EU presidency, sought to organise a head –to-head negotiation at the Seattle WTO Ministerial Meeting, with Minister Erwin to try and resolve the spat over port and sherry.¹⁸⁹

On 18 January 2000 talks between Minister Erwin and the EU development commissioner Poul Nielson and the director-general of development for the EU Phillip Lowe, were held to try and break the wine and spirits deadlock in the implementation of the FTA¹⁹⁰. It was said that whilst good progress was made, the deal was political in nature and still had to be translated into legal treaty language. As a result these talks were inconclusive since the outcome of the meeting had to be taken back to the respective EU constituencies for approval.¹⁹¹ One can say the devil was in the detail, because conflict rose once again when it was translated into technical legal language. In June 2000 it was declared that South Africa and the EU had at last reached an agreement¹⁹², which only needed the ratification of the 15 EU foreign ministers. However, by July 2000 Minister Erwin expressed “dismay” at the prospect that South Africa would have to renegotiate the complex wines and spirits accord, following claims that both sides had gone back on the deal, which was reached the month before.¹⁹³

By the 28 January 2002 reports declared that the issue had been settled, with an agreement to allow 42 million litres of South African bottled wine into the EU duty free. But presently there are still risks involving the protection of geographical

¹⁸⁶ Last-ditch effort on trade deal by John Fraser, in Business Report, 23 March 1999

¹⁸⁷ WTO “brew-ha-ha” over SA labels, by John Fraser, in Pretoria News Business Report, 3 November 1999

¹⁸⁸ Finland is another European country that shares special bilateral ties with SA and its post-apartheid party government

¹⁸⁹ EU, Erwin may meet in Seattle by John Fraser in Mercury Business Report, 3 December 1999

¹⁹⁰ EU freeze on South African wine not over until accord is implemented, by John Fraser, in Star Business Report, 8 June 2000

¹⁹¹ EU-SA talks kick off on a “good” note by Patrick Wadula, in Business Day, 19 January 2000

¹⁹² SA, EU agree (at last) on wine, spirits, in Daily Dispatch, 13 June 2000

¹⁹³ Erwin “dismayed” that EU may re-enter booze fray, by John Fraser, in Mercury Business Report, 26 July 2000

indications. South African brand names that were registered before 1995 have been recognised and honoured by the EU however; this recognition has not been written into the agreement. Therefore, EU countries could still claim a monopoly of names linked to geographical regions after which SA wines are named, example Nederburg in Germany and several other regions in France.

During these latest 2002 negotiations, Germany apparently voted against the EU wines and spirits agreement, stating that there were problems in the details of it and that the wording on labelling did not accord full protection to traditional expressions like *late harvest*, *ice wine* and *Cabernet (kabinett)*. France, on the other hand, abstained from the vote, which was carried by a weighted majority. The EU Agriculture Director General noted that some sensitive technical issues such as oenological practices and trademarks still remain on the agenda for further discussions. So as things stand, the agreement only enforces the implementation of duty free trade for 42 million litres of South African wine.

- d. *Non-Trade Issues* (competition policy, government procurement and antidumping actions). The EU found it particularly difficult to get South Africa to agree on principles in the area of competition and state aids. South Africa ensured that any inclusion of such provisions did not go beyond its national competition policy and law, thereby effectively fending off any EU attempt to dictate the composition of such rules. By arguing that this issue was under sensitive domestic construction, the South African negotiators made shrewd utilisation of the “national policy” linkage strategy.
- e. *Regional Measures* The provisions of the final FTA agreement, contains few provisions that safeguard the interests of intra-SACU and SADC trade. Since the EU would have a de facto FTA with the SACU members¹⁹⁴ as well, there were concerns about adjustment costs the agreement would impose on SADC and SACU members. South African proactively proposed that a fund be set up to offset revenue loss and compensate workers, via retraining, as well as provide investment for new industries. It is understood that currently the EU is still waiting on the BLNS to develop a project proposal on how the money

¹⁹⁴ Botswana, Lesotho, Namibia and Swaziland (BLNS)

will be utilized.

This concern with the impending costs for SACU revenue sources amid the decline in trade tariffs has pressured SACU to diversify its sources of revenue. This has a dual role of aiding the SADC FTA, since it forces the initiation of fiscal reform and is thus preparing them for the implementation of the SADC FTA as well. In respect to these regional concerns, the only other gain by the South African negotiators was to secure a “safeguard measure” for its neighbours – i.e. the right to reintroduce import tariffs on products where neighbouring industries were coming under pressure from EU imports.

3.5 CONCLUSION: FINDINGS AND IMPLICATIONS

South Africa and the EU had different ideas about the direction of their trade liberalisation; the former sitting on the fence between developmental and neo-liberal ideals while the latter was entirely driven by a neo-liberal agenda. South Africa had initially wanted accession to Lomé, but as Bertelsmann-Scott¹⁹⁵ notes the form that South Africa’s Lomé accession eventually took was exactly as proposed within the European mandate. This therefore could be seen as a negotiating defeat for SA, since it gained nothing more than it had been offered. Learning then had most definitely occurred; South Africa’s plan had failed since it got partial membership to Lomé on the EU’s terms, prompting it to rethink its strategy and alternatives towards the EU.

In respect to South Africa’s proposal, the Europeans noted that this official response was disappointing, in light of the fact that it was very similar to the Commissions proposal. If this was the case then surely because of this similarity in intent between the Commission and South Africa, the level where the most bargaining and transformation occurred was that between the Commission and its member states not between South Africa and the Commission as they already, according to their initial proposals, had very similar demands. And if so then the conclusion of the negotiations was a victory for both South Africa and the

¹⁹⁵ Bertelsmann-Scott, T.; *The EU-SA Free Trade Agreement and Southern Africa*; Paper presented at a Conference organised by the South African Institute of International Affairs on *South and Southern Africa: Lessons from emerging markets*, 16-17 July 1997, Jan Smuts House, Johannesburg. Pg.5

“revisionist” Commission¹⁹⁶ over member state mandates. So clearly, South Africa’s ability to negotiate successfully was facilitated by: these shared overlapping interests with the Commission, the support of the EU Director General of Development and special bilateral ties with individual member states.

As we are aware the EU’s goals and interests were driven by its’ strategic trade policy with the intention to move beyond Lomè with REPA’s, but in the final analysis the TDCA with South Africa is a watered down version of this intention to create reciprocal trade agreements with the developing world. The TDA is believed to be a qualitative shift away from a full functioning FTA. However it bears more market opening mechanisms than developmental. Therefore, in essence it is a TDA only in title not in application. South Africa in exploiting its regional identity only managed to buy itself time by circumventing a fully functional reciprocal agreement, by ensuring that the principle of “equitable development measures” conditioned the agreement. But despite this fact, the agreement does have inherent in it “reciprocity” therefore; in the long run the EU will achieve its long-term goals, as anticipated by REPA’s.

If South Africa opted for fair trade instead of free trade it would’ve been advocating a strong case for the developmental concerns of the south. FTA rules under Article 24 of the WTO does not accommodate concerns for a TDA since it does not deal with FTA agreements between the developed and developing world nor does it relate the conditions for the establishment of a FTA to internal growth rates. If South Africa pushed for a true regional TDA, it would have been taking a bilateral stance on a concerting multilateral issue. Isn’t this what middle power brinkmanship is about? Furthermore, the governments approach to these negotiations doesn’t mirror Mbeki’s often compelling statements on the South’s development capacity. It’s often been commented that South Africa’s executive branch of government *talks left but acts right*¹⁹⁷. This has implications for the country’s domestic policy and regional policy. Basically, the bottom line is for the South African economy to grow at a rate of at least 6 / 7 percent per annum. As a

¹⁹⁶ Interesting to note the revelation of Phillip Lowe the EU’s chief negotiator that it had been his strategy during the negotiations to try and pull the wool over the eyes of some European industries, confessing that if they had known what was going on, they might have stirred up enough pressure to block the deal, temporarily. *Silent partner is the wrong role for business*, by John Fraser, in Cape Times Business Report, 8 September 1999

¹⁹⁷ *Mbeki: Talking left and doing right*, by H. Barrell in Mail and Guardian, 21/1/2000

result the South African government is tightly policy driven by its GEAR framework, with which it seeks to create the *market friendly environment* as demanded by neo-liberalism.

South Africa should have done more for its regional partners since they too have a de-facto agreement with EU. As South Africa was the only one negotiating on “their behalf”, it should have obtained a regional mandate. South Africa’s decisions makers were no doubt faced with the dilemma of either adopting its’ regional identity for these negotiations or of letting national interest determine the agenda. If regional integration was the priority it was alleged to be, then South Africa would have pushed for a regional agreement. However, it’s no use wagging the moral finger at South Africa; since it was inevitable that what was good for its economy had to win out over regional interest. With the negotiations being headed by DTI it exemplifies that South Africa was not market driven but policy driven in its objectives, with government supporting a strategic approach to negotiations.

South Africa’s regional identity no doubt had its benefits, these were exploited in arguments during negotiations i.e. SADC first principle and refusing a maritime clause on the principle that the region comes first before rights to outside parties can be accorded. South Africa therefore chose to play on its regional identity at certain times while ignoring it in others, in order to achieve maximum negotiating benefit. The choice was clear, for whilst a politically correct foreign policy advocated regional identity, in reality South Africa is a class apart from its neighbours. It therefore, cannot afford to play down this fact for risk of jeopardising its global advancement.

CHAPTER 4

ASSESSING THE SOUTH AFRICAN APPROACH TO NEGOTIATIONS WITH THE EU: A CASE OF REFERENCE FOR THE SOUTH?

In this final chapter we assess the South African approach to the negotiations, with the intention of exploring the potential this case study has in serving as a point of reference for future North-South asymmetrical negotiations.

Chapter 1 discussed the nature of the SA-EU negotiations in context of the delineated theoretical framework on negotiation theory and bargaining. During this exploration it became evident that trade negotiations are driven by liberal not realist tenets. And despite the resolve of many states to pursue individualistic self-interests, there is an impetus for them to co-operate. This impetus for co-operation is determined by their interdependent relationship and their want to avoid a pareto-deficient outcome. Under the terms of the problem-solving approach to negotiations, the South African negotiators and their European counterparts worked towards converging their interests. To understand how this convergence (the final agreement) occurred we suggested that the outcome should be linked with the process. The exploratory analysis indicated that there was indeed a link between the SA-EU negotiation process and the outcome that emerged¹⁹⁸.

4.1 FINDINGS ABOUT THE SOUTH AFRICAN APPROACH TO NEGOTIATION

Chapter 2 analysed theories on the negotiation process, examined the internal dimension to negotiations closely and discussed the tactical options available to negotiators. In the course of discussing negotiation tactics, it became apparent that power was a contingent variable that affected ones ability to employ certain tactics and to negotiate/bargain credibly. Furthermore, because of these inequalities in power attributes, negotiations between north and south were bound to be asymmetrical. The implication of this asymmetry was that the south would not be able to negotiate with the north successfully. However, we challenged this “There is no alternative” (TINA) thinking on north south

¹⁹⁸ Theoretical corroboration for this was found in the work of Bacharach and Lawler, who argue that there is a need to relate bargaining power (context), tactical action (process) and the bargaining settlement (outcome).

negotiations, and set out to present, that in terms of the theoretical offerings (i.e. issue specific power and behavioural power) that the south can acquire power and influence over the north. The study of the SA-EU negotiation process, found in chapter 3, is the empirical evidence that is testament to these premises established in the forgoing chapters. Therefore, how South Africa “played the game” (i.e. approached the negotiations) had much to do with contouring the end result.

South Africa no doubt lacked the structural power with which to influence the EU and had to resort to tactics that were not based on its structural power. This negotiation process has obvious implication for conceptualisations surrounding North-South relationships and the ever-present power disparity between the two. Chapter one, discussed how power manifests itself under conditions of asymmetry and how both weak and strong states employ negotiation tactics to attain their desired outcomes. The assumption was that negotiated outcomes were a function of the actor’s power, for it was South Africa’s issue power balance that largely determined certain outcomes, as the objective of its tactical power was to alter the various issue power balances in its favour.

According to the findings in Chapter 3, a large component of why South Africa fared favourably against the power of the EU, had to do with the explanatory power found within issue power arguments. For whilst the resources of aggregate structural power may increase alternatives and control they however, cannot strengthen commitment, arguments or behavioural power. Thus issue specific power was the most critical component of South Africa’s power on issues likes Fishing access, industrial liberalisation and agricultural liberalisation. There was an evidential connection between the nature of the issue power balance and the outcome of certain issues, since the tactics employed were directed towards affecting one or more of the components of issue power. Thus any attempt to predict a negotiation’s outcome, monitor the status of an ongoing negotiation, or assess the outcome of a completed negotiation should focus on an analysis of the actors’ respective alternatives, commitment and degree of control and the tactics they adopt to affect these elements.

This is not to say that actors with greater aggregate structural power don’t have an important negotiating advantage, as their financial resources often afford them

access to alternative-building tactics. The Union's financial wealth meant that it was able to provide monetary incentives in order to persuade and extract concessions. This was evident in a fund it promised to set up to counter SADC/SACU adjustment costs and also in the financial package offered, as part of a compromise in the Wine and Spirits Agreement, to help aid restructuring in the wine industry. Generally, the stronger actor will have a greater ability to increase its alternatives however; there are times when alternatives cannot be bought because whilst aggregate structural power may increase the stronger actor's control, there may be severe constraints¹⁹⁹ on using such power.

A weak actor generally has more at stake in negotiations with a strong actor and will therefore devote more attention and energy to achieving its desired outcome. The stronger actor however, is unlikely to devote as much attention or develop as much cohesion as the weak actor, since it will likely have many issues on its foreign policy agenda, each with its own particular constituencies and backing from various bureaucracies. Joseph Nye coined the term "asymmetry of attention" which refers to this greater concentration of the weak actor, where negotiations are the most important issue on the foreign policy agendas of such actors and thus the preoccupation of their foreign policy bureaucracies. As mentioned by Nye this "asymmetry of attention" greatly enhances the weak actor's issue power position. Since it not only helps increase and sustain commitment, but also enhances the credibility of the weak actor's tactics²⁰⁰. For South Africa these negotiations with the EU were viewed as an important economic and foreign relations milestone for the post 1994 government, therefore warranting high levels of commitment and energy so as to ensure success.

A weak state then can bring about changes in the issue specific power balance through the use of tactics that are not based on aggregate structural power and must rely on tactics whose effectiveness and credibility derive from other sources. Such tactics include: coalition building, harassment and threats of disruption based on territorial advantage or threats to veto negotiations based on the "unfair or biased" nature of the negotiation process. None of these tactics requires the

¹⁹⁹Such constraints may derive from internal public or political opposition or the costs of increasing control may be greater than the expected benefits.

²⁰⁰The asymmetry of attention is a concept, which aids in arguing that the weak actor can counteract the asymmetry in aggregate structural power.

tangible resource of aggregate structural power.

What exactly was the South African approach to the negotiations? It was pragmatic, in that much emphasis was placed on preparation and homework. Initiatives were undertaken via NEDLAC to explore the costs and benefits of the agreement in consultation with all relevant stakeholders. These stakeholders provided critical feedback on where South Africa's offensive and defensive interests lay and were part of the foundation for building the crucial negotiating directives. The importance of these win-sets lay in their utility to plan ones offensive and defensive approach to the negotiations. These win-sets dictated where South Africa's national economic interests lay whilst national policy provided the substantiation for its demands.

South Africa's ability to ward off access to its fishing waters was supported by its' argument that this issue was of national competence and that it would not enter into an agreement on the issue so long as a National Fisheries Policy was lacking. South Africa's hard-nosed approach to this issue was due to its issue specific power, since it had the discretion to decide whether or not to allow access. Even the EU tactic of linkage, arguing that no agreement to access South African waters would jeopardise the FTA, was knocked down when South Africa countered that the issue was a sensitive regional issue and that it could not proceed without a national policy framework. This "national policy linkage" manipulates respect for sovereignty and internal democratic decision making procedures. The EU had to tone down its demands, as it obviously could not demand for an agreement that that did not abide by the tenets of liberal institutionalism.

South Africa strategically articulated for and pursued the establishment of general guiding principles that were to direct the ensuing negotiations. This was a rejection of the EU package type approach to negotiations opting rather for a progressive summation²⁰¹ approach. This shrewd and strategic approach by the South Africans laid the foundation on which the rest of the agreement was built on. South Africa utilised its regional identity to secure a critical developmental guiding principle that strengthened its ability to demand certain developmental

²⁰¹ Discussed in chapter 1

concessions for itself and its regional partners. Only after these principles were settled on, did they proceed to iron out the details of the agreement.

An exploration of what could have altered the parameters of the EU's mandate revealed that the internal dynamics of the Union played a significant role in contouring the final outcome. As Chapter 2 indicated, the internal preferences and coalitions of the Council reverberated onto the negotiation process and by implication affected the outcome. During negotiations in the Council, members drew on issue linkages. This issue linkage facilitated the coordinating process of the Commission and resulted in more comprehensive negotiations between the Commission and South Africa. The fact that some member states altered the parameters of their mandates on some issues had little to do with South African efforts, but a lot to do with the internal horse-trading that occurred among Council members.

The EU negotiators on many occasions claimed that they faced a formidable opponent in South Africa who, in spite of being perceived as the weaker side, had increasingly adopted combative tactics in replacement of the "moral card". This is not meant to discredit the power of normative arguments like: developmental arguments, the SADC first principle or Mbeki's response in regards to the Wine Debacle in which he accused the developed world of "shameless self-interest"²⁰².

The South African negotiating team emphasized the importance of flexibility stating that it increased the chances for reaching an agreement²⁰³. In regard to South Africa relinquishing concessions on the "Wine, Port and Sherry" issue, it was emphasized that flexibility was important in order to save the overall agreement²⁰⁴. Thorough analysis of their negotiating behaviour reveals that the guiding fundamentals of "knowing what it is you want, searching for overlapping interests and defining problems, goals and frameworks for negotiating", have been decisively applied by the South Africans. As Smallberger pointed out, there were

²⁰² Although he was speaking at the launch of the African Renaissance Institute, he was no doubt referring to the ongoing at that week's negotiation round with the EU. This example not only pinpoints the use, by the South African's, of normative arguments but also the use of alternate forums and multilateral channels to challenge the EU (the North). Refer to *Many in developed north have lost sense of human solidarity*, Speech by Thabo Mbeki at the launch of the African Renaissance Institute, in Business Day, 13 October 1999

²⁰³ Refer to linkage and how it increases the size of the pie, therefore allowing for more chances to link interests.

²⁰⁴ Interview with Smallberger, W. - Deputy Director Bilateral Trade in The Department of Trade and Industry, 3 July 2001, 11:00am, House of Trade and Industry, Pretoria

no substitutes for a good argument or proper preparation, moreover, that one cannot expect accommodation if your argument is based on unfounded developmental or ideological sentiment.²⁰⁵ Therefore, an argument that does not provide for a well researched or multilaterally accountable structure that enables the counterpart to show generosity without undue fear of being challenged by third parties would probably not be accommodated.

The South Africans' approach to these negotiations is reflective of a decision-making not a strategic mode. This substantiates the assertion that the first priority for a negotiator is to structure the situation and hence the emphasis being on preparatory work i.e. to know what it is you want to achieve and to know your issue of engagement by doing thorough homework beforehand. The tactical arsenal of the South African team demonstrated a number of options not based on structural power resources:

Manipulation of (a) the **CNN factor** in regard to issues being negotiated can help sway the outcome. South Africa utilised its' press machinery extensively, in discussing EU ploys and demands, in efforts to nationalize and internationalize specific sensitive issues (like wine, agriculture and fishing access) and in return mobilized sympathy for its position on such issues. This "CNN effect" of encouraging media coverage and holding press briefings, not only has an informative role, but also publicizes the on goings and issues at stake. Whilst trying to avoid suggesting that there is a causal link between the influence that the media wields and changes in the behavior or concessions of the negotiating parties, it does ply on the pressure, creating civil society awareness and support or opposition which can be brought to bear on the negotiations itself.

In line with its acquired combative style, South Africa challenged some of the European demands not only unilaterally, but complemented these by seeking out (b) **multilateral channels** (i.e. WTO, CAIRNS²⁰⁶, & G-South²⁰⁷) With it as a

²⁰⁵ Smallberger, W. *Ibid.*

²⁰⁶ CAIRNS Group is a group of agricultural exporting nations (Argentina, Australia, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Fiji, Guatemala, Indonesia, Malaysia, New Zealand, Paraguay, Philippines, South Africa, Thailand, Uruguay) who are united in their attempts at bringing down agricultural protectionism in the US, EU and Japan. Refer to *SA to meet farming allies*, by John Fraser, in Pretoria News Business Report, 26 August 1999
SA and CAIRNS Group allies demand end to farm export subsidies, by John Fraser, in Cape Times Business Report, 6 July 2000

rising middle power it has and is continually engaging itself internationally to build up its muscle power. The utilization of (c) **national policy/program linkages** [i.e. GEAR, MIDP, Spatial Development Initiative (SDI) and Industrial Development Zones (IDZ)] to create favorable conditions for the economic interests of EU lobbies aided in swaying support for a generous offer to SA, especially in regards to industrial manufacturing. Thus, negotiators should utilise their country's industrial policy (manufacturing or agro industry) to strategically acquire issue specific power on certain issues. In addition ones (d) **“bureaucratic_inexperience”** could be exploited to secure delays or to avoid being forced into making certain concessions. South Africa's insistence that the lack of a National Fisheries policy meant that it could not be forced into taking policy decisions that had to be decided at a national level was an exercise in behavioral power. The employment of this tactic can only be credibly applied in those instances where liberal institutionalism pervades decision-making structures.

Therefore, emphasizing “inexperience” and exploiting where evident their (e) **domestic liberal institutional decision making structures** are important contextual factors for the negotiator. A strong accountability to the domestic constituencies, means before confirming agreement, negotiators must consult with their constituencies. Such accountability can be tactically employed to stall or avoid making concessions during the course of negotiations. Therefore, negotiators from peripheral states must learn how to exploit their decision-making structures or those found in the pluralistic system of the opponent. As the empirical evidence indicated, there is a direct link between international trade negotiations and domestic politics²⁰⁸ The reason is that domestic negotiations (in the EU and South Africa) revolve around the demands of different interest groups²⁰⁹ and it is therefore, important to consider the degree to which such domestic negotiations can determine the content and size of win-sets (negotiating directives). Furthermore, these national constituencies exert control over the outcome as they

²⁰⁷ South Africa with other key strategic international trade partners (India, Egypt, Brazil and Nigeria) has initiated policy co-ordination through this group that has been dubbed G-South. The aim of the bloc is to jointly represent the interests of developing nations inside the WTO. Refer to *India and SA agree to begin talks on free trade*, by John Fraser, in *Star Business Report*, 30 June 2000

²⁰⁸ Simultaneous inter-state and intra-state negotiations are likely to occur. Note these intra-state negotiations are conditional upon the character of government in the parties concerned, since it is based on liberal institutionalism and notions of public penetration and participation in government structures.

²⁰⁹ This would include: business, unions, local manufacturers, in fact any enterprise that is linked to the trade in goods or services

ultimately hold ratification powers. Inside the EU we saw how internal preferences and coalition's fostered tradeoffs and linkages amongst the members.

Whilst the strong majority and discipline within the governing ANC party, arguably increased South Africa's win-set, as it gave cabinet (the central decision makers) autonomy from their constituents and afforded them flexibility when defining their win-sets. However, inadvertently, this autonomy from domestic pressure meant that South Africa's bargaining position internationally was relatively weaker. In light of the ANC majority in parliament and its' strict party discipline whereby parliamentarians are required to vote according to party lines, the argument of authority could not be exploited to its' fullest tactical advantage. Since, South Africa arguing that it would have to reject a EU proposal because it would not be able to obtain the required acceptance back in the South African parliament was not a credible option. South African negotiators have since come to realize the disadvantage, which state autonomy presents especially when it comes to taking a hard nosed approach to concession making. In fact, the South Africans are presently researching ways on how to improve bureaucratic processes, so as to obtain a more efficient and stealthy organizational decision making structure which can be strategically utilized in the course of future international negotiations.

Therefore, in its efforts to develop an adequate and effective negotiating capacity, ACP countries should fully exploit the existence of their national pluralist systems. Consultations within government and outside government, amongst unions and business are important for devising worthy trade strategies by lending an air of legitimacy to arguments employed. Also any agreement with the north is certain to be conditional upon principles of "democracy", rule of law, good governance and human rights. ACP countries that have genuine pluralist systems should exploit these in the course of negotiations, especially when being bulldozed into making an array of concessions.

Perhaps one of the most constructive ways to reinforce effective and comprehensive analyses is through the active involvement of all relevant stakeholders (this should include parliamentarians, organised workers, women, farmers, business and regional stakeholders) Such participation will serve to broaden the sources of information and deepen the insight available to

government. Broad consultations give legitimacy and if the decision making process was truly inclusive then, such decisions will in most instances be respected by the North, especially since liberal institutionalism is a cornerstone of their foreign policy. What this all means then, is that the degree to which intra-state negotiations influence outcomes is conditional upon the level of pluralist institutionalism and ratification procedures present in the negotiating southern state.

(f) **International networking** and active participation in international forums (like the WTO or CAIRNS), will not only publicise your countries ideas/principles but furthermore can aid in the initiative to introduce into the international system new international trade principles and norms. This can condition the acceptance of ones principles internationally thereby making the task of bilateral opinion swaying more probable. The establishment of working alliances with like-minded countries” (i.e. like CAIRNS GROUP and G-South) which having the strength in numbers and pooled resources, can then act as the main agents of progressive change in the multilateral arena (be it in creating intellectual property right laws that are sensitive to the developing world’s needs or in squashing agricultural protectionism.) This way they can tailor multilateral rules (i.e. transform the rules and process that underwrite rule making so as to make them more suitable for developing countries), which will permeate their bilateral relationships and negotiations. Support for this argument can be found with Krasner²¹⁰, who argues that even though the third world lacks structural power, it can acquire power and control. The strategy for achieving this objective is to change the rules of the game in various international issue areas; however this can only be effectively implemented if working alliances are first established.

Weak states are argued to fare better in negotiations in which it is (g) **defending against a perceived injustice** by the strong state. Because, for one, it is believed to be much easier to rally people around a perceived injustice or threat and two, it is a credible option for the weak state to threaten sanctions against the strong, thus broadening its range of tactics. This was especially true in regards to Europe’s Common Agricultural Policy, which internationally is regarded as unfair.

²¹⁰ Krasner, S.D.; Structural Conflict: The Third World Against Global Liberalism, University of California Press, Berkley; California, 1985, Pg.3

(h) **Regionalism** offers a better capacity to negotiate for ones developmental needs. Under GATT, developing countries that have regional trading partnerships are allowed waivers and derogations from the reciprocity and MFN principles. Thus, negotiating under a regional context allows LDC's to secure waivers by exploiting the dynamics of regional joint production schemes. Furthermore, they would also be able to secure better access for products and services under cumulative rules of origin, since bilateral negotiations would preclude beneficial cumulative rules of origin from being applied.

4.2 INSIGHT FOR THE *SOUTH*²¹¹ ON CONDUCTING TRADE NEGOTIATIONS WITH THE NORTH

The above-mentioned findings have important implications for the analysis of power in interstate negotiation. They suggest that the issue-power balance and the actor's tactical efforts to alter it should be the centre of analytical attention. Neither side should assume that the party with the greater aggregate power would win the negotiation. Negotiators must be able to assess the issue power balance at any given point in the negotiations as well as understand to what degree and to whose favour the balance is changing. Both actors should be aware of the systemic and contextual factors and use these to their fullest advantage. Understanding the context will aid negotiators in determining the right moment for pursuing a particular tactic and also help them determine what the range of their tactics should be. Learning to exploit contextual and systemic factors is especially critical for the weak state, since such factors often serve as constraints on the strong state's behaviour.

Realistically can weak states despite their power dispositions, achieve some if not most of their objectives? Are ACP countries sure to succeed if they imitate South Africa's tactical approach? In response to the first question yes, for weaker states maintaining and strengthening their natural advantages can be the most effective means to achieve their objectives. States need to identify tactics that are based on sources that do not derive from structural power resources but rather from a

²¹¹ The "South" is used to refer to those countries deemed third world / peripheral. In this discussion we will be referring to peripheral (ACP) and semi peripheral countries (semi industrialised / rising middle powers)

favourable issue power balance or the creative use of behavioural power.

Access to information, consultations and greater participation, whilst important are certainly not sufficient where it is the inequalities of resource, skills, wealth and power that weigh heavily in negotiations. Fortunately, structural power inequalities can be challenged and possibly overcome. The conceptual ideas provided by the discussion on issue-specific power and behavioural power, can be employed to escape structural power deficiencies. Issue specific power requires identifying your capabilities and position vis-à-vis another actor in terms of a specific mutual issue to be negotiated.

A suggestion is to distinguish between “natural” issue-specific power and “acquired” issue-specific power.²¹² The issue specific power held by South Africa in regards to the automotive industry was so because of its devised Motor Industry Development Programme. The MIDP, (an exercise in behavioural power) was one of the main arguments, which supported its efforts in winning the related concession from the EU. As discussed behavioural power is the process, by which actor’s manoeuvre and use their resources in their attempts at altering the issue power balance, since it is this power balance, which determines outcomes. In South Africa’s case it was the MIDP that bought it the generous offer in regard to automotive liberalisation, as it created the favourable investment and profit opportunities for European industrial interests.

Southern countries cannot assume that because the north may owe it its bread, that they should approach and conduct themselves like supplicants²¹³ rather than hardheaded negotiators. ACP countries in dire economical and financial straits must by all means avoid the linking of aid to trade concessions, for this is a highly manipulative and costly tactic. They need to take into account the changing international environment of the North-South discourse, in which well prepared briefs and mandates, rich in detail, are a must. Normative arguments cannot be solely relied on. The SA-EU negotiations were conducted in a business like tone and were strictly contractual, thus reflecting the new post-Uruguay trade environment.

²¹² Note these terms are my own formulation and suggestion.

²¹³ Tandon, Y. ACP-EU Negotiating Mandate, found at www.seatini.org/reports/ACP-EU%20Negotiations.htm

These governments should dedicate their energies towards critically subjecting proposals and current agreements to rigorous analysis so as to acquaint themselves with not only the implications that are likely to follow but also whether their existing national policies (aims) and programmes comply with or contradict such demands. Even if there is a contradiction, this does not mean that they must make the adjustment by altering their national policies; instead they should use such national frameworks to their advantage. Like the way SA used its MIDP to avoid liberalising its automotive industry. Using national frameworks to avoid liberalisation is endorsed by a general principle of the WTO, in which derogations from its obligations are allowed where there are credible existing national policies to back up claims (i.e. refer to infant industry arguments).

In addition, knowledge about the internal decision making procedures and structures of the opponent is important. In this case, the Union's institutional armoury was viewed as being managed to deliver predetermined results. Thus, an understanding of this would serve any opposing negotiating team well in their interface with the EU, because with knowledge about how decisions are made within these structures (the kind of linkages and horse trading that occurs), one can then employ this tactical knowledge in ones negotiating strategy. An example of this was when the special bilateral ties between SA and specific member states (UK & Finland) permeated negotiations through the EU presidency and official statements of support. ACP countries can therefore, use their special bilateral ties to push for the kinds of concessions they need.

Southern countries should pressurize the north to comply with the developmental letter and spirit of their Marrakech undertakings and their Uruguay Round Obligations²¹⁴. Furthermore, with growing public awareness through out the world of the inequities of the WTO system, the bargaining hand of southern countries is strengthened to bring greater legal, moral and political pressure to bear on the north. This requires that southern governments form working alliances, with NGO's and civil society so as to extend and deepen the impact public opinion and the media can play in their repertoire of strategies. As noted,

²¹⁴ Keet, D.; The challenges facing African countries regarding the WTO Trade Regime since the Third Ministerial Meeting in Seattle, IGD Occasional Paper No.25, Institute for Global Dialogue, South Africa, May 2000

the North especially the EU, have a tradition of being generous to LDC's. Highly negative publicity will surely impact on this international image and will no doubt want to be avoided.

South Africa like other rising middle powers²¹⁵ is a semi-peripheral country, and in reality this semi-peripheral status no doubt favoured it in these negotiations. A peripheral status would have deprived SA of a forte that worked to its advantage during negotiations with the EU. Exactly, what is this "forte" that distinguishes it from peripheral countries? Like other rising middle powers, South Africa is a designated emerging market, with an economic and government system that is deemed far more developed compared to other peripheral states. This emerging market status was the source of engagement for negotiations. The EU, under the terms of its' Regional Economic Partnership Arrangement, is seeking out special bilateral relationship with those countries that hold this status. Peripheral countries, on the other hand have already been given a multilateral relationship under the Cotonou Agreement.

What is the significance of emerging markets to the North? Why will the north pursue special relationships with them? Mbeki statements²¹⁶ about the new economic world order hold the clue. SA and other emerging markets are the feedstock for global accumulation; the north has sought out special bilateral partnerships with these economies for they hold the key to the north's continued accumulation²¹⁷. The present New World Order of globalisation is another stage

²¹⁵ Includes the likes of Brazil, China, India, Argentina, Thailand, Nigeria, Egypt

²¹⁶ _"The message that comes across is that the market is a cannibal that feeds on its own children...taking advantage of the fact that the fattened being described as being in transition is fat enough to be an attractive meal and yet not fat enough to defend himself or herself from attack by the cannibal progenitor...so it comes about that the market feeds on its most robust children seemingly as an expression of a necessary condition for its existence...it becomes difficult to avoid the conclusion that the progression from developing to emerging market to developed is merely a theoretical model in the minds of intellectuals, a manner of creating the circumstances for the growth of the feed stock which the cannibal needs ...we must boldly confront the question of what our response should be to the seemingly reality that nobody knows how humans might proceed from the condition "developing" to the actual status "developed" without the threat of being devoured before you achieve the age of maturityof course this question arises because the expression of the market seems to have demonstrated that its own "imperfections" have led and will lead to negative results. We must determine what is wrong. The economic questions that have been raised have their mirror reflection in the world political order with the political and economic being elements of an integrated and mutually reinforcing set of circumstances which must be addressed together" Thabo Mbeki, NAM Conference, Durban, 1998

²¹⁷ According to Amin, the world system is divided into the driving centres (the North) and the driven (the South) or dominated peripheries that are shaped by the centres. The whole – the world economic system / world economy – is superior to its parts (local economies) and is not the sum of them. From this Amin deduced that development (other than peripheral dominated growth) for the South would henceforth entail a rupture with the logic of worldwide accumulation and could not form part of it, because from the beginning, development at the centres has been autocentric. The centres have subjected and continue to subject the peripheries to the demands of their accumulation, in order to accelerate that accumulation process. Emerging economies are the instruments for this accumulation process, as their societies fulfil the demands of worldwide accumulation. The North is fostering growth within the emerging

in this global accumulation and requires new rules and regulations as embodied in a FTA's, so as to expand the mobility of finance, capital, goods and labour.

What is the relationship between this New World Order described above and the EU-SA FTA? Globalisation is the political project of the most powerful global economies and is the means by which to meet the demands of their own accumulation. Trade is now both an end and a means. Trade is the lever through which the most powerful countries and their companies manipulate the kind of agreements that they need out of the rest of the world. They do this to open up the world in ways that are conducive to their national economic interests. The bilateral negotiation of Free Trade Agreements with headhunted emerging countries is for the purpose of achieving this objective.

But, what is the importance of these emerging markets to the North? What resources/issue specific power do these emerging markets wield that other peripheral states sadly lack? Mbeki's statement indicates that the progression into a developing or emerging economy and the growth occurring in these economies, is the feedstock which the North needs to fuel its own accumulation. Thus the north feeds off this growth and inhibits "emerging" countries from truly reaching the status of developed. Capital accumulation on this global scale is compelled to control the world market and seeks to restructure that global accumulation. The expansion of the frontiers of the world market used to be done via the sword but today the WTO, WB and IMF use SAP and liberalised trade policies. The North is expanding the frontiers of "what the Market is" by forcing countries to deregulate their markets in the name of liberalisation, which is supposedly to facilitate growth.

Countries of the South have been led to believe that greater liberalisation means greater development, industrialisation and other benefits of modern growth. Also attached is the belief that they are transforming from an underdeveloped to an emerging economy or from emerging to a developed economy. But on closer

markets, but because the transition from emerging into developed, by the south would entail a "rupture" with the logic of worldwide accumulation and could not form part of it, thus the market (the North) feeds off that which it has fostered, in order for it to continue accumulating. As Mbeki suggested we cannot separate this economic imperfection from the world political order, because in order for the north to stay at the top of the international hierarchy it has to feed off these emerging economies. Refer to Amin, S.; Maldevelopment, London, 1990 Pgs. 152, 169, 219

inspection this is not entirely true. By the South allowing for greater liberalisation it is in fact fattening itself for the kill – i.e. its economy shows signs of progression, there is the growth of lucrative businesses and its population increases its buying power; since with growth arguably comes an increase in wages.

But this positive turnover in the South is conducive to the North's accumulation process because (1) increased wages in the South means that the public now has more buying power, which translates into greater market for capital intensive Northern goods (technology and services²¹⁸). (2) The calls for greater liberalisation cum privatization. This is arguably said to be good because it increases competition and efficiency. However, in reality privatisation is siphoning off lucrative businesses to northern TNC's. Privatisation is the means by which northern companies come to dominate areas of business that they specialise in. These TNC's with the assistance of their governments who make bilateral demands on peripheral countries are able via acquisitions and mergers to dominate certain areas of business in emerging economies. In the end this not only decreases competition but also is the means of driving the North's accumulation process. The analogy being that the North feeds off this growth occurring in the South, thus inhibiting it from truly reaching the status of developed. Semi-peripheral countries are the main component to fulfilling the north's accumulation process, as their attractiveness lies in their semi-industrialized state. Bilateral Free Trade Agreements then are a means of gaining unfettered access to emerging economies. Thus this semi-periphery status is what may have afforded South Africa to wield a type of issue specific power that other LDC's sadly lack. This could explain why certain countries (like SA) were and are headhunted by the EU for special bilateral negotiations whilst much of the remaining LDC's have been banded under the Cotonou Agreement. _

As a result the SA-EU TDCA should not be regarded as a model for ACP negotiations. The TDCA should be seen as a bilateral agreement reached between the EU and a relatively industrialized developing country. As a trade agreement its main potential benefits to South Africa lie in manufactured goods that most ACP countries do not have the capacity to produce or export. Furthermore, the TDCA

²¹⁸ Services in banking, e-commerce, insurance and mobile telecommunication

remains restrictive, albeit to a much lesser extent than comparable "association agreements" the EU has with Mediterranean countries, in agricultural products and agro-industries – it is with these issues where most ACP countries need to begin their struggle for development and industrialization.

Thus while not a model; the TDCA can be an important source of lessons for ACP countries. It is the product of hard and lengthy bargaining, in which haggling to promote the vested interests of various EU lobbies often held sway over professed intentions to promote growth, development and democracy in the developing world. The demands on capacity, both in the government and civil society, were significant. A major challenge is to dissect the lessons at various levels and take them into the ongoing negotiations between EU and the ACP.

4.3 Strengthening the South's negotiating capacity

The current feeling of helplessness that developing countries cannot effectively influence the developed world should be replaced by a new mood that they can achieve their objectives if a number of them are united and well-prepared. There should be a change in developing countries strategy and approach. They must not allow themselves to be bulldozed into making one-sided concessions. They must resolve to engage in a meaningful negotiation of give and take and insist on a commensurate concession from the other before agreeing to any concession from ones own side.

Today's trade agenda goes far beyond trade in manufactured goods; many LDC's sadly lack the manufacturing capacity to take advantage of the trade in these liberalised "goods" which includes intellectual property rights, biodiversity, services in banking or persons. What can they do? For one they must adapt to exploiting systemic opportunities in their favour. They must continue utilizing the multilateral trading regime (WTO) to assert their developmental needs. This can then permeate into bilateral relationships. Bilateralism is eroding multilateral rules that work in their favour (i.e. enabling clause Part IV of GATT 1994 that allows for non-reciprocity, i.e. special and differential treatment for developing countries, General Agreement on Tariffs and Trade (GATT "CONTRACTING

PARTIES”) allows derogations to the most-favoured nation (non-discrimination) treatment in favour of developing countries. In particular, its paragraph 2(c) permits preferential arrangements among developing countries in goods trade.) They should therefore remain committed to WTO machinery and use it to reassert their developmental needs.

The effectiveness of the developing countries will be enhanced if there is better co-ordination among them. The exercise of co-ordination should start right from the stage of identification of interests and formulation of positions and stands. Burden-sharing in preparations and exchange of information, will avoid duplication of efforts and ensure better utilisation of their scarce resources. For this regionalism is one option. Many of the LDC’s economies are skewed towards agricultural export and have no industrial base; they would be better off opting for negotiations in a regional context not on bilateral terms. In a regional context they stand a better chance of pushing forward their developmental concerns. Whilst the WTO provisions don’t govern an FTA between a developed and a developing country it does however, make provisions for waivers for regional groupings and their developmental concerns. Furthermore, within a regional setup, by seeking out programs like IDZ’s or SDI’s they can pursue and obtain issue structural power since they can offer competitive and attractive conditions for foreign investment which could translate into having the bargaining upper hand when at the bargaining table. Regional groupings foster greater joint production schemes amongst regional partners, in strengthening manufacturing capacity and also allowing for more cumulative rules of origin that enables greater liberalized trade in such goods or services.

Using their strategic location as ports of entry/export routes also gives them strategic power. As bilateral negotiations have their own fluctuating power structures, determining the nature of the issue power balance before commencement of the negotiation will reveal not only each side’s issue-level strength and weakness, but may also suggest tactics that each side could utilize to achieve certain desired ends. For example, many of those countries rich in biodiversity are found in the developing world; this gives them the issue power when it comes to the granting of access to foreign R&D or pharmaceutical companies. Many are so desperate for any kind of foreign “investment” that their

governments don't stop to adequately consider what *kind of investment* they need, most of the time content with receiving a meager portion of the royalties. These governments must realize that they are holding the trump card and can dictate on what terms foreign companies will be allowed to exploit their resources. Instead of granting R&D rights they should via domestic policy contour the shape and form of this "investment" by fostering joint partnerships. As R&D must allow for technology and knowledge transfer, apart from bringing in specialized people, home trained people should also be involved.

The impetus behind liberalised trade for the developing world is ***to develop***. The success of their negotiations can only be measured in terms of how it will foster the type of "*development*" they are striving for. Implementing domestic frameworks (like the MIDP) in issue areas of power: biodiversity, agro industry and natural resource manufacturing means that they can pursue "acquired" issue specific power.

National governments have the authority to institute basic domestic regulations in regard to *corporate responsibility*. This may be one way one pushing developmental progress i.e. skills transfer, technology transfer and knowledge transfer via on job training. The North commonly draws wide-ranging linkages; the south should start doing the same if they want to achieve their developmental aims. As trade policy is meant to complement other national objectives and policies (industrial policy).

In order for local industries to build up their capacity to compete successfully, this requires not just time but also demands that the state nurtures this, by subsidizing and encouraging local firms. The maintenance and enhancement of such sectors requires protection from world markets, as a result the conventional model of competition being articulated and embraced, is not appropriate for developing countries. Whilst states are told to avoid dictating conditions of entry to TNC's, they still retain their prerogative over national policymaking and they can institute a general framework of obligations on all firms (foreign/local).

Corporate responsibility of employers to their employees especially those groups deemed as disadvantaged groups should be implemented through national

legislation. Such legislation will encourage/direct all companies (especially foreign) to invest in their employees. These company training programs can enhance the skill development and technical knowledge of the local workforce and also lead to the transfer of knowledge. If countries of the south are going to liberalise investment hoping that it is going to lead to growth, they must realise that the primary responsibility for determining national economic priorities cannot be left to the market but must be assumed by a state that is capable of pursuing developmentally desirable national economic policies. States therefore, must identify their national economic goals and the state must operate with various degrees of influence to urge companies to help it achieve these goals. This is the only way an export led growth strategy as pursued under a bilateral FTA, is going to lead to successful negotiated outcomes (i.e. is going to eventually lead to the south achieving its' developmental aims).

Ongoing mergers and acquisitions allow northern parent companies to dominate local markets. Developing countries must have flexibility to choose the paradigm of competition and competition policy that is deemed suitable to their level development, these ongoing mergers and acquisitions threatens competitive position of existing local firms but also inhibits domestic investors from pursuing such areas of investment. This is where government procurement as an important tool for economic social development and nation building comes into play. It's imperative that developing countries retain this right. If it is opened up through the national treatment, MFN principle or FTA then scope for government to use procurement as instrument for development is curtailed. Developing countries must make full use of procurement to give specific groups especially those under represented in economic standing preferences and for procurement where foreign firms are invited to bid; preference can and should be awarded to particular countries (other developing countries that have the capacity to provide products or services). This will increase south-south co-operation and solidarity and help ensure that the growth occurring here is not siphoned off for the north's accumulation process but remains inside the south so as to generate development within the periphery.

The biggest strength of a negotiator lies in having the full support of his her country, behind the position taken. Developing countries must improve and

strengthen the decision-making machinery and institutions, if their positions are to enjoy strong political backing. Thus, negotiators will be able to negotiate with full confidence and strength. Also, having such pluralistic structures in developing countries means the pressures, which the major developed countries normally build up on them in the course of negotiations, will be much less effective.

Peripheral countries must evaluate the degree of their “dependence” with core partners. A high dependency is most likely due to aid and an export market relationship that dates back to colonial ties. These countries need to seriously evaluate their dependent relationships and pursue alternate markets. In negotiations with the core they must continually resist any linkage between aid and trade. The aid linkage allows the North to wield greater power at the bargaining table. These aid-trade linkages are highly manipulative and coercive and should be avoided; trade negotiations should strictly stick to the trade issues.²¹⁹

They should in advance prepare their industrial policy aims and develop competent national programs for issues like competition, government procurement and development. Trade is a means and ends in itself for the core, whilst for the periphery and semi-periphery trade it is a means to development. Development is the ultimate objective of many developing countries; the reduction of barriers (FTA’s and regional trading arrangements) is only a means to this. The test of rule therefore, should not be whether a policy is trade distorting but whether it is development distorting.

Idealistically GATT and the WTO were intended to design and maintain fair (discrimination free) rules for international trade and contribute towards a balanced and predictable international trading system designed to promote and produce development. The South’s approach should therefore, be based on economic and developmental strategy not political expediency. Poorer developing countries cannot take advantage of industrial liberalisation due to their weak or nonexistent supply capacity. Developing countries with weak domestic industrial bases must safeguard their interests (by employing infant industry arguments)

²¹⁹ Aid should be given on purely humanitarian grounds grounded on normative intent.

and not give into liberalising at a rate and sequence which their local industries are unable to bear. Developing countries whose service enterprises and industries are unable to withstand competition must make full use of the development principles and provisions in GATS. They must remember that under multilateral rules they can choose when, which sectors and how much to liberalise. Service liberalisation in areas and modes of supply of interest to developed core (financial services / telecommunications) has seen quicker results than areas of interest to developing countries i.e. export of natural persons. Developing countries then, can also pursue these in their bilateral trade negotiations.

In the final analysis the points made here are not in anyway suggesting that southern countries (if they happen to negotiate with the EU) will be able to achieve the same end result as epitomized in the SA-EU TDCA but, that if this link between process and outcome is indeed tenable, then closer deliberation of the process is warranted. It is this process, which holds the various potential keys with which to unlock the type of outcome that is sought. The empirical evidence of this case study has corroborated that: (1) How you approach the negotiations and how you play the game (i.e. the tactics employed do) determines outcomes, but also (2) that internal institutional processes and decision-making structures can pivotally contour such outcomes. Southern states in spite of their lack of aggregate structural power to influence outcomes, can achieve some degree of negotiating “victory”, by paying closer attention to the process, revising their domestic decision making structures and pursuing “acquired” issue specific power via national programs and frameworks.

APPENDIX

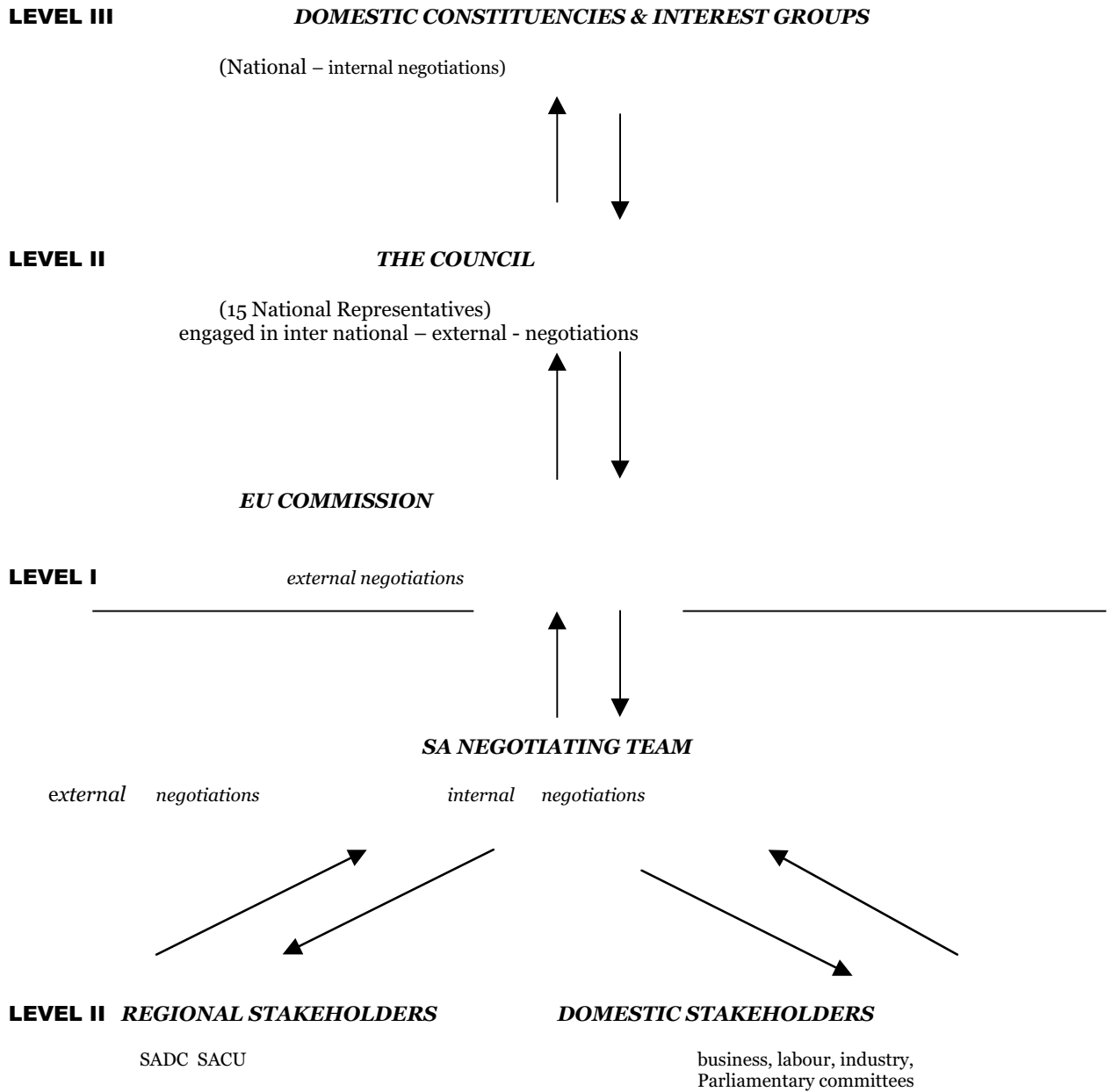
List of attachments:

- **Chronology of the SA-EU negotiating process**
- **Illustration 1: Schematic of two-level and three-level games in the SA-EU negotiation process**

CHRONOLGY OF THE EU-SA NEGOTIATION PROCESS

Dec. '94	The European Union approaches SA to come to a long-term trade and cooperation agreement; however it would take more than a year before the European Commission would agree to a negotiating mandate. European Commission's General Affair Council articulated a proposal for SA to consider. It set out only the broad parameters, with the specific details left to the bilateral dialogue
Jan. '96	EU agrees on its negotiating mandate, but SA delays negotiations as it struggles to finalise its formal response to the EU mandate.
Feb. '96	the South African governments draft National Growth and Development Strategy is made public .By June '96 this proposal is finalised as the GEAR strategy ²²⁰
Oct. '96	The South African government receives mandates, via NEDLAC, from business and labour
Dec. '96	South African officials hand over their official response to the EU mandate. The document outlines Pretoria's position on the impending EU-SA talks. The Science & Technology Agreement is signed on 6 December 1996.
Jan. '97	The road to formal negotiations is opened.
Apr.'97	SA officially gets <i>qualified membership</i> of the Lomè Convention on the 24April 1997
2000	South Africa is made member to Cotonou Agreement, but its' bilateral TDCA with the EU supersedes this arrangement.

²²⁰ Note the evolution that ANC policy making underwent during the period 1994 – 1997, it was influenced by foreign perceptions, and pressures from foreign and potential investors and institutions like the World Bank and the International Monetary Fund, also the Growth for All document of the South African Foundation (representing the countries 50 largest corporations), all influenced government thinking. As a result analysts of GEAR label its proposals as neoliberal in character. Refer to article by Williams, P. and Taylor, I.; *Neoliberalism and the Political Economy of the New South Africa*; in The New Political Economy, Vol.5 Issue. 1; March 2000



SCHEMATIC OF TWO-LEVEL & THREE LEVEL GAMES IN THE SA-EU NEGOTIATION PROCESS

BIBLIOGRAPHY

Books

Amin, S.; Maldevelopment, London, 1990

Bacharach, S.B. & Lawler, E.J.; Bargaining: Power, Tactics and Outcomes; Jossey Bass Publications, San Francisco, 1981

Bartos, O.J. Process and Outcomes of Negotiations, Columbia University Press, New York, London; 1974

Churchman, D.; Negotiation: Process, Tactics, Theory; University Press of America Inc.; Lanham, 1995

Das, Bhagirath Lal; The WTO: A guide to the framework for International Trade, Third World Network, Penang, Malaysia, 1999

Evans, P.B.; Jakobson, H.K.; Putnam, R.D. Double-Edged Diplomacy – International Bargaining and Domestic Politics, University of California Press, Berkeley, 1993

Habeeb, W.M.; Power and Tactics in International Negotiations: How weak nations bargain with strong nations; John Hopkins University Press, Baltimore, 1988

Henderson, J. & Appelbaum, R.; *Situating the state in the East Asian development process*, in States and Development in the Asian Pacific region, Sage Press, London, 1992

Ikle, F.C. How nations negotiate; Harper & Row Publishers, New York, 1976

Jervis, R.; *Bargaining and Bargaining Tactics*; in J.R. Pennock & J.W. Chapman (Eds.) Coercion; Nomos XIV, Chicago, 1972

Krasner, S.D.; Structural Conflict: The Third World against global liberalism,

University of California Press, Berkeley, California, 1985

Mautner-Markhof, F. (Ed.) Processes of International Negotiations, International Institute for Applied Systems Analysis, Austria with Westview Press, Boulder, 1989

Nugent, N. The government and politics of the European Union, Duke University Press, Durham, 1994

Pienaar, W.D. & Spoelstra, H.I.J. Negotiation: Theories, Strategies and Skills, Juta & Co Ltd, Kenwyn South Africa, 1996

Ravenhill, J.; *Negotiating the Lome Conventions: A little is preferable to nothing* in Positive Sum: Improving North South Negotiations; Zartmann, I.W.(Ed.); Transaction Books; US; 1987

Rittberger, V. & Mayer, P.; Regime Theory and International Relations, Clarendon Press, Oxford, 1993

Rothstein, R.L; *Commodity Bargaining: The Political Economy of Regime Creation* in Positive Sum: Improving North South Negotiations; Zartmann, I.W. (Ed.); Transaction Books; US; 1987

Stein, A.A. Why Nations co-operate: circumstance and choice in International Relations, Cronell University Press, Ithaca & London, 1990

Zartmann, I.W. and Bermann, M.; The Practical Negotiator, Yale University Press, 1982

Zartmann, I.W.; Europe and Africa: The New Phase, Lynne Rienner Publishers Inc.; Boulder, 1993

Journals

Ahwireng, O.R. & McGowan, P.J. *The EU-SA Free Trade Agreement* in South African Journal of International Affairs;

Vol.6 Issue.2, Winter 1999

Murray, J.S.; *Understanding Competing Theories of Negotiation*, Negotiation Journal, 2:2, April, 1986

McGinnis, M.D.; *Issue Linkage and the Evolution of International Co-operation*; Journal of Conflict Resolution, 30:1, March 1986

Wagner, R.H.; *Economic Interdependence, Bargaining Power and Political Influence*, International Organisation, 42:3, Summer, 1988

Wagner, R.H.; *Practitioners' views of International Negotiation*, in World Politics, 32:1, 1979

Carmichael, W.B.; *National Interest and International Trade Negotiations*, in World Economy, 9:4, 1986

Haas, E.B. *Why Collaborate? Issue-Linkage & International Regimes*, in World Politics, Vol43 No3, April 1980 Pgs 357-405

Huntington, S.P.; *Trade, Technology, and Leverage: Economic Diplomacy*, in Foreign Policy, 32, Fall, 1978

Hutton, N.; *Salience of Linkage in International Economic Negotiations*, Journal of Common Market Studies, 13:1-2, 1975

Fearon, J.D. *Bargaining, Enforcement and International Co-operation*, in International Organisation, Spring 1998, Vol.52 Issue.2

Fisher, R.D.; *Negotiating Power: getting and using influence*; American Behavioural Scientist, 27:2, November/December 1983

Williams, P. & Taylor, I.; *Neoliberalism and the Political Economy of the New South Africa*; in The New Political Economy, Vol.5 issue1, March 2000

Hopmann, P.T.; *Two paradigms of negotiation: bargaining and problem solving*; in Annals of the American Academy of Political and Social Sciences,

Vol.542, November, 1995

Holland, M; *South Africa, SADC and the EU: Matching bilateral with regional policies*; in The Journal of Modern African Studies; Vol.33 No.2; 1995, Pgs263-283

Main, L. & Skinner, C; *SA, Africa and the EU: Negotiating an African Renaissance?* in Indicator SA, Vol15 NO2, 1998

Mayer, M. *The EU- South Africa trade deal: implications for Southern Africa*; in Global Dialogue, published by the Foundation for Global Dialogue, Vol.4 Iss.2; Aug.1999

Putnam, R.D. *Diplomacy and Domestic Politics: The Logic of two-level games*; in International Organisation, 42(3), Summer 1988

Knopf, J.W.; *Domestic – International Interaction in the INF Talks*; in International Organisation, Vol.47, No.4, 1993

Jupille, J.; *EU bargaining positions and International outcomes*; in International Organisation; 53(2); Spring, 1999

Tandon, Y.; *ACP-EU negotiating mandate*, found at www.seatini.org/reports/ACP-EU%20Negotiations.htm

Tandon, Y.; *Cuba defiant: Report of Conference on Globalisation*; in SEATINI Bulletin, Vol.3, No.2, 31 January 2000

Keet, D.; *The challenges facing African countries regarding the WTO Trade Regime since the Third Ministerial Meeting in Seattle*, IGD Occasional Paper No.25, Institute for Global Dialogue, South Africa, May 2000
Sudworth, E. & K van Hove; *European Union-South Africa Trade Negotiations: Insights into ACP-EU Negotiating Process*, ECDPM Working Paper No.57, April 1998 found at http://carryon.oneworld.org/ecdpm/pubs/wp57_gb.htm

Torppa, R. *Negotiations at three levels: case study in EU-SA negotiations*, University of Bordeaux IV, May, 1998

Commission Document: Negotiation session of the Southern African Working Group, 4/4/95

Commission Document: Negotiation session of the Southern African Working Group, 4/5/95

Commission Document: Negotiation session of the Southern African Working Group, 19/5/95

Commission Document: Negotiation session of the Southern African Working Group, 31/5/95

Smallberger, W.; *Lessons learnt by South Africa during the negotiations in The EU-SA Agreement: South Africa, Southern Africa and the European Union*, Bertelsmann-Scott, T.; Mills, G.; Sidiropoulos, E. (Ed.); South African Institute of International Affairs, 2000

“*Submission on Preparation of a South African Mandate for Negotiation of a Bilateral Trade Agreement with the European Union*” made by the Portfolio Committees on Agriculture; Water Affairs and Forestry; Foreign Affairs and trade and Industry

Lee, M.C.; *SADC and the creation of an FTA in Southern Africa*; African Studies Program, Georgetown University Washington DC; Prepared for presentation at the African Institute of South Africa 40th Anniversary Conference on “*A United States of Africa?*” Pretoria, South Africa; May 30 – June 2, 2000

Keet, D.; *Rallying the Regions Sa-EU Negotiations Continue*; in Southern African Report; June 1997

Khor, M. ; *The WTO, the Post Doha Agenda and the future of the trade system: A development perspective* ; Third World Network, May 2002 at www.twinside.org.sg/title/mkadb.htm

Bhagirath Lal Das, *Strengthening Developing Countries in the WTO*, Trade and Development Series No.8; at www.twinside.org.sg/title/td8.htm

Chakravarthi, Raghavan ; *Integrate trade negotiations and supply capacity , R i c u p e r o* at www.twinside.org.sg/title/supply.htm

Bertelsmann-Scott, T.; *The EU-SA Free Trade Agreement and Southern Africa*; paper presented at a Conference organised by the South African Institute of International Affairs on *South and Southern Africa: Lessons for Emerging markets*, 16-17 July 1997, Jan Smuts House, Johannesburg

Parliamentary Announcements, Tabling Committee reports. Parliament of South Africa, No71, 1999, First session Second Parliament, Monday 15 November 1999

Newspaper

Automotive Industry, by Lani Holtzhausen, in Engineering News, 19-25 March 1999

“*Export or Die*”, says European car makers in SA, by Nicol Degli Innocenti, in Business Day, 27 January 2000

SA, EU Agree on wine, spirits deal, in Business Day, 13 June 2000

WTO to mediate in grappa dispute, in Wine, April 2000

An Italian change of direction is made on the road to Stellenbosch by John Fraser, found in Star Business Report, 15 November 2000

Sibisi, B.; *SA-EU Trade, Development and Co-operation Agreement: Briefing* ; presented to the Trade & Industry and Foreign Affairs Portfolio Committees; Economic Affairs select committee joint meeting, Parliament of South Africa, 17 September 1999

Grappa and ouzo misted over benefits of EU pact, by Dave Galloway, in Business Day, 12 April 2000

Booze rocks EU-SA marriage, by Tom Nevin, in African Business, December 1999

Last-ditch effort on trade deal, by John Fraser, in Business Report, 23 March 1999

WTO “brew-ha-ha” over SA labels, by John Fraser, in Mercury Business Report, 3 December 1999

EU freeze on South African wine not over until; accord is implemented, by John Fraser, in Star Business Report, 8 June 2000

EU-SA talks kick off on a “good” note, by Patrick Wadula, in Business Day, 19 January 2000

SA, EU agree (at last) on wine and spirits, in Daily Dispatch, 13 June 2000

Erwin “dismayed” that EU may re-enter booze fray, by John Fraser, in Mercury Business Report, 26 July 2000

SA punched above its weight in talks: inexperienced SA showed EU negotiators a thing or two during the recently concluded trade negotiations, by Dlodlu, J. in Business Day, 13 October, 1999

The Last Great Market in IHK Aktuell, Issue No.8, August 1999

Silent partner is wrong role for business, by John Fraser, in Cape Times Business Report, 8 September 1999

Many in Developed north have lost sense of human solidarity, Speech by Thabo Mbeki at the launch of the African Renaissance Institute, in Business Day, 13 October 1999

SA to meet farming allies, by John Fraser, in Pretoria News Business Report, 26 August 1999

SA and CAIRNS Group allies demand end to farm export subsidies, by John Fraser, in Cape Times Business Report, 6 July 2000

SA and India agree to begin talks on free trade, by John Fraser, in Star Business Report, 30 June 2000

“Let us cast our nets in your waters”, say EU officials, found at www.fm.co.za/01/0216/busaf/bbusaf.htm

Germany opposed trade deal with SA, by John Fraser, in Mercury Business Report, 29 January 2002

Benefits of Agreement will be some time coming, by Patrick Wadula & Linda Ensar, in Mercury Business Report, 29 January 2002

Dlodlu, J. *SA punched above its weight in talks: inexperienced SA showed EU negotiators a thing or two during the recently concluded trade negotiations*, in Business Day, 13 October, 1999

The Last Great Market in IHK Aktuell, Issue No.8, August 1999

SA takes its time over free trade mandate, in Mail and Guardian, 26 July 1996

End of Wine & Spirit Marathon, by Linda Ensar, in Mercury Business Report, 29 January 2002

EU deal clears way for investment, by Thabo Kobokoane, in Sunday Times, 31 January 1999

Mbeki Slaters EU trade betrayal, Sunday Tribune, 1 February 2000

Lawyer warns SA over EU trade deal, by John Fraser, Business Day, 21 June 2001

Wrecking Tactics threaten SA-EU trade deal, by John Fraser, Cape Argus, 19 February 1999

Never before have so many barriers been broken, by M. Laidler, in Business Day, 13 October 1999

Unlocking a massive potential, by Alec Erwin in Financial Times –Hong Kong, 29 November 1999

Small Firms targeted by German Investment, in Engineering News, 11 November 1999 @ www.engineeringnews.co.za

SA is Germany’s main African partner, in Engineering News, 11 November 1999

Contribution to SA increases, in

Engineering News, 3 November 2000

South Africa an attractive trade partner,
in Engineering News, 2 November 2001