

UNIVERSITY OF THE WESTERN CAPE

FACULTY OF LAW

**A CRITICAL ANALYSIS OF THE AFRICAN UNION'S SELF-FINANCING
MECHANISM**

BY

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**A Mini-Thesis submitted in partial fulfilment of the requirements for the degree MPhil
in the Faculty of Law, University of the Western Cape.**

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12 MARCH 2019

DECLARATION

I declare that, “*A critical analysis of the African Union’s self-financing mechanism*” is my own work, that it has not been submitted before for any degree or examination in any other university, and that all sources I have used or quoted have been indicated and acknowledged as complete references.

Gordon Adams



Signed



12 March 2019

DEDICATIONS

To my Lord and saviour Jesus Christ: Your strength, wisdom and protection have always been sufficient. Who would I be, were it not for your love? My strength and wisdom are found only in you.

To my late grandpa, George Alexander Adams: I know that you are laughing in heaven with the angels. You are fondly remembered and surely missed. Thank you for everything you did for me, I will never forget.

To my grandma, Irene Adams: Thank you for having taken care of me as a youngster growing up. Your strength and wisdom are what encouraged me to pursue things greater than what I could ever have imagined and to fearlessly seek understanding when it hides itself so well.

To my mother Sharon Adams: Thank you for everything that you have done and continue to do for my family. Knowing that you worked tirelessly for me, inspired me to work tirelessly at achieving my goals.

To my wife Ingrid Megan Adams: Words fail to describe what it means to have you in my corner. I love you with all my heart. Your drive to always do your best at whatever you set out to do is intoxicating and drives me to do the same.

To my kids Emily, Katherine and Alyssa Adams: Daddy will always love you. Thank you for your unconditional love. Strive to be better than what you were yesterday and you will achieve great things. I love you more than all the sand in the desert, all the stars in the sky and all the water in the oceans.

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Mr Capitalism himself, thank you Mark Hoskins for the invaluable contributions you made to my understanding of capitalism, colonialism and underdevelopment. Amidst your own PhD studies you always made time to listen to my thoughts, albeit sometimes at the initial stages scattered and murky. You opened my eyes to an entirely new world of knowledge which has undoubtedly changed the way I think about and understand history and its significance in relation to the present and future events. I would not be able to thank you enough for the support you provided me through this journey.

Thank you Prof Leon Loxton for your willingness to reshuffle lecture topics and take up extra administration responsibilities so that I could have some continuous pockets of time to dedicate and complete this project.

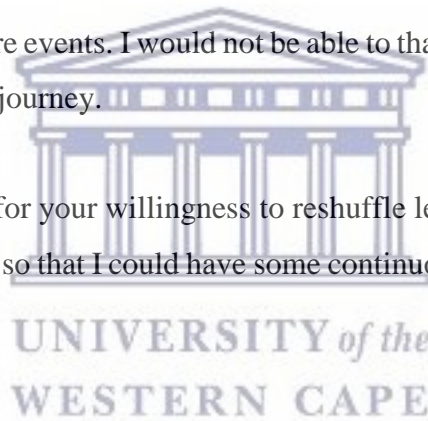


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¹ The numbering convention of the figures and tables in this mini-thesis is constructed with reference to the chapter section numbers. For illustrative purposes, Figure 2.2-1, refers to chapter 2.2 as figure 1 in that chapter section and Figure 4.4-2, refers to chapter 4.4 as figure 2 in that chapter section.

CHAPTER 1

INTRODUCTION

“Independence and self-reliance are critical to our spiritual and temporal growth. Whenever we get into situations which threaten our self-reliance, we will find our freedoms threatened as well. If we increase our dependence on anything or anyone except the Lord, we will find an immediate decrease in our freedom to act. As President Heber J. Grant declared, ‘Nothing destroys the individuality of a man, a woman, or a child as much as the failure to be self-reliant.’”

L. Tom Perry, apostle²

1.1 BACKGROUND TO THE PROBLEM

In the process of describing the background to the problem, the author will in this section firstly, explain what the African Union (AU) has implemented, secondly, explain the relevant rules and regulations that need to be adhered to as World Trade Organisation (WTO) members and lastly, explain how the self-financing mechanism might be in contravention of the rules and regulations of the WTO required to be adhered to by all WTO Members.

1.1.1 Explanation of the African Union self-financing mechanism

To achieve economic growth and economic freedom the fundamental elements that are present are the notions of independence and self-reliance.³ It is with this in mind that the AU at its July 2016 summit in Rwanda, considered the proposal of the self-financing mechanism to be implemented. The self-financing mechanism would be implemented through the introduction of a 0.2 percent levy on all eligible products⁴ imported into the territory of an AU Member State.⁵ The objective of the self-financing mechanism as indicated by the AU’s chairwoman Dr Nkosazana Dlamini Zuma at the time⁶ was to reduce the dependency of the AU on foreign

² Landeen, C., 2018. 10 Quotes About Self-Reliance.

Available at: <https://latterdayfinance.com/self-reliance/quotes-about-self-reliance/>
[Accessed 13 February 2018].

³ The quotation used to introduce the background is from a religious perspective, but when the constituent parts of the quotation are analysed, it is quite evident that the elements of independence and self-reliance are fundamental to achieving growth, economic or otherwise.

⁴ The African Union, 2018. What Constitutes Eligible Goods?

Available at: <https://au.int/en/what-constitutes-eligible-goods>
[Accessed 18 February 2018].

⁵ WorldTradeLaw.net, 2016. New AU funding system and the WTO.

Available at: <http://worldtradelaw.typepad.com/ielpblog/2016/09/new-au-funding-system-and-the-wto.html>
[Accessed 13 February 2018].

⁶ Dr Nkosazana Dlamini Zuma served as the AU Chairperson from 2012 to 2017:

funders which stood at 76 percent of the AU's budget.⁷ This sentiment was further echoed by the current AU Chairperson H.E. Moussa Faki Mahamat⁸ who stated that in order to liberate Africa, it cannot be dependent on others.⁹ On the basis that the reasons for the self-financing mechanism have been explained, we will in the next subsection consider the rules and regulations that all WTO Members should adhere to.

1.1.2 Rules and regulations of the World Trade Organisation

Whilst the AU as an organisation is not a member of the WTO, multiple AU Member States in their individual capacities are WTO Members. Of the fifty-four AU Member States, only seven AU Member States are not presently WTO Members namely, Algeria, Libya, Sudan, South Sudan, Ethiopia, Somalia and Equatorial Guinea, which just substantiates the extent to which the WTO rules and regulations would apply to the AU through the AU/WTO Members.¹⁰ To become a WTO member, those AU Member States had to commit and agree to certain WTO rules and regulations governing international trade. These rules and regulations need to be adhered to by all members or a contravening Member runs the risk of facing disputes initiated by other WTO Members or by the WTO itself. The General Agreement on Tariffs and Trade 1994 (GATT 1994) as administered by the WTO provides for core rules and principles on international trade that can be grouped into the following six categories, namely, (1) the principles of non-discrimination, (2) the rules on market access, including rules on transparency, (3) the rules on unfair trade, (4) the rules on conflicts between trade liberation and other societal values and interests, (5) the rules on special and differential treatment for

South African History Online, 2018. Nkosazana Clarice Dlamini-Zuma.

Available at: <http://www.sahistory.org.za/people/nkosazana-clarice-dlamini-zuma>
[Accessed 14 February 2018].

⁷ Fabricius, P., 2016. AU self-funding plan cautiously welcomed.

Available at: <https://www.iol.co.za/news/africa/au-self-funding-plan-cautiously-welcomed-2046731>
[Accessed 2018 February 2018].

⁸ H.E. Moussa Faki Mahamat, was elected as the African Union Commission (AUC) Chairperson on 30 January 2017 and assumed office in March 2017.

African Union, 2018. H.E. Moussa Faki Mahamat - Chairperson African Union Commission.

Available at: <https://au.int/en/cpauc5>
[Accessed 14 February 2018].

⁹ Mwai, C., 2017. Africa ponders challenges as WTO steps in way of AU self-financing model.

Available at: <http://www.newtimes.co.rw/section/article/2017-05-09/212057/>
[Accessed 14 February 2018].

¹⁰ The World Trade Organization, 2018. Members and observers of the WTO.

Available at: https://www.wto.org/english/thewto_e/countries_e/org6_map_e.htm
[Accessed 11 September 2018].

developing countries¹¹ and (6) the rules relating to decision-making and dispute settlement. These principles collectively form the foundation on which the WTO is based and the objectives with which it exercises its rights and obligations.¹² In the sections to follow, the following rules and principles relevant to this mini-thesis have been extracted because of the possible irregularities caused by the AU self-financing mechanism:

- (1) the principles of non-discrimination,
- (2) the rules on market access, including rules on transparency,
- (3) the rules on conflicts between trade liberation and other societal values and interests and
- (4) the rules on special and differential treatment for developing countries.

1.1.2.1 The principles of non-discrimination

Article I (the most favoured nation (MFN) treatment) and article III (national treatment (NT)) of the GATT 1994, are derived from the principle of non-discrimination and is fundamental for dealing with international discrimination in the trade of goods.¹³ This principle requires that a WTO Member should charge the same tariffs on the same or like products¹⁴, irrespective of



¹¹ There are no WTO definitions for developing countries. A country who seeks WTO membership declares itself as a developing country which allows for special and differential treatment in terms of the WTO rules and principles. See section 1.1.2.4

The World Trade Organization, 2018. Who are the developing countries in the WTO?

Available at: https://www.wto.org/english/tratop_e/devel_e/d1who_e.htm

[Accessed 10 July 2018].

¹² Van den Bossche, P., 2005. *The Law and Policy of the World Trade Organization*. 1st ed. New York: Cambridge University Press. Pg 39

As per the newer 3rd ed, Pg 35 of the above referenced textbook, the book writers have condensed the originally noted six categories of rules and principles of the WTO into five groups. The newer 3rd ed combines the rules on special and differential treatment for developing countries with the rules on conflicts between trade liberation and other societal values and interests into one group. Whilst this combination is not technically incorrect, the author with specific reference to the focus on underdevelopment in chapter 2 and throughout this mini-thesis has continued to separate the rules on special and differential treatment for developing countries as a separate group to be addressed in chapter 4.3.3. Throughout the remainder of this mini-thesis the total of six categories will be referred to and the relevant categories extracted for the purpose of this mini-thesis. The 3rd ed of the textbook will be used otherwise throughout this mini-thesis.

¹³ Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pg 316

¹⁴ Whilst used for introductory purposes, these are very specific terms in context of the WTO and will be explained in detail later in the mini-thesis.

the origin of the products. The result is that, WTO member countries are therefore obligated under WTO law to not discriminate between their trading partners.¹⁵

WTO members should not grant special favours, such as lower customs duties for certain products, to only one trading partner but to all other WTO Members.¹⁶ The self-financing mechanism may be seen by various WTO Members as discriminatory as the levy would be imposed on only non-AU Member States, who could be WTO Members and not on other AU/WTO members.¹⁷ The legality of the self-financing model has already been questioned by the WTO and the United States (US) government.¹⁸ Article XXIV of the GATT (1994) dealing with regional integration exceptions however, provides a framework for affording discriminatory treatment when certain criteria have been satisfied which otherwise would have been inconsistent with Article I of the GATT 1994.¹⁹ The relevant exception will be elaborated on in sections 1.1.2.3/4 to follow below.

1.1.2.2 The rules on market access, including rules on transparency

Article II of the GATT 1994 forms part of the articles designed to fortify the rules on market access, including rules on transparency. Article II of the GATT 1994 provides for a schedule of concessions that reflects the maximum tariff levels for trade in goods that can be charged by a WTO Member, also referred to as bound rates.²⁰ It is considered that a conscious effort to effect the substantial reduction in tariff levels is key to reducing barriers to market access and therefore enhancing international trade.²¹ As part of the process of becoming a WTO Member certain agreements on international trade are reached and the schedule of concessions is one of

¹⁵ Lee, Y.-S., Horlick, G., Choi, W.-M. & Brouder, T., 2011. Law and Development Perspective on International Trade Law. 1st ed. New York: Cambridge University Press. Pg 131

¹⁶ Van den Bossche, P. & Zdouc, W., 2013. The Law and Policy of the World Trade Organisation - Text, Cases and Materials. 3rd ed. New York: Cambridge University Press. Pg 318

¹⁷ Mwai, C., 2017. Africa ponders challenges as WTO steps in way of AU self-financing model. Available at: <http://www.newtimes.co.rw/section/article/2017-05-09/212057/> [Accessed 14 February 2018].

¹⁸ Mwai, C., 2017. Africa ponders challenges as WTO steps in way of AU self-financing model. Available at: <http://www.newtimes.co.rw/section/article/2017-05-09/212057/> [Accessed 14 February 2018].

¹⁹ General Agreement on Tariffs and Trade (1994) (GATT 1994) Article XXIV: Territorial Application-Frontier Traffic-Customs-Unions and Free-trade Areas

²⁰ Read, R., 2018. A Summary of the GATT Articles. Available at: www.lancaster.ac.uk/staff/ecarar/gatt%20articles.doc [Accessed 15 February 2018].

²¹ Van den Bossche, P. & Zdouc, W., 2013. The Law and Policy of the World Trade Organisation - Text, Cases and Materials. 3rd ed. New York: Cambridge University Press. Pg 419

the obligations that have to be adhered to.²² There are many AU/WTO Members which have undertaken a 0 percent tariff commitment at the WTO in their endeavours to enhance international trade.²³ Mauritius as an AU/WTO Member State has since its last trade policy review in 1995 increased its zero tariff lines to over 50 percent, which serves as an example of such a commitment.²⁴ Therefore, an increase of 0.2 percent on products as agreed to in the schedule of concessions, could be a breach of Article II of the GATT 1994, where specific AU Member countries have already agreed to 0 percent bound tariff level for those like products.²⁵

1.1.2.3 The rules on conflicts between trade liberation and other societal values and interests

Under these rules, commonly referred to as exceptions, a WTO Member is under certain conditions allowed to implement discriminatory practices which otherwise would be WTO incompatible.²⁶ These exceptions allow a WTO Member to contravene the general WTO rules in order to take into account any economic and non-economic values and interests that contradicts or competes with free trade.²⁷

(1) Non-economic values and interests (other societal values and interests)

Articles XX - General Exceptions and XXI - Security Exceptions of the GATT 1994 allow for trade discrimination when non-economic values and interests of a WTO Member is threatened. These include inter alia protecting the environment, public health and national security.²⁸

²² See section 1.1.2

²³ Desta, M., 2016. New AU financing formula and WTO law: some unknowns.

Available at: <https://www.tralac.org/news/article/10506-new-au-financing-formula-and-wto-law-some-unknowns.html>

[Accessed 15 February 2018].

²⁴ The World Trade Organization, 2018. Mauritius: November 2001.

Available at: https://www.wto.org/english/tratop_e/tpr_e/tp176_e.htm

[Accessed 11 September 2018].

²⁵ Desta, M., 2016. New AU financing formula and WTO law: some unknowns.

Available at: <https://www.tralac.org/news/article/10506-new-au-financing-formula-and-wto-law-some-unknowns.html>

[Accessed 15 February 2018].

²⁶ Van den Bossche, P. & Zdouc, W., 2013. The Law and Policy of the World Trade Organisation - Text, Cases and Materials. 3rd ed. New York: Cambridge University Press. Pg 39

²⁷ Van den Bossche, P. & Zdouc, W., 2013. The Law and Policy of the World Trade Organisation - Text, Cases and Materials. 3rd ed. New York: Cambridge University Press. Pg 39

²⁸ Van den Bossche, P. & Zdouc, W., 2013. The Law and Policy of the World Trade Organisation - Text, Cases and Materials. 3rd ed. New York: Cambridge University Press. Pg 39

(2) Economic values and interests (trade liberation)

There are various Articles of the GATT 1994 that deal with economic values and interests, however Article XXIV dealing with regional integration will be a focal point of this mini-thesis. This article of the GATT 1994, which is discussed in substantially more detail in chapter 4,²⁹ fundamentally allows a WTO Member under certain conditions to conclude trade agreements between two or more WTO Members that could be considered discriminatory.^{30,31} The self-financing mechanism has the potential to affect regional trade agreements (RTAs) concluded, by increasing tariffs charged above the agreed bound rates.

1.1.2.4 The rules on special and differential treatment for developing countries

Paragraphs one and two of the preamble to the Agreement for Establishing the WTO³² clearly state that, the developed WTO Members should strive to increase the living standards, employment and real income of the developing and least developed WTO Members. This commitment forms the basis for preferential treatment that can be afforded to developing and least developed countries. Substantially all of the AU Members are either classified as developing or least developed countries in terms of the WTO classifications.³³

The MFN obligation forms one of the pillars on which WTO law is based. It forms the bases for eliminating trade-related discrimination and any contravention of this obligation has significant consequences on international trade that could result in political tension.³⁴ It is with this in mind that the author is to formulate the problem statement in the section to follow.

²⁹ See chapter 4.4.1.2

³⁰ Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pg 648

³¹ See section 1.1.2.1

³² Hereafter referred to the WTO Agreement.

³³ The World Trade Organization, 2018. Map of negotiating groups in the Doha negotiations. [Online] Available at: https://www.wto.org/english/tratop_e/dda_e/negotiating_groups_maps_e.htm?group_selected=GRP007

[Accessed 16 August 2018].

The reader is instructed to select the LDCs from the drop-down list.

³⁴ Trebilcock, M. J. & Howse, R., 2005. *The Regulation of International Trade*. 3rd ed. London and New York: Routledge. Pgs 56-57

1.2 PROBLEM STATEMENT

The AU was formed with the following vision, to create an Africa that is:

“An integrated, prosperous and peaceful Africa, driven by its own citizens and representing a dynamic force in global arena.”³⁵

When the constituent parts of the vision are analysed, it is specifically stated that the prosperous and integrated Africa for which the AU strives should be driven by its own people. For any individual, organisation or country to be self-driven, the elements of independence and self-reliance are the key factors in determining how successful they will be.³⁶ The correlation with the opening quotation is quite clear given the direct reference to the drive of its own people as stated in the vision statement.

The reality of the matter is that the AU is significantly dependent on foreign funding, 76 percent of the AU’s budget funding stems from outside donors and partners such as the European Union, the US, China, The World Bank and the United Kingdom.³⁷ This reality is further worsened as the AU has been unable to collect the AU Member contributions as planned for the past few years.³⁸ Out of the 55 sovereign states, about 30 Member States default on payments on an annual basis thus creating a significant funding gap.³⁹ There are six countries such as South Africa, Nigeria, Algeria, Egypt and Libya who contribute about 60% of the membership portion of the AU budget.⁴⁰

Whilst the implementation of the self-financing mechanism has significant financial benefits for the AU, the issue of adhering to the agreed rules and regulations of the GATT 1994 as administered by the WTO has the potential of disputes being filed against the AU. The dispute

³⁵ African Union, 2018. AU in a Nutshell.

Available at: <https://au.int/en/history/oau-and-au>
[Accessed 16 February 2018].

³⁶ See section 1.1.1

³⁷ Miyandazi, L., 2016. Is the African Union’s financial independence a possibility?

Available at: <http://ecdpm.org/talking-points/african-union-financial-independence/>
[Accessed 16 February 2018].

³⁸ African Union, 2018. The Gap between the planned Commission budget and actual budget that is funded by both member States and the Partners: 2011- 2015. Available at: <https://au.int/en/financingau>
[Accessed 16 February 2018].

³⁹ African Union, 2018. The Gap between the planned Commission budget and actual budget that is funded by both member States and the Partners: 2011- 2015. Available at: <https://au.int/en/financingau>
[Accessed 16 February 2018].

⁴⁰ Mataboge, M., 2015. AU funding still comes from the West.

Available at: <https://www.thestandard.co.zw/2015/06/15/au-funding-still-comes-from-the-west/>
[Accessed 16 February 2018].

process as overseen by the WTO might have significant consequences should the matter of the self-financing mechanism be disputed by a fellow WTO Member.

The research problem to be discussed below stems from this balancing act between achieving the goals and objectives of the AU and adhering to the rules and regulations as set by the WTO discussed above.

1.3 RESEARCH PROBLEM

For the purpose of articulating the research problem, this section will be broken down into the following sections, firstly, the problem the AU faces with the implemented self-financing mechanism, secondly, why the problem exists by analysing the relevant WTO rules and regulations that are affected and lastly provide an overall summary of the research problem that will form the basis for the aim of the study.

1.3.1 The problem the African Union faces with the implemented self-financing model

The self-financing model implemented by the AU in the current form might be inconsistent with the requirements as set out by the WTO.⁴¹ As WTO Members, the member states of the AU are obligated to adhere to the provisions of the WTO rules and regulations. The GATT 1994 states in relevant part that in the objective of furthering reciprocal and mutually beneficial agreements, directed at substantially reducing the tariffs and other barriers to and eliminating discrimination in international trade, all of the members agree to follow the articles to the GATT 1994.⁴² Through this general agreement, the AU/WTO Member States are bound by Article I MFN Treatment and Article II - Schedules of Concessions. These Articles of the GATT 1994 will be discussed in detail in the subsection to follow.

1.3.2 Why the problem exists – A critical analysis of the relevant rules and regulations

The GATT 1994 contains specific annexures that support the Articles associated with the GATT 1994. These Articles are grouped into four parts which form the rules and regulations of the WTO. The specific Articles that the AU Member States might contravene by the implemented 0.2 percent levy are Article I - General MFN Treatment, Article II - Schedules of

⁴¹ Mwai, C., 2017. Africa ponders challenges as WTO steps in way of AU self-financing model. Available at: <http://www.newtimes.co.rw/section/article/2017-05-09/212057/> [Accessed 14 February 2018].

⁴² World Trade Organisation, 1986. The General Agreement on Tariffs and Trade, Geneva: World Trade Organisation.

Concessions and any regional trade agreements entered into under Article XXIV of the GATT 1994.

Article I of the GATT 1994 states that any favourable customs duties and charges of any other kind that has been afforded to a specific WTO Member should then be afforded to all other WTO Members. These favourable customs duties and charges should be afforded immediately and unconditionally for all like products originating from other WTO Members.⁴³ Article I of the GATT 1994 forms one of the cornerstones on which the WTO law is founded and is one of the most important rules to promote equal treatment through non-discrimination at the international trade level.⁴⁴ Article XXIV of the GATT 1994 provides for the formation of Regional Trade Agreements (RTAs). If the criteria as set out in Article XXIV of the GATT 1994 has been adhered to, the parties to those agreements can without contravening the MFN principle charge rates between the contracting parties that are different from the rates charged to other WTO Members that are not party to those agreements. Logically speaking, the rates between the contracting parties would be lower than the rates charged to non-contracting WTO Member parties. The WTO has realised that for developing countries to compete on the world stage certain preferential treatment enabling them to compete equally is not just required but an obligation.

The WTO has explained the self-financing mechanism to potentially be discriminatory on the following basis.

“Among the aspects that the levy decision is allegedly in breach of is that WTO members may not apply tariffs on a product coming from one WTO member and not apply the same tariff on the same or like product when it originates in another WTO member”.

Due to the fact that the AU is not a Free Trade Area (FTA) as defined by Article XXIV of the GATT 1994, the potential for discriminatory trade exists if the rates for like products are different depending on whether it comes from a fellow AU Member or from another WTO Member that is not part of the AU.⁴⁵

⁴³ General Agreement on Tariffs and Trade (1994) (GATT 1994) Article I para 1: General Most-Favoured-Nation Treatment

⁴⁴ World Trade Organisation, 1986. The General Agreement on Tariffs and Trade, Geneva: World Trade Organisation.

⁴⁵ Mwai, C., 2017. Africa ponders challenges as WTO steps in way of AU self-financing model. Available at: <https://www.newtimes.co.rw/section/read/212057> [Accessed 13 August 2018].

Article II of the GATT 1994 provides for a schedule of concessions that have been agreed to on a multilateral level by all the WTO Members. This Article in relevant part states that each party in agreement to the schedule of concessions cannot charge a levy greater than that agreed to.⁴⁶ The mentioned schedule reflects the maximum tariff a WTO Member can charge for a particular good. With this in mind, the 0.2% levy could potentially be in contravention of Article II of the GATT 1994 as many of the AU Members have agreed to a 0% tariff on specific products.⁴⁷ It would be inconceivable to assume that none of the goods that have been agreed to as part of the mentioned schedule of concessions would form part of the eligible goods as envisaged by the self-financing mechanism implemented by the AU.

In addition to the problems listed above, as part of the WTO objectives to enhance international trade for least developed and developing WTO Members, the GATT Contracting Parties on 28 November 1979 decided on the Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, commonly referred to as the 'Enabling Clause'.⁴⁸ The Enabling Clause allows developed WTO Members on the one hand to have preferential trading agreements with less developed WTO members on the other hand.⁴⁹ Many such preferential trade agreements have been concluded between AU Member states as developing countries and other WTO Members as developed countries. An important and significant example of this type of preferential trading arrangement is the establishment of the African Growth Opportunity Act (AGOA) which provides for many preferential trading rights between developing AU Member state countries and the USA as a developed country.⁵⁰ The implementation of the levy could have catastrophic effects on this preferential trading relationship that Africa as a whole significantly benefits from. Many other such preferential trade agreements exist between AU Member states and non-African countries and the

⁴⁶ General Agreement on Tariffs and Trade (1994) (GATT 1994) Article II para 1(a): General Most-Favoured-Nation Treatment

⁴⁷ Gerhard Erasmus 'The new self-financing Mechanism of the African Union: Can the proposed AU levy be a step towards financial independence?' (2017) available at <https://www.tralac.org/discussions/article/11661-the-new-self-financing-mechanism-of-the-african-union-can-the-proposed-au-levy-be-a-step-towards-financial-independence.html>
[Accessed on 9 June 2017]

⁴⁸ Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pgs 663-664

⁴⁹ The World Trade Organization, 2018. Differential and more favourable treatment reciprocity and fuller participation of developing countries.
Available at: https://www.wto.org/english/docs_e/legal_e/enabling1979_e.htm
[Accessed 20 July 2018].

⁵⁰ Authors own comment: I have not found any information to substantiate this statement but the author feels that is an issue that has not yet been raised and considered by the AU.

implemented levy could contravene such trade agreements by increasing tariffs above what was agreed to.

1.3.3 Overall summary of the research problem

Based on the issues raised in the previous subsections, the research problem can be summarised as follows. Articles I and II are significant in the combat against discriminatory international trade practices. Whilst the fundamental concept of the self-financing model is in line with the objectives of the WTO, the current form of the self-financing mechanism might not be consistent with WTO law. In the following section, the author will formulate the aim of the study based on the research problem highlighted.

1.4 AIM OF THE STUDY

The aim of the study is to critically analyse the self-financing mechanism adopted by the AU. To establish whether the 0.2 percent levy on eligible imported goods can be utilised to achieve the objectives of the AU and meet the AU/WTO Member States commitments in terms of the WTO legal system. The following section will formulate the research questions based on the aim of the study as indicated.

1.5 RESEARCH QUESTIONS

This section will break the research questions into the following categories namely, firstly, the main overarching research question and secondly, the ancillary research questions that will directly contribute to addressing the main overarching research question.

1.5.1 Main overarching research question

Is the implemented self-financing mechanism in the form of the 0.2 percent levy on eligible imported goods as agreed to by the AU, place the AU/WTO Member States in contravention of the WTOs rules and regulations? The following subsection will formulate the ancillary research questions.

1.5.2 Ancillary research questions

To comprehensively address the main research question the following ancillary questions have been derived to substantiate the main research question.

1. How international trade during colonisation resulted in the underdevelopment of Africa?

2. How the underdevelopment of Africa resulted in the formation of the Organisation of African Unity (OAU)?
3. Why the AU was formed to take over from the OAU?
4. Why the need for a self-financing mechanism to fund the AU?
5. What the technical details of the self-financing mechanism are and what the practical issues are surrounding the implemented self-financing mechanism?
6. Why we have international trade and the role of the WTO in regulating it?
7. Is the self-financing mechanism WTO consistent?
8. What possible corrective action exists that will allow the implemented self-financing mechanism to meet both the AU's principles of self-reliance and independence and consistency with the WTO rules and regulations?

1.6 SIGNIFICANCE OF THE STUDY

This mini-thesis will provide valuable insight into the WTO compatibility of the AU's self-financing mechanism. The self-financing mechanism is definitely a step in the direction towards achieving the goals as set out by the AU in respect of self-reliance and economic growth.⁵¹ In the current form, the self-financing mechanism may not be WTO compatible, giving rise to the possibility of disputes being filed against AU/WTO Members. The significance of this study will be the suggested corrective action provided so that the implemented self-financing mechanism meets both the WTO obligations of the AU Members and the goals of self-reliance and economic growth as set out by the AU.

1.7 RESEARCH METHODOLOGY

A desktop methodology will be appropriate given the absence of fieldwork and exclusive use of existing resources. The research will be conducted by means of an analysis of the relevant available literature on the subject matter. Study of secondary data sources such as journal articles, textbooks, theses and internet sources will be utilised.

⁵¹ African Union, 2018. AU in a Nutshell.
Available at: <https://au.int/en/history/oau-and-au>
[Accessed 16 February 2018].

1.8 CHAPTER OUTLINE

This section will provide a layout of the mini-thesis divided into specific chapters as detailed below.

Chapter Two:

Ancillary questions 1 and 2 will be dealt with in this chapter. The historical effect of international trade during the colonisation period and the resultant underdevelopment of Africa from a conceptual perspective will be discussed in detail. We will then focus on the formation of the OAU as a means of eradicating all forms of colonialism and to halt the perpetuation of the underdevelopment of Africa.

Chapter Three:

Ancillary questions 3 to 5 will be dealt with in this chapter. The formation and shortcomings of the OAU will be discussed leading to the need for a new organisation. The historical development of the AU from the shortcomings of the OAU will be highlighted resulting in the need for the self-financing mechanism. The self-financing mechanism is considered a significant step towards the AU becoming self-reliant and therefore a significant portion of the chapter will be dedicated to understanding fully the background, technical and practical issues surrounding the implemented self-financing mechanism.

Chapter Four:

Ancillary questions 6 to 8 will be dealt with in this chapter. Before discussing the WTO, it is important to get an understanding as to why we have international trade, therefore the classical theories supporting international trade will be considered. The historical development of the WTO will be discussed in detail to get an in-depth understanding of the obligations and responsibilities of the WTO as the facilitator of international trade, especially with regards to the developing and least developed WTO Members. The specific rules and regulations that the self-financing mechanism is inconsistent with will be highlighted and critically analysed. Possible corrective action with regards to legalising the self-financing mechanism will be suggested via (1) the operation of the Enabling Clause, given the WTO classification of the AU Members or (2) the AU establishing a free trade area.

Chapter Five:

This will be the concluding chapter in which the reader will be reminded of the overarching and ancillary research questions and how they were addressed in each of the relevant chapters. Recommendations on the overarching research question will be provided based on the outcome of the discussions and conclusions of the relevant chapters. Possible future research areas relevant to this mini-thesis will be identified and briefly discussed. A final conclusion will then be provided to summarise the findings related to the WTO consistency of the AU's self-financing mechanism.



CHAPTER 2

THE HISTORICAL UNDERDEVELOPMENT OF AFRICA CULMINATING INTO THE ESTABLISHMENT OF THE ORGANISATION OF AFRICAN UNITY FROM AN INTERNATIONAL TRADE PERSPECTIVE

‘The question as to who, and what, is responsible for African underdevelopment can be answered at two levels. First, the answer is that the operation of the imperialist system bears major responsibility for African economic retardation by draining African wealth and by making it impossible to develop more rapidly the resources of the continent. Second, one has to deal with those who manipulate the system and those who are either agents or unwitting accomplices of the said system. The capitalists of Western Europe were the ones who actively extended their exploitation from inside Europe to cover the whole of Africa.’⁵²

2.1 INTRODUCTION

The overarching objective of this chapter is to provide an overview of historical underdevelopment within the African Continent from an international trade perspective which culminated into the establishment of the Organisation of African Unity (OAU). To gain a thorough understanding of the OAU’s history, the effect of colonialism⁵³ within the African context by the European countries needs to be evaluated in light of the international trade relationship that was established during this period. The international trade relationship that existed under the colonial period was of a capitalist⁵⁴ nature and has led to numerous publications, focused on explaining the underdeveloped⁵⁵ state of the African Continent as a result of the exploitative nature of the international trade arrangements.

⁵² Rodney, W., 1982. *How Europe Underdeveloped Africa*. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg 27

⁵³ The policy or practice of acquiring full or partial political control over another country, occupying it with settlers, and exploiting it economically.

Oxford University Press, 2018. Definition of colonialism in English:

Available at: <https://en.oxforddictionaries.com/definition/colonialism>

[Accessed 2 May 2018].

⁵⁴ To be fully explained later in the chapter with reference to Karl Max theory on capitalism. However for a superficial understanding, capitalism is basically a trade relationship that leads to the exploitation of a party to that relationship.

⁵⁵ The term of underdeveloped countries to be used in terms the World Trade Organisation understanding.

The colonisation of Africa⁵⁶ by Europe fundamentally shaped the international trade relationship that existed historically between the African Continent with the rest of the world.⁵⁷ It is therefore imperative that the historical effects of colonialism are discussed and evaluated to understand the impact it had on underdevelopment within the African context.

In response to the colonial state within Africa, the OAU was formed at the end of May 1963. The fight against colonialism in substance was a fight against the underdevelopment of Africa, started by the OAU and continued by its successor established in 2002, the African Union (AU).⁵⁸ Therefore, a conceptual framework for the establishment of the OAU will be constructed to support the existence of the OAU.

Based on the introduction provided above, this chapter will be broken up into two major sections as follows, (1) underdevelopment in the African Continental context resulting consequentially into (2) the establishment of the OAU.

2.2 UNDERDEVELOPMENT IN THE AFRICAN CONTINENTAL CONTEXT

In this section, the author will use a theoretical approach to explaining the historical underdevelopment of Africa. Through this theoretical approach, we will look at how capitalism⁵⁹, through the colonisation of Africa fundamentally shaped the international trade agreements with the European countries. The colonisation of Africa brought about one of the first forms of capitalism and capitalistic international trade within the African Continent and played a defining role in the historical underdevelopment of Africa.⁶⁰ The extraction of natural resources from Africa for the benefit of the capitalists ensured that Africa historically remained in a state of underdevelopment.⁶¹ It is as a result of these capitalistic international trade

⁵⁶ From an international trade perspective.

⁵⁷ The focus of this mini-thesis will predominantly be on the relationship with the European countries. The international trade agreements with other international parties have neither been ignored or is considered immaterial but, falls beyond the scope of this mini-thesis.

⁵⁸ South African History Online, 2015. The African Union (AU). Available at: <https://www.sahistory.org.za/article/african-union-au> [Accessed 3 May 2018].

⁵⁹ The term capitalism will be explained more meaningfully in section 2.2.2.1 to follow. It serves here only as a means of describing the international trade relationship.

⁶⁰ Rodney, W., 1982. How Europe Underdeveloped Africa. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg 38

⁶¹ Fine, B. & Saad-Filho, A., 2016. Marx's Capital. 6th ed. London: PlutoPress. Pg 66

arrangements that Africa in most part is considered to be an underdeveloped continent in terms of the WTO's standings.⁶²

It is with the above in mind that this section will be devoted to gaining an understanding of underdevelopment in the African context. The author will draw on two specific theories historically developed to identify and explain the notion of underdevelopment. First, the colonialisation theory as a means of achieving underdevelopment will be discussed. Secondly, the dependency theory which, finds its routes in the capitalism theory will be used to concentrate on the effects of unequal exchange resulting in underdevelopment. This section will therefore be devoted to addressing (1) the general state of underdevelopment in Africa, (2) the relationship between the theories to be used for achieving underdevelopment, (3) underdevelopment from the colonialisation theory perspective, (4) underdevelopment from the dependency theory perspective and lastly (5) underdevelopment as a catalyst for the formation of the OAU.

2.2.1 Understanding the general state of underdevelopment in Africa

In the process of understanding the general state of underdevelopment in Africa, it is important that we first understand and define what underdevelopment is. Thereafter, we will discuss the theories of capitalism as formulated by Karl Marx, leading into the dependency theory as put forward by Andre Gunder Frank⁶³ for the purpose of highlighting underdevelopment. The dependency theory formulated in the 1960s became a popular framework for explaining underdevelopment more acutely within a capitalistic arrangement.⁶⁴ Colonialism is used

⁶² Rodney, W., 1982. *How Europe Underdeveloped Africa*. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg 104

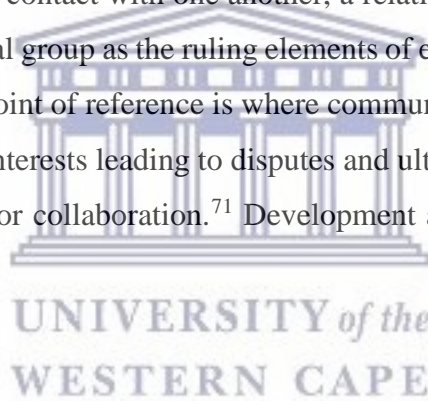
⁶³ Hereafter referred to as Frank

⁶⁴ Hout, W., 1987. *Dependency, Exploitation and a Critique of the conception Dependency Theory*, Rotterdam: Department of Political Science Erasmus University Rotterdam.

extensively by Walter Rodney⁶⁵ as a framework for identifying and explaining the state of underdevelopment of Africa by Europe.⁶⁶

To explain and understand underdevelopment, Rodney takes the approach of first explaining what development is.⁶⁷ He describes development as a multi-faceted process at both an individual and societal level. At the individual level, he refers to the increase in skill and capacity, greater freedom, creativity, self-discipline, responsibility, and material well-being.⁶⁸ He does, however, submit to the fact that measuring development on an individual basis is difficult when considering age, social class and individualistic sense of moral obligation. By definition a society, concisely can be described as a group of individual people living together in an organised manner.⁶⁹ While development at the individual level is difficult to measure, it cannot be contested that the achievement of development at an individual level is inextricably linked to the achievement of development at a societal level.⁷⁰

When two societies come into contact with one another, a relationship is formed based on the political structure of each social group as the ruling elements of each societal group are the first point of reference. This first point of reference is where communication will start with regards to trade relations, conflict of interests leading to disputes and ultimately war or commonalities which would form the basis for collaboration.⁷¹ Development at a societal level is then best



⁶⁵ Hereafter referred to as Rodney

The reader is referred to Rodney, W., 1982. *How Europe Underdeveloped Africa*. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg xiii for a comprehensive overview of Rodney W's background. For the sake of context, a brief overview is provided here. Before his teenage years, he was involved in leafletting, attending and assimilating thousands of hours of political discussions that occurred in his home. In 1963, he graduated with first class honours in History and at the age of 24 he received his PhD with honours in African History from the School of Oriental and African Studies in London. His participation in the African Liberation Struggles influenced his best known work, *How Europe Underdeveloped Africa*. Known as an internationalist, a humanist, a Marxist and an independent-minded thinker it was clear to all who met him that the fight he fought was founded in the deep respect and love for his people. As will be expanded on later in this chapter, Rodney's work is considered a classic in Anti-imperialism studies.

⁶⁶ Rodney, W., 1982. *How Europe Underdeveloped Africa*. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg 14

⁶⁷ Rodney, W., 1982. *How Europe Underdeveloped Africa*. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg 3

⁶⁸ Rodney, W., 1982. *How Europe Underdeveloped Africa*. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg 3

⁶⁹ Cambridge University Press, 2018. *Society*.

Available at: <https://dictionary.cambridge.org/dictionary/english/society>

[Accessed 18 April 2018].

⁷⁰ Rodney, W., 1982. *How Europe Underdeveloped Africa*. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg 3

⁷¹ Rodney, W., 1982. *How Europe Underdeveloped Africa*. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg 3

described as the increased ability of a society to regulate both internal and external relationships.⁷² The notion of this increased ability to regulate relationships speaks directly to the increased ability to control relationships at both a local and international level as they are fundamentally linked by definition.⁷³ The colonisation of Africa was as a direct result of Europe's increased ability to regulate on an international level the relationship with other societies, to be addressed in section 2.2.3 to follow.

The concept of underdevelopment is not the absence of development but, the rate of development as every society has developed to some extent.⁷⁴ Underdevelopment can only be truly understood at a comparative level, so only when the development of one society is compared to that of another society, does the concept of underdevelopment become clearer.⁷⁵ It is with this in mind that Rodney identified the following indicators of underdevelopment: (1) that on a comparative bases, one group appears to be wealthier than other and that in relation to the wealthy group, the other group is underdeveloped and (2) that a particular relationship of exploitation⁷⁶ exists whereby the one group benefits at the expense of the other group.⁷⁷

As part of explaining the central propositions of the dependency theory,⁷⁸ underdevelopment is described as a situation whereby the resources of a group is being used for the benefit of the controlling group and not the controlled group where the resources are found.⁷⁹ This just reinforces the conceptual connection between underdevelopment and exploitation. The following section will explore the theories that have been developed and tested to better understand the existence of underdevelopment in the African context.

⁷² Rodney, W., 1982. *How Europe Underdeveloped Africa*. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg 3

⁷³ To regulate an activity or process means to control it, especially by means of rules.

Collins, 2018. Definition of 'regulate'. [Online]

Available at: <https://www.collinsdictionary.com/dictionary/english/regulate>

[Accessed 18 April 2018].

⁷⁴ Rodney, W., 1982. *How Europe Underdeveloped Africa*. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg 13

⁷⁵ Rodney, W., 1982. *How Europe Underdeveloped Africa*. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg 14

⁷⁶ The meaning of exploitation within the various frameworks will be explained and discussed more meaningfully during the chapter.

⁷⁷ Rodney, W., 1982. *How Europe Underdeveloped Africa*. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg 14

⁷⁸ To be discussed and explained more meaningfully later in this chapter.

⁷⁹ Ferraro, V. A., 2008. *Dependency Theory: An Introduction*.

Available at: <https://www.mtholyoke.edu/acad/intrel/depend.htm>

[Accessed 19 April 2018].

2.2.2 The relationship between the theories to be used for highlighting underdevelopment

Before we start discussing the theories related to underdevelopment, it is important that the following list of definitions be provided. These definitions will be provided to link the terms used and avoid any confusion regarding the application of the definitions. The author will explain (1) the relationship between capitalism, imperialism and colonialism and (2) the relationship between the dependency theory and that of capitalism.

2.2.2.1 The relationship between capitalism, imperialism and colonialism

To put into context colonialism from a capitalist perspective, the following terms need to be defined and amalgamated.

Capitalism is defined as

‘The socio-economic system where social relations are based on commodities for exchange, in particular private ownership of the means of production and on the exploitation of wage labour.’⁸⁰

Imperialism is defined as

‘A policy of extending a country's power and influence through colonisation, use of military force, or other means.’⁸¹

Imperialism is considered to be an advanced stage of capitalism.⁸²

Colonialism is defined as

‘The policy or practice of acquiring full or partial political control over another country, occupying it with settlers, and exploiting it economically’⁸³

⁸⁰ Marxists Internet Archive, 2018. Encyclopaedia of Marxism: Glossary of Terms.

Available at: <https://www.marxists.org/glossary/terms/c/a.htm#capitalism>

[Accessed 26 April 2018].

⁸¹ Oxford University Press, 2018. Imperialism.

Available at: <https://en.oxforddictionaries.com/definition/imperialism>

[Accessed 2 May 2018].

⁸² Lenin, V., 1999. Imperialism - The Highest Stage of Capitalism. 1st ed. Newtown (Australia): Resistance Books. Pg 91

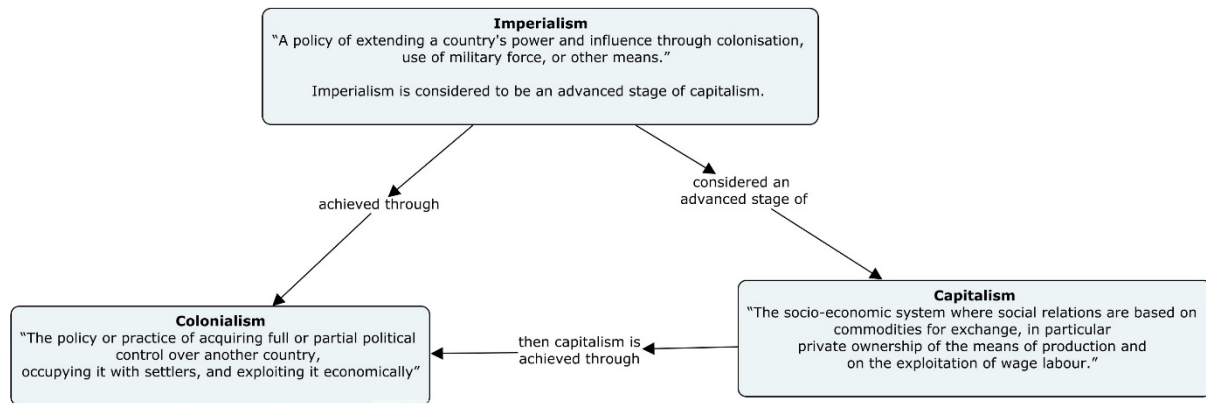
⁸³ Oxford University Press, 2018. Definition of colonialism in English:

Available at: <https://en.oxforddictionaries.com/definition/colonialism>

[Accessed 2 May 2018].

When considering these definitions in combination, the colonisation process of Africa was by definition just an extension of the capitalist European system to control the resources of Africa for exploitative purposes. This relationship can be illustrated by the conceptual linkage in figure 2.2-1 constructed below.

Figure 2.2-1: Colonialism and Capitalism Conceptual linkage⁸⁴



It is with this understanding that we will explore the work of Rodney on colonialism as a capitalist means of achieving underdevelopment in section 2.2.3 to follow.

2.2.2.2 The relationship between capitalism and the dependency theory

Capitalism as defined, essentially refers to the exploitation of wage labour for the benefit of the capitalists.⁸⁵ Within the context of the dependency theory:

Unequal exchange is defined as

‘the low-wage country has to pay more for its imports than it would if wages were the same in both countries, without getting higher prices for its own exports. It thus has to export more to get a given amount of imports. Correspondingly, the high-wage country gets more imports in return for a given amount of exports.’⁸⁶

With reference to the definition of capitalism, it can be noted that unequal exchange refers to the scenario whereby the wages in two countries are not the same, but the same amount of value is created by the waged labourers.

⁸⁴ Constructed by the author with reference to the definitions provided in section 2.2.2.1.

⁸⁵ See section 2.2.2.1

⁸⁶ Brewer, A., 2001. Marxist Theories of Imperialism. 2nd ed. London and New York: Taylor & Francis e-Library. Pg. 203

As will be illustrated in section 2.2.4 dedicated to the dependency theory as a means of highlighting underdevelopment, the disparity of waged labour across international borders given the fact that the exact same value is created forms the essence of unequal exchange within international trade arrangements that results in exploitation and therefore underdevelopment.

The sections to follow will deal with how the colonisation and dependency theories could have contributed to the underdevelopment of Africa.

2.2.3 Colonialisation theory as a means of highlighting underdevelopment

In this section dedicated to colonialism, we will (1) gain an understanding of what colonialism is and (2) explore the work of Rodney dealing with how colonialism was used as a system for the underdevelopment of Africa.⁸⁷

James Collier on the theory of colonisation states that, colonialism more truly reflects the mental state of the motherland⁸⁸ at the time the colony was formed.⁸⁹ As indicated, colonialism was in substance a means for European capitalists to exploit Africa and therefore foster underdevelopment.⁹⁰ It is therefore important to realise that to understand colonialism within the African context, capitalism actually needs to be understood as that was the mental state of the motherland during the colonial period. When the constituent parts of capitalism are isolated, it can be broken down into the following components (1) socio-economic system where social relations are based on commodities for exchange, which refers to trading, (2) the means of production are privately owned, which means that the tools to work with are not freely available for use and (3) the exploitation of wage labour, which refers to cheap labour or slavery.⁹¹

In analysing the three components it is evident that there must be goods that through a production process can be reworked and sold in an active market. The means to produce those goods for sale are owned and controlled by a selected few individuals who through the exploitation of labour power extract surplus value from the waged labourer.⁹²

⁸⁷ Rodney, W., 1982. How Europe Underdeveloped Africa. Revised edition 1981 ed. Washington D.C: Howard University Press. Ch VI

The rest of the textbook can be accessed as referenced by the interested reader.

⁸⁸ The motherland in this context refers to the European colonialists.

⁸⁹ Collier, J., 1905. The Theory of Colonization. American Journal of Sociology, 11(2), pp. 252-265. Pg 253

⁹⁰ See section 2.2.1

⁹¹ See section 2.2.1

⁹² Marxists Internet Archive, 2018. Encyclopedia of Marxism: Glossary of Terms. Available at: <https://www.marxists.org/glossary/terms/c/a.htm#capitalism>

In the section to follow the work of Rodney will be used to illustrate the role capitalism played in the underdevelopment of Africa.

2.2.3.1 Historical European influence on underdeveloping Africa

The historical account of how Europe underdeveloped Africa, as constructed by Rodney is considered a classic in anti-imperialism literature.⁹³ The assassination of Rodney at the age of 38, stands to substantiate the importance of and threat his work posed to the rulers at that time. Rodney's life was dedicated to the liberation struggle dedicating a significant portion of his short life to the exploitative practices leading to underdevelopment in Africa. Therefore the framework adopted by Rodney will be used throughout the rest of this section to illustrate according to Marxism, the capitalist approach to achieve underdevelopment.

Rodney summarises various devices used by Europe to achieve underdevelopment during colonisation.⁹⁴ These devices will be discussed in the section to follow because of the possible contribution colonialism has made towards Africa's underdevelopment.⁹⁵ The reader is reminded of the relationship of colonialism and capitalism as discussed in section 2.2.2.1 above, as it is with this understanding that we will explore the work of Rodney on colonialism as a capitalist means of underdevelopment below.

2.2.3.2 Underdevelopment from a capitalist perspective

Rodney distinguishes between the following subsections when discussing colonialism as a system for underdevelopment: (1) The Supposed Benefits of Colonialism to Africa-Socio-Economic Services, (2) Negative Character of the Social, Political, and Economic Consequences, (3) Education for Underdevelopment and (4) lastly, Development by Contradiction. All these sections are discussed briefly below and where possible the author will draw on recent events to highlight the continued effects postcolonialism.

[Accessed 26 April 2018].

⁹³ Smiley, S., 2010. How Europe Underdeveloped Africa (Book Review). Mosaic African Studies E-Journal, Volume 1, pp. 1-5 Pg 1

⁹⁴ Smiley, S., 2010. How Europe Underdeveloped Africa (Book Review). Mosaic African Studies E-Journal, Volume 1, pp. 1-5. Pg 2

⁹⁵ Rodney, W., 1982. How Europe Underdeveloped Africa. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg 142

(1) The supposed benefits of colonialism to Africa – socio-economic services

Many bourgeois⁹⁶ writers would confess that colonialism works well to further the interests of the colonialists.⁹⁷ However, when asked what the colonial governments did for Africa, references to railways, schools and hospitals that were built is made.⁹⁸

‘The combination of being oppressed, being exploited, and being disregarded is best illustrated by the pattern of the economic infrastructure of African colonies: notably, their roads and railways. These had a clear geographical distribution according to the extent to which particular regions needed to be opened up to import-export activities. Where exports were not available, roads and railways had no place. The only slight exception is that certain roads and railways were built to move troops and make conquest and oppression.’⁹⁹

An analysis of the above quotation is extremely significant, the railway lines along the coasts of South Africa were only constructed for the purpose of extracting gold, manganese, coffee or cotton. Any benefit derived by Africa from these transport routes were merely coincidental rather than for developmental purposes.¹⁰⁰ When considering that Rodney in 1972 spoke about this situation with such profoundness, puts into greater context the comments made by the current Western Cape Premier Helen Zille, ‘For those claiming legacy of colonialism was [only] negative, think of our independent judiciary, transport infrastructure, piped water etc.’¹⁰¹ Who knows what Helen Zille meant with this comment, but what is certain is that Rodney was assassinated for his work and what he stood for. Therefore, there must be a significant measure of truth to what he exposed during the colonial period, which is in total contrast to what Helen Zille tried to defend.

⁹⁶ Defined in Marxist contexts as upholding the interests of capitalism; not communist.

Oxford University Press, 2018. Definition of bourgeois in English.

Available at: <https://en.oxforddictionaries.com/definition/bourgeois>

[Accessed 2 May 2018].

⁹⁷ Rodney actually uses the word metropolitan to describe the colonialists, which in this context is interchangeable. The author has substituted metropolitan with colonialists in this section as the terms metropolitan and satellite states will be defined and used more comprehensively during the discussion on the dependency theory to follow.

⁹⁸ Rodney, W., 1982. *How Europe Underdeveloped Africa*. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg 205

⁹⁹ Rodney, W., 1982. *How Europe Underdeveloped Africa*. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg 209

¹⁰⁰ Rodney, W., 1982. *How Europe Underdeveloped Africa*. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg 209

¹⁰¹ Gqirana, T., 2017. Helen Zille does quick about-turn on 'colonialism' defence.

Available at: <https://www.news24.com/SouthAfrica/News/helen-zille-does-quick-about-turn-on-colonialism-defence-20170316>

[Accessed 2 May 2018].

In colonies such as South Africa, Algeria and Kenya racial discrimination played a significant role in accessing state resources. White individuals in the South African context instituted apartheid in order to afford themselves the best of land and amenities.¹⁰² An extreme illustration of this fact in Algeria was the difference in infant mortality rate between white settlers of 39 deaths per 1 000 births and Algerians living in the townships of 170 deaths per 1 000 births, which illustrates the manner in which hospital resources were deployed.¹⁰³

Colonialism by its very nature was against the industrialisation of Africa, as it would, in essence, be creating competition for the European capitalists.¹⁰⁴ Industrialisation would have had the consequential effect of having to develop the skills set of labourers and therefore increasing production costs and reducing the surplus value extracted for the colonialists.¹⁰⁵ The most obvious of contradictions appeared when colonies were importing products manufactured from the exact same raw materials that were being exported. Sudanese and Ugandans grew cotton but imported manufactured cotton goods, Ivory Coast grew cocoa and imported tinned cocoa and chocolate.¹⁰⁶ To illustrate the effect of underdevelopment, this irrational contradiction still persists in South Africa as of the year 2014, whereby over 90 percent of South Africa's top 10 exports to China are in raw materials while 100 percent of our top 10 imports from China are manufactured products.¹⁰⁷

Very closely related to the development of skilled labour was the racial discrimination that applied to employment opportunities. Through this practice, a considerably small number of non-white Africans had access to employment to develop a skills set. The best jobs were kept for white Africans even without possessing the necessary skills required, which even by today's

¹⁰² Rodney, W., 1982. *How Europe Underdeveloped Africa*. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg 206

¹⁰³ Rodney, W., 1982. *How Europe Underdeveloped Africa*. Revised edition 1981 ed. Washington D.C: Howard University Press. Pgs 206 -207

¹⁰⁴ Lenin, V., 1999. *Imperialism - The Highest Stage of Capitalism*. 1st ed. Newtown (Australia): Resistance Books. Pg 91

¹⁰⁵ Rodney, W., 1982. *How Europe Underdeveloped Africa*. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg 217

¹⁰⁶ Rodney, W., 1982. *How Europe Underdeveloped Africa*. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg 217

¹⁰⁷ ENCA - Money, 2014. SA trade with China up but raw material exports a concern. Available at: <https://www.enca.com/money/sa-trade-china-raw-material-exports-concern> [Accessed 2 May 2018].

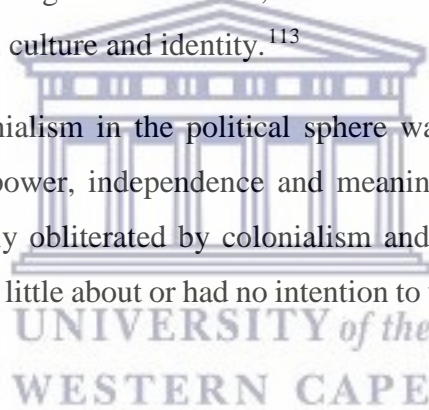
account, is a crucial factor in the development of skilled labour, notably the equity employment opportunities.¹⁰⁸

(2) Negative character of the social, political, and economic consequences

‘Indeed, what was called ‘the development of Africa’ by the colonialists was a cynical shorthand expression for ‘the intensification of colonial exploitation in Africa to develop capitalist Europe.’¹⁰⁹

According to Rodney, the loss of power by the African Continent is the reason why colonialism during its short period had such negative consequences for Africa.¹¹⁰ He describes power in this context as the ability to defend one’s self-interest by all means necessary and is the ultimate determinant of human society as it forms the relationship within and between groups.¹¹¹ In relation to people, power provides the ability for people to survive as human beings and also to retain culture.¹¹² As Africans, the ability to train young members of the society about their cultural responsibilities and obligations was lost, which in essence was the beginning of societies losing their historical culture and identity.¹¹³

The negative impact of colonialism in the political sphere was swift and striking. African political states lost all their power, independence and meaning to colonial rule.¹¹⁴ African political power was effectively obliterated by colonialism and had to bow down to foreign political rulers who knew very little about or had no intention to understand the African culture which was being eroded.¹¹⁵



¹⁰⁸ Rodney, W., 1982. How Europe Underdeveloped Africa. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg 217

¹⁰⁹ Rodney, W., 1982. How Europe Underdeveloped Africa. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg 223

¹¹⁰ Rodney, W., 1982. How Europe Underdeveloped Africa. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg 224

¹¹¹ Rodney, W., 1982. How Europe Underdeveloped Africa. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg 224

¹¹² Rodney, W., 1982. How Europe Underdeveloped Africa. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg 224

¹¹³ Rodney, W., 1982. How Europe Underdeveloped Africa. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg 224

¹¹⁴ Rodney, W., 1982. How Europe Underdeveloped Africa. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg 225

¹¹⁵ Rodney, W., 1982. How Europe Underdeveloped Africa. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg 226

Africa was denied the opportunity of developing trade links with parts of the world other than Europe and North America, this again stands against the very notion of development and serves as an example of how Africa was underdeveloped by Europe.¹¹⁶

(3) Education for underdevelopment

‘Education is the great engine of personal development. It is through education that the daughter of a peasant can become a doctor, that the son of a mine worker can become the head of the mine, that a child of farm workers can become the president of a great nation. It is what we make out of what we have, not what we are given, that separates one person from another.’¹¹⁷

These words spoken by our former late South African president, Mr Nelson Rolihlahla Mandela¹¹⁸ indicates how important, he knew education to be in the fight against poverty and continued underdevelopment. Through the eyes of this great leader, education was seen as a tool to equip the children of Africa to become leaders and not be bound to the same struggles and circumstances their parents were subjected to. Mandela in one of his many other famous quotes on education states, that ‘no country can really develop unless its citizens are educated’,¹¹⁹ which cuts deep into the state of underdevelopment in Africa given the general lack of access to good quality education.

Rodney considered education to be crucial for the preservation of life at both the individual and integrated social level.¹²⁰ Pre-colonial African education, in sharp contrast to what was introduced during colonialism, was closely linked to social life, the sense of community and most importantly conformed to the early stages of childhood development from a physical, emotional and intellectual development. Colonial education had no distinction between manual and intellectual education as colonial education had no separation of productive activity and education.¹²¹ The education policy during colonialism essentially had the effect of alienating

¹¹⁶ Rodney, W., 1982. *How Europe Underdeveloped Africa*. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg 230

¹¹⁷ Patterson, A., 2013. The Top 10 Nelson Mandela Quotes on Education. No 6. Available at: <https://writerswrite.co.za/rest-in-peace-nelson-mandela/> [Accessed 3 May 2018].

¹¹⁸ Hereafter referred to as Mr. Mandela

¹¹⁹ Patterson, A., 2013. The Top 10 Nelson Mandela Quotes on Education. No 4. Available at: <https://writerswrite.co.za/rest-in-peace-nelson-mandela/> [Accessed 3 May 2018].

¹²⁰ Rodney, W., 1982. *How Europe Underdeveloped Africa*. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg 238

¹²¹ Rodney, W., 1982. *How Europe Underdeveloped Africa*. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg 239

the pupils from their cultural heritage as it had no relevance to the African culture.¹²² The main purpose of the colonial schooling system was to only sufficiently train Africans to fill the lowest levels of local administration. The colonialists wherever possible took action to ensure that individuals that were in favour of colonialism occupied the positions of African administrators to control political and state powers.¹²³ In the South African context, this retention of power was achieved through the apartheid system which concentrated the political and state powers into the hand of white individuals. White colonists were considered the ideal local administrators because of their cultural links to Europe and the willingness to seek out new means of exploitation.¹²⁴ Ultimately the schooling systems were designed to serve a particular purpose within a given society and those educated in the younger age groups would instinctively by design, carry over the value system entrenched in them when it is their turn to make decisions in society.¹²⁵

Consequently, the education system was, as Mandela said, being used as a weapon not to alleviate but, to perpetuate the underdevelopment of African individuals and therefore the African continent.¹²⁶

(4) Development by contradiction

Following on from the section dealing with education for underdevelopment, Africans pushed the British colonialists to grant more education that was allowed within the colonial system.¹²⁷ This was considered to be a significant contradiction that assisted Africans in regaining political independence.¹²⁸ The objective of the colonial powers was to provide education for the purpose of perpetuating colonialism, but Africans by various means acquired more

¹²² Rodney, W., 1982. *How Europe Underdeveloped Africa*. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg 239

¹²³ Rodney, W., 1982. *How Europe Underdeveloped Africa*. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg 260

¹²⁴ Brewer, A., 2001. *Marxist Theories of Imperialism*. 2nd ed. London and New York: Taylor & Francis e-Library. Pg 257

¹²⁵ Rodney, W., 1982. *How Europe Underdeveloped Africa*. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg 260

¹²⁶ Patterson, A., 2013. *The Top 10 Nelson Mandela Quotes on Education*. No 5.

Available at: <https://writerswrite.co.za/rest-in-peace-nelson-mandela/>

[Accessed 3 May 2018].

¹²⁷ Rodney, W., 1982. *How Europe Underdeveloped Africa*. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg 267

¹²⁸ Rodney, W., 1982. *How Europe Underdeveloped Africa*. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg 267

education than what was the allotted resources for African education.¹²⁹ By this desire for greater education, African leaders had developed in direct contradiction to the objective of colonial education and would lead the fight for independence.¹³⁰

When considering collectively all of the devices as discussed above for underdeveloping Africa, it is really only understood as Rodney indicated at a relational level.¹³¹ The underdevelopment of Africa from a historical perspective is mirrored by the technological advancements of Europe and that Africa contributed significantly to the capital required for research and development.¹³²

It is with an understanding of the relational nature of underdevelopment that we move to the dependency theory and the role of unequal exchange in cultivating underdevelopment.

2.2.4 Dependency theory as a means of highlighting underdevelopment

In this section dedicated to the dependency theory we will for the purpose of understanding the relationship between the dependency theory and underdevelopment, (1) provide an overview of the dependency theory, (2) identify the general components of the dependency theory, (3) summarise and analyse the components of the dependency theory and (4) expand the understanding of exploitation leading to underdevelopment from the perspective of the dependency theory.

2.2.4.1 Overview

After World War II, Frank argued that classic development theories¹³³ did not in substance reflect the relationship between the developed world and the poor regions of the world.¹³⁴ Frank

¹²⁹ Rodney, W., 1982. *How Europe Underdeveloped Africa*. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg 268

¹³⁰ Rodney, W., 1982. *How Europe Underdeveloped Africa*. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg 279

¹³¹ See section 2.2.1

¹³² Rodney, W., 1982. *How Europe Underdeveloped Africa*. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg 86

¹³³ The classical economists had explained growth process in terms of rate of technological progress and population growth. In their opinion, technological progress remains in lead for some time but finally it disappears when the falling rate of profit prevents further accumulation of capital. It is at this stage that the economy slumps down into stagnation.

Debasish, 2018. *Classical Theory of Economic Development – Described!*

Available at: <http://www.economicdiscussion.net/economic-growth/classical-theory-of-economic-development-described/4534>

[Accessed 20 April 2018].

¹³⁴ Matunhu, J., 2011. A critique of modernisation and dependency theories in Africa: Critical assessment. *African Journal of History and Culture*, Volume 3(5), pp. 65-72. Pg 68

questioned the motives of the developed countries in the former colonies and stated that the process of modernisation did not address the needs of the developing countries. The Brandt Commission set up by the United Nations in 1977 reported that modernisation has not resulted in faster economic growth and that hundreds of millions of people continued to be condemned to starvation and remained destitute.¹³⁵ The realisation that modernisation in itself could not aid development gave birth to the dependency theory.¹³⁶ The dependency theory aims to explain the conditions of economic development and the lack thereof in the periphery countries which dependistas¹³⁷ refer to as underdevelopment.¹³⁸

2.2.4.2 General components

Even among the dependistas, there is still serious disagreement surrounding the variations of the dependency theory and it would be difficult to develop a single definition.¹³⁹ According to Vincent Ferraro, there are however certain features of commonality that most dependistas share which can be summarised as follows.¹⁴⁰

‘Firstly, dependency characterises the international system as comprised of two sets of states, variously described as dominant/dependent, center/periphery or metropolitan/satellite¹⁴¹. The metropolitan states are the advanced industrial nations in the Organization of Economic Co-operation and Development (OECD). The satellite states are those states of Latin America, Asia, and Africa which have low per capita GNPs and rely heavily on the export of a single commodity for foreign exchange earnings.’

This first element refers to the fact that a relationship between two states must exist which is characterised by one being in control and the other being controlled.

¹³⁵ Matunhu, J., 2011. A critique of modernisation and dependency theories in Africa: Critical assessment. *African Journal of History and Culture*, Volume 3(5), pp. 65-72. Pg 68

¹³⁶ Matunhu, J., 2011. A critique of modernisation and dependency theories in Africa: Critical assessment. *African Journal of History and Culture*, Volume 3(5), pp. 65-72. Pg 68

¹³⁷ Theorists of dependency.

¹³⁸ Reece, E. A., 1983. *Development and Underdevelopment in the Third World: Theoretical Approaches*, Hamilton, Ontario: McMaster University. Pg 2

¹³⁹ Ferraro, V. A., 2008. *Dependency Theory: An Introduction*. Available at: <https://www.mtholyoke.edu/acad/intrel/depend.htm> [Accessed 19 April 2018].

¹⁴⁰ Ferraro, V. A., 2008. *Dependency Theory: An Introduction*. Available at: <https://www.mtholyoke.edu/acad/intrel/depend.htm> [Accessed 19 April 2018].

¹⁴¹ The author would like to bring to the attention of the reader that the various phrases used to denote the relationship between the controlling group and controlled group or societies have the same meaning. The author will from this point onwards only use the phrases metropolitan to denote the controlling group and satellite to denote the controlled group.

Second, that external forces are of singular importance to the economic activities within the satellite states. These external forces include multinational corporations, international commodity markets, foreign assistance, communications, and any other means by which the metropolitan countries can represent their economic interests abroad.

The second element refers to the fact that interests of the controlling state are executed in the controlled state via representatives of the controlling state in such said controlled state. In this context can be understood as colonialism.

Thirdly, the definitions of dependency all indicate that the relations between metropolitan and satellite states are dynamic because the interactions between the two sets of states tend to not only reinforce but also intensify the unequal patterns.’

The third element refers to the fact that the controlling state will find ever-changing means and devices to retain control over the controlled state for exploitation.

In a paper presented by Wil Hout, he states that it would be difficult to make generalised statements about the exact components of the dependency theory. He then starts to unpack the components of the dependency theory based on the approach taken by Samir Amin and Frank as they were considered the front-runners of the dependistas.¹⁴² So in addition to the first set of components of the dependency theory listed above the following can be added, (1) is the slow but sure development of a world capitalist system and (2) the correlation between the development of the metropole economy and the underdevelopment of the satellite economy.

2.2.4.3 Summary and analysis

In analysing the above components of the dependency theory the following tentative conclusions can be made:

1. A relationship between two states exists that is characterised by the dominance of the metropolitan state resulting in economic development and the subservience of the satellite state resulting in development at a much slower rate as compared to the metropolitan state. Rodney makes this point when he refers to the rate of development as opposed to the absence of development.¹⁴³

¹⁴² Hout, W., 1987. *Dependency, Exploitation and a Critique of the conception Dependency Theory*, Rotterdam: Department of Political Science Erasmus University Rotterdam. Pg 2

¹⁴³ Rodney, W., 1982. *How Europe Underdeveloped Africa*. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg 13

2. The metropolitan state needs to have or gain control over the economic activities of the satellite states so that the activities of the satellite state promotes the interest of the metropolitan. The economic interest of the satellite state is completely ignored and this conflict of interest is the breeding ground for the exploitation of the satellite states. Exploitation of the satellite states can take many forms from natural resource extraction to the slave trade that is executed for the sole benefit of the metropolitan. Paul Baran¹⁴⁴ defines the exploitation of the underdeveloped (satellite) by the developed (metropolitan) countries as the transfer of surplus¹⁴⁵ from the former to the latter countries.¹⁴⁶
3. The consequence of the exploitation by the metropolitan is that the satellite suffers from economic developmental stagnation as the interest of the metropolitan is advanced at the expense of the satellite.

From the summarisation of the dependency theory components, it is clear that a relationship of exploitation between the satellite and metropolitan states exists and that the exploitation at both a national¹⁴⁷ and international level prevents the reinvestment of capital into the satellite states to stimulate economic growth. The theory does have its fair share of critics, but it begins to explain the relationship between underdevelopment and historical trade relationships.¹⁴⁸

The exploitation of satellite states as mentioned earlier can be perpetrated by many different means. In the section to follow, exploitation from the perspective of the dependistas will be identified and discussed.

1. Exploitation from the perspective of the dependency theory

As noted, Baran defines exploitation as the transfer of surplus from the satellite state to the metropolitan. Baran further expands on the understanding of surplus by noting that it includes both actual and potential surplus that is extracted from the satellite states.¹⁴⁹ Baran defines (1) actual and (2) potential surplus as follows, (1) actual surplus ‘as the difference between

¹⁴⁴ Hereafter referred to as Baran

¹⁴⁵ The concept of surplus value will be addressed under the section of capitalism to follow in this chapter. Karl Marx conceptualisation of surplus value is far more comprehensive, but the author aims to avoid conceptual integration for the purpose of clarity.

¹⁴⁶ Baran, P. A., 1957. *The political economy of growth*. 1st ed. Los Altos, California: Penguin Books. Pg 22

¹⁴⁷ The infiltration of the metropolitan state agents within the satellite state. A very real example of this is the establishment of the apartheid regime via racial discrimination in the African context.

¹⁴⁸ Hout, W., 1987. *Dependency, Exploitation and a Critique of the conception Dependency Theory*, Rotterdam: Department of Political Science Erasmus University Rotterdam. Pg 17

¹⁴⁹ Baran, P. A., 1957. *The political economy of growth*. 1st ed. Los Altos, California: Penguin Books. Pg 22

society's actual¹⁵⁰ current output and the actual current consumption' and (2) potential surplus as 'the difference between the output that could be produced in a given natural and technological environment with the help of employable productive resources, and what might be regarded as essential consumption'.

In the author's understanding of the mechanics of exploitation, it can only really exist where there is enough of a particular good or service to cater for the basic needs of the satellite state and the excess/surplus is extracted and transferred to the metropolitan state. It would then stand to reason that at a conceptual level exploitation cannot exist when there are no goods or services that can be provided by the satellite state for the benefit of the metropolitan state. Dependistas have over the past centuries studied and identified several devices through which surplus have been extracted from satellite states and transferred to the metropolitan states.

Firstly, during the first period of European expansion, the removal of previously stored up surplus of the targeted potential satellite state. The actions of the Spanish conquistadores are used as an example of this practice.¹⁵¹ Spain was renowned for the conquering of other states by means of military action and the introduction of diseases which dismantled existing structures and had the effect of destroying previously stored up surplus.¹⁵²

Secondly, dependistas have studied the transfer of surplus value via international trade.¹⁵³ In layman's terms, the rise of international trade, especially in the context of a metropolitan-satellite state scenario, has given rise to the potential for unequal exchange¹⁵⁴ at an international level.¹⁵⁵ The fundamental reason for this is the very nature of the relationship between the metropolitan and satellite states which is characterised by control and exploitation. As a result of the control exercised by the metropolitan, the terms and conditions of trade would be constructed to benefit solely the interests of the metropolitan state.¹⁵⁶

¹⁵⁰ Italics added for emphasis on the distinction between actual and potential surplus.

¹⁵¹ Hout, W., 1987. *Dependency, Exploitation and a Critique of the conception Dependency Theory*, Rotterdam: Department of Political Science Erasmus University Rotterdam. Pg 5

¹⁵² Hennessy, A., 1992. *The Nature of the Conquest and the Conquistadores* - British Academy. (Noted as Pg 5) Available at: <https://www.britac.ac.uk/pubs/proc/files/81p005.pdf> [Accessed 24 April 2018].

¹⁵³ Hout, W., 1987. *Dependency, Exploitation and a Critique of the conception Dependency Theory*, Rotterdam: Department of Political Science Erasmus University Rotterdam. Pg 5

¹⁵⁴ The principle of unequal exchange is to be dealt with in the section to follow.

¹⁵⁵ Hout, W., 1987. *Dependency, Exploitation and a Critique of the conception Dependency Theory*, Rotterdam: Department of Political Science Erasmus University Rotterdam. Pg 5

¹⁵⁶ Brewer, A., 2001. *Marxist Theories of Imperialism*. 2nd ed. London and New York: Taylor & Francis e-Library. Pgs 164-165

Thirdly, investments into the satellite states lead to a net capital outflow since the surplus extracted would be redistributed to the metropolitan states via the national structures implemented in the satellite states. This state is still characterised by the number of foreign-owned enterprises within Africa. As at the end of December 2015, it was reported that nearly fifty percent of the 40 top JSE listed companies were owned by foreign shareholders and it is this foreign ownership that historically has laid the foundation for a net capital outflow.¹⁵⁷ Companies, according to the dependistas are considered to be agents of the metropolitan states used as a vehicle to facilitate the extraction of surplus value from the satellite states.¹⁵⁸

Fourth and lastly, this method is linked with the principle of unequal exchange, the deterioration of the terms of trade between the metropolitan and the satellite states.¹⁵⁹ The perspective of dependistas Arghiri Emmanuel,¹⁶⁰ on the concept of unequal exchange, will be discussed because of the significant amount of attention he devoted to this concept.¹⁶¹

2. Unequal Exchange

The formulation of the theory of unequal exchange by Emmanuel is based on Karl Marx's solution to the transformation problem. Fundamentally the issue of transformation focuses on how the value of labour power is transformed into wages.¹⁶² Labour power became a commodity that can be bought and sold for a wage, slavery being the most unadulterated example of this fact. The source of profit is constituted by the excess of value created by the labour power over the wage incurred to purchase the labour power, differently stated, in a capitalist society the cost of labour power will never exceed that of the value created by it as a loss would then be suffered.¹⁶³ Labour power is the only commodity that can produce a value

¹⁵⁷ SA Investing, 2015. Foreign shareholders now control almost half the JSE's Top 40 companies. Available at: <https://www.biznews.com/sa-investing/2015/12/02/foreign-shareholders-now-control-almost-half-the-jses-top-40-companies/> [Accessed 24 April 2018].

¹⁵⁸ Hout, W., 1987. *Dependency, Exploitation and a Critique of the conception Dependency Theory*, Rotterdam: Department of Political Science Erasmus University Rotterdam. Pg 7

¹⁵⁹ Hout, W., 1987. *Dependency, Exploitation and a Critique of the conception Dependency Theory*, Rotterdam: Department of Political Science Erasmus University Rotterdam. Pg 5

¹⁶⁰ Hereafter referred to as Emmanuel.

¹⁶¹ Hout, W., 1987. *Dependency, Exploitation and a Critique of the conception Dependency Theory*, Rotterdam: Department of Political Science Erasmus University Rotterdam. Pg 5

¹⁶² Brewer, A., 2001. *Marxist Theories of Imperialism*. 2nd ed. London and New York: Taylor & Francis e-Library. Pg. 201

¹⁶³ Emmanuel, A., 1972. *Unequal Exchange - A Study of the Imperialism of Trade*. 2nd ed. Paris: Librairie Francois Maspero. Pgs 106-107

greater than its own cost of production¹⁶⁴ and it is this ability that results in wage differences that are prejudicial to the satellite states.¹⁶⁵ International trade is essentially the exchanging of values between countries and labour power forms an integral part of the value creation process, more commonly referred to as the production process.¹⁶⁶ Unequal exchange then exists whereby:

‘the low-wage country has to pay more for its imports than it would if wages were the same in both countries, without getting higher prices for its own exports. It thus has to export more to get a given amount of imports. Correspondingly, the high-wage country gets more imports in return for a given amount of exports.’¹⁶⁷

From the perspective of a metropolitan-satellite relationship, the consequence of this is that the satellite has to produce and export more products (i.e. more value) to be able to import the equivalent amount of value. To explain this scenario Anthony Brewer¹⁶⁸ constructs an example to illustrate the principle which the author of the mini-thesis will explain in a concise manner.¹⁶⁹ Only the key features of the example are presented here and it is further clarified that the wage rates in a metropolitan-satellite state relationship is one whereby the wages in the metropolitan are significantly higher than that of the satellite for the same value created in both. Therefore in this example country A, is classified as the metropolitan and country B as the satellite for the purpose of this mini-thesis. Country A and B trade with each other.

The tables to follow as constructed by Brewer highlight the change in the value of goods being imported and exported when the wage cost of Country A is increased. The starting point is table 2.2-1 whereby the wage costs of both Country A and B are exactly the same. Contrast to this, table 2.2-2 now reflects an increase in the wage in Country A with no increase in value produced.

¹⁶⁴ Emmanuel, A., 1972. *Unequal Exchange - A Study of the Imperialism of Trade*. 2nd ed. Paris: Librairie Francois Maspero. Pg. 107

¹⁶⁵ Hout, W., 1987. *Dependency, Exploitation and a Critique of the conception Dependency Theory*, Rotterdam: Department of Political Science Erasmus University Rotterdam. Pg 5

¹⁶⁶ Hout, W., 1987. *Dependency, Exploitation and a Critique of the conception Dependency Theory*, Rotterdam: Department of Political Science Erasmus University Rotterdam. Pg 6

¹⁶⁷ Brewer, A., 2001. *Marxist Theories of Imperialism*. 2nd ed. London and New York: Taylor & Francis e-Library. Pg. 203

¹⁶⁸ Hereafter referred to as Brewer

¹⁶⁹ Brewer, A., 2001. *Marxist Theories of Imperialism*. 2nd ed. London and New York: Taylor & Francis e-Library. Pgs 204-208

Only relevant aspects of the example have been extracted and explained. The full example with all the information and assumptions can be examined as referenced.

Table 2.2-1: Source and uses of goods – Equal wages

Country	Goods	Output	Used as input	Used by workers	Used by capitalists	Net Import
Country A	Good 1	500	(100)	(100)	(50)	(250)
	Good 2		(100)	(100)	(50)	+250
Country B	Good 1		(100)	(100)	(50)	+250
	Good 2	500	(100)	(100)	(50)	(250)

Table 2.2-2: Source and uses of goods – Wages increased in Country A (Unequal wages)

Country	Goods	Output	Used as input	Used by workers	Used by capitalists	Net Import
Country A	Good 1	500	(100)	(150)	(27.78)	(222.22)
	Good 2		(100)	(150)	(27.78)	+277.78
Country B	Good 1		(100)	(100)	(22.22)	+222.22
	Good 2	500	(100)	(100)	(22.22)	(277.78)

Notes to tables 2.2-1 and 2.2-2:

- Sources of goods (production, imports) shown as +, uses as ()

A comparison of table 2.2-1 and 2.2-2 reveals the following:

- 1) Whereas before the wage increase in country A, the value of the products exchanged was exactly the same which means that the exchange of values and the benefit to the respective countries were equal.
- 2) However, after the increase in the wage rate in country A, the value of the goods being exchanged (traded) is not the same anymore. At the same level of production, the value of products leaving country B equals 277.78 units whilst the value of products imported is only valued at 222.22 units. This results in a net exchange loss of 55.56 units (277.78-222.22) in country B.
- 3) In contrast, at the same level of production the value of goods leaving country A equals 222.22 units, whilst the value of products being imported equals 277.78 units. The result of this is an exchange gain of 55.56 units. The basis for this comparison is the fact that profits will equalise at the international level, meaning that country A has basically via the increase in the wage, stripped country B from realising an equivalent profit by having increased the cost of production in country B. As indicated, the selling prices remain constant and therefore profit is reduced by the formula that profit = selling price less cost of production. As the cost of production increases ceteris paribus, profit will decrease.

In summarising the fundamental concern raised by Emmanuel, it is clear that the principle of unequal exchange at the wage level is critical to fully understanding the methods of exploitation used by the metropolitans to extract surplus value from the satellites. It is fundamentally because of this reason that the slave trade industry developed and expanded. Slaves were a cheap form of labour power that could be used in the production process to create value.

The dependency theory is founded on establishing a metropolitan-satellite relationship with the intention of exploiting the satellite for the benefit of the metropolitan. Many dependistas, noticeably Emmanuel were essentially Marxian economists and have grounded their theories or have extended Karl Marx's theory of capitalism. Endless references in the work of Emmanuel on unequal exchange is made to the work of Karl Marx, which just serves to underline the importance understanding capitalism.^{170,171}

2.2.5 Underdevelopment as a catalyst for the formation of the Organisation of African Unity

Underdevelopment is not an original state of backwardness but the result of the satellite state being exploited by the metropolitan state.¹⁷² According to Rodney, the reasons for underdevelopment are normally given from preconceived ideas influenced by a conflict of interest or that looking inside the underdeveloped economy will explain why it is underdeveloped. Rodney states further that the true reasons for underdevelopment can only be explained at a relational level with developed countries and identifying that relationship as exploitative.¹⁷³ At the end of May 1963, the OAU was formed to better the political and economic situation in Africa, fight colonialism and defend the independence of African States.¹⁷⁴ The fight against colonialism in substance was a fight against the underdevelopment of Africa, and whilst the OAU eventually succumbed to the pressures of dictatorship and civil war, the AU was established in 2002 as the OAU's successor.¹⁷⁵ It is on this note that we turn

¹⁷⁰ Emmanuel, A., 1972. *Unequal Exchange - A Study of the Imperialism of Trade*. 2nd ed. Paris: Librairie Francois Maspero. Pg.4

¹⁷¹ See section 2.2.3

¹⁷² Brewer, A., 2001. *Marxist Theories of Imperialism*. 2nd ed. London and New York: Taylor & Francis e-Library. Pg 18

¹⁷³ Rodney, W., 1982. *How Europe Underdeveloped Africa*. Revised edition 1981 ed. Washington D.C: Howard University Press. Pg 22

¹⁷⁴ Poverty, 2013. *The formation of the African Union*.

Available at: <http://devinit.org/post/formation-african-union/>
[Accessed 3 May 2018].

¹⁷⁵ South African History Online, 2015. *The African Union (AU)*.

Available at: <https://www.sahistory.org.za/article/african-union-au>

our attention to the next major section of this chapter which deals with the establishment of the OAU.

2.3 THE ESTABLISHMENT OF THE ORGANISATION OF AFRICAN UNITY

In this section, we will construct a framework for the establishment of the OAU by discussing the vision and objectives with which the OAU was formed and linking those objectives back to the effect of underdevelopment within Africa.

2.3.1 Framework for the establishment of the Organisation of African Unity

The establishment of the OAU was based on the belief that for black civilisations to prosper, it was necessary to establish their own nations free from European influences.¹⁷⁶ The notion of establishing our own nation speaks directly to the desire for power and control over the future of Africa by Africans which is related to the development of the Pan-Africanism¹⁷⁷ movement and was fundamental to the establishment of the OAU.¹⁷⁸ Referring back to section 2.2.4.3 in which the components of the dependency theory was summarised, it was noted that a relationship of exploitation between the satellite and metropolitan states exists and that the exploitation at both a national and international level prevented the reinvestment of capital into the satellite states to stimulate economic growth, thereby underdeveloping the satellite state.

Using the dependency theory, the establishment of the OAU can be substantiated through the use of the Hegelian Dialectic¹⁷⁹ approach. The subject matter is the development of Africa and how Africa can reap the benefits of its resources. The mini-thesis in this context, is that the

[Accessed 3 May 2018].

¹⁷⁶ South African History Online, 2011. Organisation of African Unity.
Available at: <http://www.sahistory.org.za/topic/organisation-african-unity-oau>
[Accessed 4 May 2018].

¹⁷⁷ There are many varieties of Pan-Africanism. In its narrowest interpretation, Pan-Africanists envision a unified African nation where all people of the African Diaspora can live.
South African History Online, 2015. Pan-Africanism.
Available at: <http://www.sahistory.org.za/article/pan-africanism>
[Accessed 4 May 2018].

¹⁷⁸ South African History Online, 2011. Organisation of African Unity.
Available at: <http://www.sahistory.org.za/topic/organisation-african-unity-oau>
[Accessed 4 May 2018].

¹⁷⁹ Defined as: an interpretive method in which the contradiction between a proposition (thesis) and its antithesis is resolved at a higher level of truth (synthesis)
Collins, 2018. Definition of 'Hegelian dialectic'.
Available at: <https://www.collinsdictionary.com/dictionary/english/hegelian-dialectic>
[Accessed 4 April 2018].

resources extracted from Africa need to be reinvested back into Africa by means of building better schools for better education, improving the road and railway system and so forth, in essence we are referring to the objectives with which the OAU was originally conceived referred to in section 2.3.2 to follow.¹⁸⁰ The anti-thesis in this context is that colonialism with its exploitative nature had no intention of developing Africa as has been reiterated by the work of Rodney and by his account, the resources of Africa were being extracted and invested in the development of Europe.¹⁸¹ The perfect synthesis to this dialectic would have been the eradication of colonialism and the redistribution back to Africa as the rightful owners to reap the benefit of Africa's resources. The result of this would have been the reinvestment of the wealth extracted from Africa into the schooling system and the other developmental goals as envisaged by the OAU. This was not possible due to the military powers at the colonialist's disposal, however, a movement in this case the formation of the OAU would at least serve as a means to try and consolidate the little power and influence the individual African States had and use it to develop Africa for Africans.

'By union the smallest states thrive. By discord the greatest are destroyed'¹⁸²

Essentially the conflict of interest between the colonialists and colonies is what gave birth to the idea of unity. The desire for Africa to thrive brought together the African states under a common cause which resulted in the establishment of the OAU. We will in the following section discuss the objectives of the OAU.

2.3.2 The Objectives of the Organisation of African Unity

The OAU Charter Article 2(1) outlined the following objective:¹⁸³

- a) Promote unity and solidarity of the African states

¹⁸⁰ South African History Online, 2015. The African Union (AU).

Available at: <https://www.sahistory.org.za/article/african-union-au>
[Accessed 3 May 2018].

¹⁸¹ Rodney, W., 1982. How Europe Underdeveloped Africa. Revised edition 1981 ed. Washington D.C: Howard University Press. Chapter V

¹⁸² Sallust, 2018. The Best Quotes About Unity.

Available at: <https://www.ranker.com/list/notable-and-famous-unity-quotes/reference>
[Accessed 11 May 2018].

¹⁸³ Elias, T. O., 1965. The Charter of the Organization of African Unity. The American Journal of International Law, 59(2), pp. 243-267. Pg 247

- b) To coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa,
- c) To defend their sovereignty, their territorial integrity and independence,
- d) To eradicate all forms of colonialism from Africa, and
- e) To promote international cooperation, having due regard to the Charter of the United Nations (UN) and the Universal Declaration of Human Rights.

When considering the above objectives they can be grouped and discussed as follows. Objectives (a) to (c) can be grouped with the purpose of achieving unification, prosperity and independence of Africa and its people. Objective (d) speaks directly to the need of eradicating colonialism in order to achieve independence and African state sovereignty. Objective (e) had the intention of making African member states aware that, in order to achieve international co-operation, then the principles of the United Nations Charter Article 52 para 1 had to be adhered to. This United Nations Charter Article states that regional agencies can be created if the activities of those agencies are consistent with the purpose and principles of the UN.¹⁸⁴

(1) Unification, prosperity and independence of Africa and its people

As mentioned in section 2.2.3.2-(1), dealing with the supposed benefits to Africa under colonialism, it was noted that transport between the African States was basically non-existent, except to the extent that it served the purpose of transporting white settlers or for military mobility. To achieve a unified Africa at a local level, the road and railway system would need to be addressed to facilitate movement between the African States.

(2) Eradication of Colonialism

Rodney speaks about the power of Africans being taken away by colonialism, this speaks directly to the need for self-reliance and sustainability as an African Nation. The governance of power over Africa by Africans would go a long way in eliminating the conflict of interest that exists between the development of Europe and the development of Africa. The two cannot

¹⁸⁴ Elias, T. O., 1965. The Charter of the Organization of African Unity. The American Journal of International Law, 59(2), pp. 243-267. Pg 247

exist side-by-side when European colonisation by definition refers to a situation whereby Africa will be exploited for the benefit of the European colonists.

(3) United Nations Charter

The reference to the UN Charter can be seen as a legal framework within which the OAU has established itself. This in essence gave the OAU legal backing in trying to achieve its main objectives.

2.4 CONCLUSION

Referring back to the introductory paragraph, the following tentative conclusion can be drawn on the following focus points, (1) underdevelopment in the African Continental context and (2) the establishment of the OAU.

(1) Underdevelopment in the African Continental context

The roots of underdevelopment in the African Continental context can be traced back to the exploitative nature of trade with Europe. Under colonialism, Africa suffered severely from an economic and societal perspective as the mineral rich countries were stripped bare of their resources and the wealth transferred to Europe. Rodney explicitly states that underdevelopment of Africa from a historical perspective is mirrored by the technological advancements of Europe and explains how Africa contributed to the development of Europe. The present day state of underdevelopment of Africa is still largely reflected by the significant amount of raw materials exported and manufactured products imported. The lack of industrialisation is a key issue to be addressed before the intrinsic value of raw materials can be extracted through the manufacturing process.

(2) The establishment of the Organisation of African Unity

The establishment of the OAU was unavoidable in light of the conflict of interest that existed between the development of Africa and Europe. As long as colonialism existed, Africa would have been exploited for the benefit of the colonist. The formation of the OAU was in essence born out of the desire to see Africa develop, especially given how rich in natural resources Africa is. The OAU played a key role in defending and actively pushing the interest of Africa as a whole. It is therefore imperative that the OAU is independent in its existence, thoughts and actions, and reliance on donor funding from the very countries against which the interests of

Africa is to be defended and pursued, severely compromises the OAU to think and act independently.

It is without any doubt that the ability of the OAU to exist, think and act independently is very closely linked to its ability to self-finance. Dependence on donor funding significantly impairs the organisation's ability to act without fear of losing that funding when called on to defend and pursue the interest of Africa at the expense of the donor's. The self-financing mechanism implemented can be seen as a measure to address the ability to self-finance and gain independence.

The formation of the African Union (AU) to continue the work of the OAU, following its demise and the development and implementation of the self-financing mechanism to achieve independence and combat underdevelopment will therefore be explored comprehensively in chapter 3.



CHAPTER 3

THE ESTABLISHMENT OF THE AFRICAN UNION LEADING INTO THE NEED FOR A SELF-FINANCING MECHANISM

‘The OAU’s original aim was to defend and respect the sovereignty and territorial integrity of member states, and to liberate all those who were still under colonial rule.’¹⁸⁵

3.1 INTRODUCTION

The overarching objectives of this chapter are to provide a historical account relating to the establishment of the African Union (AU) and construct a theoretical framework for the AU’s decision to establish and implement a self-financing mechanism. The establishment of the AU begins with the formation of the Organisation of African Unity (OAU) which was established on 25 May 1963.¹⁸⁶ The 19th-century Pan-Africanist movement played a key role in the formation of the OAU,¹⁸⁷ whereby it was believed that people of African descent have common interests and should be unified.¹⁸⁸ At the time of the OAU establishment, the main objective was the liberation of the entire African Continent from colonial, racist and apartheid systems¹⁸⁹ and whilst having achieved that objective, the OAU’s framework for crisis management failed to adequately address the complex nature of crises in recent times.¹⁹⁰

It was this inability to deal with the changing nature of conflict within Africa that, in July of the year 2000 led to the adoption of the Constitutive Act for the AU.^{191,192} The AU was designed to be more proactive in its efforts to tackle the challenges faced by Africa, by way of organising the people and using the continent's resources to improve the conditions within

¹⁸⁵ Bakwesegha, M., 2001. From Unity to Union. *Conflict Trends*, 2001(2), pp. 28-33. Pg 28

¹⁸⁶ South African History Online, 2011. Organisation of African Unity. Available at: <http://www.sahistory.org.za/topic/organisation-african-unity-oau> [Accessed 29 May 2018].

¹⁸⁷ South African History Online, 2011. Organisation of African Unity. Available at: <http://www.sahistory.org.za/topic/organisation-african-unity-oau> [Accessed 29 May 2018].

¹⁸⁸ South African History Online, 2015. Pan-Africanism. Available at: <http://www.sahistory.org.za/article/pan-africanism> [Accessed 29 May 2018].

¹⁸⁹ Schadomsky, L., 2013. Africa's dream of unity. Available at: <http://www.dw.com/en/africas-dream-of-unity/a-16832516> [Accessed 29 May 2018].

¹⁹⁰ Bakwesegha, M., 2001. From Unity to Union. *Conflict Trends*, 2001(2), pp. 28-33. Pg 30

¹⁹¹ The establishment of the African Union in terms of Article 2 of the Constitutive Act of the African Union

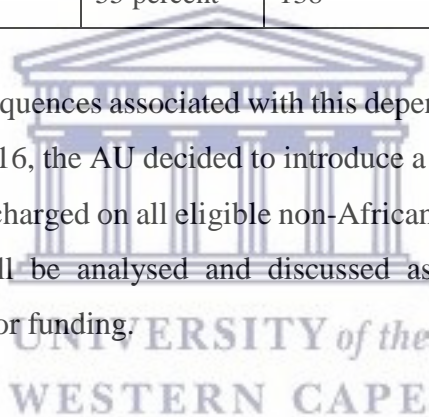
¹⁹² Bakwesegha, M., 2001. From Unity to Union. *Conflict Trends*, 2001(2), pp. 28-33. Pg 31

Africa.¹⁹³ In order for the AU to carry out its objectives, funding is required which historically has been obtained from a combination of member contributions and donors.¹⁹⁴ The exceptionally high level of reliance on donor funding severely undermines the AU's ability to act impartially and puts at risk the independence and honour of the AU.¹⁹⁵ This reliance is highlighted by the table 3.1-1 that splits the 2014 to 2016 AU budgets contributions between the donor and Member State portions:

Table 3.1-1: The 2014 to 2016 African Union Budget split between donor and member state portions:

Budgetary Year	Total Budget in \$ Million	Portion donor-funded in \$ Million	Percentage donor funding	Portion Member State funded in \$ Million	Percentage Member State-funded	Footnote Reference
2016	417	247	59 percent	170	41 percent	¹⁹⁶
2015	522	375	72 percent	147	28 percent	¹⁹⁷
2014	308	170	55 percent	138	45 percent	¹⁹⁸

It is the realisation of the consequences associated with this dependence, which lead to the need for self-sufficiency. In July 2016, the AU decided to introduce a self-financing mechanism via a 0.2 percent levy that will be charged on all eligible non-African imported products.^{199,200} The self-financing mechanism will be analysed and discussed as a means of alleviating the dependency of the AU on donor funding.



¹⁹³ Bakwesegha, M., 2001. From Unity to Union. Conflict Trends, 2001(2), pp. 28-33. Pg 31

¹⁹⁴ Also referred to as development partners in some referenced text. The different terms however have the same meaning.

¹⁹⁵ Institute for Security Studies, 2016. A new financing model for the AU: will it work?

Available at: <http://www.polity.org.za/article/a-new-financing-model-for-the-au-will-it-work-2016-07-25> [Accessed 31 May 2018].

¹⁹⁶ African Union Commission, 2016. African Union Handbook 2016. 3rd ed. Addis Ababa: African Union Commission and New Zealand Ministry of Foreign Affairs and Trade. Pg 171

¹⁹⁷ African Union Commission, 2015. African Union Handbook 2015. 2nd ed. Addis Ababa: African Union Commission and New Zealand Ministry of Foreign Affairs and Trade. Pgs 169-170

¹⁹⁸ African Union Commission, 2014. African Union Handbook 2014. 1st ed. Addis Ababa: African Union Commission and New Zealand Ministry of Foreign Affairs and Trade. Pgs 161-162

¹⁹⁹ The term 'eligible non-African imported products' will be discussed and fully unpacked in the chapter 3.3.2.2

²⁰⁰ Apiko, P. & Aggad, F., 2017. Analysis of the implementation of the African Union's 0.2% levy: Progress and challenges. Pg introductory summary (The initial pages are unnumbered)

Available at: <http://ecdpm.org/publications/analysis-of-the-implementation-of-the-africa-union-levy/> [Accessed 31 May 2018].

Based on the introduction provided above, this chapter will be broken up into two major sections as follows, (1) the formation of the OAU and subsequent establishment of the AU and (2) an analysis of the self-financing mechanism.

3.2 THE FORMATION OF THE ORGANISATION OF AFRICAN UNITY AND SUBSEQUENT ESTABLISHMENT OF THE AFRICAN UNION

In this section related to the formation of the OAU and subsequent AU, we will first discuss the formation, objectives and history of the OAU leading into, secondly why the AU was established to take over from the OAU.

3.2.1 The Organisation of African Unity

In this subsection dedicated to the OAU, we will discuss (1) its formation from the Pan-Africanism ideals, (2) the Charter of the OAU and lastly (3) the shortcomings of the OAU resulting in the establishment of the AU.

3.2.1.1 From Pan-Africanism to the formation of the Organisation of African Unity

The formation of the OAU can trace its routes back to the Pan-Africanism movement started by Trinidad born Sylvester Williams.²⁰¹ Williams was the first person to publicly speak about the Pan-African dream, which fundamentally focussed on three aspects, (1) the restoration of the dignity of black men and women, (2) the return to the land of their forefathers and (3) the revival of the African culture.²⁰² In 1900, Williams in collaboration with several other black leaders living in exile organised the first Pan-African meeting.²⁰³ This meeting constituted the first opposition against colonialism and apartheid, at an international level and attracted international attention which put the word Pan-African at the forefront of international affairs.²⁰⁴ In 1919, William DuBois²⁰⁵ attended and chaired the first Pan-African Congress

²⁰¹ Hereafter referred to as Williams.

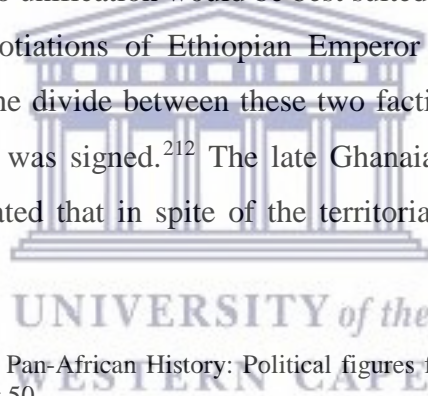
²⁰² Oji, E. C. & Lusignan, B., 2004. The Africa Union: Examining the new hope of Africa. Pg 8 Available at: <https://web.stanford.edu/class/e297a/The%20African%20Union%20-%20Examining%20the%20New%20Hope%20For%20Africa.pdf>. [Accessed 05 June 2018].

²⁰³ Adejumobi, S. A., 2007. The Pan-African Congresses, 1900-1945. Available at: <http://www.blackpast.org/perspectives/pan-african-congresses-1900-1945> [Accessed 6 June 2018].

²⁰⁴ Adejumobi, S. A., 2007. The Pan-African Congresses, 1900-1945. Available at: <http://www.blackpast.org/perspectives/pan-african-congresses-1900-1945> [Accessed 6 June 2018].

²⁰⁵ Hereafter referred to as DuBois.

(PAC) in Paris focused on the protection of the rights of Africans and those of African descent in the colonies and elsewhere by the League of Nations.²⁰⁶ By the seventh PAC held in Accra during the year 1958, the issue of decolonisation was raised which resulted in two forms of Pan-Africanism, firstly, the maximalist approach and secondly, the minimalist approach.²⁰⁷ The maximalist approach sought to create a United States of Africa and though supported by the majority of the African leaders, they understood the control the former colonialists still exerted in Africa and how this consolidation of the African States would ultimately work against decolonisation.²⁰⁸ The minimalist approach was seen as a weaker form of Pan-Africanism which proposed the formation of the OAU²⁰⁹ but, the establishment of the OAU served to emphasise the commonality amongst African people and formed a closer sense of solidarity and identity amongst the African States.²¹⁰ This solidarity was however tested as a result of disagreements that arose surrounding the method with which unity was to be achieved. One faction of countries believed in immediate unification whilst the other faction believed a regional approach to unification would be best suited to achieve the unity.²¹¹ It was however, the diplomatic negotiations of Ethiopian Emperor Haile Selassie and Guinea's Sekou Toure which bridged the divide between these two factions and on 25 May 1963 the official Charter for the OAU was signed.²¹² The late Ghanaian President and Pan African activist, Kwame Nkrumah stated that in spite of the territorial boundaries dividing us, the



²⁰⁶ Adi, H. & Sherwood, M., 2003. Pan-African History: Political figures from Africa and the Diaspora since 1787. 1st ed. London: Routledge. Pg 50

²⁰⁷ Oji, E. C. & Lusignan, B., 2004. The Africa Union: Examining the new hope of Africa. Pgs 8-9
Available at: <https://web.stanford.edu/class/e297a/The%20African%20Union%20-%20Examining%20the%20New%20Hope%20For%20Africa.pdf>.
[Accessed 05 June 2018].

²⁰⁸ Oji, E. C. & Lusignan, B., 2004. The Africa Union: Examining the new hope of Africa. Pg 8
Available at: <https://web.stanford.edu/class/e297a/The%20African%20Union%20-%20Examining%20the%20New%20Hope%20For%20Africa.pdf>.
[Accessed 05 June 2018].

²⁰⁹ Oji, E. C. & Lusignan, B., 2004. The Africa Union: Examining the new hope of Africa. Pg 9
Available at: <https://web.stanford.edu/class/e297a/The%20African%20Union%20-%20Examining%20the%20New%20Hope%20For%20Africa.pdf>.
[Accessed 05 June 2018].

²¹⁰ Schalk, B., Auriacombe, C. J. & Brynard, D. J., 2005. Successes and Failures of the Organisation of African Unity: Lessons for the Future of the African Union. *Journal of Public Administration*, 40(3.2), pp. 496-511. Pgs 499-450

²¹¹ Oji, E. C. & Lusignan, B., 2004. The Africa Union: Examining the new hope of Africa. Pg 9
Available at: <https://web.stanford.edu/class/e297a/The%20African%20Union%20-%20Examining%20the%20New%20Hope%20For%20Africa.pdf>.
[Accessed 05 June 2018].

²¹² Davis, J., 1996. AU/History - Birth pangs.
Available at: <http://www.washingtonpost.com/wp-adv/specialsales/international/spotlight/africa/article9.html?noredirect=on>
[Accessed 6 June 2018].

different religions and many different languages we speak, he was convinced that the forces fighting for unity far outweighed those which divide us.²¹³ It is with this in mind that we move to the next section in which we will discuss the Charter of the OAU.

3.2.1.2 Charter of the Organisation of African Unity

It is without any doubt that the original aims of the OAU were to (1) defend and respect the sovereignty and independence of the African States and (2) eradicate all forms of colonialism from Africa.²¹⁴ Article II para 1 of the Charter of the OAU further expands on these aims by establishing the purposes of the OAU as follows:²¹⁵

- a) 'To promote the unity and solidarity of the African States;
- b) To coordinate and intensify their cooperation and efforts to achieve a better life for the people of Africa;
- c) To defend their sovereignty, their territorial integrity and independence;
- d) To eradicate all forms of colonialism from Africa; and
- e) To promote international cooperation, having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights.'

Whilst all the items listed above are important, of particular importance is (d). The OAU failed in many of the objectives as set out by the Charter especially in terms of peace and security, but the role it played in the eradication of colonialism was considered one of the major accomplishments of the OAU and was critical for the development of Africa.²¹⁶ Colonialism was a significant contributor to the historical underdevelopment of Africa as a result of the exploitation suffered at the hands of the colonialists.²¹⁷

Article III of the OAU provides the basic principles to be adhered to by all the OAU Members in pursuit of the purposes as set out in Article II.

1. 'The sovereign equality of all Member States.

²¹³ Nkrumah, K., 1964. *Africa Must Unite*. 1st ed. New York: Frederick A. Praeger Inc Publishers. Pg 132

²¹⁴ Bakwesegha, M., 2001. From Unity to Union. *Conflict Trends*, 2001(2), pp. 28-33. Pg 28

²¹⁵ The Organization for African Unity, 1963. *The Charter for the Establishment of the Organization for African Unity*. Addis Ababa, Secretary-General.

²¹⁶ Bakwesegha, M., 2001. From Unity to Union. *Conflict Trends*, 2001(2), pp. 28-33. Pg 30

²¹⁷ See chapter 2.2.3

2. Non-interference in the internal affairs of States.
3. Respect for the sovereignty and territorial integrity of each State and for its inalienable right to independent existence.
4. Peaceful settlement of disputes by negotiation, mediation, conciliation or arbitration.
5. Unreserved condemnation, in all its forms, of political assassination as well as of subversive activities on the part of neighbouring States or any other States.
6. Absolute dedication to the total emancipation of the African territories which are still dependent.
7. Affirmation of a policy of non-alignment with regard to all blocs.’

Article III is referred to as the article of faith, as it sets out the principles that need to be adhered to by all the OAU Members in pursuit of the OAU’s aims.²¹⁸ All of these principles²¹⁹ are of importance but more so are the principles of non-interference and absolute sovereignty as they severely impeded the OAU’s ability to establish peace and security in Africa, the pinnacle of which is reflected by the mass genocide in Rwanda during 1994 whereby during a period of three months saw about 800 000 people slaughtered.²²⁰ The Rwandan genocide and failed peace-keeping attempt in Chad in 1981 which led to the overthrow of the legal authority²²¹ are just some of the examples which highlighted the complex nature of modern crises and the inadequacy of the OAU’s crisis management framework to deal with these complex issues.²²² It is with this in mind that we elaborate on the shortcomings of the OAU in the following subsection resulting in the establishment of the AU.

²¹⁸ Elias, T. O., 1965. The Charter of the Organization of African Unity. *The American Journal of International Law*, 59(2), pp. 243-267. Pg 248

²¹⁹ For the interested reader, refer to - Elias, T. O., 1965. The Charter of the Organization of African Unity. *The American Journal of International Law*, 59(2), Pgs 248-250 for a full description of the seven principles as set out in Article III of the OAU Charter.

²²⁰ History.com Staff, 2009. Rwandan Genocide. Available at: <https://www.history.com/topics/rwandan-genocide> [Accessed 6 June 2018].

²²¹ Sesay, A., 1991. The Limits of Peace-Keeping by a Regional Organization: The OAU Peace-Keeping Force in Chad. Pg 7 Available at: <https://journals.lib.unb.ca/index.php/JCS/article/viewFile/14931/16000>. [Accessed 6 June 2018].

²²² Bakwesegha, M., 2001. From Unity to Union. *Conflict Trends*, 2001(2), pp. 28-33. Pg 30

3.2.1.3 The shortcomings of the Organisation of African Unity leading to the establishment of the African Union

It was agreed that after the liberation of Africa from colonial power, the crisis management framework of the OAU was severely handicapped by the existing principles of non-interference and absolute sovereignty. These principles prevented the OAU from getting involved in conflicts within member states' borders²²³ which did very little to further the goals of greater peace, unity and prosperity on the African Continent.²²⁴ These principles are described as merely academic ideals which are unrealistic in modern times.²²⁵ As a direct consequence of the OAU's inability to deal with these complex issues, former Presidents Mbeki of South Africa together with Ghadaffi of Libya and Obasanjo of Nigeria, advocated for a reconceptualisation of the OAU, which essentially was the beginning of the end of the OAU.²²⁶ In addition to the fundamental contradiction of the non-interference and absolute sovereignty principles, the following factors also contributed to the failure of the OAU.²²⁷

- 'Lack of funding to operate effectively
- Lack of true unification of the nations that make up the OAU
- Lack of commitment from the heads of states of member nations
- Continuous ridicule from critics and a lack of respect from other international bodies.
- No true benefits to its members, affecting the efficacy of the OAU influence on the individual countries' policies.'

It is intriguing to note that the lack of funding ranks highly as a contributing factor for the inability of the OAU to act on its intentions as most Members had stopped paying their Member contributions.²²⁸ This led to the OAU having to approach the international community for

²²³ Oji, E. C. & Lusignan, B., 2004. The Africa Union: Examining the new hope of Africa. Pg 14

Available at: <https://web.stanford.edu/class/e297a/The%20African%20Union%20-%20Examining%20the%20New%20Hope%20For%20Africa.pdf>.

²²⁴ Schalk, B., Auriacombe, C. J. & Brynard, D. J., 2005. Successes and Failures of the Organisation of African Unity: Lessons for the Future of the African Union. *Journal of Public Administration*, 40(3.2), pp. 496-511. Pg 508

²²⁵ Bakwesegha, M., 2001. From Unity to Union. *Conflict Trends*, 2001(2), pp. 28-33. Pg 30

²²⁶ Langerud, M. H., 2016. From the Organisation of African Unity to the African Union: From a policy of non-interference to a policy of non-indifference?. Oslo: University of Oslo. Pg 69

²²⁷ Oji, E. C. & Lusignan, B., 2004. The Africa Union: Examining the new hope of Africa. Pg 15

Available at: <https://web.stanford.edu/class/e297a/The%20African%20Union%20-%20Examining%20the%20New%20Hope%20For%20Africa.pdf>.

²²⁸ Oji, E. C. & Lusignan, B., 2004. The Africa Union: Examining the new hope of Africa. Pg 14

financial assistance which severely undermined and diluted the strategic position of the OAU.²²⁹ It is with very little doubt that the author identifies this very matter as the reason for the conceptualisation, adoption and ultimate implementation of the AU's self-financing mechanism to be addressed in the following major section 3.3 of this chapter.

It is fundamentally with these factors in mind, that the African leaders in 1999, decided to accommodate different opinions on the restructuring of the OAU and in 2000 the Constitutive Act for a new organisation was adopted.²³⁰ The establishment of the AU was achieved in four Summits resulting in the official launch of the AU at the Durban Summit in 2002.²³¹ It is with this movement from the OAU to the AU that we discuss the AU in the subsection to follow.

3.2.2 The African Union

In this subsection dedicated to the AU, we will first, list the objectives and principles as set out by Articles 3 and 4 respectively in the Constitutive Act of the AU of 2002,²³² identify and discuss the main difference in the principles subscribed to by the OAU and the AU. Lastly, we will gain an understanding as to how the difference in principles affects the AU's funding requirements and discuss the need for self-reliance.

3.2.2.1 The African Union Constitutive Act

The AU Constitutive Act was adopted and signed at Lome Togo in 2000 and legally put into force on 26 May 2001 at the Lusaka Summit of 2001 at which, a roadmap for the implementation of the AU was established.²³³ The AU is officially established by the operation of Article 2 of the AU Constitutive Act, which establishes the AU subject to the provisions of the AU Constitutive Act.²³⁴

Available at: <https://web.stanford.edu/class/e297a/The%20African%20Union%20-%20Examining%20the%20New%20Hope%20For%20Africa.pdf>.

²²⁹ Oji, E. C. & Lusignan, B., 2004. The Africa Union: Examining the new hope of Africa. Pg 14

Available at: <https://web.stanford.edu/class/e297a/The%20African%20Union%20-%20Examining%20the%20New%20Hope%20For%20Africa.pdf>.

²³⁰ Langerud, M. H., 2016. From the Organisation of African Unity to the African Union: From a policy of non-interference to a policy of non-indifference?. Oslo: University of Oslo. Pg 70

²³¹ Oji, E. C. & Lusignan, B., 2004. The Africa Union: Examining the new hope of Africa. Pg 16

Available at: <https://web.stanford.edu/class/e297a/The%20African%20Union%20-%20Examining%20the%20New%20Hope%20For%20Africa.pdf>.

²³² Hereafter referred to as AU Constitutive Act.

²³³ Ani, N. C., 2016. African Solutions to African Problems: Assessing the African Union's Application of Endogenous Conflict Resolution Approaches. Durban: University of KwaZulu-Natal. Pg 125

²³⁴ The Department of International Relations and Cooperation's, 2004. Constitutive Act of the African Union. Available at: <http://www.dirco.gov.za/au.nepad/constitutive.htm>

Article 3 of the AU Constitutive Act lists the objectives of the AU as follows:²³⁵

- (a) 'achieve greater unity and solidarity between the African countries and the peoples of Africa;
- (b) defend the sovereignty, territorial integrity and independence of its Member States;
- (c) accelerate the political and socio-economic integration of the continent;
- (d) promote and defend African common positions on issues of interest to the continent and its peoples;
- (e) encourage international cooperation, taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights;
- (f) promote peace, security, and stability on the continent;
- (g) promote democratic principles and institutions, popular participation and good governance;
- (h) promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments;
- (i) establish the necessary conditions which enable the continent to play its rightful role in the global economy and in international negotiations;
- (j) promote sustainable development at the economic, social and cultural levels as well as the integration of African economies;
- (k) promote co-operation in all fields of human activity to raise the living standards of African peoples;
- (l) coordinate and harmonize the policies between the existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union;
- (m) advance the development of the continent by promoting research in all fields, in particular in science and technology;

[Accessed 8 June 2018].

²³⁵ The Department of International Relations and Cooperation's, 2004. Constitutive Act of the African Union.

Available at: <http://www.dirco.gov.za/au.nepad/constitutive.htm>

[Accessed 8 June 2018].

- (n) work with relevant international partners in the eradication of preventable diseases and the promotion of good health on the continent.’

Article 4 highlights the principles that must be adhered to in pursuing the objectives as outlined in Article 3 of the AU Constitutive Act as follows:²³⁶

- (a) ‘sovereign equality and interdependence among Member States of the Union;
- (b) respect of borders existing on achievement of independence;
- (c) participation of the African peoples in the activities of the Union;
- (d) establishment of a common defence policy for the African Continent;
- (e) peaceful resolution of conflicts among Member States of the Union through such appropriate means as may be decided upon by the Assembly;
- (f) prohibition of the use of force or threat to use force among Member States of the Union;
- (g) non-interference by any Member State in the internal affairs of another;
- (h) the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity;
- (i) peaceful co-existence of Member States and their right to live in peace and security;
- (j) the right of Member States to request intervention from the Union in order to restore peace and security;
- (k) promotion of self-reliance within the framework of the Union;
- (l) promotion of gender equality;
- (m) respect for democratic principles, human rights, the rule of law and good governance;
- (n) promotion of social justice to ensure balanced economic development;
- (o) respect for the sanctity of human life, condemnation and rejection of impunity and political assassination, acts of terrorism and subversive activities;

²³⁶ The Department of International Relations and Cooperation’s, 2004. Constitutive Act of the African Union. Available at: <http://www.dirco.gov.za/au.nepad/constitutive.htm> [Accessed 8 June 2018].

(p) condemnation and rejection of unconstitutional changes of governments.’

An analysis of Articles 3 and 4 of the AU Constitutive Act when compared to the objectives and principles as outlined by Articles II and III of the OAU Charter reveals a very important difference in the approach. The movement from a policy of non-interference and absolute sovereignty to non-indifference was seen by the African leaders as a dawn of a new era.²³⁷ As was discussed in section 3.2.1.3 dealing with the shortcomings of the OAU, the policy of non-interference and absolute sovereignty in substance negated the OAU’s ability to intervene in conflict within the borders of OAU Member States and fundamentally rendered the OAU defunct.²³⁸

3.2.2.2 From a policy of non-interference to non-indifference and the need for self-reliance

The adoption of the policy of non-indifference even though and rightfully considered a dawn of a new era in the African fight for peace, security and stability, comes with added financial burdens. Pursuant to this fundamental change in policy²³⁹ and in line with the provision of Article 5(2) of the Constitutive Act, the Peace and Security Council (PSC) of the African Union²⁴⁰ was established and is considered the most critical component in the AU’s peace and security architecture.²⁴¹ The PSC under the policy of non-indifference makes it possible for the AU to intervene in the internal affairs of a Member State to prevent or combat threats to peace, security and stability.²⁴² One of the critical factors adding to the shortcomings of the OAU, was the lack of funding²⁴³ for the initiatives to be actioned which left the OAU

²³⁷ Mwanasali, M., 2005. The era of non-indifference.

Available at: <https://mg.co.za/article/2005-09-13-the-era-of-nonindifference>
[Accessed 8 June 2018].

²³⁸ Mwanasali, M., 2005. The era of non-indifference.

Available at: <https://mg.co.za/article/2005-09-13-the-era-of-nonindifference>
[Accessed 8 June 2018].

²³⁹ From a policy of non-interference and absolute sovereignty to the policy of non-indifference.

²⁴⁰ African Union, 2003. Protocol Relating to the Establishment of the Peace and Security Council of the African Union.

Available at: <https://au.int/en/treaties/protocol-relating-establishment-peace-and-security-council-african-union>
[Accessed 12 June 2018].

²⁴¹ Aning, K., 2008. The African Union’s Peace and Security Architecture: Defining an emerging response mechanism. Pg 4

Available at: <http://nai.diva-portal.org/smash/get/diva2:610688/FULLTEXT01.pdf>
[Accessed 12 June 2018].

²⁴² Mwanasali, M., 2005. The era of non-indifference.

Available at: <https://mg.co.za/article/2005-09-13-the-era-of-nonindifference>
[Accessed 8 June 2018].

²⁴³ See section 3.2.1.3

with good intentions but, with no way of executing them.²⁴⁴ The ability and willingness of the AU Member States to contribute to the funding of peace and security initiatives are considered critical, given the fact that Africa cannot experience development where there is no peace, security and stability.²⁴⁵ This lack of Member State funding forces the AU to rely on the former colonialists and other external assistance for financial and technical resources which ultimately undermines the AU's peace-keeping activities.²⁴⁶ This need for assistance from external parties contradicts the important principle of self-reliance as set out in Article 4 para (k) in its aim for peace-keeping within and ultimate development of Africa. It is with this critical principle of self-reliance in mind that, the AU Assembly at its July 2016 Summit in Kigali considered the funding mechanism as proposed by Dr Donald Kaberuka²⁴⁷ which consists of a 0.2 percent import levy on all eligible imported products to finance the AU.²⁴⁸ This funding mechanism will form the focus of the next important section of this chapter dedicated to the AU's self-financing mechanism.

3.3 THE AFRICAN UNION'S SELF-FINANCING MECHANISM

In this section dedicated to the AU's self-financing mechanism we will discuss, (1) the background to and purpose of the self-financing mechanism, (2) the form and technical details of the self-financing mechanism and (3) practical matters related to the implementation of the self-financing mechanism by the Member States.

3.3.1 The background and purpose of the self-financing mechanism

The notion of self-reliance was core to the Pan-African values leading into the formation of the OAU²⁴⁹ and has been carried forward into the principles of the AU as has been highlighted in

²⁴⁴ Oji, E. C. & Lusignan, B., 2004. *The Africa Union: Examining the new hope of Africa*. Pg 14
Available at: <https://web.stanford.edu/class/e297a/The%20African%20Union%20-%20Examining%20the%20New%20Hope%20For%20Africa.pdf>.

²⁴⁵ Badmus, I. A., 2015. *The African Union's Role in Peacekeeping - Building on Lessons Learned from Security Operations*. 1st ed. New York: Palgrave Macmillan. Pg 5

²⁴⁶ Zondi, S., 2017. *African Union approaches to peacebuilding*.
Available at: <https://reliefweb.int/report/world/african-union-approaches-peacebuilding>
[Accessed 8 June 2018].

²⁴⁷ At the time Dr Donald Kaberuka was appointed as the AU High Representative for the Peace Fund tasked with finding sustained, predictable and flexible funding mechanisms to support AU-led peace operations.

²⁴⁸ Apiko, P. & Aggad, F., 2017. *Analysis of the implementation of the African Union's 0.2% levy: Progress and challenges*. Pg 4
Available at: <http://ecdpm.org/publications/analysis-of-the-implementation-of-the-africa-union-levy/>
[Accessed 31 May 2018].

²⁴⁹ African Union, 2018. *Financing of the Union - "By Africa for Africa"*. Pg 13
Available at: <https://au.int/sites/default/files/pages/31955-file-what20is20financing20of20the20union-1-2.pdf>

section 3.2.2.2 above. The initial conceptualisation of a self-financing mechanism can be traced back to declaration 1 (XXXVII) by the Assembly of Heads of State and Government held in 2001, during which the determination to uplift the living conditions of Africans was reiterated via the achievement of self-reliance.²⁵⁰ The purpose of the self-financing mechanism can be ascribed to the achievement of the following objectives:²⁵¹

1. 'To provide reliable and predictable funding for Continental peace and security through the Peace Fund,
2. To provide an equitable and predictable source of financing for the union,
3. To reduce the dependency on partner funds for the implementation of Continental developmental and integration programmes and
4. To relieve the pressure on national treasuries with respect to meeting national obligations for payment of the assessed contributions of the Union'.

An analysis of the above objectives quoted, just reaffirms the importance and financial burden the principle shift from a policy of non-interference to non-indifference is expected to have on the peace fund.²⁵² Creating a reliable source of funding to cover the budgetary requirements of the AU is critical to reducing dependency on donor funding, especially for developmental programmes and to assist the Union Members to fulfil their contribution requirements.

The AU's budget consists of three major components which are listed and briefly explained as follows.²⁵³

1. The operational budget

The operational budget is used to finance the operational costs of the AU. The operational costs include inter alia administrative and service delivery costs and have averaged around

[Accessed 13 June 2018].

²⁵⁰ African Union, 2001. Assembly of Heads of State and Government Thirty-Seventh Ordinary Session. Available at: <https://au.int/en/decisions/assembly-heads-state-and-government-thirty-seventh-ordinary-session> [Accessed 14 June 2018].

²⁵¹ African Union, 2018. Background Paper on Implementing the Kigali Decision on Financing the Union. Pg 2 Available at: <https://au.int/web/en/financing-union-document> [Accessed 14 June 2018].

²⁵² Refer to section 3.2.2.2

²⁵³ African Union, 2018. Background Paper on Implementing the Kigali Decision on Financing the Union. Pgs 4-5 Available at: <https://au.int/web/en/financing-union-document> [Accessed 14 June 2018].

US\$110 million annually from 2011 to 2015.²⁵⁴ This portion of the AU budget is financed exclusively from assessed Member State contributions.²⁵⁵

2. The programme budget (excluding peace support operations)

The programme budget is created to cover the costs related to the execution of the programmes approved by the AU Assembly. There are several groups of programmes that can be assigned to the budget but, the core substance of this budget is to finance those operations that could negatively affect the African Continent holistically, however matters of peace and security are budgeted for separately.

3. The peace and security budget

The peace and security budget is created to cover the costs associated with peace support operations, mediation and preventive diplomacy.

The fulfilment of these budgets is critical in enabling the AU to execute the programmes. The funding of the AU's budgets consists of two sources, the Member State contributions and the donor funding received from external parties.²⁵⁶ AU representatives at different stages have expressed concern over the growing reliance on donor funding to cover the operational costs of the AU.²⁵⁷

The following illustrative tables (3.3-1 and 2) stand but to highlight the dire financial constraints the AU was exposed to during the period of 2011 to 2015, which reaffirms the need for a self-financing mechanism.

²⁵⁴ The period indicated was used to substantiate the decision on the self-financing mechanism, the author has therefore used the same period as part of this mini-thesis. Refer to African Union, 2018. Background Paper on Implementing the Kigali Decision on Financing the Union. Pgs 6-7 Available at: <https://au.int/web/en/financing-union-document> [Accessed 14 June 2018].

²⁵⁵ Hereafter referred to as Member State contributions.

²⁵⁶ See section 3.2.2.2

²⁵⁷ Apiko, P. & Aggad, F., 2017. Analysis of the implementation of the African Union's 0.2% levy: Progress and challenges. Pg 1

Table 3.3-1: Member States contributions as per amount assessed, 2011-2015 in Mill. US\$²⁵⁸

Contribution	2011	2012	2013	2014	2015	Average
Current Year Assessment ²⁵⁹	122.6	120.1	120.5	126.1	131.2	124.0
Paid amount current year	68.7	88.2	85.1	84.7	89.4	83.3
Payment Rate	56%	73%	71%	67%	68%	67%

An analysis of the overall Member State contributions, reveals the following:

1. The Member States have not collectively in any of the years indicated paid 100 percent of the contribution budgeted for by the AU.
2. On average, only 67 percent of the total Member State contribution has been paid to the AU over the five year period analysed.

The above analysis is aggravated by the fact that the outstanding arrear Member State contributions are not honoured either as indicated by table 3.3-2 below.

Table 3.3-2: Member States arrears outstanding versus amount paid, 2011-2015 in Mill. US\$²⁶⁰

	2011	2012	2013	2014	2015	Average
Total Arrears outstanding	44.7	72.0	44.0	49.0	76.0	57.0
Arrears Paid	18.1	62.1	28.7	32.0	51.1	38.7
Payment Rate	42%	86%	65%	65%	68%	67%
Outstanding Arrears	58%	14%	35%	35%	32%	33%

²⁵⁸ African Union, 2018. Background Paper on Implementing the Kigali Decision on Financing the Union. Pg 7 Available at: <https://au.int/web/en/financing-union-document> [Accessed 14 June 2018].

²⁵⁹ It should be noted that the reason for the difference between the 2014 and 2015 assessed Member State budget portion as per table 3.3-1 and the Member State contributions as per table 3.3-2, relates to the inclusion of inter alia the Acquisition of Properties Fund, Reserve Fund and Women Fund as part of the allocated Member State budget portion. For the purpose of accurately calculating the percentage of actual Member State contributions paid towards the assessed Member State contributions, the budgets allocated to the funds noted have been eliminated.

²⁶⁰ African Union, 2018. Background Paper on Implementing the Kigali Decision on Financing the Union. Pg 7 Available at: <https://au.int/web/en/financing-union-document> [Accessed 14 June 2018].

From table 3.3-2 it is noted that only 67 percent of outstanding arrear Member State contributions are collected. This ultimately means that for the period highlighted, the AU was unable to collect 100 percent of the budgeted Member State contributions.

A superficial analysis of the averages over the period under review from table 3.3-1 together with table 3.3-2 reveals the following:

1. The sum of the average contributions paid during the year (US\$83.3 million) and the average arrear contributions paid (US\$38.7 million) equals US\$122 million.
2. The average annual costs of the operational budget only, of the AU is estimated at US\$110 million.²⁶¹
3. This means that after the average annual costs of only the operational budget are paid, only US\$12 million on average is available for both the programme and peace and security budgets from the Member State contributions.

This leaves AU in the compromising position of expecting about 90 percent of the programme budget to be funded by donors.²⁶² Donor funding has however consistently fallen below the requested amounts which has left the AU unable to execute the programmes planned for.²⁶³ It is with this lack of sustainable and predictable funding in mind that we shift our attention to the self-financing mechanism in the following subsection.

3.3.2 The form and technical details of the self-financing mechanism

This subsection will be split into two sections dealing with, (1) what form the self-financing mechanism will take and (2) the technical details regarding the self-financing mechanism.

²⁶¹ Refer to section 3.3.1 – 1. The Operational Budget.

²⁶² African Union, 2018. Background Paper on Implementing the Kigali Decision on Financing the Union. Pg 7 Available at: <https://au.int/web/en/financing-union-document> [Accessed 14 June 2018].

²⁶³ African Union, 2018. Background Paper on Implementing the Kigali Decision on Financing the Union. Pg 7 Available at: <https://au.int/web/en/financing-union-document> [Accessed 14 June 2018].

The interested reader is referred to page 8, figure 4 of the above referenced document to get a more comprehensive picture of the recent differences between the requested and actual funding received from the development partners.

3.3.2.1 Form of self-financing mechanism

Pursuant to the objective of finding a viable, equitable, sustainable and predictable source of financing the Union, the following alternative funding sources were identified and presented at the May 2013 AU Assembly.²⁶⁴

1. US\$2.00 hospitality levy per stay in a hotel instead of tourism levy, or
2. US\$5 cents levy per text message sent, or
3. US\$5.00 travel levy on flight tickets originating from or coming to Africa from outside Africa.

These proposals were in principle approved but some members, especially those reliant on the tourism industry expressed concern about the effects these options would have on their already struggling tourism industries.²⁶⁵ In January 2016, Dr Kaberuka proposed the use of a 0.2 percent import levy to be charged on all eligible imported goods into the Continent to finance the AU's Operational, Programme and Peace Support Operations Budgets starting from the year 2017.²⁶⁶ The 0.2 percent proposed import levy to finance the AU was accepted by the Assembly of the Union at the twenty-seventh AU Summit.²⁶⁷ Having established the form of the self-financing mechanism as a 0.2 percent import levy, the next subsection will deal with the technical details related to the 0.2 percent import levy.

3.3.2.2 Technical details – 0.2 percent import levy

The self-financing mechanism is technically described as a 0.2 percent import levy to be charged on all eligible goods imported into the territory of a Member State from a non-Member State.²⁶⁸ An analysis of the phrases used to describe the self-financing mechanism

²⁶⁴ Apiko, P. & Aggad, F., 2017. Analysis of the implementation of the African Union's 0.2% levy: Progress and challenges. Pg 2

²⁶⁵ Apiko, P. & Aggad, F., 2017. Analysis of the implementation of the African Union's 0.2% levy: Progress and challenges. Pg 2

²⁶⁶ Apiko, P. & Aggad, F., 2017. Analysis of the implementation of the African Union's 0.2% levy: Progress and challenges. Pg 4

²⁶⁷ African Union, 2018. Decisions, Declarations and Resolution of the Assembly of the Union Twenty-Seven Ordinary Session. Assembly/AU/Dec.605(XXVII)

Available at: <https://au.int/en/decisions-2>

[Accessed 15 June 2018].

²⁶⁸ African Union, 2018. Meeting Of Finance Ministers on Implementation of the Kigali Assembly Decision on Financing the African Union. Pg 12

Available at: <https://au.int/web/en/financing-union-document>

[Accessed 18 June 2018].

identifies the following as important, (1) 0.2 percent import levy, (2) eligible goods and (3) imported into the territory of a Member State from a non-Member State.

The phrases identified are defined as follows:

1. 0.2 percent import levy

It stands to reason that from a purely mathematical perspective, 0.2 percent of nil is nil,²⁶⁹ therefore the 0.2 percent import levy referred to needs to be applied to a base that will result in a 0.2 percent increase being instituted. To this end, the base indicated is referred to as a taxable base against which the 0.2 percent import levy will be calculated and applied.²⁷⁰ So within the process of understanding what this 0.2 percent import levy will be calculated on, the phrase taxable base needs to be expanded on as follows.

The taxable base against which the 0.2 percent levy will be applied can be grouped into the following two categories, (1) eligible goods arriving by sea or road²⁷¹ and (2) eligible goods arriving by air.²⁷² The distinction is important because of the difference in the taxable base to be used for calculating the 0.2 percent import levy. At the date of departure, the taxable base for eligible goods arriving by sea or road will be assessed as the Cost Insurance and Freight (CIF) value at the port of departure and for eligible goods arriving by air will be assessed as the Customs value at the airport of departure.²⁷³

Cost Insurance and Freight (CIF) value:

The CIF value can basically be explained as the cost of the goods to the buyer plus the insurance, in transit and freight charges paid by the seller of the goods.²⁷⁴

²⁶⁹ Differently illustrated – $R0 (\text{nil rand}) * 0.2\% = R0 (\text{nil rand})$

²⁷⁰ Apiko, P. & Aggad, F., 2017. Analysis of the implementation of the African Union's 0.2% levy: Progress and challenges. Pg 6

²⁷¹ No mention is made of train lines, but the author based on logical reasoning would group the train lines and road access together.

²⁷² African Union, 2018. Financing of the Union - "By Africa for Africa". Pg 8

Available at: <https://au.int/sites/default/files/pages/31955-file-what20is20financing20of20the20union-1-2.pdf> [Accessed 13 June 2018].

²⁷³ African Union, 2018. Financing of the Union - "By Africa for Africa". Pg 8

Available at: <https://au.int/sites/default/files/pages/31955-file-what20is20financing20of20the20union-1-2.pdf> [Accessed 13 June 2018].

²⁷⁴ IRMI Online, 2018. Cost, Insurance, and Freight (CIF).

Available at: <https://www.irmi.com/term/insurance-definitions/cost-insurance-and-freight> [Accessed 03 July 2018].

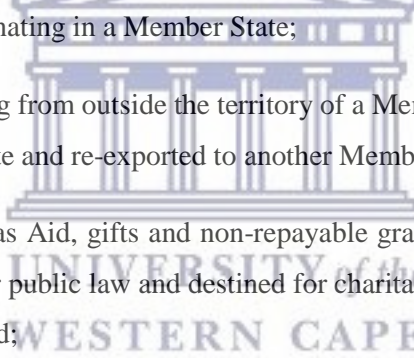
Customs value:

The customs value can be assessed in different ways but, essentially it is the value assigned to imported goods by the Customs Authority.²⁷⁵

Having now gained an understanding of how the taxable base of the 0.2 percent import levy is determined, we now need to gain an understanding of what an eligible good is to which a taxable base for the 0.2 percent import levy can be assigned.

2. Eligible goods

What was understood from the 0.2 percent import levy discussion, is that it is calculated on the taxable base of eligible goods, which beckons the question, what constitutes an eligible good? In principle, the 0.2 percent import levy will apply to the taxable base of all goods originating from a non-Member State imported into the territory of a Member State for consumption in the territory of that Member State, with the following exemptions.²⁷⁶

- 
- a) 'All Goods originating in a Member State;
 - b) Goods originating from outside the territory of a Member State for home consumption in a Member State and re-exported to another Member State;
 - c) Goods received as Aid, gifts and non-repayable grants by a State or by legal entities constituted under public law and destined for charitable works recognized as being for the common good;
 - d) Goods originating from non-Member States, imported as part of financing agreements with foreign partners, subject to a clause expressly exempting the said goods from any fiscal or Para-fiscal levy;
 - e) Goods imported by enterprises before the entry into operation of these Guidelines;
 - f) Goods on which the AU import levy has been previously paid.'

²⁷⁵ BusinessDictionary, 2018. Customs Value.

Available at: <http://www.businessdictionary.com/definition/customs-value.html>
[Accessed 03 July 2018].

²⁷⁶ African Union, 2018. Meeting Of Finance Ministers on Implementation of the Kigali Assembly Decision on Financing the African Union. Pg 13

Available at: <https://au.int/sites/default/files/pages/31955-file-summary20report20on20the20meeting20of20afriacn20ministers20of20finance20281292028229-2.pdf>
[Accessed 18 June 2018].

An analysis of the above exemptions to the general rule, indicates that:

- (1) The 0.2 percent import levy should not affect transactions between the AU Member States as this would ultimately result in a transfer of value from one Member State to another. Briefly put, the levy charged (value increase) by one Member State would result in an equal but opposite levy incurred (value decrease) by the other Member State which would cancel each other out at the AU's level. This principle is illustrated by table 3.3-3 below, Member State 1 (MS1) sells to Member State 2 (MS2), MS1 pays the levy to MS2, MS2 then pays the levy collected over to the AU. The net cash flow as a result of the levy being charged between the Member States from an individual and consolidated perspective can be tabulated and illustrated as follows:

Table 3.3-3: Net cash flow from levy charged between AU Member States

Countries	Levy Received (A)	Levy Paid (B)	Net Cash flow position from Levy (C)=(A)-(B)
Member State 1 – Seller	US\$0	US\$500	-US\$500
Member State 2 – Purchaser	US\$500	US\$500	US\$0
African Union	US\$500	US\$0	US\$500
Consolidated Cash Flow²⁷⁷	US\$1 000	US\$1 000	US\$0

- (2) the 0.2 import levy should not affect any efforts related to foreign aid originating from non-Member States for consumption within the territory of a Member State,
- (3) goods originating from non-Members that have already in terms of the applicable laws of the Member State been exempted from any financial levy,
- (4) the import levy cannot be applied retrospectively and
- (5) a good cannot be subjected to 0.2 percent import levy more than once.

In addition to the above exemptions, the AU Ministers stressed that the 0.2 percent import levy should be implemented in a manner which does not negatively affect the developmental goals of the Member States.²⁷⁸

²⁷⁷ The consolidated cash flow includes that of MS1, MS2 and the AU as they are in substance a group.

²⁷⁸ African Union, 2018. Report of the 2nd Meeting of Ministers of Finance Committee of Ten on Implementation of the Kigali Assembly Decision on Financing the African Union. Pg 3
Available at: <https://au.int/web/en/financing-union-document>
[Accessed 18 June 2018].

Having now understood both what the levy will be based on and what eligible goods are, it is important to understand what imported into the territory of a Member State means.

3. Imported into the territory of a Member State from a non-Member State

At face value, it should be easy enough to determine when a good is imported into the territory of a Member State from a non-Member State. However, a simple transaction of buying a finished good from a non-Member State that is imported into the territory of a Member State can become complicated when a Member State was party to a manufacturing process that resulted in a finished good being imported from a non-Member.

To illustrate the potential problem with regards to the distinction between Member and non-Member States, let's consider the following hypothetical example:²⁷⁹

- Country A and Country B are Member States of the AU.
- Country C is a non-Member State of the AU.
- Country C sells goods to both Country A (scenario 1) and Country B (scenario 2) as follows:

Scenario 1: Goods sold from Country C to Country A:

Country C in its own territory sources all the raw materials, human labour and machinery to convert the raw materials into finished goods that are eventually sold to Country A.

A concise but strict application of a non-Member to a Member State requirement will clearly result in a good being imported into the territory of a Member State (Country A) from a non-Member State (Country C) as there were no other States involved in the manufacturing process.

Scenario 2: Goods sold from Country C to Country B:

Country C in its own territory provides only human labour and machinery to convert raw materials bought from Country A to eventually sell the finished goods to Country B.

²⁷⁹ Constructed by the Author.

A concise but strict application of a non-Member to a Member State requirement will now be clouded by the fact that a Member State (Country A) is involved in the manufacturing process. In anticipation of these types of transactions, the AU Ministers made note of the fact that the rules of origin of import goods should be clarified so as to ensure consistency with the World Trade Organisation (WTO) rules.²⁸⁰

WTO Members use different rules to determine the origin of goods, however generally speaking the rules of origin are based on (1) the method of value added, (2) the method of change in tariff classification or (3) the method of qualifying processes.²⁸¹

1) Under the method of value added

The origin of the goods will be considered based on the value added to the finished good by the Member and non-Member States. The origin of the goods will generally be considered to be the State that added the most value to the good.

2) Under the method of change in tariff classification

The origin of the good will be considered based on where the good's tariff classification has changed. The origin of the goods will generally be considered to be the State where as a result of a manufacturing process, the tariff classification of the good to be sold has changed.

3) Under the method of qualifying processes

The origin of the good will be considered based on the location of specialised manufacturing or processing operations relating to the produced good. The origin of the goods will generally be considered to be the State where the specialised manufacturing or processing operation is located.

So with reference to scenario 2 of the example provided, the definition and application of the rules of origin from a value added, change in tariff classification or qualifying processes

²⁸⁰ African Union, 2018. Report of the 2nd Meeting of Ministers of Finance Committee of Ten on Implementation of the Kigali Assembly Decision on Financing the African Union. Pg 3
Available at: <https://au.int/web/en/financing-union-document>
[Accessed 18 June 2018].

²⁸¹ Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pgs 460-461

perspective can affect the criteria for a good being imported by a Member State from a non-Member State as illustrated below:²⁸²

(1) Rules of Origin – based on the method of value added

Outcomes	Value added by Member State	Value added by non-Member State	From non-Member state to Member state?	Can levy be applied?
1.	40 percent	60 percent	Yes	Yes
2.	55 percent	45 percent	No	No

(2) Rules of Origin – based on the method of change in tariff classification

Outcomes	Change in tariff classification occurred?	From non-Member state to Member state?	Can levy be applied?
1.	In the territory of a non-member state	Yes	Yes
2.	In the territory of a member state	No	No

(3) Rules of Origin – based on the method of qualifying processes

Outcomes	Location of specialised manufacturing or processing operation?	From non-Member state to Member state?	Can levy be applied?
1.	In the territory of a non-member state	Yes	Yes
2.	In the territory of a member state	No	No

Having discussed and gained an understanding about the technical details related to the 0.2 percent import levy, we turn our attention to the practical matters related to the implementation of the 0.2 percent import levy at a Member State level in the following subsection.

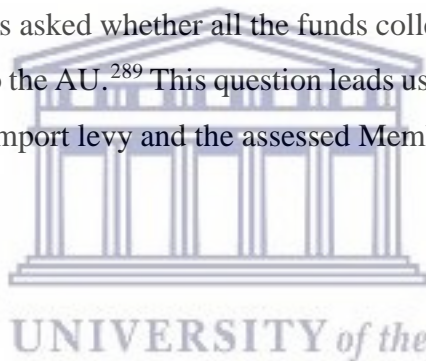
²⁸² It must be noted that the examples are for illustrative purposes only. These outcomes given are at the backend of what can be an extremely tedious WTO application process of the rule of origin based on the methods of value added, change in tariff classification or qualifying processes. The objective here is to only illustrate the possible effect the rule of origin might have on the requirement for a good to be imported into the territory of a Member State from a non-Member State once a WTO ruling based on the application of a rule of origin method has been reached.

3.3.3 Practical matters related to the implementation of the self-financing mechanism

In addition to the technical matters raised by the AU Ministers, matters of practical significance include inter alia²⁸³ (1) the process for the charging, collection and remittance of the import levy to the AU and (2) the linkage between the annual assessed Member State contributions and the import levy.

3.3.3.1 The charging, collection and remittance of the import levy

The national Customs Administration of a Member State would generally be responsible for the charging and collection of the import levy.²⁸⁴ The Member State can however, assign the responsibility to any other appropriate financial institution.²⁸⁵ An account in the name of the AU will need to be opened with the Central, National or Reserve Bank²⁸⁶ of the Member State and the import levy will need to be deposited into that account.²⁸⁷ The Member State's National Reserve Bank will then periodically transfer the import levy collected to a bank account designated by the AU.²⁸⁸ It was asked whether all the funds collected by a Member State as an import levy, will be remitted to the AU.²⁸⁹ This question leads us to the next subsection dealing with the linkage between the import levy and the assessed Members State contributions.



²⁸³ African Union, 2018. Report of the 2nd Meeting of Ministers of Finance Committee of Ten on Implementation of the Kigali Assembly Decision on Financing the African Union. Pgs 3-4
Available at: <https://au.int/web/en/financing-union-document>
[Accessed 18 June 2018].

²⁸⁴ African Union, 2018. Background Paper on Implementing the Kigali Decision on Financing the Union. Pg 11
Available at: <https://au.int/web/en/financing-union-document>
[Accessed 14 June 2018].

²⁸⁵ African Union, 2018. Financing of the Union - "By Africa for Africa". Pg 9
Available at: <https://au.int/sites/default/files/pages/31955-file-what20is20financing20of20the20union-1-2.pdf>
[Accessed 13 June 2018].

²⁸⁶ Hereafter collectively referred to as the National Reserve Bank.

²⁸⁷ African Union, 2018. Meeting Of Finance Ministers on Implementation of the Kigali Assembly Decision on Financing the African Union. Pg 13
Available at: <https://au.int/sites/default/files/pages/31955-file-summary20report20on20the20meeting20of20afriacn20ministers20of20finance20281292028229-2.pdf>
[Accessed 18 June 2018].

²⁸⁸ African Union, 2018. Meeting Of Finance Ministers on Implementation of the Kigali Assembly Decision on Financing the African Union. Pg 13
Available at: <https://au.int/sites/default/files/pages/31955-file-summary20report20on20the20meeting20of20afriacn20ministers20of20finance20281292028229-2.pdf>
[Accessed 18 June 2018].

²⁸⁹ African Union, 2018. Background Paper on Implementing the Kigali Decision on Financing the Union. Pg 10
Available at: <https://au.int/sites/default/files/pages/31955-file-summary20report20on20the20meeting20of20afriacn20ministers20of20finance20281292028229-2.pdf>
[Accessed 14 June 2018].

3.3.3.2 The linkage between the import levy and the assessed Member State contributions.

It has been noted that any excess balance related to the import levy remaining in the Member State's National Reserve Bank after the assessed Member State contribution has been fulfilled, will be kept by the Member State and should be applied for their own developmental needs.²⁹⁰ However, in the same breath any deficit remaining in the assessed Member State contribution after all the funds related to the import levy have been remitted to the AU, will have to be covered by the Member State from other sources.²⁹¹ It can then be concluded that the 0.2 percent import levy is a means for the Member States to fulfil their AU budgetary requirements. This is further illustrated by the fact that South Africa and Egypt have requested flexibility with regards to finding alternative sources of AU funding instead of implementing the 0.2 percent import levy.²⁹²

3.4 CONCLUSION

Referring back to the introductory paragraph, the following tentative conclusion can be drawn on the following focus items, (1) the formation of the OAU and subsequent establishment of the AU and (2) an analysis of the self-financing mechanism.

(1) The formation of the Organisation of African Unity and subsequent establishment of the African Union

The OAU can trace its roots back to the Pan-African movement paragons which was the first international movement against colonialism and apartheid.²⁹³ When the matter of decolonisation was raised by the PAC, two forms (the maximalist approach and the minimalist approach) of Pan-Africanism emerged with different views on how decolonisation should be

²⁹⁰ African Union, 2018. Meeting Of Finance Ministers on Implementation of the Kigali Assembly Decision on Financing the African Union. Pg 18

Available at: <https://au.int/sites/default/files/pages/31955-file-summary20report20on20the20meeting20of20afriacn20ministers20of20finance20281292028229-2.pdf> [Accessed 18 June 2018].

²⁹¹ African Union, 2018. Meeting Of Finance Ministers on Implementation of the Kigali Assembly Decision on Financing the African Union. Pg 6

Available at: <https://au.int/sites/default/files/pages/31955-file-summary20report20on20the20meeting20of20afriacn20ministers20of20finance20281292028229-2.pdf> [Accessed 18 June 2018].

²⁹² Apiko, P. & Aggad, F., 2017. Analysis of the implementation of the African Union's 0.2% levy: Progress and challenges. Pg 7

²⁹³ See section 3.2.1.1

achieved.²⁹⁴ The minimalist approach which was considered the weaker of the two approaches was adopted for the formation of the OAU. The OAU had two major objectives, which were to defend and respect the sovereignty and independence of the African States and to eradicate all forms of colonialism from Africa. Whilst the OAU succeeded in the latter objective, it was unable based on the principles of non-interference and absolute sovereignty able to deal with the complex issues of contemporary times. This inability to deal with these issues is what fundamentally gave rise to the AU. The AU adopted the important principles of (1) non-indifference which allows the AU to act in ways that the OAU was unable to, in the pursuit of peace and security and (2) self-reliance with the aim of weaning of assistance from foreign donors for AU operational matters.

(2) An analysis of the self-financing mechanism

The AU's principle of self-reliance has played a significant role in the establishment of the self-financing mechanism. The self-financing mechanism which takes the form of a 0.2 percent import levy charged on all eligible goods was conceived for the purpose of reducing the AU's reliance on donor funding and to create a sustainable and predictable source of funding. The funds collected by the Member States from the import levy will assist the Member States to fulfil their obligations with regards to the assessed Member State contributions towards the AU's budgets. In so doing, the AU will be able to plan more confidently and most importantly, fund the required arrangements to act on those plans.

As WTO Members, the 0.2 percent import levy implemented by the AU Member States could affect other WTO Members. The following chapter will therefore discuss the need for a WTO and its rules and principles and the WTO compatibility of the self-financing mechanism.

²⁹⁴ See section 3.2.1.1

CHAPTER 4

THE ESTABLISHMENT OF THE WORLD TRADE ORGANISATION AND THE COMPATIBILITY OF THE AFRICAN UNION'S SELF-FINANCING MECHANISM

‘The Parties to this Agreement, Recognizing further that there is need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development...’²⁹⁵

4.1 INTRODUCTION

The overarching objectives of this chapter are to (1) provide a conceptual framework for regulated international trade, (2) discuss the regulation of international trade under the World Trade Organisation (WTO) and (3) assess the compatibility of the African Union's (AU's) self-financing mechanism²⁹⁶ with the rules and principles of the WTO.

Whilst there are critics and subsequent modifications to the classical economists Adam Smith's²⁹⁷ and later David Ricardo's²⁹⁸ theories on international trade, most economists agree that the absolute cost advantage theory²⁹⁹ and subsequently the comparative cost advantage theory³⁰⁰ are fundamental in explaining why even the poorest of countries can benefit from the existence of regulated international trade.³⁰¹

The formation of the World Trade Organisation (WTO) begins with the establishment of the General Agreement on Tariffs and Trade 1947 (GATT 1947) which was set up for the purposes of regulating international trade and reducing tariffs in the trade of goods.³⁰² On 1 January 1995, the GATT 1947 was eventually succeeded by the WTO as it failed to address important aspects such as inter alia, trade in services and international investments.³⁰³

²⁹⁵ The World Trade Organization, 2018. Marrakesh Agreement Establishing the World Trade Organization. Available at: https://www.wto.org/english/docs_e/legal_e/04-wto_e.htm [Accessed 20 July 2018]. Preamble Paragraph 2

²⁹⁶ See chapter 3.3

²⁹⁷ Hereafter referred to as Smith.

²⁹⁸ Hereafter referred to as Ricardo.

²⁹⁹ As formulated by Smith.

³⁰⁰ As formulated by Ricardo.

³⁰¹ Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pg 18

³⁰² Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pg 75

³⁰³ The World Trade Organization, 2018. The GATT years: from Havana to Marrakesh.

The WTO has six categories of rules and principles that govern the manner in which WTO Members should conduct international trade activities, four of the groups namely (1) the principles on non-discrimination, (2) the rules on market access, including rules on transparency, (3) the rules on conflicts between trade liberalisation and other societal values and interests and (4) the rules on special and differential treatment of developing countries have been extracted for special consideration in this chapter.³⁰⁴

The AU's self-financing mechanism will result in a 0.2 percent import levy charged on eligible goods imported from a non-AU Member State into the territory of an AU Member State.³⁰⁵ Whilst the 0.2 percent import levy can be seen as discriminating between WTO Members, substantially all of the AU/WTO Members are classified as developing countries which affords them special and differential treatment.³⁰⁶ The AU's self-financing mechanism appears to, on the one hand, contravene the principle of non-discrimination and on the other assist the AU via its Members move towards becoming self-reliant and independent. This contradiction and apparent incompatibility with the WTO's rules and principles will form a significant discussion point later in the chapter.

Based on the introduction provided above, this chapter will be broken up into three major sections as follows, (1) establishing a conceptual framework for regulated international trade, (2) the regulation of international trade under the WTO and (3) the compatibility of the AU's self-financing mechanism with the rules and principles of the WTO.

4.2 CONCEPTUAL FRAMEWORK FOR INTERNATIONAL TRADE

In this section, we will explore and gain an understanding of the theories that provide a conceptual framework for the existence of international trade. There are basically two types of international trade transactions between countries as follows:³⁰⁷

Available at: https://www.wto.org/english/thewto_e/Whatis_e/tif_e/fact4_e.htm
[Accessed 20 July 2018].

³⁰⁴ See chapter 1.1.2 for the explanation regarding the six groups of rules and principles identified.

³⁰⁵ See chapter 3.3.2

³⁰⁶ The World Trade Organization, 2018. Differential and more favourable treatment reciprocity and fuller participation of developing countries.

Available at: https://www.wto.org/english/docs_e/legal_e/enabling1979_e.htm
[Accessed 20 July 2018].

³⁰⁷ Sherlock, J. & Reuvid, J., 2008. The Handbook of International Trade - A Guide to the Principles and Practice of Export. 1st ed. London: GMB Publishing Ltd. Pg 3

- (1) the country importing the good is unable to produce the good locally or, cannot produce enough to satisfy local demand and
- (2) the importing country has the ability and resources to produce the good, but still imports it.

The reason for the first type of international trade transactions is very clear, as long as the importing country can afford to acquire the goods, they will do so, otherwise, they will have to do without those goods.³⁰⁸

At face value, the most logical question that comes to mind regarding the second group of international trade transactions would be, why import something that we can produce locally? The fundamental principles behind this phenomena have been the subject matter of economists such as Smith and later Ricardo, who developed what is referred to as the classical theories to explain the reasons behind this group of international trade transactions.³⁰⁹ The classical international trade theories have been extensively modified but the theory of comparative advantage as postulated by Ricardo is still the prevailing explanation as to why even the poorest countries can benefit from regulated international trade.³¹⁰ It is with this in mind that we will in the following subsections explore (1) the Smith theory of absolute cost advantage and (2) the Ricardian theory of comparative cost advantage.

4.2.1 Smith's theory of absolute cost advantage

The theory of absolute cost advantage is based on Smith's persuasive argument for specialisation and international trade.³¹¹ In 1776, Smith theorised that the key to economic efficiency lies in specialisation via essentially the division of labour.³¹² Smith argued that the economic efficiencies because of specialisation would result in substantial productivity gains

³⁰⁸ Sherlock, J. & Reuvid, J., 2008. *The Handbook of International Trade - A Guide to the Principles and Practice of Export*. 1st ed. London: GMB Publishing Ltd. Pg 3

³⁰⁹ Nitisha, 2018. 3 Classical Trade Theories – Discussed!

Available at: <http://www.economicdiscussion.net/international-trade/3-classical-trade-theories-discussed/4239> [Accessed 11 July 2018].

³¹⁰ Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pg 18

³¹¹ Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pg 19

³¹² Butler, E., 2011. *The Condensed Wealth of Nations and The Incredibly Condensed Theory of Moral Sentiments*. 1 ed. London: Adam Smith Institute (Research). Pg 9

and that the gains from specialisation are limited only by the extent of the market.³¹³ The extent of the market to which Smith refers, fundamentally speaks to market growth via access to the international market. The argument for specialisation at a national level is substantiated by the following statement;

‘If foreign goods are no cheaper than domestic ones, then giving a monopoly of the home market to domestic producers is evidently pointless. If, on the contrary, foreign goods are in fact cheaper, then the regulation is harmful, because it is wasteful to make at home what you can buy cheaper elsewhere. The tailor does not attempt to make his own shoes, nor the shoemaker his own clothes: and countries too should make what they can make cheaper, and buy in what would cost them more to produce’.³¹⁴

An analysis of the above quotation reveals the following:

1. In line with the specialisation theory, when a product is produced cheaper locally, there is no need to import that particular product from a foreign supplier.³¹⁵ By the same logic, the possibility for the local producers to export goods exists when the local producer has managed to gain economic efficiencies via specialisation resulting in the cheaper product.
2. On the contrary, when a foreign producer has managed to gain economic efficiencies via specialisation resulting in a cheaper product, then it would be cost effective to rather import the product than to produce it locally.

It is based on Smith’s theory of the absolute cost advantage that Ricardo developed the theory of comparative cost advantage to be discussed next.

4.2.2 Ricardian theory of comparative cost advantage

In 1817, Ricardo developed the theory of comparative cost advantage which is still considered the basis for why even the poorest of nations can benefit from regulated international trade.³¹⁶

³¹³ Butler, E., 2011. *The Condensed Wealth of Nations and The Incredibly Condensed Theory of Moral Sentiments*. 1 ed. London: Adam Smith Institute (Research). Pg’s 9 and 13

³¹⁴ Butler, E., 2011. *The Condensed Wealth of Nations and The Incredibly Condensed Theory of Moral Sentiments*. 1st ed. London: Adam Smith Institute (Research). Pg’s 9 and 13

³¹⁵ The issues related to the quality of the products produced locally or by foreign producers are ignored for the sake of only comparing the effect of economic efficiencies via specialisation.

³¹⁶ Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pg 18

Economists of the twentieth century have refined and added to the Ricardian theory and have all but substantiated the conclusions drawn from the classical Ricardian theory.³¹⁷

Without going into the technical detail regarding the difference between the absolute and comparative cost advantage theories. The major difference between and the superiority of the comparative cost advantage theory from an international trade perspective is reflected in the fact that, under the absolute cost advantage the trade is not mutually beneficial, whilst under the comparative cost advantage the trade is mutually beneficial and reciprocal.³¹⁸

With regards to underdevelopment in the African Continental context, international trade, if left unregulated can, based on the principle of unequal exchange, result in the underdevelopment of satellite countries.³¹⁹ It is with this need for regulation in mind that we focus our attention to the next major section dealing with the WTO and its regulation of international trade.

4.3 THE WORLD TRADE ORGANISATION

In this section, we will focus on (1) the historical development, (2) the objectives and functions, (3) the basic rules and principles and (4) the membership to the WTO.

4.3.1 The historical development of the world trade organisation

As has been noted earlier, international trade can contribute significantly to economic development at an international level, however, if left unregulated it can be the source of systematic underdevelopment of satellite countries. The historical development of the WTO can trace its roots back to the establishment of the GATT 1947 which can be divided into three distinct phases namely (1) the initial failed attempt at establishing an International Trade Organisation (ITO) from the 1944 Bretton Woods Conference,³²⁰ (2) the second failed attempt

³¹⁷ Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pg 19

³¹⁸ Prabhat, S., 2011. Difference between Absolute and Comparative Advantage.

Available at: <http://www.differencebetween.net/business/difference-between-absolute-and-comparative-advantage/>

[Accessed 12 July 2018].

³¹⁹ See chapter 2.2

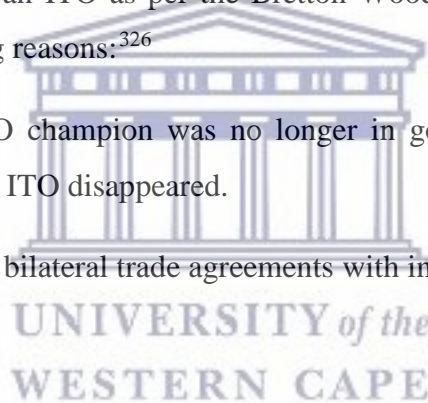
³²⁰ The Bretton Woods Conference, officially known as the United Nations Monetary and Financial Conference, was a gathering of delegates from 44 nations who met from July 1 to 22, 1944 in Bretton Woods, New Hampshire, to agree upon a series of new rules for the post-World War II international monetary system. The two major accomplishments of the conference were the creation of the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (World Bank).

at establishing an ITO at the 1946 Geneva negotiations for a multilateral trade agreement resulting in the GATT 1947 and (3) the establishment of the WTO. These will, therefore, be discussed separately in the following subsection.

4.3.1.1 Bretton Woods Conference 1944 – initial failed attempt at establishing an organisation for international trade regulation

Whilst the establishment of the GATT 1947 can trace its roots back to the 1944 Bretton Woods Conference,³²¹ the first recognisable proposal for an ITO type body was made from within the United States (US) by Cordell Hull.^{322,323} In 1916, Hull was a proponent for what he referred to then as a permanent international trade congress, later in 1925 Hull used the term ITO.³²⁴ The original Bretton Woods agreement which served as a platform for the establishment of two key financial institutions, the International Monetary Fund (IMF) and the World Bank for Reconstruction and Development (World Bank), included a proposal for an ITO as well.³²⁵ The initial attempt at establishing an ITO as per the Bretton Woods Conference failed in broad terms because of the following reasons:³²⁶

1. Hull who was the ITO champion was no longer in government and with that, the political support for an ITO disappeared.
2. The US was busy with bilateral trade agreements with individual countries.



U.S. State Department, 2009. The Bretton Woods Conference, 1944.
Available at: <https://2001-2009.state.gov/r/pa/ho/time/wwii/98681.htm>
[Accessed 20 July 2018].

³²¹ Georgetown University Law Library, 2018. From the GATT to the WTO: A Brief Overview.
Available at: <http://guides.ll.georgetown.edu/c.php?g=363556&p=4108235>
[Accessed 18 July 2018].

³²² Then Roosevelt's Secretary of State. Hereafter referred to as Hull.

³²³ Narlikar, A., Daunton, M. & Stern, R. M., 2012. The Oxford Handbook on the World Trade Organization. 1st ed. New York: Oxford University Press Inc. Pg 133

³²⁴ Narlikar, A., Daunton, M. & Stern, R. M., 2012. The Oxford Handbook on the World Trade Organization. 1st ed. New York: Oxford University Press Inc. Pg 133

³²⁵ Bretton Woods Projects, 2005. What are the Bretton Woods Institutions?
Available at: <http://www.brettonwoodsproject.org/2005/08/art-320747/>
[Accessed 18 July 2018].

³²⁶ George, S., 2007. Alternative Finances.
Available at: <https://www.globalpolicy.org/component/content/article/209/43824.html#1>
[Accessed 20 July 2018].

3. Much of the US business community from the perspective of a protectionist approach, opposed the creation of an ITO and requested their chief negotiator Harry Dexter White to push only for the IMF and World Bank.

A strong argument could be made for the establishment of an ITO type body at the time the IMF and World Bank was created by the following statement and recommendation made at the conference:³²⁷

‘Whereas, in Article I of the Articles of Agreement of the International Monetary Fund it is stated that one of the principal purposes of the Fund is to facilitate the expansion and balanced growth of international trade, and to contribute thereby to the promotion and maintenance of high levels of employment and real income and to the development of the productive resources of all members as primary objectives of economic policy. Whereas, it is recognized that the complete attainment of this and other purposes and objectives stated in the Agreement cannot be achieved through the instrumentality of the Fund alone; therefore The United Nations Monetary and Financial Conference recommends:

To the participating Governments that, in addition to implementing the specific monetary and financial measures which were the subject of this Conference, they seek, with a view to creating in the field of international economic relations conditions necessary for the attainment of the purposes of the Fund and of the broader primary objectives of economic policy, to reach agreement as soon as possible on ways and means whereby they may best:

- (1) reduce obstacles to international trade and in other ways promote mutually advantageous international commercial relations;
- (2) bring about the orderly marketing of staple commodities at prices fair to the producer and consumer alike;
- (3) deal with the special problems of international concern which will arise from the cessation of production for war purposes; and
- (4) facilitate by cooperative effort, the harmonization of national policies of Member States designed to promote and maintain high levels of employment and progressively rising standards of living.’

An analysis of the above recommendation is quite intriguing as it reveals the following.

³²⁷ US Government, 1948. Bretton Woods Conference. Washington, US Government Printing Office. Pg 941

- (1) One of the principal objectives of the IMF is to facilitate the balanced growth of international trade. The IMF, however, does not have the authority nor the ability to influence international trade agreements which, fundamentally could result in the growth of international trade.³²⁸
- (2) By their own account, they recognised that the objectives of the IMF cannot be achieved through the operation of the IMF alone and therefore provides a list of recommendations to try and achieve the isolated primary objective of increasing international trade. The achievement of this objective would require the ability to significantly influence trade policies, which fell beyond the purposes of both the IMF and World Bank.³²⁹ The beggar-thy-neighbour trade policy³³⁰ was widely used for protection during the period of the Great Depression, which by default the IMF and World Bank would be unable to affect in any meaningful manner.³³¹
- (3) Points 1 and 2 directly refer to an organisation which would be able to affect international trade by setting up agreements and promote fair international trade practices. Points 3 and 4 refer to war specific conditions and the need for employment respectively.

Whilst the ITO in terms of the original Bretton Woods Agreement did not materialise, the US Congress had granted President Truman in July of 1945 the authority to enter into negotiations to conclude a multilateral trade agreement that would result in mutually beneficial reductions in tariffs on trade in goods.³³² This leads us to the second of the three phases identified.

³²⁸ International Monetary Fund, 2018. What the IMF Does.

Available at: <https://www.imf.org/external/work.htm>
[Accessed 28 August 2018].

³²⁹ US Government, 1948. Bretton Woods Conference. Washington, US Government Printing Office. Pgs 947-943 and 1016-1017

³³⁰ This occurs whereby the imposition of a tariff by a large country gives rise to an externality that reduces the national welfare of other countries and increases economic welfare in the tariff-setting country. This is because the prices received by foreign exporters fall as a consequence of tariffs being imposed on their exports, i.e. the terms of trade of foreign exporters decline, and the terms of trade of the tariff-imposing country improve. Narlikar, A., Dauntou, M. & Stern, R. M., 2012. *The Oxford Handbook on the World Trade Organization*. 1st ed. New York: Oxford University Press Inc. Pg 66

³³¹ Narlikar, A., Dauntou, M. & Stern, R. M., 2012. *The Oxford Handbook on the World Trade Organization*. 1st ed. New York: Oxford University Press Inc. Pg 155

³³² Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pg 76

4.3.1.2 Geneva multilateral trade agreement 1946 – second failed attempt at establishing an organisation for international trade regulation culminating in the establishment of the General Agreement on Tariffs and Trade 1947

The negotiations for the multilateral trade agreement had a greater objective, in February of 1946 at the proposal of the US the United Nations Economic and Social Committee adopted a resolution calling for a conference to draft a charter for an international organisation for trade.³³³ The drafting of the charter was continued from April to November 1947 in Geneva and consisted of three parts:³³⁴

- (1) The first part was dedicated to the charter for the ITO.
- (2) The second part was dedicated to establishing a multilateral agreement through negotiations aimed at reducing tariffs for mutual benefit.
- (3) The third part was dedicated to drafting the ‘general clauses’ of obligations relating to the tariffs.

Part 1 would result in the establishment of the ITO whilst parts 2 and 3 together would constitute the General Agreement on Tariffs and Trade (GATT) that would theoretically be administered by the ITO.³³⁵

Whilst the negotiators by October 1947 had reached an agreement on the GATT, it was clear that the ITO Charter would not be finished before 1948.³³⁶ Many of the negotiators considered it impossible to wait for the ITO charter to be completed before the GATT could be instituted. This was because of two reasons, (1) although the tariffs were secret they would become known and could distort international trade patterns and (2) the US negotiators were acting under the

³³³ Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pg 76

³³⁴ J. Jackson, 1998. *The World Trade Organization: Constitution and Jurisprudence*. Royal Institute of International Affairs. Pgs 15-16 (As cited by Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pg 76) The author has exhausted all reasonable options to obtain the original source. The original source is a textbook that the author is unable to acquire from the UWC library or other internet resources.

³³⁵ Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pg 76

³³⁶ Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pg 77

authority of the renewed 1945 US trade legislation which was set to expire mid-1948.³³⁷ To overcome this dilemma, initially eight and soon after implementation the rest of the twenty-three countries that had negotiated the GATT 1947 signed the Protocol of Provisional Application of the GATT (PPA).³³⁸ The PPA allowed for the GATT contracting party to retain all legislative provisions that were inconsistent with the GATT Part II obligations, these were referred to as grandfather rights.³³⁹ Even though at Havana in March 1948, the ITO Charter³⁴⁰ was successfully completed, it was never brought into force.³⁴¹ The final Act for the ITO was signed by fifty-three countries but would not come into effect until it was ratified.³⁴² In 1951, President Truman decided to no longer seek Congressional approval of the ITO Charter as approval was repeatedly denied.³⁴³ The US was the world's biggest economy and trading nation³⁴⁴ and therefore other countries would normally refrain from making a decision until they knew how the US would proceed.³⁴⁵

Table 4.3-1 provides an overview of the negotiation rounds as they occurred under the GATT 1947 leading up to the establishment of the WTO.³⁴⁶

Table 4.3-1: List of negotiations under the GATT 1947 leading up to the establishment of the World Trade Organisation

Year	Place/name	Subjects covered	Countries
1947	Geneva	Tariffs	23
1949	Annecy	Tariffs	13
1951	Torquay	Tariffs	38

³³⁷ J. Jackson, 1998. *The World Trade Organization: Constitution and Jurisprudence*. Royal Institute of International Affairs. Pgs 17-18 (As cited by Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pg 76)

³³⁸ Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pg 77

³³⁹ J. Jackson, 1998. *The World Trade Organization: Constitution and Jurisprudence*. Royal Institute of International Affairs. Pg 18 (As cited by Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pg 77)

³⁴⁰ Some texts referred to the Havana Charter, it is however essentially the completed ITO Charter.

³⁴¹ Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pg 78

³⁴² Narlikar, A., Daunton, M. & Stern, R. M., 2012. *The Oxford Handbook on the World Trade Organization*. 1st ed. New York: Oxford University Press Inc. Pg 146

³⁴³ Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pg 78

³⁴⁴ Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pg 78

³⁴⁵ Narlikar, A., Daunton, M. & Stern, R. M., 2012. *The Oxford Handbook on the World Trade Organization*. 1st ed. New York: Oxford University Press Inc. Pg 146

³⁴⁶ The World Trade Organization, 2018. *The GATT years: from Havana to Marrakesh*.

Available at: https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm
[Accessed 20 July 2018].

Year	Place/name	Subjects covered	Countries
1956	Geneva	Tariffs	26
1960-1961	Geneva-Dillon Round	Tariffs	26
1964-1967	Geneva-Kennedy Round	Tariffs and anti-dumping measures	62
1973-1979	Geneva-Tokyo Round	Tariffs, non-tariff measures, “framework” agreements	102
1986-1994	Geneva Uruguay Round	Tariffs, non-tariff measures, rules, services, intellectual property, dispute settlement, textiles, agriculture, the creation of WTO, etc	123

The first five negotiation rounds under the GATT 1947 related to tariff reductions and by the Kennedy negotiation round³⁴⁷ matters relating to non-tariff barriers were becoming increasingly more prevalent.³⁴⁸

Known as the competition phase of negotiations, the Kennedy and Tokyo Rounds were the first rounds of GATT 1947 negotiations to go beyond tariffs.³⁴⁹ The Kennedy Round through the American negotiators aimed to (1) minimise protectionist policies, (2) reduce and prevent non-tariff barriers and deal with matters related to the concerns of the developing world.³⁵⁰ The Tokyo Round of negotiations succeeded in establishing several codes related to government procurement, subsidies and dumping, customs valuation and import licensing.³⁵¹ These codes fundamentally changed the GATT 1947 from a tariff reduction body to an international trade management forum.³⁵² This leads us to phase three focused on the establishment of the WTO.

4.3.1.3 The establishment of the World Trade Organisation

The establishment of the WTO can even though not part of the original negotiation mandate, be traced back to the Uruguay round of negotiations.³⁵³ Considered the most successful and

³⁴⁷ The sixth round of negotiations.

³⁴⁸ Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pg 78

³⁴⁹ Narlikar, A., Daunton, M. & Stern, R. M., 2012. *The Oxford Handbook on the World Trade Organization*. 1st ed. New York: Oxford University Press Inc. Pg 164

³⁵⁰ Narlikar, A., Daunton, M. & Stern, R. M., 2012. *The Oxford Handbook on the World Trade Organization*. 1st ed. New York: Oxford University Press Inc. Pg 164

³⁵¹ Narlikar, A., Daunton, M. & Stern, R. M., 2012. *The Oxford Handbook on the World Trade Organization*. 1st ed. New York: Oxford University Press Inc. Pg 170

³⁵² Narlikar, A., Daunton, M. & Stern, R. M., 2012. *The Oxford Handbook on the World Trade Organization*. 1st ed. New York: Oxford University Press Inc. Pg 170

³⁵³ Narlikar, A., Daunton, M. & Stern, R. M., 2012. *The Oxford Handbook on the World Trade Organization*. 1st ed. New York: Oxford University Press Inc. Pg 179

important rounds of multilateral trade negotiations under the GATT 1947, the matters inter alia that were addressed, policies adopted and agreements created can be summarised as follows:³⁵⁴

1. The tariffs on non-agricultural trade goods were significantly reduced.
2. Trade in services and intellectual property rights were incorporated within the trading system.
3. The trade dispute procedures were strengthened greatly.
4. Other noteworthy agreements were reached for:
 - a. trade-related investment measures,
 - b. export subsidies,
 - c. anti-dumping,
 - d. government procurement,
 - e. safeguards,
 - f. sanitary and phytosanitary measures, and
 - g. technical barriers to trade,
5. The WTO, even though not part of the original negotiation mandate was created during the last phase of the negotiations.

The established WTO incorporated all elements of the Uruguay Round Agreement and the long-standing provisions of the GATT 1947 to form a restructured WTO that would be responsible for the administration of all the agreements concluded during the Uruguay Round of negotiations held between 1986 and 1994.³⁵⁵ Having now discussed the historical development and establishment of the WTO, we will focus on the objectives and functions of the WTO in the following section.

³⁵⁴ Narlikar, A., Daunton, M. & Stern, R. M., 2012. The Oxford Handbook on the World Trade Organization. 1st ed. New York: Oxford University Press Inc. Pg 179

³⁵⁵ The World Trade Organization, 2018. What we do.
Available at: https://www.wto.org/english/thewto_e/whatis_e/what_we_do_e.htm
[Accessed 20 July 2018].

4.3.2 The objectives and functions of the World Trade Organisation

This section will be further broken up into two sections namely, (1) the objectives of the WTO and (2) the function of the WTO.

4.3.2.1 The objectives of the World Trade Organisation

The objectives of the WTO can be found in the preamble to the WTO Agreement. The preamble is quoted as follows:³⁵⁶

‘Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development,

Recognizing further that there is need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development,’

When the preamble is analysed the following overarching objectives are identified.

1. To increase the standard of living,
2. To strive towards total employment,
3. To grow real income and effective demand and
4. To expand the production of and trade in goods and services.

The achievement of these overarching objectives are to be pursued taking into account sustainable development. It is further noted that developing and more so least developed countries should secure an increased share in international trade proportionate with their needs for economic development. The preamble to the GATT 1947 did not make any reference to

³⁵⁶ The World Trade Organization, 2018. Marrakesh Agreement Establishing the World Trade Organization. Available at: https://www.wto.org/english/docs_e/legal_e/04-wto_e.htm [Accessed 20 July 2018].

these significant aspects of international trade.³⁵⁷ As a result of its importance and relevance to this mini-thesis, the objective of the WTO with regards to developing and least-developed countries will be discussed separately in section 4.3.2.3 to follow.

4.3.2.2 The functions of the World Trade Organisation

Articles II and III of the WTO Agreement³⁵⁸ set out the functions of the WTO in broad and more specific terms respectively as follows.

Article II of the WTO Agreement states that the WTO should provide the common institutional framework within which the WTO Members are to conduct international trade relations under the WTO Agreement.

Article III of the WTO Agreement, in summary, provides for the functions of the WTO as follows;

1. the satisfactory implementation of the WTO agreements;
2. the negotiation of new agreements in terms of the principles of the WTO;
3. the settlement of disputes in terms of the WTO dispute settlement understanding;
4. review of trade policies for compatibility with the rules and regulations of the WTO;
5. cooperation with other organisations; and
6. technical assistance to developing countries.

An analysis of the functions of the WTO highlights the following:

Points 1 and 2 refer to the administrative functions of the WTO in terms of existing agreements and providing a platform for the negotiation and implementation of new agreements between WTO Members.³⁵⁹

³⁵⁷ Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pg 83

³⁵⁸ The WTO Agreement was established from the Marrakesh Agreement. This mini-thesis will use the term. WTO Agreement.

³⁵⁹ Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pgs 85-94

Points 3 and 4 refer to the policing responsibilities of the WTO to ensure the rules and principles of the WTO are upheld and to adjudicate on any disputes raised by WTO Members.³⁶⁰

With reference to point 5, agreements for example with the International Monetary Fund (IMF) and the World Bank have been reached to exchange information and institute mutually supportive policies.³⁶¹

Point six because of its importance and relevance to this mini-thesis will be discussed separately in the section to follow.

4.3.2.3 Special recognition for developing and least-developed countries

Within the objectives and functions of the WTO, specific reference towards developing and least developed countries highlights the importance the WTO has assigned in assisting those countries reap the benefits of their WTO Membership.³⁶² It is interesting to note that in 1946 the terms developing and least developed countries were constructed out of political sensitivities to describe economically underdeveloped countries.³⁶³ The dependency theory as formulated by Frank only gained prominence during the 1960's,³⁶⁴ which still has not prompted any change in the terminology to reflect more accurately the effect of capitalism on most of the poor countries who joined the WTO.³⁶⁵ However, terminology aside, the WTO Members pursuant in terms of the preamble of the WTO Agreement to ensure special consideration towards developing and least-developed countries, reached an agreement in 1979 for the differential and more favourable treatment of developing countries.³⁶⁶ This agreement which is an integral part of the GATT 1994, stems from the rules on special and differential treatment

³⁶⁰ Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pgs 94-97

³⁶¹ Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pg 97

³⁶² Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pg 102

³⁶³ Narlikar, A., Daunton, M. & Stern, R. M., 2012. *The Oxford Handbook on the World Trade Organization*. 1st ed. New York: Oxford University Press Inc. Pg 139

³⁶⁴ See chapter 2.2.4

³⁶⁵ Narlikar, A., Daunton, M. & Stern, R. M., 2012. *The Oxford Handbook on the World Trade Organization*. 1st ed. New York: Oxford University Press Inc. Pg 139

³⁶⁶ The World Trade Organization, 2018. Differential and more favourable treatment reciprocity and fuller participation of developing countries.

Available at: https://www.wto.org/english/docs/e/legal/e/enabling1979_e.htm
[Accessed 20 July 2018].

for developing countries that will form part of the discussion on the rules and principles of WTO law in the following section.³⁶⁷

4.3.3 The basic rules and principles of World Trade Organisation law

The WTO law consists of multilateral and bilateral or regional trade agreements (RTAs).^{368,369} The multilateral trade agreement system has benefits and consequences which is why RTAs exist to facilitate economic integration.³⁷⁰ Multilateral agreements and RTAs with their benefits and consequences can be described as follows:

1. Multilateral trade agreements

Is an agreement between three or more contracting parties. The most significant example of this type of trade agreement is the GATT 1994 which has multiple parties.³⁷¹

By its very nature, amongst other benefits, the most significant benefit is that multilateral trade agreements ensures that a bigger group of WTO Members are treated the same, which promotes the Most-Favoured-Nation (MFN) principle. However, these agreements are complex and time consuming which can stagnate international trade.³⁷²

Whilst the multilateral agreements are significant in terms of promoting the MFN principle, the negatives collectively play a role in the established exceptions to multilateral trading agreements. The GATT 1994, therefore, provides for exceptions to this general MFN rule in terms of Article XXIV of the GATT 1994, which fundamentally forms the basis for RTAs that will be defined below and discussed further in section 4.3.3.3.

³⁶⁷ See chapter 1.1.2

³⁶⁸ Hereafter referred collectively to as regional trade agreements.

³⁶⁹ Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pgs 41 and 648

³⁷⁰ Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pg 649

³⁷¹ Dictionary of International Trade, 2018. Multilateral agreement.

Available at: <https://www.globalnegotiator.com/international-trade/dictionary/multilateral-agreement/> [Accessed 1 August 2018].

³⁷² Amadeo, K., 2018. Multilateral Trade Agreements: Pros, Cons and Examples.

Available at: <https://www.thebalance.com/multilateral-trade-agreements-pros-cons-and-examples-3305949> [Accessed 14 August 2018].

2. Regional trade agreements

Are reciprocal trade agreements between two or more contracting parties and include free trade agreements and customs unions.³⁷³ An example of this is the agreement for The Common Market for Eastern and Southern Africa (COMESA). As an exception to the multilateral trade agreements, RTAs have the following benefits and consequences.

Apart from the time it takes to negotiate a RTA, a significant benefit is that trade relations from a political perspective creates a sense of partnership that fosters peace and growth for the parties.³⁷⁴ However, referred to as the spaghetti bowl phenomenon, multiple RTAs can become extremely complex with multiple overlapping sets of regulations that need to be adhered to.³⁷⁵

Having discussed the relevant types of agreements that make up the WTO law, the basic rules and principles which govern the types of agreements can be grouped into six categories, namely, (1) the principles of non-discrimination, (2) the rules on market access, including rules on transparency, (3) the rules on unfair trade, (4) the rules on conflicts between trade liberalisation and other societal values and interests, (5) the rules on special and differential treatment for developing countries and (6) the rules relating to decision-making and dispute settlement.³⁷⁶ However, with specific reference to the functioning of the self-financing mechanism the following four relevant rules and principles have been isolated for the purpose of addressing the effect of the self-financing mechanism from a WTO perspective.³⁷⁷ The principles of (1) non-discrimination, the rules on (2) market access, including rules on transparency, the rules on (3) conflicts between trade liberalisation and other societal values and interests and the rules on (4) special treatment for developing countries will be discussed further.³⁷⁸

³⁷³ The World Trade Organization, 2018. Regional trade agreements and preferential trade arrangements.

Available at: https://www.wto.org/english/tratop_e/region_e/rt_a_pta_e.htm

[Accessed 25 September 2018].

³⁷⁴ Black, M., 2017. The Advantages of Regional Trade Agreements.

Available at: <https://bizfluent.com/list-6721244-advantages-regional-trade-agreements.html>

[Accessed 16 August 2018].

³⁷⁵ Bhagwati, J. N. & Krueger, A. O., 1995. Dangerous drift to preferential trade agreements. 1st ed. Washington, D.C: AEI Press.

³⁷⁶ See chapter 1.1.2

³⁷⁷ See chapter 3.3

³⁷⁸ These rules and principles have been singled out because of the direct significance and relevance to the focus area of this mini-thesis.

4.3.3.1 The principles of non-discrimination

The anti-discrimination principles of the WTO as contained in Articles of the GATT 1994 are arguably the most important principles upon which the multilateral trading system is built.³⁷⁹ The MFN obligation in terms of Article I and the national treatment (NT) obligation in terms of Article III of the GATT 1994 collectively form the anti-discrimination principles of the WTO, which are defined below.³⁸⁰

1. Article I: Most-Favoured-Nation Treatment Obligation:

In terms of Article I(1) of the GATT 1994, the MFN treatment obligation requires in simplified terms that, when a WTO Member grants a more favourable³⁸¹ advantage to another WTO Member, then that advantage should be granted immediately and unconditionally for all like products³⁸² imported from other WTO Members. There are however exceptions to the MFN obligation provided for by Article I(2) and (3) of the GATT 1994 to be addressed in sections 4.3.3.3 and 4.3.3.4 to follow.

2. Article III: National Treatment on Internal Taxation and Regulation Obligation:

In summary Article III(1 to 10), subject to very limited circumstances³⁸³, requires that all like products imported into the territory of a WTO Member should be afforded the same treatment as a locally produced like product. To this end, the imported like products cannot be directly or indirectly subjected to internal taxes or other charges, which the locally produced like product would not directly or indirectly be subjected to.

The two Articles collectively, therefore, ensure that the like products are not discriminated against at the national border (MFN) and once inside the border, they are not discriminated against within the border (NT). The self-financing mechanism in principle only affects the

³⁷⁹ The World Trade Organization, 2018. Principles of the trading system.

Available at: https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm#top [Accessed 23 July 2018].

³⁸⁰ Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pg 36

³⁸¹ Compared to what was previously granted or initially agreed to in terms of the GATT 1994.

³⁸² Like products in terms of the GATT has different meanings within different contexts, for the purpose of this mini-thesis, like products will be considered to be directly substitutable products. The interested reader is referred to the following for a detailed analysis:

Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pgs 325-328

³⁸³ These circumstances are deemed beyond the scope of this mini-thesis and are therefore not addressed.

goods at the border and not when they have entered the territory of a WTO Member.³⁸⁴ Therefore Article III of the GATT 1994 from a discrimination perspective will not be discussed further in this mini-thesis.

4.3.3.2 The rules on market access, including rules on transparency

Article II of the GATT 1994 provides for a schedule of concessions agreed to by all WTO Members that reflects the maximum tariff levels for trade in goods that can be charged by a WTO Member, also referred to as bound rates.³⁸⁵ Any arrangement that increases the tariff charged by a WTO Member above the bound rate will be considered illegal in terms of WTO law.

4.3.3.3 The rules on conflicts between trade liberalisation and other societal values and interests

This category of rules is split into (1) non-economic values and interests and (2) economic values and interests.³⁸⁶ Based on the functioning of the self-financing mechanism, it is highly unlikely that the self-financing mechanism would have an effect on a non-economic value and interest of an AU Member State as envisaged in section 1.1.2.3-(1).³⁸⁷

However, under the economic values and interest section, the GATT 1994 provides exceptions that allow WTO Members to deviate from the basic principles and rules for the purpose of achieving trade liberation.³⁸⁸ There are numerous Articles of the GATT 1994 which govern the application of this rule, however, Article XXIV of the GATT 1994 and the Understanding on the Interpretation of Article XXIV of the GATT 1994³⁸⁹ dealing with regional integration exceptions will be addressed because of its relevance to this mini-thesis.³⁹⁰ The importance of this article, in relation to the AU Member States WTO classification³⁹¹ will be further addressed in section 4.3.3.4 to follow because of the special and differential treatment afforded

³⁸⁴ See chapter 3.3.2

³⁸⁵ Read, R., 2018. A Summary of the GATT Articles.

Available at: www.lancaster.ac.uk/staff/ecarar/gatt%20articles.doc
[Accessed 15 February 2018].

³⁸⁶ See chapter 1.1.2.3

³⁸⁷ See chapter 3.3

³⁸⁸ Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pg 39

³⁸⁹ Hereafter referred collectively to as Article XXIV of the GATT 1994 and its understanding.

³⁹⁰ Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pg 649

³⁹¹ See chapter 2.2

to developing countries. We will then in section 4.4.1.2 expand on the application of RTAs and how the AU is affected by them.

4.3.3.4 The rules on special and differential treatment for developing countries

The WTO Agreement in paragraph two of its preamble explicitly states that the developed WTO Members should through their trade relations strive to increase the living standards, employment and real income of the developing and least developed WTO Members. WTO law includes many provisions specifically dedicated to allow for the special and differential treatment afforded to developing and least developed WTO Members, examples of these include inter alia, Article XVIII - Governmental Assistance to Economic Development and Part IV – Trade and Development of the GATT 1994. Arguably, the most significant of all special and differential treatment provisions of the GATT 1994, was established on 28 November 1979.³⁹² On the said date, a decision³⁹³ was taken to establish the agreement for Differential and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries, more commonly referred to as the Enabling Clause.³⁹⁴ In broad terms, developed countries under the Enabling Clause may afford differential and more favourable treatment to developing countries which would otherwise have been inconsistent with the WTO rules on non-discrimination.³⁹⁵

Of particular importance and relevance to this mini-thesis is the operation of the Enabling Clause within the sphere of the (1) MFN principle and (2) RTAs.³⁹⁶

1. In terms of paragraph (2)(a) of the Enabling Clause, developed countries may afford preferential tariff treatment to products originating in developing countries as a special exception to the MFN principle.³⁹⁷

³⁹² Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pg 330

³⁹³ Decision of 28 November 1979 (L/4903).

³⁹⁴ The World Trade Organization, 2018. Differential and more favourable treatment reciprocity and fuller participation of developing countries.

Available at: https://www.wto.org/english/docs_e/legal_e/enabling1979_e.htm

[Accessed 20 July 2018].

³⁹⁵ See section 4.3.3.1

³⁹⁶ Enabling Clause Paragraph (2)(c)

³⁹⁷ Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pg 330

2. In terms of paragraph (2)(c) of the Enabling Clause, developing countries can amongst themselves, conclude preferential trade arrangements under Article XXIV of the GATT 1994 and its understanding which otherwise would be inconsistent with the MFN obligation principle of the WTO.³⁹⁸ Ordinarily, the establishment of a RTA amongst developed WTO Members would need to meet stringent substantive requirements as set out by Article XXIV of the GATT 1994 and its understanding before it is considered valid.³⁹⁹ However, no such requirements under the Enabling Clause exist to establish a RTA.⁴⁰⁰

These WTO rules and principles only apply to its Members and therefore membership admission will be briefly discussed in the following subsection.

4.3.4 Membership to the World Trade Organisation

Membership to the WTO in terms of the WTO Agreement can be achieved through either Article XI - Original Membership or Article XII - Accession of the GATT 1994. Despite the manner in which membership has been achieved, the rights and obligations of all the WTO Members once inducted are exactly the same.⁴⁰¹ The AU as a Union is not a WTO Member, however multiple countries party to the AU are WTO Members in their individual capacity.⁴⁰² The rules and principles, therefore, apply to the individual AU/WTO Members who have adopted the AU's self-financing mechanism. The following major section will, therefore, be dedicated to assessing the WTO compatibility of the AU's self-financing mechanism.

4.4 AFRICAN UNION'S SELF-FINANCING MECHANISM COMPATIBILITY WITH THE BASIC RULES AND PRINCIPLES OF THE WORLD TRADE ORGANISATION

Concerns regarding the apparent WTO incompatibility of the self-financing mechanism implemented by the AU through the individual AU Member States have already been raised

³⁹⁸ Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pg 664

³⁹⁹ Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pg 664

⁴⁰⁰ Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pg 664

⁴⁰¹ Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pg 109 footnote 178

⁴⁰² See chapter 1.1.2

by the WTO and the US government.⁴⁰³ The contestation of the possible incompatibility of the AU self-financing mechanism with the WTO Members' obligations is what forms the basis of this section to the chapter.

At the core of the WTO are the agreements that have been concluded amongst the WTO Members which give rise to their WTO rights and obligations.⁴⁰⁴ Those agreements can be broken down into the multilateral agreements and RTAs.⁴⁰⁵

The remainder of this section will be broken up into the following subsections, (1) establishing the rights and responsibilities of the WTO Members in terms of these agreements, (2) the legal interpretation of the MFN obligation, RTAs and Enabling Clause, (3) recapping the important details of the self-financing mechanism, (4) assessing the self-financing mechanism against the MFN obligation and RTAs, (5) making a tentative conclusion on the WTO compatibility of the self-financing mechanism and (6) based on the outcome provide some corrective actions.

4.4.1 World Trade Organisation members – rights and obligations

This subsection will be dedicated to understanding the rights and obligations of the WTO Members from a multilateral and RTA perspective.

4.4.1.1 Multilateral Trade Agreements⁴⁰⁶

Amongst others, two important multilateral trade agreements are:

- (1) The WTO Agreement concluded in April 1994, which in terms of Article II(1) acts as a conjugation agreement under which all subsequent WTO negotiations will be conducted.
- (2) The GATT 1994, which in terms of Article II(2) of the WTO Agreement forms an important part of the multilateral agreements.⁴⁰⁷

⁴⁰³ Mwai, C., 2017. Africa ponders challenges as WTO steps in way of AU self-financing model. Available at: <https://www.newtimes.co.rw/section/read/212057> [Accessed 13 August 2018].

⁴⁰⁴ The World Trade Organization, 2018. What is the WTO? Available at: https://www.wto.org/english/thewto_e/whatis_e/whatis_e.htm [Accessed 1 August 2018].

⁴⁰⁵ See section 4.3.3

⁴⁰⁶ See section 4.3.3

⁴⁰⁷ See section 4.3.1.2

Article II(2) of the WTO Agreement states clearly that the rights and obligations in the multilateral trade agreements are binding on all WTO Members. In terms of Article 1(1) of the GATT 1994 WTO Members are not allowed to discriminate between other WTO Members for the purpose of establishing tariffs to be charged.⁴⁰⁸

4.4.1.2 Regional Trade Agreements⁴⁰⁹

Regional Trade Agreements can be established in terms of (1) Article XXIV of the GATT 1994 and its understanding or (2) the Enabling Clause which provides for the establishment of agreements between selected WTO Members, which otherwise would be incompatible with the WTO's MFN principle.⁴¹⁰ As indicated earlier, the requirements for establishing a RTA under the Enabling Clause is significantly less than those required under Article XXIV of the GATT 1994 and its understanding.⁴¹¹ Contrary to what the name suggests, RTAs can be concluded amongst WTO Members from different geographical regions.⁴¹²

Contingent on the degree of integration RTAs can broadly be divided into five categories described as follows:⁴¹³

1) *Preferential Trade Agreements (PTAs)*,

Trade barriers within a union are reduced on goods produced within that union. The countries making up the union however individually retain some flexibility with regards to the reduction.⁴¹⁴

2) *Free Trade Agreements (FTAs)*,

A FTA is a special type of PTA whereby member countries remove all trade barriers for goods produced within the member countries.

⁴⁰⁸ See section 4.3.3.1

⁴⁰⁹ Refer to section 4.3.3 for the definition of a RTA.

⁴¹⁰ Pal, P., 2004. Regional Trade Agreements in a Multilateral Trade Regime: An Overview. Pg 1 Available at: http://www.networkideas.org/feathm/may2004/survey_paper_RTA.pdf [Accessed 13 August 2018].

⁴¹¹ See section 4.3.3.4

⁴¹² The World Trade Organization, 2018. Regional trade agreements and the WTO. Available at: https://www.wto.org/english/tratop_e/region_e/scope_rta_e.htm [Accessed 14 August 2018].

⁴¹³ Pal, P., 2004. Regional Trade Agreements in a Multilateral Trade Regime: An Overview. Pg 2 Available at: http://www.networkideas.org/feathm/may2004/survey_paper_RTA.pdf [Accessed 13 August 2018].

⁴¹⁴ Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pgs 663-664

3) *Customs Unions (CUs)*,

In a CU member countries maintain a common tariff on goods imported from non-member countries.

4) *Common Markets (CMs)*

Member countries try to align some institutional arrangements and laws amongst themselves. Labour and capital can also move freely between the member countries.

5) *Economic Unions (EUs)*.

Member countries adopt and implement common economic policies and regulations and adopt a single currency.

The PTAs, FTAs and CUs (1 to 3) are considered to be a shallow level of RTAs integration whilst the CMs and EU's (4 to 5) are considered to be a deep level of RTAs integration. The differences in the levels of RTAs integration can be depicted in figure 4.4-1 below.⁴¹⁵

Figure 4.4-1: Spectrum of formal Regional Trading Arrangements



⁴¹⁵ Das, D., 2001. Regionalism In A Globalizing World: An Asia-Pacific Perspective. Pg 6 Available at: http://wrap.warwick.ac.uk/2038/1/WRAP_Das_wp8001.pdf [Accessed 14 August 2018].

The trading partners to a RTA have to abide by the preferential tariff levels agreed to. The AU's self-financing mechanism could result in negotiated tariff levels for existing RTAs being exceeded and therefore breach those agreements. This could result in other WTO Members not part of the AU but, party to existing RTAs with AU Member States to contest the self-financing mechanism.

At the shallow level of integration, various AU Member States are party to various RTAs in terms of Article XXIV of the GATT 1994 and its understanding, the EFTA – SACU Free Trade Agreement is an example of such an agreement which includes inter alia AU Member States, South Africa, Namibia and Botswana.⁴¹⁶ The illustrative example in chapter 3 emphasises the importance of the origin of the eligible goods, the non-AU Member State (Country C) can possibly be a partner to an existing RTA which would then result in the AU breaching that RTA.⁴¹⁷ An example of this possible scenario is the EFTA – SACU Free Trade Agreement, whereby Iceland, Liechtenstein, Norway and Switzerland are not part of the AU and therefore eligible goods imported from these countries might be subjected to the 0.2 percent levy in contravention of the said agreement.

South African President Ramaphosa in his 2018 state of the nation address indicated that SA has acceded to a Tripartite Free Trade Area Agreement which brings together the Southern African Development Community (SADC), Common Market for Eastern and Southern Africa (COMESA) and the East African Community (EAC).⁴¹⁸ The Tripartite FTA consists of 26 out of the 55 AU Member States and is indicative of the extent to which the AU is implicated in the formation of the FTA and ultimately through its members with multiple RTAs.⁴¹⁹ On the back of this Tripartite FTA, negotiations towards the African Continental Free Trade Area (AfCFTA) are developing quickly and a framework agreement is expected to be concluded.⁴²⁰

⁴¹⁶ The World Trade Organization, 2018. Regional Trade Agreements Information System (RTA-IS). Available at: <http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=621&lang=1&redirect=1> [Accessed 18 September 2018]. Current signatories are: Botswana; Lesotho; Namibia; South Africa; Eswatini; Iceland; Liechtenstein; Norway; Switzerland

⁴¹⁷ See chapter 3.3.2.2-(3)

⁴¹⁸ Sunday Times - Timeslive, 2018. Read Cyril Ramaphosa's first state of the nation address.

Available at: <https://www.timeslive.co.za/politics/2018-02-16-in-full--read-cyril-ramaphosas-first-state-of-the-nation-address/>

[Accessed 16 August 2018].

⁴¹⁹ Tralac, 2017. The relation between the Tripartite FTA and the Continental FTA.

Available at: <https://www.tralac.org/news/article/11511-the-relation-between-the-tripartite-fta-and-the-continental-fta.html>

[Accessed 18 September 2018].

⁴²⁰ Sunday Times - Timeslive, 2018. Read Cyril Ramaphosa's first state of the nation address.

The AfCFTA will bring together all the 55 Member States of the AU potentially forming the biggest free trade area since the establishment of the WTO.⁴²¹

In summary and before proceeding to the legal requirements of the MFN rule and RTAs,

- From a multilateral agreements perspective, any WTO Member can contest an act deemed to be discriminatory in terms of Article 1(1) (MFN rule) of the GATT 1994.
- From a RTA perspective, only Members party to a RTA can contest an act that violates the terms of that agreement.

It must be born in mind that the AU as an organisation is currently not a WTO Member and therefore the reference to the organisation as a Union is not to be confused with the meaning assigned by Article XXIV of the GATT 1994 and its understanding. The AU as an organisation therefore currently does not meet any of the said Article's provisions for the formation of a customs or economic union. The understanding of the current scenario gives even more importance to the formation of the AfCFTA to be addressed as part of the possible corrective actions in section 4.4.6 to follow.

The above explanations are the basis from which the WTO and the US have written to many of the AU/WTO Members regarding the WTO compatibility of the self-financing mechanism.⁴²² This leads us to the legal understanding of the MFN principle, RTAs and the Enabling Clause.

4.4.2 Legal understanding of the Most-Favoured-Nation Obligation, Regional Trade Agreements and Enabling Clause

The Enabling Clause has broad and far reaching effects on the general WTO rules and principles related to the MFN obligation and the establishment of RTAs.⁴²³ The author has

Available at: <https://www.timeslive.co.za/politics/2018-02-16-in-full--read-cyril-ramaphosas-first-state-of-the-nation-address/>

[Accessed 16 August 2018].

⁴²¹ Tralac, 2018. African Continental Free Trade Area (AfCFTA) Legal Texts and Policy Documents.

Available at: <https://www.tralac.org/resources/our-resources/6730-continental-free-trade-area-cfta.html>

[Accessed 18 September 2018].

⁴²² Mwai, C., 2017. Africa ponders challenges as WTO steps in way of AU self-financing model.

Available at: <https://www.newtimes.co.rw/section/read/212057>

[Accessed 13 August 2018].

⁴²³ See section 4.3.3.4

therefore constructed figure 4.4-2 which illustrates the interconnected relationship between the MFN principle, RTAs and the Enabling Clause.

Figure 4.4-2: The relationship between the MFN Principle, RTAs and the Enabling Clause

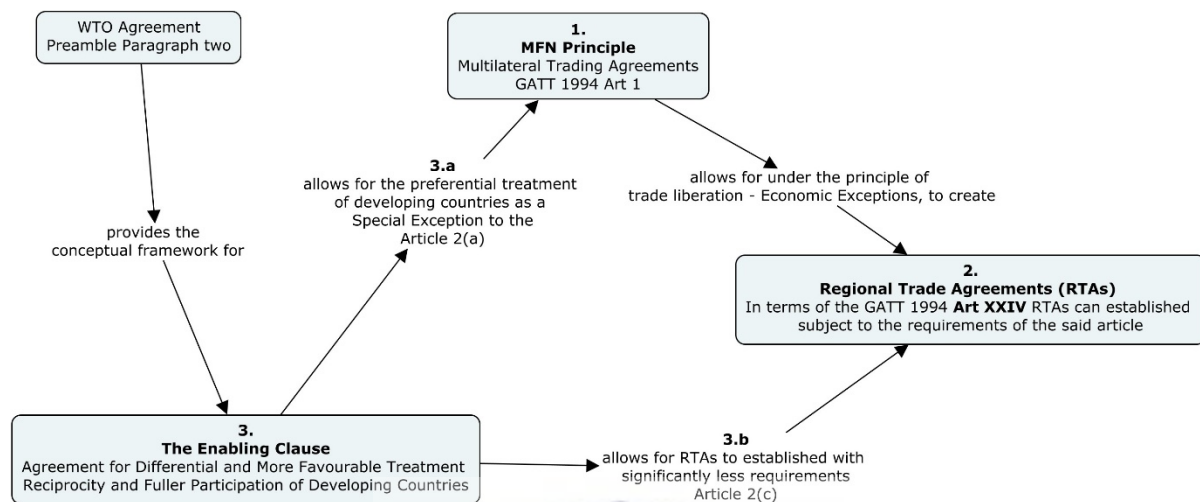


Figure 4.4-2 will be used by the author to isolate the respective concepts marked 1. MFN Principle, 2. RTAs and 3. the Enabling Clause, address them separately where appropriate and then in combination via the conceptual linkages. The specific number and letter combination of the concept map will be referred to in subsections (4.4.2.1 to 4.4.2.3) so that the reader can follow the discussion accordingly. The self-financing mechanism will then in section 4.4.4 be assessed against these concepts based on the same logic.

4.4.2.1 Most-Favoured-Nation obligation

In terms of Article 1(1) of the GATT 1994, WTO Members are not allowed to discriminate between WTO Members. To determine consistency with Article 1(1), a four-tier test is applied as follows:⁴²⁴

1. whether the measure at issue is a measure covered by Article 1:1;
 - Article I:1 covers any advantage, favour, privilege or immunity granted, with respect to inter alia, (1) customs duties and charges of any kind.⁴²⁵

⁴²⁴ Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pgs 320-330

⁴²⁵ Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pg 321

2. whether the measure grants an advantage;
 - The reference refers to any advantage granted.⁴²⁶
3. whether the products concerned are ‘like’ products; and
 - Whilst the term like products is not defined in the GATT 1994, like products exist when products are distinguished between based purely on their origin.⁴²⁷
4. whether the advantage at issue is accorded ‘immediately and unconditionally’ to all like products concerned, irrespective of their origin or destination.
 - The advantage should be granted to all WTO Members with like products without delay and conditions not related specifically to the like products.⁴²⁸

An analysis of the four-tier test reveals quite clearly that like products irrespective of the WTO Members origin should in principle be treated exactly the same by the purchasing WTO Member. Interestingly, even though insignificant because, 97 percent of all international trade transactions are concluded between WTO Members, the MFN obligation also applies when a trade advantage is granted by a WTO Member to a non-WTO Member.⁴²⁹

4.4.2.2 Regional Trade Agreements

Article XXIV of the GATT 1994 and its understanding regulates the creation of the RTAs that would otherwise be inconsistent with the MFN rule of the WTO.⁴³⁰ Regional Trade Agreements correctly formed in terms of the said article, allow the contracting parties to circumvent and negate the MFN rule. Therefore only a contracting party to a RTA can dispute the action of another party to the RTA if the possibility of a breach in contract exists. Refer to section 4.4.1.2 for an example of a RTA to which an AU Member State is a party.

⁴²⁶ Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pg 324

⁴²⁷ Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pg 328

⁴²⁸ Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pg 329

⁴²⁹ Van den Bossche, P. & Zdouc, W., 2013. *The Law and Policy of the World Trade Organisation - Text, Cases and Materials*. 3rd ed. New York: Cambridge University Press. Pg 324 footnote 34

⁴³⁰ See section 4.4.1.2

4.4.2.3 The Enabling Clause

The effect of the Enabling Clause needs to be addressed from the MFN (3.a) and RTAs (3.b) perspective.⁴³¹ From the MFN perspective, developed countries in terms of (3.a) Article 2(a) can have preferential trade agreements with developing countries which will be considered WTO compatible. From a RTA perspective, developing countries in terms of (3.b) Article 2(c) can amongst themselves establish RTAs which will be considered WTO compatible. The establishment of the Tripartite Free Trade Area Agreement consisting of 26 out of the 55 AU Member States and the expected establishment of the AfCFTA which includes substantially all of the AU Member States, highlights the possible protection under the Enabling Clause that can be afforded to the AU for the self-financing mechanism implemented given its members' WTO classification.⁴³² The following section will highlight the important aspects of the self-financing mechanism.

4.4.3 Self-financing mechanism summary

The following details of the self-financing mechanism, should be highlighted.⁴³³

1. The self-financing mechanism will take the form of a 0.2 percent levy.
2. The 0.2 percent levy will be charged on all eligible goods imported into the territory of an AU Member from a non-AU Member.
3. From point two, for the sake of clarification, the levy will not be charged on goods sold and bought between the AU Member States.

4.4.4 Assessing the self-financing mechanism

In this section and with reference to section 4.4.2, we will assess the self-financing mechanism against the (1) MFN principle and (2) RTAs and tentatively conclude on the WTO compatibility of the self-financing mechanism taking into account the provisions of the Enabling Clause.

⁴³¹ See section 4.3.3.4

⁴³² See section 4.4.1.2

⁴³³ See chapter 3.3.2

4.4.4.1 Most-Favoured-Nation perspective

The criteria for compatibility with the MFN obligation has been listed in section 4.4.2.1 and will be applied here in the same numbering convention:

(1) whether the measure at issue is a measure covered by Article 1:1;

- The measure at issue is the 0.2 percent import levy to be charged on all eligible goods imported from non-AU Members which could be WTO Members into the territory of an AU/WTO Member State.
- This is a charge imposed on imported eligible goods which qualifies as a measure covered by Article 1:1.

(2) whether the measure grants an advantage;

- The AU/WTO Member States will possibly be charging non-AU Member States who are WTO Members, a 0.2 percent import levy on eligible products imported into the territory of an AU/WTO Member State.
- The same charge will not be levied on eligible products imported from an AU/WTO Member and therefore, an advantage through the lack of such a levy is granted amongst the AU/WTO Member States.

(3) whether the products concerned are 'like' products;

- It is technically possible but highly unlikely that none of the products traded between the AU Member States will not qualify as a like product imported from other WTO Member States not part of the AU.
- Therefore in principle, it is likely that eligible like products will be traded between the AU Member States and acquired from other WTO Member States not part of the AU.

(4) whether the advantage at issue is granted 'immediately and unconditionally' to all like products concerned.

- By virtue of the self-financing mechanism, the advantage granted amongst the AU Member States will not be granted immediately and unconditionally to all eligible like products from other WTO Member States not part of the AU.

Whilst the self-financing mechanism appears to be inconsistent with the MFN principle of the WTO, such an arrangement could be allowed if the provisions of Article XXIV dealing with RTAs are correctly applied. This leads us to the following perspective against which the self-financing mechanism will be tested.

4.4.4.2 Regional Trade Agreements' perspective

From a RTA perspective, it only needs to be determined if the self-financing mechanism will result in a breach of existing RTAs that the AU Members have agreed to in their individual capacities with other WTO Members not part of the AU. From the complete list of AU Member States, three Member States have been selected and table 4.4-1 created to show the RTAs that the AU is implicated in and might possibly contravene:

Table 4.4-1: Sample of RTAs the AU is by association implicated in

AU Member State	Regional Trade Agreements	Contracting Parties ⁴³⁴
Cameroon	EU - Cameroon	Austria; Belgium; Bulgaria; Cyprus; Czech Republic; Denmark
Egypt	EFTA - Egypt	Iceland; Liechtenstein; Norway; Switzerland
South Africa	EU - SADC	Austria; Belgium; Bulgaria; Croatia; Cyprus; Czech Republic; Denmark

With this in mind, it is again highly unlikely that in principle none of the eligible like products would not have bound rates in terms of a RTA signed. Some African countries could have agreed to a zero tariff which, with the implementation of the 0.2 percent levy will put them in breach of those particular RTAs.⁴³⁵ In terms of the EFTA-SACU Free Trade Agreement Article 8(1), no new customs duties should be introduced in trade between the EFTA States and SACU, which would be contravened by the self-financing mechanism.

⁴³⁴ Only parties not part of the AU have been listed here that might possibly be affected by the self-financing mechanism.

⁴³⁵ Erasmus, G., 2017. The new self-financing Mechanism of the African Union: Can the proposed AU levy be a step towards financial independence?

Available at: <https://www.tralac.org/discussions/article/11661-the-new-self-financing-mechanism-of-the-african-union-can-the-proposed-au-levy-be-a-step-towards-financial-independence.html> [Accessed 16 August 2018].

4.4.4.3 Effect of the Enabling Clause

With regards to the MFN principle, the significant majority of the AU international trade transactions are concluded with North, South and Central America, Europe, Middle East and Asia, most of which are developed countries in terms of WTO classification.⁴³⁶ In terms of the Enabling Clause, the developed countries can provide preferential treatment to the AU Member States as developing countries as a special exception to the MFN principle.

With regards to the RTAs, the expected formation of the AfCFTA which includes all of the AU Member States, will fundamentally legalise the self-financing mechanism as the non-restrictive formation of a RTA in terms of the Enabling Clause will allow for the circumvention of the MFN principle in terms of Article XXIV of the GATT 1994 and its understanding.

4.4.5 Tentative conclusion

Based on the application of the relevant WTO rules and principles, it would appear before considering the Enabling Clause that the self-financing mechanism in its current form is not WTO consistent from both a multilateral and RTA perspective. However, taking into account the Enabling Clause and its consequential effects on the multilateral and RTAs, special and differential treatment can be sought for the self-financing mechanism given the WTO classification of the AU Member States. The AU should, therefore apply the provisions of the Enabling Clause in defending the WTO compatibility of the self-financing mechanism.

4.4.6 Possible corrective actions

(1) Most of the AU Member States are either developing or least developed countries in terms of the WTO classifications.⁴³⁷ The preamble to the WTO Agreement recognises the responsibility to try and raise the standard of living amongst what can only be understood to be developing and least developed countries. It has however been noted given the developing and least developed status of most of the AU Member States that a special

⁴³⁶ African Union Commission, 2018. African Trade Statistics Yearbook 2017. Pg 19

Available at: <https://www.tralac.org/news/article/13489-african-trade-statistics-yearbook-2017.html>
[Accessed 25 September 2018].

⁴³⁷ The World Trade Organization, 2018. Map of negotiating groups in the Doha negotiations. [Online]

Available at: https://www.wto.org/english/tratop_e/dda_e/negotiating_groups_maps_e.htm?group_selected=GRP007

[Accessed 16 August 2018].

The reader is instructed to select the LDCs from the drop-down list.

waiver has not been sought.⁴³⁸ Any such request could be defended with reference to the WTO Agreement preamble and more specifically the Enabling Clause.

(2) In terms of Article XXIV of the GATT 1994 and its understanding, establish the AU as a Free Trade Area (FTA) would basically have the effect of legalising the self-financing mechanism.⁴³⁹ By establishing a FTA, the AU would within the law of the WTO be able to eliminate trade barriers within the FTA group and still implement the self-financing mechanism.⁴⁴⁰ As mentioned in section 4.4.1.2, South African (SA) President Ramaphosa in his 2018 state of the nation address, indicated that SA has acceded to a Tripartite Free Trade Area Agreement which brings together SADC, COMESA and the East African Community.⁴⁴¹ The establishment of the AfCFTA, to bring together all the AU Member States is developing quickly and a framework agreement is expected to be concluded, which in terms of Article XXIV of the GATT 1994 would establish a free trade area under the Enabling Clause.⁴⁴²

4.5 CONCLUSION

Referring back to the introductory paragraph, the following tentative conclusion can be drawn on the focus items, (1) establishing a conceptual framework for international trade, (2) the



⁴³⁸ Erasmus, G., 2017. The new self-financing Mechanism of the African Union: Can the proposed AU levy be a step towards financial independence?

Available at: <https://www.tralac.org/discussions/article/11661-the-new-self-financing-mechanism-of-the-african-union-can-the-proposed-au-levy-be-a-step-towards-financial-independence.html>

[Accessed 16 August 2018].

⁴³⁹ Erasmus, G., 2017. The new self-financing Mechanism of the African Union: Can the proposed AU levy be a step towards financial independence?

Available at: <https://www.tralac.org/discussions/article/11661-the-new-self-financing-mechanism-of-the-african-union-can-the-proposed-au-levy-be-a-step-towards-financial-independence.html>

[Accessed 16 August 2018].

⁴⁴⁰ Erasmus, G., 2017. The new self-financing Mechanism of the African Union: Can the proposed AU levy be a step towards financial independence?

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[Accessed 16 August 2018].

⁴⁴¹ Sunday Times - Timeslive, 2018. Read Cyril Ramaphosa's first state of the nation address.

Available at: <https://www.timeslive.co.za/politics/2018-02-16-in-full--read-cyril-ramaphosas-first-state-of-the-nation-address/>

[Accessed 16 August 2018].

⁴⁴² Sunday Times - Timeslive, 2018. Read Cyril Ramaphosa's first state of the nation address.

Available at: <https://www.timeslive.co.za/politics/2018-02-16-in-full--read-cyril-ramaphosas-first-state-of-the-nation-address/>

[Accessed 16 August 2018].

WTO and (3) the compatibility of the AU's self-financing mechanism with the rules and principles of the WTO.

(1) Establishing a conceptual framework for international trade

Based on the Ricardian theory of comparative advantage it is clear that international trade is a source of wealth for nations. International trade can also be the gateway for exploitation of especially the smaller countries who don't have the resources to compete with multinational conglomerates. Therefore the need for a body to regulate international trade is imperative for the success of the underdeveloped countries.

(2) The World Trade Organisation

The eventual establishment of the WTO was an important achievement for the regulation of international trade. From the original concept of an ITO at the Bretton Woods Conference in 1944, the absence of such an organisation was felt, however valiantly the GATT 1947 tried to influence the international trade policies adopted by most countries. Whilst the GATT 1947 succeeded in substantially reducing tariffs on goods, it became ineffectual in dealing with negotiations outside of matters dealing with tariffs. The establishment of the WTO completed the third leg of the tripartite with the IMF and World Bank to deal effectively with matters of international relations and trade beyond that of tariffs only.

(3) African Union's self-financing mechanism World Trade Organisation compatibility

Without the operation of the Enabling Clause, the self-financing mechanism adopted by the AU appears to be incompatible with the WTO. However, it will be a significant step towards achieving self-reliance in terms of the mandate of the AU. Whilst the operation of the Enabling Clause should be pursued to legalise the self-financing mechanism, the formation of a FTA would have significant trade benefits as indicated by South Africa's President Ramaphosa. Negotiations to form a FTA between SADC, COMESA and the East African Community is in progress and a framework agreement is expected to be completed imminently. The eventual formation of the AfCFTA which is expected to bring together all of the AU Members under a single FTA will allow the AU as a whole to conclude agreements with WTO Members not part of the AU that would otherwise be WTO incompatible.

The following and final conclusionary chapter will provide a general overview of the important aspects, summarise the main points of the various chapters, provide recommendations and highlight areas for future research resulting from this mini-thesis.



CHAPTER 5

CONCLUSION AND RECOMMENDATIONS

‘The lesson taught at this point by human experience is simply this, that the man who will get up will be helped up; and the man who will not get up will be allowed to stay down. This rule may appear somewhat harsh, but in its general application and operation it is wise, just and beneficent. I know of no other rule which can be substituted for it without bringing social chaos. Personal independence is a virtue and it is the soul out of which comes the sturdiest manhood. But there can be no independence without a large share of self-dependence, and this virtue cannot be bestowed. It must be developed from within.’⁴⁴³

5.1 INTRODUCTION AND BACKGROUND

In January 2016, Dr Kaberuka proposed the use of a 0.2% levy on eligible goods imported into the territory of an African Union (AU) Member State from a non-AU Member to fund the operations of the AU.⁴⁴⁴ The main purpose of the self-financing mechanism is to provide a reliable, sustainable and predictable source of funding for the AU and in so doing, reduce the AU’s dependence on donor funding for the implementation of African Continental developmental and integration programmes.⁴⁴⁵ The individual AU Member States who have elected to implement the self-financing mechanism, are responsible for administering the levy that would, in terms of the relevant AU Member’s assessed budgeted AU contribution be distributed to the AU.⁴⁴⁶ Even though the AU as an organisation is not a WTO Member, many of the AU Member States in their individual capacities are and therefore are obligated to abide by the WTO rules and principles.⁴⁴⁷ The principle of non-discrimination is one of the pillars upon which the WTO multilateral trade system is founded and the self-financing mechanism might discriminate between WTO Members who might be AU and non-AU Member States.⁴⁴⁸ The obligation of the AU/WTO Members to abide by the non-discrimination principle is the basis on which the WTO and the United States (US) Government have written to a number of the AU/WTO Member States about the perceived WTO incompatibility of the self-financing

⁴⁴³ Douglass, F., 2018. Quotation Collection.

Available at: <http://www.quotationcollection.com/author/Frederick-Douglass/quotes>
[Accessed 28 August 2018].

⁴⁴⁴ See chapter 3.3.2.1

⁴⁴⁵ See chapter 3.3.1

⁴⁴⁶ See chapter 3.3.3.1

⁴⁴⁷ See chapter 4.3.4

⁴⁴⁸ See chapter 4.3.3.1

mechanism.⁴⁴⁹ This apparent incompatibility of the self-financing mechanism with the WTO rules and principles is what gave rise to the overarching research question and ancillary research questions as follows:⁴⁵⁰

5.1.1 Main overarching research question

Is the implemented self-financing mechanism in the form of the 0.2 percent levy on eligible imported goods as agreed to by the AU, through the AU/WTO Member States in contravention of the WTO's rules and regulations?

5.1.2 Ancillary research questions

1. How international trade during colonisation resulted in the underdevelopment of Africa?
2. How the underdevelopment of Africa resulted in the formation of the Organisation of African Unity (OAU)?
3. Why the AU was formed to take over from the OAU?
4. Why the need for a self-financing mechanism to fund the AU?
5. What the technical details of the self-financing mechanism are and what the practical issues are surrounding the implemented self-financing mechanism?
6. Why we have international trade and the role of the WTO in regulating it?
7. Is the self-financing mechanism WTO consistent?
8. What possible corrective action exists that will allow the implemented self-financing mechanism to meet both the AU's principles of self-reliance and independence and the WTO rules and regulations?

These questions have been systematically addressed in the chapters forming the body of this mini-thesis to be summarised and analysed in the subsection to follow.

⁴⁴⁹ See chapter 4.4

⁴⁵⁰ See chapter 1.5

5.1.3 CHAPTERS SUMMARY

5.1.3.1 Chapter 1

Chapter 1 introduces the concept of the self-financing mechanism implemented by the AU and the formulation of the problem statement which informs the research problem that exists because of its possible WTO incompatibility. The main and ancillary research questions⁴⁵¹ were then formulated from the research problem to evaluate the perceived incompatibility. These ancillary research questions are addressed in the three chapters constituting the body of this mini-thesis to ultimately address the stated main research question. These chapters are summarised below.

5.1.3.2 Chapter 2

The objective of chapter 2 with reference to ancillary research questions 1 and 2, is to provide a conceptual framework for the formation of the Organisation of African Unity (OAU) based on the principle of underdevelopment of the African Continent from an international trade perspective. Followed by the formation of African resistance against colonialism. This resistance took the form of the OAU which was established with multiple objectives, one of which was the complete eradication of colonialism from the African Continent.⁴⁵² The underdevelopment of Africa was conceptually discussed and highlighted with reference to the capitalism and the dependency theories.⁴⁵³ As was highlighted in the chapter, the fight against colonialism was fundamentally a fight against capitalism as these concepts are inextricably linked.⁴⁵⁴ The application of these theories exposes the means by which Africa was being exploited and consequently underdeveloped, which forms the conceptual framework upon which the OAU was founded.⁴⁵⁵ With reference to the objectives of the OAU, the need for independence and the complete eradication of colonialism,⁴⁵⁶ a clear link between the underdevelopment of Africa and the establishment of the OAU is created in terms of the main objective of this chapter.

⁴⁵¹ See sections 5.1.1 and 5.1.2

⁴⁵² See chapter 2.2.5

⁴⁵³ See chapter 2, sections 2.2.3.2 and 2.2.4

⁴⁵⁴ See chapter 2.2.2.1

⁴⁵⁵ See chapter 2.3.1

⁴⁵⁶ See chapter 2.3.2

5.1.3.3 Chapter 3

With reference to ancillary research questions 3 to 5, the main objective is to create a causal link between the demise of the OAU, the establishment of the AU and the conceptualisation of the self-financing mechanism. The demise of the OAU can without any doubt be traced back to its inability to deal with complex matters in terms of its crisis management framework.⁴⁵⁷ The crisis management framework was constructed on the idealistic principles of non-interference and absolute sovereignty which significantly impeded the OAU's ability to intervene in conflicts within Member State borders.⁴⁵⁸ The OAU was basically rendered defunct, which is why former Presidents Mbeki of South Africa together with Ghadaffi of Libya and Obasanjo of Nigeria were proponents for an overhaul of the OAU.⁴⁵⁹ In addition to the principles of non-interference and absolute sovereignty, the lack of operational funding was a significant factor which prevented the OAU from performing its functions.⁴⁶⁰ The AU Constitutive Act was legally put into force on 26 May 2001 and fundamentally continued on where the OAU fell short. Whilst the AU in substance adopted and added to many of the OAU's objectives, a significant change to the principles of non-interference and sovereignty was affected. The AU adopted the important principles of (1) non-indifference, which under the banner of restoring peace, security and stability, allows the AU to intervene within the borders of AU Member States when peace, security and stability is threatened and (2) the promotion of self-reliance.⁴⁶¹ However, with the change in principles, comes the financial implications of being able to act, when required. Historically about 76 percent of the AU's budget originated from donor funding, which logically contradicts the AU's principle of self-reliance⁴⁶² and it's undoubtedly under this principle that the self-financing mechanism finds its genesis within the AU. This situation is exacerbated by the fact that on average only about 67 percent of the annual AU Member State assessed budgets were paid.⁴⁶³ The self-financing mechanism in the form of a 0.2 percent levy charged and collected by substantially all the AU Members on all eligible imported products will be used to pay their AU budget contributions and in so doing, reduce the dependency on donor funding for operational purposes.⁴⁶⁴

⁴⁵⁷ See chapter 3.2.1.2

⁴⁵⁸ See chapter 3.2.1.3

⁴⁵⁹ See chapter 3.2.1.3

⁴⁶⁰ See chapter 3.2.1.3

⁴⁶¹ See chapter 3.2.2.2

⁴⁶² See chapter 3.1

⁴⁶³ See table 3.3-1

⁴⁶⁴ See chapter 3.3.1

Following on from chapter two, the main objective of this chapter was to discuss and highlight the links between (1) the establishment of the AU, from the OAU leading into (2) why the self-financing mechanism was introduced. The AU took over from the OAU because of the outdated principles under which the OAU had to operate and in doing so the AU amended the principles under which the AU would function.⁴⁶⁵ The important principles of non-indifference and self-reliance in essence form the conceptual framework within which the self-financing mechanism was conceived. With reference to the main objective of this chapter, it has been discussed and illustrated how the formation of the AU can be linked to the demise of the OAU and how the new principles adopted by the AU form the conceptual framework within which the self-financing mechanism was conceived.⁴⁶⁶

5.1.3.4 Chapter 4

With reference to ancillary research questions 6 to 8, the main objectives are to (1) understand why international trade exists, (2) why it needs to be regulated and (3) assess the WTO compatibility of the AU's self-financing mechanism. The establishment of the WTO in this chapter was substantiated with reference to the economists' classical international trade theories of absolute and comparative cost advantage.⁴⁶⁷ These theories explain why and how even the poorest of countries can benefit from regulated international trade.⁴⁶⁸ International trade relations can also be a mechanism used to exploit foreign countries by means of the principle of unequal exchange.⁴⁶⁹ In chapter 2 the dependency theory was used to illustrate the exploitive effects of international trade conducted on unequal terms resulting in unequal exchange, which highlights the need for international trade regulation.^{470,471} The WTO is such a regulator which, through its rules and principles of the GATT 1994 promotes non-discriminatory and equitable international trade.⁴⁷² The AU's self-financing mechanism is however considered to be in possible contravention of the non-discriminatory principle of the WTO, which is why the WTO and the US Government have contacted many of the AU's Member States regarding the self-financing mechanism. A preliminary analysis conducted

⁴⁶⁵ See chapter 3.2.1.3

⁴⁶⁶ See chapter 3.2.2.2

⁴⁶⁷ See chapter 4.2

⁴⁶⁸ See chapter 4.2.2

⁴⁶⁹ See chapter 2.2.4.3

⁴⁷⁰ See chapter 2.2.4

⁴⁷¹ See chapter 4.3.1

⁴⁷² See chapter 4.3.3

before taking into account the special and differential treatment afforded to developing countries in terms of the Enabling Clause, suggests that the self-financing mechanism might be WTO incompatible.⁴⁷³

5.2 SUGGESTED SOLUTIONS

The suggested solutions to the arguments claiming WTO incompatibility of the self-financing mechanism are as follows.⁴⁷⁴

- (1) Would be to request a special concession from the WTO with regards to the self-financing mechanism. Substantially all of the AU/WTO Member States are developing or least-developed countries which could be granted preferential treatment in terms of the Enabling Clause.
- (2) For the AU to form a Free Trade Area (FTA). In terms of Article XXIV of the GATT 1994 and its understanding, certain discriminatory practices are allowed by the WTO to achieve regional integration. This would allow the AU to charge tariffs between the AU Member States which could be different from a tariff charged to a non-AU Member. To this end, the expected formation of the African Continental Free Trade Area (AfCFTA) would have the result of bringing together all the AU Member States under a single FTA.⁴⁷⁵ The establishment of the AfCFTA would essentially legalise the AU's self-financing mechanism pursuant to the AU's objectives of self-reliance and independence.

5.3 POSSIBLE FUTURE RESEARCH

From this mini-thesis, other areas still to be researched could include.

- (1) The study of the formation of the European Union (EU) and apply those principles to the AU scenario as a preliminary framework for establishing the AU as a Union.
- (2) The identification of the devices perpetuating underdevelopment in Africa from an international trade perspective and suggesting means to eliminate those devices.

⁴⁷³ See chapter 4.4.5

⁴⁷⁴ See chapter 4.4.6

⁴⁷⁵ See chapter 4.5

- (3) Perform a detailed study of the developmental plans of the AU and determine if they are to be implemented on the devices perpetuating underdevelopment.

5.4 FINAL CONCLUSION

It is inconceivable to imagine that the road to self-reliance and independence would be halted by the very institution established to pursue economic development and prosperity for all.⁴⁷⁶ For as long as the AU is dependent on donor funding for its basic operations, it will never be able to make objective decisions for the benefit of Africa without fear of losing the funding. This mini-thesis is born out of this contradiction between what is right and what is legal. In an idealistic world, these should be the same however, no such thing exists.

The AU needs to consider the option of making a formal request to the WTO for the self-financing mechanism to be granted special concession in terms of the Enabling Clause. The WTO classification of the AU Member States as developing countries would give substantial merit to such a request, given the objective of the self-financing mechanism. Whilst the eventual establishment of the AfCFTA would essentially result in the legalisation of the self-financing mechanism, the current perceived incompatible WTO status of the self-financing mechanism could result in more disputes being lodged against the AU/WTO Member States that have implemented the mechanism.

The self-financing mechanism is without any doubt, in the author's view a significant step towards the pursuit of independence and self-reliance and ultimately the greater good of Africa. With reference to the opening quotation, the author concludes this mini-thesis with the following statement, independence cannot be achieved without a significant measure of self-reliance and this independence cannot be conferred by anyone, but can only be developed from within who seeks it. This is very much the scenario within which the AU finds itself, bravery and technical acumen are what is required from the AU leadership to bridge the gap between the AU's independence and the technical requirements of the WTO.

⁴⁷⁶ See chapter 4.3.2.1

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