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Therese M. Woods*

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Abstract

This Note argues that the EEC and Mexico should modify their current agreement. Part I examines the terms of the EEC-Mexican Agreement. Part II discusses the changing economic factors in the EEC and Mexico that dictate the need for a new agreement. Part III suggests modification of the EEC-Mexican Agreement to enhance the economic relationship between the EEC and Mexico. The Note concludes that the EEC, the second largest trading bloc in the world, should offer Mexico greater cooperation to enable Mexico to expand its non-petroleum exports and thereby modernize its industrial capacity. A new agreement with specific provisions designed to attain these goals would further the economic objectives not only of Mexico, but of the EEC as well.

THE EEC-MEXICAN AGREEMENT: TIME FOR REEVALUATION?

INTRODUCTION

In 1975, the Agreement Between the European Economic Community and the United Mexican States (the "EEC-Mexican Agreement" or the "Agreement")[1] was signed to improve bilateral trade. Since the Agreement was signed, however, trade between the parties has not increased to the level the parties had hoped.[2] While Mexico's economy has stagnated, a stronger European Economic Community (the "EEC" or "Community")[3] has negotiated a series of trade agreements to stimulate economies in other developing nations.[4] In light of the changing structure of the EEC and the changing economies of both the EEC and Mexico, the present agreement is ineffective. It does not sufficiently promote Mexican non-petroleum exports to the EEC or EEC exports of technology to Mexico.

This Note argues that the EEC and Mexico should modify their current agreement. Part I examines the terms of the EEC-Mexican Agreement. Part II discusses the changing eco-

1. Agreement Between the European Economic Community and the United Mexican States, O.J. L 247/11 (1975) [hereinafter EEC-Mexican Agreement]. This agreement was concluded under articles 113 and 114 of the Treaty Establishing the European Economic Community. Mar. 25, 1957, arts. 113, 114, 1973 Gr. Brit. T.S. No. 1 (Cmd. 5179-II) at 42-43 (official English version), 298 U.N.T.S. 11, 60 (1958) (unofficial English translation) [hereinafter Treaty]. For a discussion of the EEC's legal power to negotiate Community commercial agreements under articles 111, 113 and 114 of the Treaty, see A. PARRY & J. DINNAGE, PARRY & HARDY: EEC LAW 428-30 (2d ed. 1981).

2. *See* De Mateo, *Mexico and the European Economic Community: Trade and Investment*, in THE EUROPEAN ECONOMIC COMMUNITY AND MEXICO 17 (1987) [hereinafter THE EEC AND MEXICO].

3. The EEC originally consisted of six Member States: Belgium, France, the Federal Republic of Germany, Italy, Luxembourg, and the Nertherlands. Three new members joined in 1973 with the accession of the United Kingdom, Denmark, and Ireland. Greece acceded in 1981. Spain and Portugal became Member States in 1986. *See generally* F. NICHOLSON & R. EAST, FROM THE SIX TO THE TWELVE: THE ENLARGEMENT OF THE EUROPEAN COMMUNITIES (1987) (detailing course of successive ECC enlargements). For an explanation of the legal basis of the EEC, see D. LASOK & J.W. BRIDGE, AN INTRODUCTION TO THE LAW AND INSTITUTIONS OF THE EUROPEAN COMMUNITIES 2-25 (3d ed. 1982).

4. *See infra* notes 71-100 and accompanying text (for a discussion of EEC agreements with developing nations).

nomic factors in the EEC and Mexico that dictate the need for a new agreement. Part III suggests modifications of the EEC-Mexican Agreement to enhance the economic relationship between the EEC and Mexico. This Note concludes that the EEC, the second largest trading bloc in the world, should offer Mexico greater cooperation to enable Mexico to expand its non-petroleum exports and thereby modernize its industrial capacity. A new agreement with specific provisions designed to attain these goals would further the economic objectives not only of Mexico, but of the EEC as well.

I. *THE PRESENT AGREEMENT BETWEEN THE EEC AND MEXICO*

A. *Roots of the EEC's Developmental Trade Policies with Developing Nations*

The EEC pursues trade, agriculture, and financial aid policies in its relations with developing nations.[5] Two policies motivate this approach. First, the EEC views the developing nations as an expanding market for its products and technology, as well as a source of labor, energy, and raw materials.[6] Second, the EEC seeks to develop the economic infrastructure of its former colonies,[7] as well as other developing nations.[8] In

5. *See* Stevens, *The European Community and Africa, the Caribbean and the Pacific*, in INSTITUTIONS AND POLICIES OF THE EUROPEAN COMMUNITY 142 (J. Lodge ed. 1983) [hereinafter Lodge I] (analyzing foundations of European Community's policy toward developing nations).

6. *See* K. LALL & H. CHOPRA, THE EEC AND THE THIRD WORLD xvi-xvii (1981).

7. *See id.* at 3. The dismantling of the European colonial structure between the 1940s and the 1970s was "one of the most historic and spectacular developments of global significance following upon the end of "World War II." *Id.* The EEC is concerned with economic matters. It seeks to promote the free exchange of goods, serivces, and capital between the Member States. *See* D. WYATT & A. DASHWOOD, THE SUBSTANTIVE LAW OF THE EEC 13 (1980). "[T]he economic integration contemplated by the Treaty was intended to advance the long term aim of political union." *Id.* (explaining economic and political undercurrents of the Treaty).

The EEC aims to play a major role in world affairs. Its major interests include: defending its need for an open trading system and a stable monetary system, and making its voice heard above the "mix of superpower dialogue . . . which dominates international politics." *See* Prag, *International Relations*, in EUROPEAN UNION: THE EUROPEAN COMMUNITY IN SEARCH OF A FUTURE 104 (J. Lodge ed. 1986) [hereinafter Lodge II]. The EEC also has a special relationship to developing nations, because it absorbs over 40% of their exports. *See id.* (for a discussion of the role of Western Europe in world affairs).

In 1957, while negotiating the Treaty, France held a substantial empire in Africa pursuit of these policies, the EEC has signed agreements with developing nations in order to establish firmly an economic presence in these countries.

In the early 1970s, the EEC concluded non-preferential trade agreements with Uruguay[9] and Brazil.[10] These agreements were intended to increase and diversify trade. Continuing this expansion of trade and developmental contacts with Latin American nations, the EEC began negotiating a trade agreement with Mexico.[11] After two years of negotiation, the EEC-Mexican Agreement was signed in Brussels on September 16, 1975, and entered into force on September 26, 1975.[12]

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and outposts in the Caribbean, Latin America, Southeast Asia, and Polynesia. Belgium held the Congo (now Zaire) and the Netherlands held colonies in Asia and the Caribbean. *See* E. FREY-WOUTERS, THE EUROPEAN COMMUNITY AND THE THIRD WORLD 13-14 (1980) (discussing French plan to associate its overseas countries and territories with the new European Economic Community). France asserted that it would sign the Treaty only if the EEC would establish an association agreement with overseas countries and territoris. *See id.* The original six members agreed that the non-European countries and territories that had special ties to Belgium, France, Italy, and the Netherlands would become associated with the EEC. *See id.* at 14; Treaty, *supra* note 1, arts. 131-36, at 65-67; *id.* Implementing Conventions at 157-61. The association agreement has two main provisions. First, it calls for establishment of a free trade area between the EEC and the overseas countries and territories. *See id.* Second, it provided for the European Development Fund to grant EEC development aid to the associated countries and territories. *See id.*

The African colonies achieved independence soon after 1957. *See* E. FREY-WOUTERS, *supra*, at 14 (noting that France proposed a new convention for Euro-African cooperation when most of its former territories achieved independence shortly after enforcement of the Treaty of Rome).

8. *See* K. LALL & H. CHOPRA, *supra* note 6, at xv.

9. Trade Agreement Between the European Economic Community and the Eastern Republic of Uruguay, O.J. L 333/2 (1973); *see* A. PARRY & J. DINNAGE, *supra* note 1, at 479 (for a brief discussion of the EEC agreements with Latin American nations).

10. Trade Agreement Between the European Economic Community and the Federal Republic of Brazil, O.J. L 102/24 (1974); *see* A. PARRY & J. DINNAGE, *supra* note 1, at 479. In 1980, the EEC concluded a new agreement with Brazil. Framework Agreement of September 21, 1980. For Cooperation Between the European Economic Community and the Federative Republic of Brazil, O.J.L. 281/2 (1982) [hereinafter EEC-Brazil Agreement].

11. *Relations with Latin American Countries*, Common Mkt. Rep. (CCH) ¶ 3871, at 3099 (Agreement with Mexico) [hereinafter Latin American Relations]. The EEC-Mexican Agreement departs from earlier agreements concluded with other Latin American countries, such as Argentina in 1971 and Uruguay in 1973, because it aims to develop and diversify trade between the parties through the cooperation of both parties. *See id.*

12. *See* EEC-Mexican Agreement, *supra* note 1. The two-year negotiation process when Luis Echeverria, then President of Mexico, visited the Commission between April 7-9, 1973. *See* President of Mexico Visits the Commission, E.C. Bull. No.

While the Agreement itself states the common goals shared by both the EEC and Mexico, each party had separate agendas. Mexico sought to increase exports to the nine nations that then comprised the EEC.[13] Primarily, Mexico wanted to reduce its economic dependence on trade with the United States.[14] Finally, Mexico needed Community assistance to speed economic growth, diversify industrial activity, develop natural resources, and provide technological innovation.[15]

For its part, the EEC wanted to develop a higher level of trade with Mexico. The EEC recognized Mexico's special situation as a developing nation and sought to extend its already established policy of cooperation with developing countries. At this time, the EEC had entered into negotiations with forty-six developing African, Carribean, and Pacific States in preparation for the ACP-EEC Convention of Lomé ("Lomé I").[16]

4, ¶ 2315 (1973). President Echeverria expressed hope that economic cooperation between Mexico and the Community would help resolve the problems Mexico faced in its international relations. *Id.* In March 1975, the Council authorized the Commission to begin negotiations for a non-preferential agreement between Mexico and the Community. Mexico, E.C. Bull. No. 3, ¶ 2344 (1975). This agreement would be based on commercial cooperation between the parties. *Id.* Before the negotiations opened, Sir Christopher Soames, Vice-President of the European Commission, visited Mexico to talk with President Echeverria and the Mexican Ministers for Foreign Affairs and Industry and Commerce. Official Visit by Sir Christopher Soames, E.C. Bull. No 4. ¶ 2348 (1975). The talks related to Mexico's prospects for relations with the Communities. *Id.*

On April 29, 1975, negotiations between the EEC and Mexico opened in Brussels. *Id.* The first round, which lasted two days, concentrated on the major issues of the contemplated Agreement. *Id.* These included "development and diversification of trade through commerical and economic cooperation." *Id.* ¶ 2349. The negotiations concluded on June 9 & 10, 1975. *See* Mexico, E.C. Bull. No. 6 ¶ 2351 (1975).

13. *See* Spokesman's Group of the Commission of the European Communities, EEC-Mexico Agreement, Information Memo (July 1975) [hereinafter Information Memo] (available at the *Fordham International Law Journal* office).

14. *See id.* By 1972, two-thirds of Mexico's 300 largest industrial firms were based in the United States. *See* S. WEINTRAUB, FREE TRADE BETWEEN MEXICO AND THE UNITED STATES? 17 (1984).

15. *See* COMMISSION, SEVENTH GENERAL REPORT ON THE ACTIVITIES OF THE EUROPEAN COMMUNITIES in 1973, at 432 (1974); Information Memo, *supra* note 13.

16. ACP-EEC Convention of Lomé, Council Regulation No. 199/76, O.J. L 25/1 (1976) [hereinafter Lomé I]; *see* Information Memo, *supra* note 13; *infra* note 71 (for historical explanation and discussion of the goals of Lomé Convention). *See generally*, C. TWITCHETT, A FRAMEWORK FOR DEVELOPMENT: THE EEC AND THE ACP (1981) (giving an overview of link between EEC and ACP States).

B. *The Present EEC-Mexican Agreement*

In the Agreement, the EEC and Mexico grant each other most-favored-nation treatment[17] in customs duties and charges, taxes, and quantity of imports and exports.[18] As a result of this provision, Mexico and the EEC agreed to grant each other any trade advantages that are extended to third countries.[19] In theory, no third country shall have better trade relations with either Mexico or the EEC than they have with each other. By a subsequent provision, however, these provisions do not apply to advantages that either party grants to neighboring countries or to advantages that Mexico grants to Latin American or Carribean countries.[20]

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17. *See* EEC-Mexican Agreement, *supra* note 1, art. 2, O.J. L 247/11, at 12. Articles 2 states that the parties shall grant most-favored-nation treatment in all matters relating to the following:

> —customs duties and charges of all kinds on imports or exports, including the procedures for collecting such duties and charges;
> —regulations concerning customs clearance, transit, warehousing or transhipment of imported or exported products;
> —taxes and other internal charges directly or indirectly imposed on imported or exported goods or services;
> —arrangements governing the quantity of imports and exports;
> —regulations concerning payments in respect of trade in goods or services, including the allocation of foreign currency and the transfer of such payments;
> —regulations affecting the sale, purchase, transport, distribution and use of goods and services on the internal market.

Id. art. 2(1), at 12; *see* D. WYATT & A. DASHWOOD, *supra* note 7, at 18 (for discussion of the "most-favored-nation" principle). The most-favored-nation principle implies that "any privilege or favor granted by a contracting party to the products of any other country in respect of customs duties or charges shall be accorded immediately and unconditionally to similar products originating in the territory of any other contracting party." *Id.* The Agreement also makes exceptions to this principle, such as advantages that the contracting parties grant to particular countries in conformity with the General Agreement on Tariffs and Trade ("GATT"), *opened for signature* Oct. 30, 1947, 61 Stat. A3, T.I.A.S. No. 1700, 55 U.N.T.S. 187. *See* EEC-Mexican Agreement, *supra* note 1, art. 2(2), at 12.

The most-favored-nation clause was essential to the EEC-Mexican Agreement, because at the time of the negotiation, all nine members of the EEC were signatories to GATT, which contains a general most-favored-nation provision for all signatories. *See* D. WYATT & A. DASHWOOD, *supra* note 7, at 18-19. Mexico, however, was not then a member of GATT and did not become a signatory to GATT until 1987. *See* U.S. DEPT. OF STATE TREATIES IN FORCE 303-04 (1988) (listing all signatories, including Mexico, to GATT as of January 1, 1988).

18. *See* EEC-Mexican Agreement, *supra* note 1, arts. 1-2, at 12.

19. *See supra* note 17 (explaining the most-favored-nation treatment).

20. *See* EEC-Mexican Agreement, *supra* note 1, art. 2(2), at 12. Article 2(2) states that the most-favored-nation privilege shall not apply to the following:

The Agreement speaks in general terms of promoting the development and diversification of trade[21] and economic cooperation between Mexico and the EEC.[22] To achieve these goals, the Agreement encourages economic operators and institutions to undertake practical economic cooperation projects.[23] While the Agreement encourages economic cooperation, it does not specify the areas in which the parties shall cooperate.[24] Furthermore, the Agreement does not provide financial incentives to encourage institutions to undertake cooperation projects.[25]

To ensure the proper functioning of the agreement, Mexico and the EEC agreed to create the EEC-Mexico Joint Committee (the "Joint Committee").[26] The Joint Committee has

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(a) advantages granted by Contracting Parties to neighboring countries to facilitate frontier-zone traffic;

(b) advantages granted by the Contracting Parties with the object of establishing a customs union or a free trade area or as required by such a customs union or free trade area;

(c) advantages which the Contracting Parties grant to particular countries in conformity with the General Agreement on Tariffs and Trade;

(d) advantages which Mexico grants to certain countries in accordance with the Protocol on trade negotiations between developing countries in the context of the General Agreement on Tariffs and Trade;

(e) other advantages granted or to be granted by Mexico to any Latin American or Caribbean country or group of countries.

Id.

21. *See id.* art. 3, at 12. Article 3 states that "[t]he Contracting Parties undertake to promote the development and diversifiation of their reciprocal trade to the highest possible level." *Id.*

22. *See id.* art. 4, at 12. Article 4 states that "[t]he Contracting Parties will develop their economic cooperation, where linked with trade, in fields of mutual interest and in light of developments in their economic policies." *Id.*

23. *See id.* art. 5, at 12. Article 5 states that "[w]ith a view to implementing Articles 3 and 4, the Contracting Parties agree to promote contracts and cooperation between their economic operators and institutions with a view to undertaking practical economic cooperation projects which are likely to contribute to the development and diversification of their trade." *Id.*

24. *See* Coffey, *Co-operation Between the European Economic Community and Latin America—with Special Reference to Mexico: A European View*, in THE EEC AND MEXICO, *supra* note 2, at 29, 33 (Agreement is "much too general in scope and quality").

25. *See* Reyes, *Industrial Policy in Mexico: Problems, Objectives and Relationship to the EEC, in* THE EEC AND MEXICO, *supra* note 2, at 98 (Mexico must make a substantial effort to attract high-tech industries).

26. *See* EEC-Mexican Agreement, *supra* note 1, art. 6, at 12. The Joint Committee has several functions. First, it must study practical trade problems between the Community and Mexico and, where possible, propose solutions for them. A. PARRY & J. DINNAGE, *supra* note 1, at 479; LATIN AMERICAN RELATIONS, *supra* note 11, at 3099. For example, where there are specific barriers to trade, products, or indus-

arranged conferences between European and Mexican firms to discuss joint ventures,[27] supported projects to develop geothermal energy[28] and agricultural research,[29] and obtained financial assistance from the EEC for displaced population groups.[30]

The EEC-Mexican Agreement contains an evolutionary clause that provides for amplification to cover any additional issues.[31] The parties may amend the Agreement in consideration of new situations in the economic policies of either side.[32]

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tries, the Joint Commission can propose measures to expand the trade relationship. *Id.* Second, the Joint Commission is to encourage Mexico to use the generalized system effectively in order to promote EEC-Mexican trade. *Id.* Third, the Joint Commission must see that all parties benefit from the agreement by promoting the exchange of information and contacts between Community firms and investors and Mexico, as well as seeing that projects are completed. Mexico, E.C. Bull. No. 6 ¶ 2345 (1975). However, the degree to which Community investors would participate in Mexican development projects depend on the extent to which Mexico could attract them to profitable operations.

27. *See* Spokesman's Group of the European Communities, EEC-Mexico Joint Commission, Memo 17/87 (Feb. 10, 1987) (not-attributable) [hereinafter Joint Commission Memo] (available at the *Fordham International Law Journal* office). For its part, the Community believed that face-to-face counsultation among EEC and Mexican businesses was essential to industrial cooperation. *Id.* at 2. In pursuit of this cooperation, the European Commission and the Mexican authorities arranged several "encounters" in Guadalajara in December 1984. *Id.* During these encounters, approximately 100 European firms met with potential Mexican partners to discuss proposals for future cooperation. *Id.*

28. *Id.* at 3. There have been several projects in the field of energy cooperation. They include Community assistance to develop Mexican geothermal energy, two studies on methods by which Mexico could use energy and energy policy rationally, and the creation of reliable instruments to forecast future energy supply and demand. *Id.*

29. *Id.* A European and a Mexican institute conducted a joint research program in the field of tropical agriculture. *Id.* The project was called "Conversion of tropical agricultural production into animal feed by fermentation." This project was intended to reduce Mexico's requirements for grain imports by developing methods to convert the waste of tropical agriculture, such as leaves, into animal feed. *Id.*

30. *Id.* During 1985 and 1986, the EEC provided financial assistance for several development cooperation projects in Mexico, which assisted displaced population groups, gave food aid, and allocated money for the construction of a hospital. *Id.*

31. *See* EEC-Mexican Agreement, *supra* note 1, art. 12, at 13; *Latin American Relations, supra* note 11.

32. *See* EEC-Mexican Agreement, *supra* note 1, art. 12, at 13.

II. *THE CHANGING ECONOMIC AND LEGAL RELATIONSHIP BETWEEN THE EEC AND MEXICO*

During the 1980s, Mexico has suffered a severe recession and faces problems repaying foreign debt.[33] At the same time, the EEC has embarked upon a program to establish a single market within the Community by 1992.[34] As its economic power has increased, the EEC has begun to expand its trade agreements with developing nations.[35]

A. *Recession and Foreign Debt in Mexico*

From 1940 through 1976, Mexico experienced high rates of real growth, even though its domestic industries were maintained at high cost.[36] Thus, Mexico entered into the EEC-Mexican Agreement during a time of relative economic prosperity with the intention of expanding this prosperity.

In the late 1970s, however, this economic growth did not outpace inflation.[37] The Mexican government devalued the peso in 1976, destabilizing the economy.[38] The government

33. *See infra* notes 36-52 and accompanying text.

34. *See* Single European Act, O.J. L 169/1 (1987). *See generally* Lodge II, *supra* note 7 (discussing political and economic implications of proposed European Union).

35. *See infra* notes 71-100 (discussing Lomé Agreements and other trade agreements between the EEC and Latin American nations).

36. *See* Sinkin, *The Mexican Economy in Crisis*, in LEFLER, DOING BUSINESS IN MEXICO § 3.02, at 3-3 (1985) (discussing ultimate downfall of Mexico's program to produce goods domestically).

Mexico's program of import substitution industrialization ("ISI") development between 1940-1976 encouraged the production of products that were intended to service the domestic market, decreasing the competitiveness of Mexican goods abroad. Thus, ISI sought to decrease Mexico's dependence on both foreign exchange and imported goods. *Id.* Mexican goods did not have to compete in international markets because ISI was intended to supply consumer goods to the Mexican market. *Id.* Mexican goods were produced inefficiently and at a high cost relative to other nations. *Id.* Consequently, Mexican goods could not be exported to foreign markets and, therefore, could not contribute to Mexico's foreign exchange earnings *Id.* For a discussion of ISI, see Hirschman, *The Political Economy of Import Substituting Industrialization in Latin America*, 82 Q.J. ECON. 1 (1968). Notably, the government did to administer the program well and many of the developmental projects were never completed. Street, *Mexico's Developmental Crisis*, CURRENT HIST., Mar. 1987, at 101.

37. *See* Sinkin, *supra* note 36, § 3.02, at 3-4.. For a discussion of Mexico's poor financial and fiscal management, see Street, *supra* note 36, at 101-01.

38. *See* Sinkin, *supra* note 36, § 3.02, at 3-4. By 1976, inflation outpaced economic growth and population growth had reached nearly 3.5%. *Id.* The ISI model was not able to sustain economic growth. *Id.* The failure of the ISI model caused a

attempted to revitalize the nation chiefly through development of its oil industry.[39] While the initial success of Mexico's oil industry brought increased revenue to the country, it did not stabilize the economy.[40] This influx of currency, chasing a limited supply of goods and services, caused inflation to increase to 27.9% in 1981 and caused an import binge.[41] Furthermore, the high price of Mexican goods destroyed the export market for non-petroleum products.[42] As a result, deficits increased in Mexico's trade balance and in the current account of its balance of payments.[43] During the early 1980s, Mexico borrowed

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severe economic crisis in 1976, and a devaluation of the peso just as a new presidential administration was taking office. *Id.* Consequently, President José López Portillo faced an unstable economic situation when he took office. *Id.*

It should be noted that the term of office of the President of the Republic is six years and that he is ineligible for reelection. One political party, the Institutional Revolutionary Party (known as the P.R.I.) has controlled the presidency since 1929. *See* Robter, *Can He Save Mexico?*, N.Y. Times, Nov. 20 1988, § 6 (Magazine), at 34.

39. *See* Sinkin, *supra* note 36, § 3.02, at 3-1 to 3-5. The López Portillo administration planned to stabilize the economic situation and then increase domestic demand to promote economic growth. *Id.* To restrict inflation, however, the administration planned to increase both production and imports. *Id.* Oil was the main player in the strategy, because the Mexican national oil company, PEMEX, had announced huge new discoveries of petroleum reserves in southern Mexico in late 1976. The government contemplated that the new national growth strategy would be paid for by oil export revenues and foreign borrowing. *Id.* By 1978, the program to expand exports of oil began to have positive results. Mexico was a major exporter of oil during a global energy crisis. *Id.*; *see* Street, *supra* note 36, at 101. Between 1978 and 1981, the Mexican economy grew by an annual rate of 8.4%, while the value of Mexican exports grew from US$9.3 billion in 1979 to US$19.8 billion in 1981. Sinkin, *supra* note 36, § 3.02, at 3-5. Also during this period, public expenditure increased rapidly, real per capita income increased, and unemployment fell. *Id.* Sinkin, *supra* note 36, § 3.02, at 304 to 3-5. For an analysis of the financial policies followed between 1970 and 1985 by the Mexican oil sector, run by PEMEX, see Wionczek, *Mexico's External Debt and the Oil Question*, THE EEC AND MEXICO 57, 77-82 (1987).

40. *See* Sinkin, *supra* note 36, § 3.02, at 3-6. Moreover, massive amounts of foreign debt fueled the expansion of Mexico's oil industry. *See* Thurow, *Bordering on Disaster*, NEWSWEEK, June 14, 1982, at 78, col. 1.

41. *See* Sinkin, *supra* note 36, § 3.02, at 3-6. Mexicans purchased from abroad because the peso was highly overvalued. *Id.* As cheaper imports rapidly entered Mexico, Mexican non-petroleum exports collapsed. *See id.*

42. *See id.*

43. *See id.* The balance of payments is the method of recording all of a particular country's economic transactions with those of the rest of the world during a fixed period of time. J. DOWNES & J. GOODMAN, DICTIONARY OF FINANCE AND INVESTMENT TERMS 27-28 (2d ed. 1987). It is usually divided into three accounts, the current, capital, and gold accounts, which can show a surplus or deficit. *Id.* Imports and exports of goods and services are listed in the current account. *Id.* at 27-28. The capital account tracks investments. Gold transactions are noted in the gold account. *Id.*

in the international capital markets to cover these huge deficits.[44]

The drop in oil revenues in 1981 triggered a collapse in the Mexican economy in 1982.[45] Since then, Mexico has experienced negative growth rates, soaring inflation, and massive trade imbalances.[46] The value of the peso has fluctuated wildly

A country may assess its comparative economic strengths and weaknesses with the balance of payments. *Id.*

44. *See* Sinkin, *supra* note 36, § 30.2, at 3-6. For a discussion of underlying legal problems regarding the Mexican borrowing during the 1970s and early 1980s, see Pando. *The Mexican Debt Crisis in Perspective: Faulty Legal Structures and Afterhocks*, 23 TEX. INT'L L.J. 171-231 (1988).

As a result of oil exports, Mexicans had enormous amounts of currency to spend, but a limited quantity of goods and services upon which to spend it. *Id.* This situation increased inflationary pressure, and by 1981 inflation reached 27.9% annually. *Id.* In response, the government increased the value of the peso, thus reducing the cost of imported goods relative to Mexican goods. *Id.* The overvalued peso caused a flood of imported goods into Mexico and, at the same time, a collapse in the export market for Mexican non-petroleum products. *Id.* Mexico's deficits in its trade balance and in its current account of the balance of payments increased because of the economic situation. *Id.* Between 1980 and 1981, Mexico's trade balance deficit grew from −US$2.83 billion to −US$4.1 billion, while its current accounts defict grew from −US$4.8 billion in 1979 to −US$11.7 billion in 1981. *Id.*

During the six yers of the López Portillo administration, Mexico borrowed approximately US $10 billion annually to cover its deficits. *Id.* After 1977, the external debt increased at a rapid pace: US$22.91 billion at the end of 1977, US$26.26 billion in December 1978, US$52.96 billion in December 1981, and US$58.87 billion in December 1982. *See* Pando, *supra* at 183.

Mexico's foreign debt was large and poorly structured. Sinkin., *supra* note 36, § 3.02, at 3-7. Approximately 15% of Mexico's 1981 deficit was financed by short-term loans and approximately 85% was financed by medium term loans. *Id.* The debt service payments increased during every year of the López Portillo administration except 1981. *See* Sinkin, *supra* note 36, § 3.02, at 3-7. Over 30% of exports were allocated for payments. *See id.*

As debt service increased, the average maturity period for all loans to Mexico dropped from 13.7 to 7.7 years between 1972 and 1981. *Id.* At the same time, interest rates rose on these loans from 6.9% to 15% on average. *Id.*

45. *See* Sinkin, *supra* note 36, § 3.01, at 3-1 to 3-2. *See generally* Wionczek, *supra* note 39, at 57. The Mexican government found itself confronting a "witch's brew of staggering unemployment, rising inflation and pyramiding foreign debts." *Mexico's Petroleum Hangover*, TIME, Mar. 29, 1982, at 50, col. 1.

46. *See* Sinkin, *supra* note 36, § 3.01, at 3-1 to 3-2. In 1982 and 1983, Mexico's economy contracted, it grew in 1984, and was stagnant in 1985. *Id.* The sharp decline in oil prices in 1986 worsened the Mexican economy. *See id.* By 1986, Mexico depended on oil exports to pay its US$97 billion foreign debt. When the price of oil dropped from US$21 to US$20 during 1986, Mexico faced a US$2 billion annual loss in earnings. *See* Buchanan, *De La Madrid is Dilthering While Mexico's Debt Fuse Burns*, BUS. WK. Feb. 17, 1986, at 50, col. 2; *see also* 1986-1987 Eur. Parl. Deb. (No. 340) 68 (Oct. 6, 1986) (discussing how sharp fall in the price of oil represents a serious threat to development of countries such as Mexico, because they finance greater part of

during these crisis years, and the inflation rate has averaged over sixty percent since the 1982 collapse.[47]

Furthermore, the drop in oil prices in 1982 caused foreign investors as well as Mexicans to withdraw their money from Mexico.[48] This flight of capital prevented Mexico from meeting payments on its foreign debt and deprived it of funds with which to develop its industrial infrastructure in non-petroleum products.[49] Today, non-petroleum products comprise

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their imports with proceeds of oil, and it is extremely difficult for them to service their foreign debt under these conditions).

47. *See* Sinkin, *supra* note 36, § 3.01, at 3-2. Inefficient import substitution, inadequate effective demand, and decelerating productivity growth in both rural and urban activities led to increasing income inequalities, inefficient industrialization behind protective tariffs, and a growing balance of payment problems. *See id.* § 3.02, at 3-3; *see also* Reyes, *supra* note 25, at 92 (noting the though Mexican manufacturing output grew rapidly until 1981, efficiency levels were far below those prevailing in industry in developed countries).

48. *See* Sinkin, *supra* note 36, § 3.03, at 3-8 to 3-9. In 1982, three forces combined to cause a drastic fall in oil prices: conservation, a recession in the United States and new oil sources. *Id.*

49. *See id.* On the verge of bankruptcy in 1982, Mexico received massive financial assistance from international banks and financial institutions. *See id.* § 3.03, at 3-10; Street, *supra* note 36, at 103. By February 1982, the Mexican economy was in crisis.

The government depleted public-sector finances in order to service the foreign debt. *See* Sinkin, *supra* note 36, § 3.03, at 3-9. Meanwhile, international reserves sunk to very low levels and inflation soared. To prevent the economy from falling further, the government devalued the peso by 67%, from 26.5 to 46 to the dollar. *See id.*

The International Monetary Fund ("IMF") pressured international creditors to delay all payments due on the public sector debt for 90 days. *Id.* § 3.03, at 3-10. At the same time, Mexican authorities sought to reschedule payments on its debt and to obtain a loan from the IMF. *Id. See* Preusse, *Latin American Foreign Debt and the International Financial System*, in THE EEC AND MEXICO 39, 40 (1987) (relating Mexico's 1982 debt rescheduling to international debt crisis). In November, 1982, the Mexican government reached a three-year accord with the IMF, which called for a severe austerity program. *See* Sinkin, *supra* note 36, § 3.03, at 3-11; Street, *supra* note 36, at 103. This program included "limitations on public sector borrowing, increases in taxes, a significant lowering of inflation, elimination or reductions of government subsidies and price controls for basic goods and services." *See* Sinkin, *supra* note 36, § 3.03, at 3-11. The program also called for substantial reductions in the deficit as a percentage of the GDP and the systematic undervaluation of the peso to stimulate non-petroleum exports and to reduce imports. *See id.* Street, *supra* note 36, at 103.

On July 22, 1986, Mexico and the IMF signed another in a series of agreements to delay payment of Mexico's US$97.6 billion debt obligation. *See* Sander, *International Debt: IMF-Mexico Stand-By Agreement*, 28 HARV. INT'L L.J. 157 (1987).

In this agreement, the IMF offered a series of prescriptions to Mexico intended to encourage long-term economic growth. *Id.* Thus, for the first time, the IMF favored economic growth instead of "the traditional demands for economic austerity normally forced upon the debtor country." *Id.* In exchange, Mexico agreed to make fifteen percent of Mexico's exports to the EEC.[50]

The economic crisis continues today in Mexico, highlighting the disparity between the Mexican and European economies.[51] Mexico no longer wants assistance to expand on prosperity. Rather, it urgently needs to improve its trade relationship with the EEC[52] so that it may import advanced technology and export non-petroleum manufactured products.

B. *Changes in the EEC: The Second Enlargement and the Single European Act*

The second enlargement of the EEC, which took place during the 1980s, has affected the EEC's relations with Mexico.[53] The entry of Greece, Spain, and Portugal into the EEC has major implications on the EEC's trade and economic rela-

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changes in economic policy and institute tax reform. *See Back to the Brink in Mexico*, BUS. WK, June 23, 1986, at 12, col. 2; Wildstrom, *The Big Risks in Baker's Mexican Bailout*, BUS. WK., Aug. 4, 1986, at 35, col. 2.

50. *See* De Mateo, *supra* note 2, at 16. If oil is excluded, Mexico's total exports to the EEC underwent zero growth between 1979-84. *See id.*

51. For example, the gross domestic product in purchasers' value in Mexico during 1984 was approximately US$171,298 million. *See* THE EUROPA YEARBOOK 1839-40 (Europa Publications, Ltd. ed. 1988). During the same year, the gross domestic product in purchasers' values was US$595,893 million in the Federal Republic of Germany. *See id.* at 1160-61. It was US$476,666 million in France. *See id.* at 1045. The GDP at market prices was US$427,776 million in the United Kingdom. *See id.* at 2784-85. The gross domestic product at factor cost was US$353,667 million in Italy. *See id.* at 1479. *See generally* De Mateo, *supra* note 2, at 10-12 (for a statistical comparison of the Mexican and Latin America economies during the early 1980s).

52. *See* 1986-1987 Eur. Parl. Deb. (No. 340) 60 (Oct. 6, 1986). In a talk endorsing an improved trading system between the EEC and Mexico, Mr van Aerssen stated:

> A strong expansion of world trade was also the best way of helping countries in difficulties to work out a long-term solution to their problems. . . . I also agree that the problems have since become more acute because of the drastic fall in export earnings by those countries which are oil exporters.
>
> A country for which we currently cherish warm feelings is Mexico, which is hosting the World Cup—an event which I hope, brings the Nations closer together. Mexico alone has lost 2.75 billion DM this year in export revenues. The interest on that country's foreign debt is greater than its earnings from oil. As the previous speaker said, that is a dramtaic [sic] situation. The fact that we are discussing the matter here does not mean that the Commission should now come up with proposals for a kind of Lomé Convention with the states of Latin America. What we want is a multilateral open trading system, and we want to push this through in the long term in GATT, even if it takes a few years.

Id.

53. *See generally* F. NICHOLSON & R. EAST, *supra* note 3 (for comprehensive back-

tions with Mexico.[54] EEC aid to Mexico may suffer due to several factors. These new Member States have agricultural sectors and lower levels of development than the other Member States.[55] Therefore, they require aid from the Community in order to integrate fully.[56] Competing demands on funds to reduce regional disparities and to restructure the productive base within the three new Member States are likely to restrict comparable assistance programs aimed towards the economies of non-member developing nations, such as Mexico.[57] During the present transitional period after their entry, the new states are receiving much EEC money to modernize their economies and prepare for competition.[58] For example, Portugal received 137 billion escudos from the Community during its first two years of membership.[59] Between January 1986 and March 1988, more than two-thirds of the new capital in Portugal came from other EEC countries.[60]

On the other hand, the accession of Greece, Spain, and Portugal may improve trade relations between the EEC and Mexico in several ways. For example, new markets on favorable terms may become available to developing nations, because the three new nations must now adjust their tariffs to conform with those already established within the EEC.[61] Thus, their tariffs would be lowered to match those that the EEC currently grants to Mexico.

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ground of the EEC's second enlargement). New Member States become parties to prior EEC treaties with foreign states.

When a new country joins the Community, it must ratify existing agreements between the EEC and non-member countries by the normal procedure of that country. *Id.* at 274. The existing agreement is generally modified by protocol to include the new Member State. *Id.*

54. *See* D. SEERS & C. VAITSOS, THE SECOND ENLARGEMENT OF THE EEC 216-24 (1982).

55. *See id.* at 216.

56. *See id.* at 216-19.

57. *See id.*

58. *See A Survey of Portugal: Another New World*, ECONOMIST, May 28, 1988, survey at 4, col. 1.

59. *See id.* survey at 14, col. 2.

60. *See id.* survey at 17, col. 1.

61. *See* D. SEERS & C. VAITSOS, *supra* note 54, at 220-21. For example, Spanish tariffs for coffee and cocoa beans prior to accession were about 22.5% and 30% respectively. *Id.* at 221. The EEC tarriffs on the same products that originate in Africa, the Carribean, and the Pacific (the "ACP States") were between 4 and 5% in the early 1980s. *Id.*

The strong trade relations between Spain and Mexico will strengthen the ties between the EEC and Mexico. Due to its historical and cultural links with Mexico, Spain wants the EEC to extend its Lomé Convention to that part of the world.[62] Additionally, Spain imports a large volume of goods from Mexico.[63]

In addition, EEC-Mexican relations are likely to be affected by the Community's drive towards a single market with no trade barriers. The Single European Act[64] was signed in February, 1986, by all twelve Member States of the European Community.[65] The EEC will become the largest trading bloc in the world if it achieves its goal of an "internal market" set for 1992.[66] It will comprise forty percent of all foreign trade.[67] This market would rival the United States in scope and worldwide influence.[68]

Non-Europeans fear that access to the sheltered European market will be a privilege that will cost money.[69] This has negative implications for trade between the EEC and Mexico since the outside world views European integration as a "fortress blocking . . . improvements in the rules of world trade."[70]

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62. *See* Brooke, *Europe's Old Colonies Are Getting Anxious as 1992 Nears*, N.Y. Times, Jan. 1, 1989, § 4, at 4 (noting the Spain and Portugal want to extend to Latin America trade and aid benefits that Europe now gives the Lomé countries). *But see EEC: Lomé Convention: No Way José*, ECONOMIST, Apr. 9, 1988, at 48, col. 1 (noting that it is unlikely that Latin American nations will become parties to the fourth Lomé Convention, for which negotiations are now opening).

63. *See* THE EUROPA YEARBOOK, *supra* note 51, at 1842. During 1985, Spain imported Mexican goods worth US$17 billion. *See id.*

64. *See* Single European Act, *supra* note 34. Several goals can be inferred from the Single European Act: to update and expand upon existing treaties, to set up a single institutional framework for the union, and to render the institutions established by the Community more democratic, effective, and accountable than they have been. *See* Lodge II, *supra* note 7, at 8.

65. *See* Single European Act, *supra* note 34, at 21-23.

66. *See* de St. Phalle, *And Now, the Tiger of Europe*, N.Y. Times, Mar. 24, 1988, at A35, cols. 2-3. Project 1992 aims to create a Common Market in which goods, people, services, and capital could move without obstacles. *See A Survey of Europe's Internal Market*, ECONOMIST, July 9, 1988, survey at 5, col.2.

67. *See id.*

68. *See id.* at col. 3.

69. *See The Shape of Europe's Trade*, ECONOMIST, Sept. 3, 1988, at 13, col. 2.

70. *Id.* at 14, col.1.

C. *EEC Agreements with Developing Nations*

1. Lomé

In 1975, the EEC and the African, Carribean, and Pacific States (the "ACP States") signed Lomé I to accelerate the economic progress of the ACP States.[71] Lomé I allowed almost all ACP products access to the EEC free of customs duties.[72]

The agreement was intended to strengthen the economic infrastructures in the ACP States, increase the use of market and sales promotion schemes,[73] and encourage rural development, training programs, and industrial development.[74] To

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71. Lomé I, *supra* note 16. The first Lomé Convention was signed on February 28, 1975. Its duration was five years. The First ACP/EEC Convention of Lomé, General Note, EEC Encyclopedia ¶ B12-522 [hereinafter General Note]. It replaced the Second Yaoundé Convention of Association Between the European Economic Community and the African and Malagasy Associated States (the "Second Yaoundé Convention, J.O. L 282/2 (1970) and the Internal Agreement of September 24, 1969, on the Measures to be Taken Applying the Agreement Establishing an Association Between the European Economic Community and the United Republic of Tanzania, the Republic of Uganda and the Republic of Kenya and the Procedures to be Followed Therein, (the "Arusha Convention") J.O. L 282/80 (1970). For a brief explanation of the Lomé Convention, see D. LASOK & J.W. BRIDGE, *supra* note 3, at 44-45. The Lomé Convention was concluded between the nine Member States of EEC and 46 developing ACP States. It required ratification by all nine Member States of the EEC and by two-thirds of the ACP signatories. *See* Lomé I, *supra* note 16, art. 87, at 29. The Convention also anticipated the possibility of accession on the part of any other developing states that have an economic and productive structure comparable to that of the ACP States. There was a reservation that such accession have the consent of both the Member States of the EEC and of the ACP States. *See id.* art. 90, at 30.

The purpose of the agreement was to produce a structure to accelerate the economic progress and social development of the ACP States. General Note, *supra*, ¶ B12-522. The provisions regarding trade and commercial cooperation stressed free access to the EEC for almost all products from the ACP States and the non-reciprocity of trade obligations. *Id.* Most ACP products were admitted to the EEC free from customs duties and without being subject to quantitative restrictions. *Id.* The EEC did not receive any reverse preferences. *Id.* The one obligation imposed on the ACP signatories was to accord EEC Member States most-favored-nation treatment. *Id.* For a discussion of the Lomé Convention and its effect on EEC relations with developing nations, see E. FREY-WOUTERS, *supra* note 7.

While the Second Yaoundé Convention was responsive to the problems of the relations of former colonies to the EEC, Lomé I and its renewals reflect the developments in the United Nations Conference on Trade and Development ("UNCTAD") from 1964 and, most importantly, the developments in GATT. *See* E. FREY-WOUTERS, *supra* note 7 at 181; C. TWITCHETT, *supra* note 16, at 52.

72. *See* General Note, *supra* note 71, ¶ B12-522.

73. *See id.* ¶ B12-524.

74. *See id.*

achieve these goals, the Community supported ACP regional and inter-regional cooperation schemes, provided specific aid to small and medium-sized firms and small-scale development schemes, and provided special aid to the least developed countries.[75]

Lomé I forged particular paths to realize these goals. For example, the EEC agreed to foster industrial development in the ACP States by (1) facilitating the transfer of technology,[76] (2) promoting the marketing of ACP industrial products in foreign states,[77] and (3) encouraging Community firms to participate in ACP development.[78]

Subsequent Lomé conventions have targeted precisely the ways in which the EEC would aid the ACP States. For example, in the Second ACP-EEC Conference of Lomé ("Lomé II"),[79] the EEC offered financial and technical assistance to produce and distribute energy in the ACP States.[80] In 1985, the Third ACP-EEC Conference of Lomé ("Lomé III")[81] provided that the EEC would advance industry in the ACP States through the development of small and medium-sized enterprises.[82] As a result of the Lomé process, cooperation between the EEC and ACP nations has greatly increased.[83]

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75. *See* Lomé I, *supra* note 16, arts. 7-13, at 106-07; General Note, *supra* note 71, at ¶ B12-524.

76. *See* Lomé I, *supra* note 16, art. 26, at 17.

77. *See id.*

78. *See id.*

79. Second ACP-EEC Convention of Lomé, Council Regulation No. 3225/80, O.J. L 347/1 (1980) [hereinafter Lomé II]; *see* General Note, *supra* note 71, ¶ B12-547. On March 1, 1980 the First ACP-EEC Convention of Lomé expired. General Note, *supra* note 71, ¶ B12-52611. The Second ACP-EEC Convention was signed in Lomé, Republic of Togo, on October 31, 1979. Lomé II, *supra*, at 26. Twelve ACP States signed Lomé II who were not signatories to Lomé I. General Note, *supra* note 71, ¶ B12-526/1. The new treaty devoted a title to the needs of the least developed and land-locked countries. Lomé II, *supra*, tit. VIII, at 53-54.

80. Lomé II, *supra* note 79, arts. 72, 76 at 27-28; *see* General Note, *supra* note 71, ¶ B12-526/8.

81. Third ACP-EEC Convention of Lomé, Council Regulatoin No. 86/127, O.J. L 86/1 (1986) [hereinafter Lomé III]; *see also* General Note, *supra* note 71, ¶ B12-526/8.

82. Lomé III, *supra* note 81, art. 67, at 29. The Community offered to assist development of ACP technology by implementing research programs. Lomé III, *supra* note 81, art. 68, at 29-30.

83. *See* M. Hauswirth, *Meeting Point*, 97 COURIER 4 (May-June 1986). Since Lomé I, European development activities in the ACP States have become an increasingly important part of Community development aid. *See id.* In particular, the European

2. Latin America

While updating the Lomé conventions, the EEC has begun to improve its trade agreements with some Latin American countries. During the 1980s, the EEC signed new agreements with Brazil,[84] the Andean Group,[85] and the Central American Countries.[86] These agreements are intended to provide specific areas of trade cooperation between the EEC and Latin America.[87]

In 1982, the EEC signed the Framework Agreement for Cooperation Between the European Economic Community and the Federative Republic of Brazil (the "EEC-Brazil Agreement").[88] This agreement specifies that the EEC will encourage scientific and technological progress in Brazil.[89] It

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Development Fund has provided for the construction of ports, dams, and many miles of roads. *See id.*

84. EEC-Brazil Agreement, *supra* note 10.

85. Cooperation Agreement Between the European Economic Community, of the One Part, and the Cartagena Agreement and the Member Countries Thereof—Bolivia, Colombia, Ecuador, Peru and Venezuela—of the Other Part, O.J. L 153/2 (1984) [hereinafter EEC-Andean Group Agreement].

86. Cooperation Agreement Between the European Economic Community, of the One Part, and the Countries Parties to the General Treaty on Central American Economic Integration (Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua) and Panama, of Other Part, O.J. L. 172/2 (1986) [hereinafter EEC-Central American Agreement].

87. *See infra* notes 88-100 and accompanying text.

88. *See* EEC-Brazil Agreement, *supra* note 10.

89. *See* EEC-Brazil Agreement, *supra* note 10, art. 3, at 3. Article 3 states:

> 1. The Contracting Parties, in the light of their mutual interests and taking into account their long-term economic aspirations, shall foster economic co-operation in all fields deemed suitable by the Parties. Among the objectives of such cooperation shall be:
> — to encourage the development and prosperity of their respective industries.
> — to open up new sources of supply and new markets,
> — to encourage scientific and technological progress,
> — generally to contribute to the development of their respective economics and standards of living.
> 2. As a means to such ends, the Contracting Parties shall endeavor *inter alia* to facilitate and promote by appropriate means:
> (a) broad and harmonious cooperation between their respective industries, in particular in the form of joint ventures;
> (b) greater participation by their respective economic operators in the industrial development of the Contracting Parties on mutually advantageous terms;
> (c) scientific and technological cooperation;
> (d) cooperation in the field of energy;

further states that the EEC will suspend Common Customs Tariff duties on cocoa butter and soluble coffee to fulfill the EEC's commitment to the United Nations Conference on Trade and Development ("UNCTAD").[90] Since the EEC and Brazil signed this agreement, Brazilian exports to the EEC have increased by twelve percent and EEC exports to Brazil, by thirty-three percent.[91]

In 1984, the Community and the Andean Group signed the Cooperation Agreement Between the European Economic Community, of the One Part, and the Cartagena Agreement and the Member Countries Thereof—Bolivia, Colombia, Ecuador, Peru and Venezuela—of the Other Part (the "EEC-Andean Group Agreement").[92] The EEC-Andean Group Agreement states special areas of joint cooperation: development of farming, industry, and energy; encouragement of scientific and technological progress; creation of new employment opportu-

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(e) cooperation in the agricultural sector;

(f) favourable conditions for the expansion of investment on a basis of advantage for both Parties;

(g) cooperation in respect of third countries.

Id. art. 3(1)-(2), at 3.

90. *See* EEC-Brazil Agreement, *supra* note 10, annex, at 6. In reference to cooperation regarding the marketing of cocoa butter and soluble coffee, it states:

> 1. The Community shall, in pursuance of its offer of generalized preferences as notified to UNCTAD and in accordance with arrangements based on the conclusions reached within that body, suspend the Common Customs Tariff duties on the following products, originating in developing countries. . . .
>
> 2. . . . [Q]uotas amounting for 1974, to 21600 tonnes for cocoa butter . . . and 18750 tonnes for soluble coffee . . . .
>
> After the first year of application of the Agreement, the above quotas shall be increased annually, under the Community system of generalized preferences, on the basis of the Community's needs and imports; they may be amended for any changes made in the list of countries to which that system applies.
>
> 3. If the Community finds that products to which the arrangements described in point 1 . . . are likely to be particularly harmful to the interests of Community producers . . . the Common Customs Tariff duties may be reimposed in part or in whole for the products . . . .
>
> 4. Brazil shall take all appropriate steps to ensure that its policy regarding prices and other conditions for the marketing of cocoa butter soluble coffee disturbs neither the internal market of the Community nor its traditional patterns of trade.

Id. paras. 1-4.

91. *See* EUROSTAT, EXTERNAL TRADE STATISTICAL YEARBOOK 52-53 (1987).

92. *See* EEC-Andean Group Agreement, *supra* note 85.

nities; and advancement of rural development.[93] The agreement also calls for undertakings in the form of joint ventures between the EEC and the Andean Group.[94]

In addition, the EEC-Andean Group Agreement calls for commercial cooperation to maximize trade. The parties have agreed to study ways to overcome barriers, particularly non-tariff and quasi-tariff barriers.[95] Both sides have consented to facilitate commercial transactions and to study and recommend trade promotion measures.[96]

More recently, the EEC and the Central American nations signed the Cooperation Agreement Between the European Economic Community, of the One Part, and the Countries Parties to the General Treaty on Central American Economic Integration (Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua) and Panama, of the Other Part (the "EEC-Central American Agreement").[97] The EEC agreed to promote the development of industry, agri-industry, and energy; encourage scientific and technological progress; and create new employment opportunities in the Central American nations.[98] In order to accomplish these objectives, the parties agreed to exchange information, cooperate in the energy field, increase European investment in Central American countries, establish joint ventures,[99] and reduce trade barriers.[100]

The EEC's recent trade agreements provide specific areas in which the Community will assist development of particular industries within Latin American countries. They also indicate specific ways in which the parties will cooperate in regard to trade.

93. *See id.* art. 1, at 3.

94. *See id.*

95. *See id.* art. 3, at 4.

96. *See id.*

97. EEC-Central American Agreement, *supra* note 86.

98. *See id.* art. 3, at 4.

99. *See id.*

100. *See id.* art. 4, at 4-5. During 1987, the EEC gave the five Central American countries over 82 million ECU in aid, more than in any of the previous five years. *See* Spokesman's Group of the Commission of the European Communities, Official Visit by Mr. Cheysson to Central America, Memo 9/88 (Jan. 29, 1988) (non-attributable) at 3 (available at the *Fordham International Law Journal* office). During this year, Community involvement in Central America included the reactivation of regional projects and the resettlement of refugees in El Salvador and Guatemala. *See id.*

III. *PROPOSALS TO ENHANCE THE EEC-MEXICAN TRADE AGREEMENT*

The Mexican economy needs developmental assistance in order to achieve economic growth and to enable Mexico to repay its foreign debt.[101] The EEC, which has recently concluded several trade agreements to accomplish similar goals with other nations, can be one source of such assistance.[102] The Community's willingness to use its economic power to assist developing nations and Mexico's need for such assistance mandate a basis to support a better agreement.

While the Joint Committee furthered the establishment of contacts between the EEC and Mexican businesses, it was not effective in increasing non-petroleum exports to the EEC, a major desire of Mexico.[103] Further, Mexico has decreased its imports from the EEC, frustrating the Community's objective of increased trade with Mexico.[104]

For several reasons, the current EEC-Mexican Agreement has not been successful in increasing EEC investment in Mex-

101. *See* S. WEINTRAUB, *supra* note 14, at 107 (suggesting that development of Mexican capital goods industry would create jobs and make Mexico a stronger competitor in world markets); Reyes, *supra* note 25, at 95-96 (suggesting the Mexico seek cooperation and trade with modern firms in industrially advanced countries).

102. *See generally* Reyes, *supra* note 25, at 87-101 (discussing Mexico's industrial policy and its relationship to the EEC); *see supra* note 52 (quoting European Parliament debate that called for expansion of trade to help countries, such as Mexico, with difficulties).

103. *See* De Mateo, *supra* note 2, at 17. Although the EEC-Mexican Agreement made it possible for Mexico to export large quantities of oil to some of the European countries, it has not been effective in increasing Mexico's non-petroleum exports. *See id.*

104. *See* Joint Commission Memo, *supra* note 27, at 4. Traditionally, in its trade with Mexico, the Community has run a clear surplus. *Id.* As a result of Mexico's need for capital goods to carry out its development program, the Community's exports were rising. *Id.* Thus, until 1982, the Community's trade surplus with Mexico tended to increase. *Id.* In 1982, the Community's balance of trade with Mexico reversed due to Mexico's lessened demand for imports during the recession and an increase in Mexican petroleum exports. *Id.*; *see* DE MATEO, *supra* note 2, at 18 (noting that Mexican exports to the EEC have not risen in the past few years). *See id.* The Mexican surplus grew between 1982 and 1984. *Id.* In 1981, the trade balance between the EEC and Mexico was +1226 million ECU. *Id.* It declined to −35 million ECU in 1982, and to −1355 million ECU in 1984. *See id.* The decrease in oil prices changed the trend and brought trade almost into balance. *See id.* The trade balance was −605 million ECU in 1985 and −71 million ECU for the first nine months of 1986. *See id.* These statistics show a reversal of the balance of trade in favor of the EEC.

ico or in increasing non-petroleum trade between the parties.[105] First, the agreement states a general goal of trade cooperation without specifying which sectors of the economy need to be developed.[106]

Second, while the EEC has financed some research projects[107] and assisted in some developmental projects,[108] it should increase investment in capital projects—a more significant promotion of Mexican industry. A lack of financial incentives has not helped to formulate joint ventures.

In contrast to the vague, and therefore ineffectual, nature of the EEC-Mexican Agreement, other recent EEC developmental agreements have been successful in their specificity. For example, while the EEC-Mexican Agreement seeks to develop economic cooperation in "fields of mutual interest,"[109] the EEC-Brazil Agreement specifies that the parties would cooperate in science, technology, energy, and agriculture.[110] The Lomé agreements specify trade cooperation in energy, food production, mining, fisheries, and industrial development.[111]

The EEC-Mexican Agreement allows for revision if circumstances change.[112] The current economic situation in Mexico, coupled with the EEC's evolution into a single common market, are factors warranting a change in the EEC-Mexican Agreement. Furthermore, as a most-favored-nation, Mexico should be granted at least the same trade advantages that the EEC grants to other nations.[113]

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105. *See* Coffey, *supra* note 24, at 33-34 (stating that the EEC-Mexican Agreement is too general); De Mateo, *supra* note 2, at 17 (noting that the EEC-Mexican Agreement has not been effective in increasing Mexico's non-petroleum exports); *see also* Reyes, *supra* note 25 at 101 (noting need for new industrial investment in Mexico by both Mexican and foreign firms).

106. *See* EEC-Mexican Agreement, *supra* note 1, art. 3, at 12. Article 3 states: "[t]he Contracting Parties undertake to promote the development and diversification of their reciprocal trade to the highest possible level." *Id.*

107. *See* Joint Commission Memo, *supra* note 27, at 3.

108. *See id.*

109. EEC-Mexican Agreement, *supra* note 1, art. 4, at 12.

110. EEC-Brazil Agreement, *supra* note 10, art. 2, at 3.

111. *See supra* notes 71-83 and accompanying text (discussing specific areas of cooperation between EEC and ACP States under Lomé agreements).

112. *See* EEC-Mexican Agreement, *supra* note 1, art. 12, at 13.

113. *See supra* note 17 (quoting EEC-Mexican Agreement's provision on most-favored-nation treatment, and explaining theory behind this privilege).

In modifying the EEC-Mexican Agreement, the parties should specify certain sectors of the Mexican economy that the EEC will assist in developing. For example, the EEC can facilitate the development of modern production facilities in Mexico.[114] Increased exports of advanced computer technology and manufacturing equipment to Mexico would help achieve this goal.[115]

The EEC should also consider reducing its current trade restrictions on certain non-petroleum imports from Mexico, such as honey, tobacco, and coffee.[116] At the present time, Mexico does not export these products in large quantities. If Mexico should increase the number and variety of exports, however, it will encounter trade restrictions with the General System of Preferences,[117] which allows for very few trade concessions.[118]

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114. *See* Reyes, *supra* note 25, at 94-99 (discussing Mexico's need to modernize its industries); *id.* at 101 (suggesting that both Mexican and foreign firms must contribute directly to the development of a highly efficient productive structure).

115. *See id.* at 98 (noting that high speed of technological change on the world level necessitates application of new technologies to Mexican industries).

It is likely the EEC exports of technology to Mexico will have to comply with Mexican guidelines for technology transfer. *See* Ley Sobre el Registro de la Transferencia de Technologia y el Uso y Explotacion de Patentes y Marcas, Piario Oficial, Dec. 30, 1972, *reprinted in* 12 I.L.M. 421 (1973) (English trans.). The law purports to set guidelines for the transfer of technology to Mexico. *Id.* The English translation of article 2 of the Mexican Technology Transfer Law states:

> Registration in the Register referred to in the foregoing article shall be mandatory for documents embodying instruments, contracts or agreements of any kind intended to be operative in the national territory and concluded for the purposes of
>
> (a) the grant of the use of trade-names and trade-marks or of authorization to work them;
>
> (b) the grant of the use of patents of invention, improvements, models and industrial drawings or of authorization to work them;
>
> (c) the furnishing of technical know-how by means of drawings, diagrams, models, guidelines, instructions, formulae, specifications, personnel training and qualification, or by other means;
>
> (d) the supply of basic or detailed engineering know-how for the setting up of plant or equipment or for the manufacture of products; and/or
>
> (c) technical assistance in any form.

12 I.L.M. at 422. No legal effect is produced by article 2 instruments, agreements, or contracts that are not registered with the National Register of Technology Transfer. *Id.* art. 6, *reprinted in* 12 I.L.M. at 423. As such, they are not enforceable by national courts and tribunals. *Id.*

116. *See* De Mateo, *supra* note 2, at 15.

117. *See id.* at 25.

118. *See* Lodge I, *supra* note 5, at 144.

A reduction in these restrictions, similar to the reduction for cocoa butter and soluble coffee in the EEC-Brazil Agreement, would meet demands of both parties.[119] It would allow Mexico to derive needed foreign exchange from non-petroleum exports and, at the same time, accomplish the EEC's goal of providing development assistance to Mexico.

CONCLUSION

The present agreement between the EEC and Mexico does not meet the needs of the parties or take into account the legal and economic changes that have occurred in both the EEC and Mexico since 1975.

The EEC's increasing role as a world economic power; its second expansion to include Spain, Portugal, and Greece and its dependence on oil imports have dramatically changed the EEC's international outlook. The Mexican economic recession and the resulting debt crisis have increased Mexico's need to revive its economy through manufactured exports.

Since the 1975 EEC-Mexican Agreement, the EEC has concluded several trade agreements designed to grant specific trade concessions to developing nations. As part of this process, the EEC should reevaluate its trade agreement with Mexico to provide the same types of assistance it now provides other nations. The time has arrived for a new agreement between the EEC and Mexico that specifies new areas of cooperation, especially in the fields of Mexican non-petroleum exports to the EEC and EEC technological exports to Mexico. A new agreement would facilitate the recovery of the Mexican economy, provide a market for European goods, and encourage increased commercial interaction between these two suitable trading partners.

*Therese M. Woods**

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119. *See* Coffey, *supra* note 24, at 33 (suggesting that current EEC-Mexican Agreement be transformed into something similar to the more specific EEC-Brazil Agreement).

* J.D. candidate, 1990, Fordham University School of Law.