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Fifth Meeting of the Intergovernmental Negotiating Team on the Treaty for the Establishment of a Preferential Trade Area for Eastern and Southern African States

Addis Ababa, Ethiopia, 8-19 October 1979

MEMORANDUM ON THE PARTICIPATION BY BOTSWANA, LESOTHO AND SWAZILAND IN THE PREFERENTIAL TRADE AREA FOR EASTERN AND SOUTHERN AFRICAN STATES

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I. INTRODUCTION

1. It will be recalled that at the First Extraordinary Conference of Ministers of Trade, Finance and Planning of Eastern and Southern African States held in Lusaka, Republic of Zambia, from 30-31 March 1978, it was agreed that ECA "should send a special mission to Botswana, Lesotho and Swaziland in view of their unique position."1/ The report of the mission was submitted to the fourth meeting of the Intergovernmental Negotiating Team held in Luanda, Peoples Republic of Angola, from 12-16 June 1979.2/

2. It will further be recalled that at its inaugural meeting held in Addis Ababa from 27-30 June 1978, the Intergovernmental Negotiating Team on the Treaty for the Establishment of the Preferential Trade Area for Eastern and Southern African States agreed that the Treaty should be supplemented, inter alia, by a Protocol relating to the unique situation of Botswana, Lesotho and Swaziland (hereinafter referred to as "the BLS States".) The Protocol would be based on the report of the special mission referred to in the proceeding paragraph.

3. The fourth meeting of the INT held in Luanda, Angola, from the 12-16 June 1979, agreed to include this item on the agenda for its fifth meeting.

4. The purpose of this memorandum is to highlight the problems of BLS States and their historical background; to identify the problems that may make it difficult for BLS States to comply with the provisions of the Treaty and suggest solutions to these problems; and to introduce the Draft Protocol on the BLS States.

II. BLS HISTORICAL PERSPECTIVES

5. In the 19th Century Basutoland (now the Kingdom of Lesotho), Bechuanaland (now the Republic of Botswana), and Swaziland (now the Kingdom of Swaziland) opted for Protectorate Status under the British Crown rather than accept suzeraingnty of the Boer Republics that were springing up all over what is now the Republic of South Africa. Their choice was based on their commitment to freedom and on their deeply-held objections to the race policies of the Boers.

6. In 1909 when the Union of South Africa was created, the three Protectorates were offered another chance to join the new State. Again they rejected the offer because of the race clauses of the South Africa Act, 1909. That is, the Constitution of the Union of South Africa (as it then was).

1/ Report of the First Extraordinary Conference of Ministers of Trade, Finance and Planning of Eastern and Southern African States (ECA/MULPOC/Lusaka/78/Rev.2, May 1978).

2/ Report of the ECA Mission to BLS countries on their participation in the Establishment of a Prerential Trade Area for Eastern and Southern Africa (ECA/MULPOC/Lusaka/PTA/III/10 dated 23 February 1979).

7. Provision was, however, made in Section 151 of the South Africa Act, 1909, for the three Protectorates to join the Union at some future date. Reference was also made to this eventuality in the preamble and schedule to the Act. In fact Britain developed them with this view in mind. However, efforts made between 1909 and 1955 by successive British and South African Governments to achieve the merger of the Protectorates with South Africa were successfully resisted by the Protectorates because since the coming into power of the Nationalist Party Government in South Africa in May 1948, Apartheid had become national State Policy. The Republic of South Africa Constitution Act No.32 of 1961 completed this process. By this time also each of the Protectorates had come to look to achieving its own separate national independence and sovereignty. By the end of the 1960s they had achieved this objective as the Sovereign Independent States of the Kingdom of Lesotho, the Kingdom (now Republic) of Botswana, and the Kingdom of Swaziland. All had Fundamental Human Rights and Freedoms entrenched in their independence Constitutions. All joined the Organization of African Unity, the Commonwealth, the United Nations, the Non-aligned Movement, and espoused their principles and policies. This removed them further away from South Africa's political orbit.

8. However, this political freedom did not and could not sever the links that had been established between them and the Republic of South Africa (as it now is) over a period of nearly 100 years in the fields of law and the administration of justice, labour, currencies, financial institutions, education, markets, transport and communications, customs, and so on. How to reconcile these economic and other links with South Africa on the one hand with their political commitment to anti-racism and freedom on the other hand has been their main pre-occupation since independence.

9. In the last two years, for example, they have commissioned various studies on "Reducing Dependence" on South Africa. Their accession to the Preferential Trade Area for Eastern and Southern Africa must be viewed against this background. It is a background that bristles with problems. These problems have been set out fully in the "Report of the ECA Mission to BLS countries on their participation in the establishment of a Preferential Trade Area in Eastern and Southern Africa." 1/ To these problems we must now turn.

III. PROBLEMS OF THE BLS STATES

10. All these countries are landlocked. And the country landlocking them is mainly the Republic of South Africa. For example, the only immediate neighbour Lesotho has is South Africa. This makes Lesotho's case unique within a generally unique BLS situation.

11. Only one-third of Lesotho's land surface is arable land. The rest is rocky and snow-capped mountains rising to over 11 000 feet above sea level. Mineral resources seem to be negligible. Where such minerals exist they raise major problems of ownership and control.

1/ ECA/MULPOC/Lusaka/PTA/III/10 dated 23 February 1979.

12. In Botswana only the land between the line of rail and the Limpopo River receives about 15" of rain annually. West of the line of rail is mainly the Kalahari and Namib Deserts. However, Botswana has substantial deposits of diamonds, coal, and copper. These are owned, controlled, exploited, and marketed mainly by giant transnational corporations based in South Africa.

13. The Southern African Customs Union Agreement, 1969, which ties the BLS countries to South Africa in many ways, also accounts for over 50 per cent of their yearly revenues.

14. The Rand Monetary Agreement, 1974, between South Africa on the one hand, and Lesotho and Swaziland on the other, ties the monetary systems and currencies of the two countries to the South African Rand. Thus, the South African Rand is legal tender not only in South Africa but also in Lesotho and Swaziland. Lesotho has no other currency except the South African Rand. It should, however, be noted that, when the Lesotho Monetary Authority Act, 1978, and the Lesotho Currency Act, 1978, came into force, Lesotho will have its own Monetary Authority and its own currency, the Maloti. Swaziland has a dual currency system, the South African Rand and its own Elangeni. However, the South African Reserve Bank is also the Reserve Bank for both Lesotho and Swaziland. The need to establish their full monetary, financial and fiscal independence is urgent. Botswana which established its own independent National Bank and currency (the Pula) under the Bank of Botswana Act, 1975, has freedom in determining its own monetary policies.

15. All three countries have signed agreements with South Africa on the export of Migratory Labour to South Africa, mainly to the mines. Revenues derived from this source are considerable. Lesotho could have great difficulties in paying for her South African imports but for money derived from this source. Sudden withdrawal of this labour from South Africa would put intolerable pressure on sources of employment, housing, education, health services, water and other resources or infrastructure in all these countries, with fairly predictable consequences.

16. All the three countries face serious constraints, not only of natural resources, but also of skilled indigenous personnel to man all aspects of the economy. It is even doubtful whether finances, even if made available, could be used effectively by the existing staff.

17. There is hardly any direct trade between the BLS countries because geographically they are thousands of miles apart, separated by the South African land mass. This makes direct road and rail transport between them very difficult. Without an effective network of road, rail, and air transport, direct trade between the three countries will not be feasible. And without such trade, economic development and independence or self-reliance will be difficult to achieve, and so will be effective membership of the Preferential Trade Area for Eastern and Southern Africa.

18. The Agricultural sector among the BLS countries is so under-developed that 50 per cent of their food is imported from the Republic of South Africa. This exposes these countries to possible blackmail should they take economic or political initiatives that are unacceptable to South Africa.

19. The small nascent industrial sector which exists has a very narrow base and is over-whelmingly owned and controlled by various firms based in South Africa. Yet there are sectors in which the BLS countries could specialize and participate effectively.

20. Attention has already been drawn by implication to the legal problems related to the Migratory Labour Agreements, Rand Monetary Agreement of 1974, and the South African Customs Union Agreement, 1969. In fact, these constitute the tip of the iceberg because the common law of all these countries and much of their statute law, is South African law. Their joint Court of Appeal is tied to South Africa through its personnel. All this has far-reaching implications for their economies.

21. Apart from being the underprivileged partners in all co-operation arrangements with South Africa, the BLS countries are over-whelmingly dominated by that country from the view-points of geography, population, resources, economic and all round national development. Accordingly there has developed a general psychology of dependence on South Africa and the fear of the unknown syndrome in the event of their disengagement from that country.

22. These are some of the problems that the Draft BLS Protocol must face. They are unique problems in respect of which there are no precedents to guide us in facing them.

IV. ECONOMIC ASSISTANCE BY THE MEMBER STATES TO THE BLS STATES TO ENABLE THEM TO DISENGAGE FROM SOUTH AFRICA

23. It will be noted from the problems cited above that the BLS countries cannot participate fully in the proposed Preferential Trade Area arrangements unless they disengage themselves from their present economic and other ties to South Africa which arise from their geographical position and the agreements signed with that country. On the other hand, it is obvious that, due to their economic situation, the BLS countries cannot disengage themselves from South Africa without the full support and assistance of the other member States. Thus, taking into account the economic, social and political advantages likely to accrue from their full participation in the Preferential Trade Area, it will be necessary for the member States and other African countries to agree and embark on appropriate long and medium-term economic assistance programmes which will not only enhance the independence of the BLS countries from South Africa, but also strengthen their links with other independent African countries. The achievement of this objective calls for the establishment of machinery for assisting the BLS countries in drawing up appropriate disengagement programmes and advising the member States on the assistance required by these countries in various areas.

24. Since most of the problems experienced by the BLS countries arise from formal agreements entered into with South Africa, the member States in general, and the OAU and ECA in particular, should provide these countries with the necessary legal and technical assistance in re-negotiating the respective agreements with South Africa. Similarly, due to their geographical position, special attention should be given to economic assistance programmes which would reduce the dependence of the BLS countries on South Africa's transport and communications systems. Furthermore, taking into account the limited resources of the Preferential Trade Area, the member countries should undertake to support the BLS countries in their endeavours to obtain technical and material assistance from other sources.

25. Due to the nature and scope of the problems facing the BLS countries, it will take some time before these countries can disengage themselves fully from South Africa. However, taking into account the agreement reached by the Lusaka MULPOC Council of Ministers that the Preferential Trade Area be developed into an Economic Community over a period of about 10 years, it may be necessary for the programme for the disengagement of the BLS countries from South Africa to be phased over a similar period so that the provisions of the common market when establishment may apply equally to all member States.

V. STRATEGIC ALTERNATIVES

26. The BLS report[1/] deals with "four broad strategic alternatives scenarios" that might be adopted in bringing the BLS States into the Preferential Trade Area. The fourth meeting of the INT held in Luanda, Angola from 12-16 June 1979, agreed that the BLS countries should be assisted in the course of their disengagements from the long standing trade and other economic links with South Africa, and that "any loosening or phasing thereof should be allowed to take place over a sufficiently long period". 2/ The draft Protocol makes provision for such phasing out of SACUA. It is estimated that this period of transition will last no more than ten years. However, the final decision on the duration of this transition period will be determined by the Council on the advice of the Committee established under Article 6 of the draft Protocol. Attention now turns to the main provisions of the Draft Protocol.

VI. THE MAIN PROVISIONS OF THE DRAFT PROTOCOL

27. Article 2 deals with the main objectives of the Protocol. These are to facilitate the accession of the BLS States to the Treaty; to help strengthen their economies and to help them reduce their economic dependence on South Africa.

28. Article 3 deals with the scope of exceptions. This proceeds on the basis that the BLS States will be full members of the Preferential Trade Area upon the coming into force of the Treaty and that as such they will be subject to provisions of the Treaty and all its Protocols. However, under this Article, they are granted certain Customs exemptions for a transitional period whose duration shall be determined by the Council because of legally binding agreements they have signed with South Africa. The phasing out of these exemptions shall be determined by the Council on the recommendation of the Committee to be established under Article 6 of the Protocol.

1/ ECA/MULPOC/Lusaka/PTA/III/10 dated 23 February 1979, page 27.

2/ ECA/MULPOC/Lusaka/PTA/IV/7, 20 July 1979.

29. Article 4 imposes obligations on the BLS States to take certain measures to develop their independent economies with a view to reducing dependence on South Africa. It also makes it obligatory for other member States to help BLS States in this endeavour.

30. Article 5 imposes obligations on BLS States themselves to pursue such socio-economic policies as will enable them to reduce their economic dependence on South Africa and thus increase their capacity to be self-reliant. To this end the Article enjoins the BLS States to establish machinery to enable them to implement these objectives.

31. Article 6 provides for the establishment of a special committee to undertake in-depth studies needed to monitor the implmentation of the provisions of the Protocol and to undertake appropriate action.

32. Article 7 - 14, inclusive, are of a formal kind that appear in all Draft Protocols.

VII. IMPLEMENTATION

33. It is a necessary pre-condition for the implementation of the provisions of this Protocol that the BLS States should obtain the consent of South Africa as required under Articles 6 and 19 of the South African Customs Union Agreement, 1969, to participate in the Preferential Trade Area for Southern and Eastern Africa. They should also take steps to renegotiate all other legal agreements they have signed with South Africa with a view to reducing their dependence on that country and strengthening their links with other member States. They will need maximum support from member States in achieving these objectives.