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# 厦门大学

## 博士学位论文

**ACP-EC 经贸合作的法律机制研究**  
**——兼论新时期中非经贸合作关系的进路**  
**Study on the Legal Regimes of ACP-EC**  
**Economic & Trade Cooperation**  
**——Roadway of the Sino-African Economic & Trade**  
**Cooperation Relationship in the New Era**

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## 内 容 摘 要

晚近，非洲在世界经济向全球化、国际政治格局向多极化发展的新形势中，越来越引起世界各国的关注。因而，本文以非加太国家（ACP）与欧洲共同体（欧共体或 EC）之间的经贸合作的法律机制为主要研究对象，并在此基础上探讨我国与非洲地区的经贸合作关系的进路问题。全文共六章，大体上可以分为两部分。

第一部分从第一章至第五章。为了清晰地全面了解 ACP-EC 的合作机制的演变历程，这部分主要以时间的顺序，对它们之间的经贸合作机制的内容及其变革予以深入的论述并加以评析。

第一章主要探讨非洲地区与 EC 之间早期的联系机制，包括《罗马条约》的联系专约机制以及雅温得、阿鲁沙联系机制。从 1957 年至 1975 年初的十多年间，EC 通过这些联系机制，把部分非洲国家作为 EC 的联系国纳入到了共同体的体系内。其中，《罗马条约》的联系专约机制是几个西欧大国的一场政治交易的结局，具有单方性与片面性、强制性与不平等性、歧视性，其内容体现了旧殖民主义者的“利益均沾”思想。而雅温得、阿鲁沙联系机制虽然建立在契约制度的基础之上，表面上体现了主权国家之间进行的平等双边合作，但实际上，这种联系协定是《罗马条约》的联系专约机制在新的历史环境下的延伸，保证了欧-非特殊经济关系的连续性，其内容仍刻着强烈的殖民主义的时代烙印，并未给联系国的经济和社会发展带来多少积极的影响。

第二章着重分析了 ACP-EC 洛美合作机制的建立及其内容。在 20 世纪 60 年代末 70 年代初全球国际经济秩序发生剧变之际，ACP 国家利用有利的国际形势，充分利用 UNCTAD 的力量、1973 年石油危机以及北方国家对南方资源的依赖的契机，增加谈判的筹码，与 EC 达成了洛美合作协定。与之前的联系机制相比，洛美合作机制有了很大的改革，包括确立了非互惠贸易体制、工业合作机制，建立了 Stabex 机制，加强了金融与技术援助的合作等。这些内容的改进体现了国际经济秩序的新旧更替、弃旧图新的初步成果，并

确立了洛美精神。但是，这一法律框架仍然存在诸多局限性：许多机制安排对 ACP 国家显失公平与公正，特别是单方面的保障措施和原产地规则对 ACP 国家不公平；新的贸易优惠体制掣肘着 ACP 国家从中受惠，而且还会阻碍南南经济合作等。

第三章以时间为线索，纵向论述了洛美合作机制的发展与衰落过程，包括这期间所历经的三个洛美协定（《洛美协定 II》——《洛美协定 IV》）。虽然每次重订，各项合作机制都有所完善和革新，但是，洛美合作机制对 ACP 国家经济的整体影响甚微，绝大部分仍然依赖少数几种初级产品，没有成功地实现出口多元化，它们的经济甚至还呈现出逐步恶化的趋势。同时这部分还分析了 ACP-EC 的洛美合作机制发展的特点：形式上的契约性、稳定性、较强的可操作性、可预测性、长期性、严密的组织性等，以及阻碍洛美合作机制发挥作用的各种原因，包括许多合作机制的不完善、EC 援助的严重不足、对援助强制推行条件化、全球地缘形势的变化、WTO 等多边自由化安排的侵蚀以及内部组织机构的运作资金的严重缺乏等。事实证明，洛美合作法律机制实质上体现的是一种不平等的、新的殖民掠夺关系和虚伪的合作关系。

第四章主要研究 ACP-EC 的新型合作机制——《科托努协定》的内容与特点。世纪之交，随着传统贸易优惠体制是否符合 WTO 的争议的提出，“香蕉案”迟迟未落下帷幕，以及 EC 发布《绿皮书》，ACP-EC 的经贸合作法律机制发生了嬗变。双方最终于 2000 年缔结了《科托努协定》。这标志着 ACP-EC 双方的关系进入了一个新的阶段，许多由历史纽带所约束的合作关系逐步淡化或结束，尤其是新协定要求贸易体制由非互惠向互惠过渡，取消了 Stabex 和 Sysmin 制度等，加强了政治对话、强化援助的条件性、提升非政府主体在 ACP 国家的发展战略中的作用等。实质上，科托努合作机制不仅没有改变 ACP-EC 之间的不平等关系，导致 ACP 集团的分化，而且还体现了发达国家的自由化理念的胜利。

第五章重点探讨有关 ACP-EC 经济伙伴协定 (economic partnership agreement, EPA) 这一新型贸易机制。目前，ACP-EC 的经济合作法律关系进入了以 EPA 为主题的新时代。EC 的目标是与 6 个 ACP 地区缔结自由贸易区

协定，协定内容涵盖货物、服务、投资、知识产权、与贸易有关其他议题以及发展支持和政治对话等。但是，谈判一开始到现在双方对许多议题都处于矛盾之中，无法达成一致。到目前为止，只有加勒比地区与 EC 签署了一项综合的 EPA，部分最有可能受到影响的国家也与之签署了一些临时性 EPA。而大部分非最不发达 ACP 国家和最不发达 ACP 国家都没有选择签署这些协定。经分析，ACP-EC 的 EPA 并非真实的发展性协定，而是 EC 兜售“新加坡议题”的重要舞台。并且，双方之间的这种贸易安排存在着如何协调与 WTO 规则的关系以及如何应对 ACP 集团的组织结构复杂性的问题。ACP 国家在谈判中还面临着缺乏相应的谈判技术与专家以及财政资金的支持，国内公众对于 EPA 谈判的自觉性也较低，对 EC 的依赖心理严重等。

第二部分为第六章，主要探索新时期我国与非洲国家的经贸合作关系的进路。总体来说，中非双方在经贸领域建立了较为全面的合作法律机制，而且进入新世纪以来，这种合作关系越来越向机制化、组织化和契约化方向发展。不过，目前这种合作法律机制仍然处于发展的初级阶段，存在着诸多问题和挑战，与 ACP-EC 成熟的合作机制相比，仍有较大的差距。在组织机构方面，中非合作论坛（the Forum on China-African Cooperation, FOCAC）的组织化程度较弱（论坛的性质不甚明确、论坛基本文件约束力与稳定性较低）以及混合委员会的职能缺乏严密的规范，监督或审查机制缺失。在经贸合作制度方面，存在着与非洲国家的自由贸易区建设相对滞后、中非双方贸易不平衡与贸易磨擦等问题。而且晚近我国同非洲国家的经贸活动常被 EC 及其成员国等西方发达国家诬蔑为“新殖民主义行为”。

鉴此，本文建议未来中非经贸合作关系的进路是：制定实施对非经贸合作的中长期发展战略；充分借鉴 ACP-EC 的各项有益的合作经验，建立常设性中非合作组织以及加强双边混委会职能的建设；根据非洲不同地区组织、不同国家的发展水平和需要，加快中非经贸合作的法律制度的建设。而且十分重要的是我们要尽快开展中非经济伙伴协定、自由贸易区协定的研究；拟定协定谈判范本，并尽快进行谈判；完善技术与财政援助机制，包括完善援助基金机制和提高援非项目的效率等。针对西方的“新殖民主义”论调，本文认为其实质上是维护它们在非洲地区的既得利益和既定的国际经济旧秩

序，为此我们应当加强相应的研究与宣传，而主要之策就是要通过推动中非经贸法律建设来促进双方的经济与社会文化的发展。

**关键词：**法律机制；洛美协定；新殖民主义

厦门大学博硕士论文摘要库

## ABSTRACT

Recently, Africa has aroused more and more world attention in the new era of economy globalization and multi-polarization of international political pattern. Hence, this essay takes the ACP-EC legal regimes of economic & trade cooperation as the research target, and on this basis to discuss the roadway issues of the Sino-Africa economic & trade cooperation relationship. The whole article contains six chapters, generally can be divided into two parts.

The first part is from Chapter 1 to Chapter 5. In order to fully and clearly understand the ACP-EC cooperation regimes, this part deeply analyzes and comments on the evolution of the economic & trade cooperation regimes between them in order of time.

Chapter 1 mainly discusses the early association regimes between Africa and European Community (EC), including the association regimes of the Treaty of Rome, Yaundé and Anusha. The EC brought part of African countries into its Community system by way of these association regimes from 1957 to 1975. In fact, the special association regimes of the Treaty of Rome was the result of a political deal among several Western European Powers, and was an unilateral, mandatory, unequal and discriminatory arrangement, and its content reflected the "interest-touched" idea of these old colonialists. However, though basing on the contract system and reflecting the *prima-facie* equality between the sovereignties, the association regimes of Yaundé and Anusha were actually the extension of the Rome association regimes under the new historical conditions, guaranteeing the continuity of the Euro-African special economic relationship, and still engraving with strong colonial time brand, which did not bring many positive influence to these associated countries.

Chapter 2 focuses on analyzing the ACP-EC Lomé cooperation regimes. In the late 1960s and early 1970s, the global international economic order was under drastic change. The ACP countries used this favorable international situation, and made full use of UNCTAD strength and the opportunities of 1973 oil crisis and the Northern countries dependence on the Southern resources, increased the bargaining chip and reached successfully the Lomé Convention with the EC. Compared with the formal association regimes, the Lomé regimes had made a lot of reforms, including establishing a non-reciprocal preferential trade system, and industrial cooperation mechanism, the Stabex mechanism, and strengthening the cooperation on the financial and technical aid, etc. These enhancements reflected



the changes of the new international economic order, which established the Lomé-spirit and brought a big influence on the international economic order. However, this legal framework still had many limitations. Lots of arrangements were unfair to the ACP countries, especially, the unilateral safeguard measures and the rules of origin were unjust towards the ACP countries, and the new trade preferential system constrained the ACP countries from getting benefits and also hindered the South-South economic cooperation.

Chapter 3 vertically discusses the development and the decline of the Lomé cooperation regimes in order of time, including three Lomé Conventions (Lomé II- Lomé IV). Although the cooperation regimes had some improvements and innovations during each amendment, Lomé regimes had little effect on overall ACP countries' economies, causing their majority still relying on a few primary products and failing to successfully realize export diversity, but also their economies showed the trend of gradual deterioration. This essay also analyzes the development characteristics of the ACP-EC Lomé cooperation regimes, including contractual form, stability, strong operationability, predictability, long-lasting, strict organization, etc. It further discusses the various factors hindering the Lomé regimes to play roles, including the imperfection of many cooperation regimes, the shortage of aid from EC, Europe enforcement to carry out conditional aids, the changes of the global geo-political situation, the liberalization erosion of various multilateral arrangements (like WTO) and the serious lack of operation capital within the internal organizations, etc. Facts had proved the Lomé legal regimes reflected a kind relationship of inequality, new colonial plunder and hypocritical cooperation.

Chapter 4 primarily studies the new ACP-EC cooperation regimes ---- the Cotonou Convention. Under the backgrounds of the issues such as the traditional preferential trade system matching the WTO rules, the curtain of "banana case" falling down hardly, and the EC releasing the Green Paper, the ACP-EC legal regimes of economic & trade cooperation had undergone some changes. Ultimately, they concluded the Cotonou Convention in 2000, which marked the ACP-EC bilateral relations had entered a new stage, many cooperation relationships bound by the history-tie gradually fading and disappearing, especially, the new Convention required the non-reciprocal preferential trade system to be turned into reciprocal preferentiality, cancelled the Stabex and Sysmin system, and further strengthened the political dialogue and the aid conditionalization, and enhanced the non-governmental actors' role in the ACP national development strategy. In essence, the Cotonou Convention not only failed to change the inequality relationship between the ACP and the EC, and

might further lead to the divination of the ACP Group, but also reflected the victory of the concept of the liberalization of the developed countries.

Chapter 5 mainly discusses about the new ACP-EC trade system ---- economic partnership agreement (EPA). At present, the legal relationship of economic cooperation between the EC and the ACP states has entered a new era with the theme of EPA. The EC's goal is to conclude free trade area agreements with 6 ACP regions, covering the goods, services, investment, intellectual property, and other issues relating to trade, and also including the development support and political dialogues, etc. However, the negotiations between them continue to be conflicting from the beginning till now, and many issues still have not been resolved. So far, only the Caribbean has signed a comprehensive EPA with the EC, and part of the most affected ACP countries also signed a temporary EPA. The most of the non-least-developed ACP countries and the least developed ACP countries have not chosen to sign such agreements. After analyzing, the ACP-EC EPAs are not true of developmental agreements, but becoming the important stage where the EC peddles the "Singapore issues". Furthermore, such trade arrangements between them encounter the following problems: how to coordinate the relationship with the WTO rules, and how to deal with the structure complexity of the ACP Group. In addition, the ACP countries are facing such problems in negotiations as lack of negotiation techniques, experts and financial support, low public consciousness towards EPA negotiations, and the serious psychology of dependence on the EC.

The second part of this essay is Chapter 6, which mainly explores the roadway of the Sino-African economic & trade cooperation relationship in the new era. China, overall speaking, has established comparative all-sidedly legal regimes of economic & trade cooperation with African countries. Such cooperation relationship is turning towards institutionalization and contracization after entering the new century. However, the current cooperation regimes are still in immaturely stage, having many problems and challenges, and with a large gap by comparing with the ACP-EC mature cooperation regimes. In organization field, the institutionalization level of the Forum on China-African Cooperation (FOCAC) is still comparative low (the nature of the Forum is in vague; the binding force and stability of the basic documents of the Forum are comparative low, etc.), and the Sino-African Mixed Committees lack of clear stipulations in duties, procedures and no clear supervision system. In economic & trade cooperation systems, the Sino-African bilateral relationship mainly is led by politics; the establishment of the free trade area with African countries is very slow; the Sino-African trade imbalance and conflicts exist. At the same time, the

recent economic activities of China in African countries are often criticized as a "neo-colonialism behavior" by the western developed countries like EC and its members.

In view of the above issues, this essay suggests the roadway of Sino-African economic & trade cooperation relationship is: to draw up the long-term development strategy of economic & trade cooperation towards African countries; with fully absorbing the ACP-EC valuable cooperation experiences, to establish permanent Sino-African cooperation organizations and to strengthen the functions and coherence of the Sino-African Mixed Committees; to accelerate the development of the Sino-African economic & trade cooperation systems according to the different development levels and needs of various regional organizations and countries in Africa. Furthermore, it is very important to carry on the study-work on Sino-African economic partnership agreement or free trade area agreements as soon as possible; to draft the negotiation models of such agreements and start such negotiations; to improve the technological and financial aid system (to consummate the aid fund system and enhance the aid efficiency, etc.). As to the western "neo-colonialism" arguments, the essay points out that their essence is to maintain their vested interests in Africa and the established old international economic order, therefore, we should strengthen propagation and research correspondingly; and the main counter-measure is to accelerate the Sino-African economic & trade cooperation legal construction, hence to promote the Sino-African economic, social and cultural development.

**Key Words:** legal regimes; the Lomé Convention; the neo-colonialism.

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