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SYMPOSIUM ON AFRICA AND THE FUTURE OF INTERNATIONAL TRADE REGIMES

RETHINKING THE AGOA MODEL: HOW TO CREATE A PRO-STRUCTURAL TRANSFORMATION OF THE U.S.-AFRICA TRADE PARTNERSHIP

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Seventeen years into the life of the African Growth and Opportunities Act (AGOA), two key issues stand out: first, that the preference utilization rate—as indicated by the meagre increases in African exports to the United States—remains marginal; and second, that the AGOA initiative has not helped build diversified African economies. This reality in turn raises two critical issues: that Africa's structural challenges need to be addressed; and that extensions of the AGOA in and of themselves may not be the solution for the continent's economic development. Therefore, looking toward 2025 is an opportunity to have a fresh discussion with the United States, one focused on placing the African economic development challenge at the heart of the dialogue. This requires designing a new model grounded in Africa's aspirations for structural transformation of its economies from primary product to industrial product exporters.

This essay argues that business as usual will not work. Extending AGOA, while useful in the immediate term, will not address the fundamental challenges that lie at the heart of why its full potential remains untapped. I argue in favor of rethinking AGOA. This would mean placing trade preferences in the proper developmental context, by emphasizing a stronger focus on a U.S.-Africa relationship that supports the continent's structural transformation. This model would prioritize development of productive capacities and value addition, supporting (for instance) the transition from Ghana's cocoa beans to exports of chocolate, drinks, and other products at higher rungs of the value chain. This alternative model would focus on strengthening the interface between agroindustry, manufacturing, and services capacity development. Achieving this will not take the offering of duty free access across a range of tariff lines on which Africa's capacity to produce remains prospective. Rather, it will require a focus on targeted U.S. investments and interventions to create *an agricultural, industrial, and services revolution* in Africa. It will require partnerships that focus on empowering local individuals and companies to *become owners*, rather than spectators or casual laborers, in their own industrial development. Put differently, it will require both sets of actors to change their mindsets: the United States should focus more on investment for trade and Africa should pursue a partnership in which the United States supports its efforts to create the enablers for the continent's sustainable development through trade. Africa will also need to invest in design and implementation of industrial policies that encourage local ownership and capacity development in various sectors.

The essay surveys AGOA's track record; assesses the political economy of shifting from a trade preference-based relationship to a *pro-structural transformation-based U.S.-Africa relationship*; and offers initial thoughts on designing the new partnership for U.S.-Africa trade and development relations.

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AGOA: Its Operation in Practice

Under the AGOA initiative, the United States offers qualifying sub-Saharan African countries duty free access across a range of approximately 6,500 product tariff lines.[1] In order to qualify, African countries must demonstrate their commitment to improve their rule of law, human rights, and respect for core labor standards. The United States ultimately decides, on an annual basis, whether such requirements have been met. Beneficiary status may, without right of appeal, be withdrawn, at the discretion of the U.S. President.[2] Indeed, as of June 2017, Rwanda, Tanzania, and Uganda are up for an out-of-cycle review, for their planned ban on second-hand clothing, a move seen as harming U.S. trade interests.[3] AGOA is currently extended to 2025.

Research from the Brookings Institution demonstrates that the breadth and scope of products utilized under AGOA remains narrow. For example, crude oil continues to dominate AGOA exports, accounting for 46 percent of all AGOA imports into the United States in 2014.[4] Energy-related products more generally represented 67 percent of all AGOA imports in the same year and for most other African exporters of non-oil products, AGOA contributes to less than 0.0001 percent of per capita income.[5]

Africa accounts for the lowest share in global merchandise and commercial services trade. The World Trade Organization's International Trade Statistics 2015 notes an 8 percent decline by 2014 in Africa's share of global exports. In value terms, Africa exported US$555 billion to the world, totaling 3 percent of global merchandise exports.[6]

Nonetheless, some countries have gained significantly from AGOA. The case of Lesotho and its textiles exports stands out. The AGOA scheme accounts for nearly 10 percent of its per capita income, and is credited with the creation of thousands of jobs in that country.[7] Such evidence is critical in demonstrating the still important role of a preferential access component to a future U.S.-Africa relationship.

But there have been challenges—mainly around the inability of AGOA to trigger the creation of a dynamic industrial base, with upward engagement in higher value segments of the apparel chain. Indeed, while AGOA has traditionally attracted a range of Asian and South African investors, the bulk of the industry remains foreign-owned and -managed (a phenomenon seen across several other sub-Saharan African (SSA) AGOA exporters), operating largely in Export Processing Zones that have limited linkages to domestic industry in similar segments. The dividends of technology and skills transfer as well as the creation of market opportunities—perhaps through domestic supply of certain value-chain inputs—remain largely untapped. Foreign investors typically stay only for the duration of preferential schemes and depart when the schemes terminate or the schemes' conditions change. As a result, they are generally not invested in the longer term growth of the domestic industry, which

[1] About AGOA, AGOA.INFO.

[2] *See* AGOA Country Eligibility, AGOA.INFO.

[3] *See* Request for Comments and Notice of Public Hearing Concerning an Out-of Cycle Review of Rwanda, Tanzania, and Uganda Eligibility for Benefits Under the African Growth and Opportunity Act, 82 Fed. Reg. 28,217 (June 20, 2017).

[4] Mwangi S. Kimenyi, *AGOA Utilization 101*, BROOKINGS INSTITUTION (Mar. 23, 2015). UNCTAD corroborates the findings from the perspective of the composition of Africa's export basket: that in 2016, it remained dominated by commodities such as petroleum oils or bituminous products, food, and light manufacturing products. *See* Edward Chisanga, *Mapping of Intra-African Trade Flows by Product Compared with the Rest of the World for 54 Countries* (UNCTAD, forthcoming).

[5] Kimenyi, *supra* note 4.

[6] *See* World Trade Org., International Trade Statistics, 2015 at 40, 41.

[7] *See* Kimenyi, *supra* note 4.

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denies countries the opportunity to reap the intended full benefits of such arrangements.[8] This results less from the AGOA initiative per se, and more from the inability of SSA countries to design and implement industrial policies that can build systems, create networks, develop institutions, and align strategic priorities.[9] SSA countries need to reflect on how a future U.S.-Africa relationship can support their efforts in resolving these challenges, in particular in a manner that promotes establishment (and ownership) of local industrial capacity that can outlive the uncertainties of preferential schemes.

Shifting to a Pro-Structural Transformation Model

Many African countries experience structural complexities that leave them as the world's producer and supplier of raw materials, thereby reaping the fewest gains from international trade. From Ghana's cocoa beans, Senegal's mangoes, and Nigeria's crude oil, to Kenya's tea leaves, Ethiopia's coffee beans, and Malawi's raw tobacco lies a pattern telling of a continent that continues to struggle with limited value addition, and an unutilized potential in manufacturing and services trade. There are some exceptions. South Africa has an economy whose export profile, from a structural point of view, is diversified: the country exports shoes and cars, agricultural products and high technological services. Similar patterns can be observed in some countries in North Africa, and to an extent in Kenya. But overall, the story of the African economy is one dominated by *promise* not yet fulfilled. Africa is also home to thirty-four of the world's forty-eight least developed countries—and according to the UN Development Programme, records very low scores on human development indices.[10] Many agree that Africa will be the determining battleground for whether the global Sustainable Development Goals will be won. This context is key in understanding the operative framework in which AGOA has unfolded for the last 17 years.

Post-2025, indications are that the United States will reconstruct its relationship with Africa, moving more towards a reciprocity-based trade arrangement.[11] This should come as no surprise, since some of Africa's leading traditional export markets, such as the European Union, sought reciprocal terms in negotiating Economic Partnership Agreements with various African states. While the bulk of these agreements remain works in progress, their design leaves no doubt about how the European Union sees its future relationship with Africa.

In considering how to construct a new U.S.-Africa trade partnership, the reality of Africa's structural weaknesses should inform the optimal approach. The United States, as a global leader, should set the tone for a win-win development partnership. This will require a purposeful shift in defining development cooperation in the twenty-first century. The provision of preferential access remains an important part of this conversation, but the practice, from the time of the development of multilateral rules protecting such initiatives to date,[12] demonstrates the limitations of a trade-preferences-only approach. The numbers tell the story: in spite of being one of the largest recipients of preferential market access initiatives, Africa remains the weakest player in the multilateral trading system, and is the one region that struggles the most with fighting poverty—itself the central promise of international trade.

[8] For more on the challenges of preferential schemes and the need for targeted industrial policy to maximize benefits, see Colette van der Ven, *Where Trade and Industrial Policy Converge: How Developing Countries Can Utilize Trade Preferences to Generate Sustainable, Local Growth in the Garment Sector*, INT'L LAW. (Summer 2015).

[9] *Id.* at 105. *See also* Ken Warwick, *Beyond Industrial Policy: Emerging Issues and New Trends* (OECD Science, Technology & Industry Policy Papers No. 2, 2013).

[10] *See* UN Development Programme, Africa Human Development Report 2016 (Aug. 28, 2016).

[11] On this, see also the other essays in this symposium.

[12] *See* GATT Contracting Parties, Decision on Differential and More Favorable Treatment, Reciprocity and Fuller Participation of Developing Countries, The Enabling Clause, Decision L/4903 (Nov. 28, 1979).

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There is a temptation for the United States to move to reciprocity-based trade agreements with individual (or groups of) African countries. This approach should be reevaluated. Reciprocal trade arrangements between the United States and Africa will not, in the current context, produce the needed momentum for Africa's development. While they will secure market access, they will leave the core question of Africa's development through trade unanswered and the challenge exacerbated. This is the heart of the considerations of political economy that the United States and African countries must carefully think through in structuring a new model of U.S.-Africa relations: the parties should invest only in those approaches that will work for Africa's longer term sustainable development.

Towards a New Partnership for U.S.-Africa Trade and Development Relations

A new partnership for U.S.-Africa trade and development relations must strike a balance between focusing sufficiently on supporting economic structural transformation and strengthening the scope, breadth, and depth of the trade component.

While AGOA has played a critical role in creating new export opportunities for qualifying African countries, its core strength lies in what it can potentially do going forward. The fundamental reason why the AGOA utilization record is low is that significant challenges remain unaddressed on the productive capacity side. Development cooperation with Africa should be designed around how to use the continent's core base—agriculture—as a *development pivot* for its structural transformation. Investing in strengthening productivity in Africa's agricultural sector will provide employment to large parts of the population, encouraging value addition (thereby creating a sound basis for industrialization). This in turn will create naturally complementing dynamics in the services sector, such as transport, distribution, logistics, and telecommunications. A key condition for all of this to work is to ensure there is sufficient domestic ownership of the production process, thus multiplying the benefits across as many African communities as possible.

The United States can lead global efforts to move from policies and dialogue to action. A key way to do this is to develop instruments—including laws, regulations, and practices—that incentivize U.S. companies to invest in Africa. This corporate presence will bring with it technology, skills, and finance, in partnership with African enterprise. This approach is in U.S. interests because it will widen U.S. companies' investment portfolios in areas (such as agriculture, industry, and services) that will yield guaranteed profit, thanks to the growing middle class and the population boom across the African continent. The United States has the institutional capacity to make this operational shift possible. It may utilize its diplomatic relations with governments across Africa as well as its development arm, USAID, which is present in a broad range of African countries, including at the regional level, to undertake and support the growth of initiatives in this direction.

This new approach would create an agriculturally-based industrial revolution and upgrade services infrastructure and technology through investment in energy, transport networks, and finance. The current profile of intra-Africa trade tells us that there is existing capacity in (and a market for) the production and export of manufactured goods—an opportunity that can be tapped by large U.S. investments in agriculture, industry, and services. Such partnerships would also benefit from the local knowledge and investment in longer term industrial viability that African enterprise brings.

To succeed on this front, it will be important to ensure that the overall global financial and economic architecture supports Africa's development objectives. In this regard, the United States should consider how to use its influential position in the global financial architecture to ensure that African countries spend more of their resources on building productive capacities and less on paying debt. A transformative miracle in Africa will not be possible as long as its core resources cannot be kept in-country.

In addition to changes in emphasis in the U.S.-Africa trade relationship, the AGOA itself needs to be redesigned, from a structural perspective. While it was considered pragmatic to allow third country fabric provisions in

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AGOA, such measures should be phased out to create the necessary push for development of African suppliers. Preferential trade agreements should trigger economic activity that creates forward and backward linkages, bringing more people to the table. In designing any future trade component of the U.S.-Africa relationship, stricter rules on where to source products eligible for export will help support the agriculture, industrial, and services revolution. Anything short of this leaves Africa as the stitching hub at the lower end of global production lines, with other lucrative parts of the textiles and clothing value chain going to source markets. Insisting on in-continent sourcing will be important in attracting more South-South investment in Africa.

It is difficult to make serious investment decisions in the face of an initiative whose lifeline is uncertain. The predictability needed to justify the type of investments by both African and foreign players in pursuit of AGOA opportunities does not lend itself to ifs and maybes. A new generation trade relation should avoid limiting timeframes. This is an attractive proposition for both U.S. and African companies, which find it difficult to undertake serious investments amidst temporal uncertainty.

For AGOA to deliver at a scale that is truly transformational, it would have to be a quota-free initiative, across a broader range of products. Thresholds above which beneficiaries cannot access the market on preferential terms act as a stick to large scale enterprises seeking to scale up their operations. Big investment decisions can only be made for big opportunities. And instruments that frontload sticks amidst carrots are drawbacks.

AGOA is not accessible to all African countries. It is only for qualifying SSA countries. While including some states and not others may have been important for the United States, going forward partners dealing with Africa should accommodate *all of Africa*, in line with continental objectives that define "*The Africa We Want*," such as those contained in the African Union's Agenda 2063.[13]

Africa is deepening its trade integration through its Continental Free Trade Area negotiations. Going forward, approaching the continent as a block, and not on a country or group basis, will be important in maintaining the integrity of the much needed integration Africa is currently pursuing. And this makes business sense, for it is no secret that individual African markets would be of less interest to entice large economies such as the United States to invest, especially if progress made in one country may be undermined by the absence of similarly facilitative regimes in other African countries.

Conclusion

AGOA has had a positive impact in some countries. It has also shown the limits of how far trade liberalization instruments can go. AGOA's expiration in 2025 should be seen as positive, because it creates the opportunity to go back to the drawing board. The new approach should focus on supporting Africa's efforts toward structural transformation. It is in this approach that we will find a truly poverty-eliminating partnership, which, after all, is what such preferential trade initiatives are about. The new model should focus on frontloading U.S. investments, in partnership with African enterprise, to support the creation of Africa's agricultural, industrial, and services revolution. Better structured preferential trade initiatives should be seen as complementary, rather than as the defining feature of the U.S.-Africa trade partnership. This is the much-needed African miracle we talk about, and one the United States must grab its place in history by helping to shape.

[13] For more on Agenda 2063, see What Is Agenda 2063?, African Union.

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