

An African Response to AGOA

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In: Southern African Economist

Vol. 14, N° 6

Publication: 2001

pp. : 17-19

One of the objectives of the US Africa Growth and Opportunity Act (AGOA), signed last year by former president Bill Clinton is to balance out with the Cotonou agreement between the European Union (EU), African, Caribbean, and Pacific countries.

However, while the Cotonou agreement is based on preferential trade, AGOA is designed to determine trade and development modalities, priorities and opportunities, without offering any macro-economic benefits to sub-Saharan Africa.

Indeed, AGOA should be renamed American Growth and Opportunity Act, and this for the following reasons:

- Whereas the US is a member of the WTO/TRIPS, which seeks to promote the globalization of the world economy, AGOA presents additional eligibility requirements and conditionalities outside this framework;
- The conditionalities being imposed on the supposedly beneficiary countries are based on free market models designed to create markets for US corporations in the name of trade liberalisation and privatization;
- The bilateral approach and process of designation destroys the sub-regional blocks and groupings such as SADC, thereby creating socio-political and economic instability within the regions and undermining African solidarity to economic development; and
- Though SADC, for example, is a strategic market for US producers and investors, it is being forced to implement WTO/TRIPS provisions through the back door for the benefit of American transnational corporations on a bilateral basis.

Section 104 of AGOA outlines the conditions for eligibility for countries to access benefits. From an African point of view, these conditions are rather harsh, ultimately placing these countries at a disadvantage. Conforming to some of these prerequisites entails being submissive to the additional US conditionalities over and above those stipulated through the WTO/TRIPS and other international trade agreements.

Section 104 (a)(1)(A) requires a country seeking eligibility to:

- Establish or be making continual progress toward establishing "a market based economy";
- Enact legislation to protect private property;

- Incorporate an open-rules based trading system; and
- Minimize government interference through measures such as price controls and subsidies and government ownership of economic assets.

These provisions are not favourable to the interests of the majority of African countries. This is as a result of experiences most countries went through within the context of trade liberalisation, which involved opening up their markets to global corporations, privatisation of national institutions and reduction of government spending. These measures resulted in many governments fore-going programmes that provided for social safety-nets or cutting basic social services and turning from domestic food production to export-oriented cash cropping.

The structural adjustment programmes have negated economic progress in Africa, whose current share of world trade is a mere 1-2 percent. By advocating a market-based economy that protects private property and incorporates an open-rules based trading system, the US is advocating for:

- Competitiveness in international trade which depends to a large extent on the availability of developed services and high technology;
- New prospects for the US in the provision of services to Africa and in export of high technology;
- Expansion of opportunities for US investors in sub-Saharan Africa without any restrictions;
- Enhancement of US interests in trade of knowledge-intensive goods, services and uniform protection of intellectual property rights;
- Reduction of the roles of the state to mere writing of rules and regulations which facilitate the operation of market economy forces without providing social safety nets for the poor;
- Establishing a framework through (AGOA) for competition in Africa favourable to US business interests and benefits parallel to those of the EU; and
- Ensuring increased US exports to opened African markets and creating free-trade areas in the continent.

Incorporating an open-rules based trading system allows foreign investors to trade without any obstacles in any goods and services. These aspects are also being pushed for through new negotiations, which require commitments that are of fundamental concern to developing countries. In fact, there is little evidence suggesting blanket liberalisation will benefit developing countries, even though WTO papers are riddled with sweeping claims to the contrary. The assertion and argument by the WTO Secretariat, that the liberalisation of trade in services has benefits in the development and improvement of infrastructure and general economic efficiency of developing countries in such crucial areas as telecommunications, finance and transport will not materialise. GATS only provides security to investors by guaranteeing that investment and trading conditions will not be changed against their interests. AGOA's eligibility requirement and conditionalities are also pushing for the same conditions in sub-Saharan Africa.

However, minutes of the meetings held by the Services Council within the WTO contrast sharply with these assertions, as representatives from developing countries state that their GATS commitments do not translate into increases in foreign investment. They point out that, impediments like the closely guarded patent rights of transnational companies are blocking improved efficiency in services, regardless of how open their economies may have become.

For example, a Malaysian representative pointed out, prior to the Seattle ministerial meeting, that his country had recorded deficits in services trade for decades despite being a relatively open market. These deficits had generated pressures against further market openings. The UNCTAD studies also observe that, the top twenty services exporters are from developed countries and that there is no evidence of increased Foreign Direct Investment (FDI) flows into developing countries.

In this context, while AGOA grants extensive rights and benefits to transnational corporations operating in Africa, it does nothing to ensure that African workers and business benefit from expanded trade, and includes no provisions protecting the environment. Intended benefits for Africa are enhanced market access for its trading goods, and US guaranteed funds and support to boost private sector development.

In addition, AGOA requires minimising government interference in the economy through measures such as price controls and subsidies. Such a provision will entail untold hardship and suffering on the local consumer. With no price controls allowed, governments would be prevented from checking the inefficiencies and vagaries of the market. Given their comparatively large capital base, technological advancement and the restrictions of IPRs, transnational corporations can use these resources to create monopolies and reduce African countries to being mere recipients (net importers) of goods and capital. On the other hand, consumers will be forced to accept the uncompetitive and high trading rates because of the monopolies created.

Underlying Problems

This system of trade disadvantages domestic economic players, in that they stand to lose in trading, as they can no longer afford to effectively compete against the more established concerns of the US. The Act does not make provisions for effective transfer of appropriate technology by the US to Africa, a vital element to foster trade and development.

The requirement for minimum government control is being pushed using "trade" to pursue privatisation, deregulation and extending the scope of liberalisation. This approach is similar to that which is being pursued within the GATS negotiations, which will result with the proposed "prior consultation rights" by the private sector. Such national obligations would mean that, foreign interests would have the right to be notified considerably in advance of the introduction of any new measures affecting services in such areas as water, health and education. A consultation process would have to be set up for them and they could demand to have their inputs given due consideration before the measures are implemented. This is tantamount to giving foreign interests rights in setting domestic policy.

Government subsidies are important not only in infrastructural development, but also in easing market inequities. By disallowing any government subsidies, AGOA not only disregards the human factor, but also aims at ensuring that foreign traders thrive without local competition. If a government subsidises an indigenous trader, this enables the trader to market goods at a lower rate, thus providing stiff competition and ultimately forcing reasonable rates from the foreign traders.

Overall, this provision is intended to disarm African governments economically, out-do local entrepreneurs, and yet at the same time strengthen trading monopolies.

Section 104 (1) (C) of AGOA provides for the elimination of barriers to US investment. The provision is ambiguous, therefore giving room for multiple interpretations to suit US interests.

Intellectual Property Rights (IPRs)

The US requirement for African countries to maintain market-based ; economies which protect IPRs will strengthen trade in investment, services and intellectual property to the detriment of African countries, as they are economically and technologically weak. In contrast, Article 15 of the Convention on Biological Diversity (CBD) recognises the sovereign right of states over national biodiversity, and calls for the provision of access and for sharing of benefits arising from the sustainable use of bio-resources. AGOA provides no incentives for those abiding by the conditionalities. Policy makers need to find a balance between some of the US conditionalities and the regional needs in terms of technology transfer and access to biotechnology. One would have to regard this "balance" as the juxtaposition of two totally different issues.

The danger in the call for immediate intellectual property protection emerges as a factor in both biotechnology and biodiversity. With the CBD in force since 1993, there is an urgent need for a common understanding of the role of intellectual property within the context of both TRIPs/WTO, CBD and AGOA. Although policy-makers will be driven to their law books by AGOA, in an endeavor to comply, there is need not to lose sight of what the multilateral agreements calls for. Contradictions already exist between the TRIPs/WTO and CBD, and AGOA will add to the confusion.

If in a scramble to enter a bit of the US market, sub-Saharan African countries accept these conditions, then the impact of strengthened IPR will increase royalty payments required by the technology holders. Moreover, unless an effective system of compulsory licensing is established in Africa, the holders may simply refuse to transfer their technology and thereby block industrial initiatives by third parties. Reverse engineering, and other methods of imitative innovation that industrialised countries (especially the US) extensively used when their economies were not competitive, are made difficult under the TRIPs/WTO agreement; AGOA makes it even more: difficult.

It is not too late for sub-Saharan Africa to negotiate modifications to AGOA, and seek to incorporate two measures aimed at fostering appropriate technology transfer and avoiding abusive conditions in licensing agreements:

- Licenses for governmental non-commercial use and licenses to remedy anti-competitive practices; and
- National laws can provide for granting of compulsory licenses whenever the title holders refuse to grant a voluntary license "on reasonable commercial terms".

In the WTO treaty (1995), Section 8 sets forth the rules within which the transfer of technology by means of a licensing agreement may be regulated at the national level. It is important that AGOA conforms to these provisions provided within the framework of the WTO Treaty and does not set out extra conditionalities outside the inter-governmental trade regimes.

This sub-section seems to offer flexibility similar to that allowed by Article 27.3 (b) of the TRIPs: "[it] requires members to implement some form of intellectual property protection

for ... plant varieties whether through patents, a sui generis system or a combination of the two." Thus, a country has sufficient flexibility to design a system that best fits its circumstances, goals and objectives - such as licensing provisions suggested above.

AGOA also contains a section that calls for a system to combat corruption. But it only mentions corruption in the realm of international business. If the US were serious about corruption, it would require attention to it at all levels of the economy and certainly, would agree to reciprocal constraints and vigilance by the US government over American corporations operating abroad.

Very disturbing, is a provision that sets as a prerequisite that an eligible country should not undermine US national security or foreign policy interests. The reverse should also be ensured within the provision of the Act. This provision hinders African states' sovereignty and freedom of association and trade. In simple terms, it entails that the US's friends and foes should be the same for any country wanting to benefit from this trade act. From an African point of view, this provision is unacceptable, especially if it is read with Section 104 (1) (A). The two provisions entail taking away the affected African country's economic power and its freedom of trade and association; the price of becoming "eligible" to participate in this trade is too high.

The requirements and conditionalities for eligibility in AGOA are creating additional trade rules outside the inter-governmental WTO/TRIPS agreement. The conditions are only designed to benefit US private corporations through free-trade principles, market liberalisation and privatisation. AGOA will indeed destroy the fundamental principles of sub-regional blocs, create socio- political and economic instability, and affect African solidarity to collective and strategic economic development.

The bilateral approach pursued by AGOA is contradictory to what the WTO/TRIPS multilateral agreements call for, and should, therefore, be rejected. The fact that designation is on an annual basis means that those countries which may be eligible for a number of years, invest in infrastructure, capacity building and establish small to medium enterprises (SMES) targeting the US market can lose all this if they fallout with US policies. As a result, there is no guaranteed sustainability of such market opportunities even if they are breadcrumbs. It is clear that, by establishing all the conditionalities required by the US, there are no effective economic benefits which African countries can realise.

To the contrary, AGOA is meant to increase US exports to sub-Saharan Africa, while at the Same time ensuring that African markets are open to US business. AGOA also grants extensive rights and benefits to transnational corporations operating in Africa, but does nothing to benefit the workers, business and export opportunities for these countries .

Descriptors: International Trade, Trade Agreements, International Cooperation, International Organisations, Trade Retaliation.

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