BEYOND AGOA

AN UPDATED CASE FOR A TRANS - ATLANTIC TRADE & INVESTMENT PARTNERSHIP BETWEEN AFRICA & THE UNITED STATES

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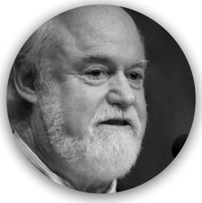

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With a 50-year career in trade policy at State Department, at the USTR and in the private sector, **Stephen** was pivotal to adding bilateral and plurilateral elements to U.S. trade policy that had almost exclusively been multilateral and based on the GATT.[1] He was key to initiatives such as AGOA, CBI[2] and GSP[3] as well as various US FTAs.[4] He is President of Manchester Trade and also an adjunct professor at the *Paul H. Nitze School of Advanced International Studies*, Johns Hopkins University.

1. General Agreement on Tariffs and Trade 2. Caribbean Basin Initiative
3. Generalized System of Preferences 4. Israel, Mexico and Canada, in Central America and with the Dominican Republic

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* Dennis headed Uganda's *Gifted by Nature* campaign and was one of three founding members of the Uganda Media Center

Abbreviations

AGOA ~ Africa Growth Opportunities Act
AU - African Union
BITS ~ Bilateral Investment Treaties
COMESA ~ Common Market for Eastern and Southern Africa
CCA ~ Corporate Council on Africa
DBIA ~ Doing Business in Africa
EAC ~ East African Community
EBA ~ Everything But Arms
ECOWAS ~ Economic Community of West African States
EPA ~ Economic Partnership Agreement
EU ~ European Union
EXIM Bank ~ Export Import Bank
FDI ~ Foreign Direct Investment
FOCAC ~ Forum on China Africa Cooperation
FTA ~ Free Trade Area | Free Trade Agreement
ICT ~ Information Communication Technology
IPR ~ Intellectual Property Rights
MBDA ~ Minority Business Development Agency
MCC ~ Millennium Challenge Corporation
MNC ~ Multinational Corporation
NGO ~ Non Governmental Organization
NSC ~ National Security Council
NSS ~ National Security Staff
OPIC ~ Overseas Private Investment Corporation
RECs ~ Regional Economic Communities
SADC ~ Southern Africa Development Community
SBA ~ Small Business Administration
SMEs ~ Small Medium Enterprises
SPVs ~ Special Purpose Vehicles
SSA ~ Sub - Saharan Africa
TIFA~Trade and Investment Framework Agreement
TRQs ~ Tariff Rate Quotas
USAID ~ United States Agency for International Development
USTDA ~ United States Trade and Development Agency
USTR ~ United States Trade Representative
WTO ~ World Trade Organization

Introduction

Preamble

In this paper, McDonald, Lande & Matanda argue that, premised on conditions here in the U.S., in Africa and elsewhere, the 'perfect storm' could be brewing for an effective renewal or enhancement of AGOA before the program expires in 2015.

With ingredients such as the Obama Administration's 'whole-of-government' approach, Africa's rapid ascent as a trade and investment destination and the risk of an inappropriate response to China and other third countries' Africa engagement, the paper's recommendations pivot towards ensuring that the U.S. and Africa form a more equitable commercial partnership.

An Introduction

Three months into the Obama Second Term - amidst a flurry of activity on the U.S. | Africa trade and investment policy front - our colleagues at the ***Heritage Foundation, Brookings Institution***, ***Corporate Council on Africa,*** and the ***Wilson Center,*** amongst others argue that there's apparent 'continuity rather than change in U.S. policy'[1] towards Africa; they suggest that the U.S. 'has been slow to seize the opportunities availed by the new Africa;'[2] and also warn that 'without a much better focused effort, the U.S. may lose the chance to play a substantial role (in) developing a region of major importance.'[3]

In this paper, we agree with the collective rationale that there are gaps in U.S. policy towards Africa, and we also make the case for an even more ambitious transatlantic partnership between sub Saharan Africa and the U.S. Fortunately starting last year, both the U.S. Administration and Congress recognized the need for more intensive American engagement with sub Saharan Africa.

In June 2012, Michael Froman, both a Special Assistant to the President and the Deputy National Security Advisor for International Economic Affairs unveiled the Presidential Directive on Sub Saharan Africa at the 12th AGOA Forum in Washington DC and laid the foundation for a new program by emphasizing the *whole-of-government* approach. Congress seemingly awoke as well with a number of their own Africa-centric initiatives.

There were 3 significant congressional actions: The first was a commitment earlier this year by the House Ways and Means Committee to extend and possibly enhance AGOA on a timely basis, meaning that something should be done before the 114th Session of Congress commences in January 2015. With this same deadline in mind, Karen Bass (D-CA), ranking member of the House Subcommittee on Africa, has engaged and formed a working group of influential members to review options for AGOA renewal.

Finally, a comprehensive bill was introduced by a bipartisan group of Senators and Congressmen led by Senator Dick Durbin, the powerful Senate Majority Whip from Illinois and by Rep. Chris Smith (R-N.J.), Chairman of the House Subcommittee on Africa, Global Health and Human Rights. Entitled *The Increasing American Jobs through Greater Exports to Africa Act*, this bill set out to do exactly as its name suggested. It was meant to effectively level the playing field for U.S. exporters against the Chinese in Africa by promoting US investment and creating jobs both in Africa and the U.S. Seminally, while each of these actions is under the jurisdiction of separate entities, they are also indicative of like-minded units that could be coordinated to ensure a coherent federal government approach.

Thus, we suggest specific steps that can be implemented by the Administration and Congress to achieve an ambitious bipartisan transatlantic partnership between the U.S. and Africa. Arms of government must start by incorporating AGOA in a legislative endeavor that ultimately supports an expanded U.S. commercial presence in Africa.

As Africa prospers, the U.S. must pivot away from humanitarian programs. African governments are increasingly better placed to take care of their own people which, on its own, creates the foundation for a *perfect storm* for business in Africa since the U.S. can shift precious resources towards economic development activity.

Thus, a gentle nudge from the Obama administration could be the tipping point that alters America's waning fortunes in Africa.

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1. From '***An Assessment of the Obama Administration's Africa Strategy,***' hosted by Ray Walser, Ph.D. Senior Policy Analyst, the *Heritage Foundation*, Tuesday, July 31, 2012

2. From '***Top Five Reasons Why Africa Should Be a Priority for the United States,***' by John P. Banks, *et al,* Africa Growth Initiative, *Brookings,* Mar. 2013

3. From '***Policy Recommendations on Africa for the Second Obama Administration,***' by the *Corporate Council on Africa*, April 17, 2013.

Since 2009, the U.S. is no longer Africa's single biggest trade partner or its most important source of investment.

Executive Summary

Executive Summary

Ever since the beginning of 2013, the *Economist* has, ostensibly, half-dared and half tantalized U.S. investors to dip their toes in the rich, warm water that is Africa. Almost all the paper's weekly issues have carried a glorious story about the potential that is in Africa: and yet the U.S., unlike China, and smaller economies, still does not respond appropriately to the call of the wild wealth of today's new world.

The *Economist* and other reputable houses, including the influential *McKinsey* all say the same thing: Six of the world's fastest growing economies are in Africa, and the next decade portends even more for what many once referred to as the *dark continent*. Now called *the hottest frontier*, Africa has opportunities unavailable in the richer world. On top of a rapidly expanding consumer middle class on the continent, there are abundant natural resources, human energy, youth, aspirations and a willingness to work - exactly the ingredients *everyone* aside from America is leveraging so as to rush their share of foreign direct investment and resources to secure the lucrative ventures waiting to be plucked.

But the world's largest economy is, ostensibly, much too *largesse* to be *lithe*. While the U.S. dithers, China, the second largest economy, methodically works to expand its economic presence on the continent. The EU is also aggressively using trade negotiating tactics to secure a special position in the region. Combined with aggressive action by India, Brazil and a slew of smaller economies, American exporters and entrepreneurs are, increasingly, at a disadvantage in Africa unless remedial actions are undertaken.

The Obama Administration has already begun to coordinate resources of agencies working in Africa. In their aforementioned *whole-of-government* approach, the State and Commerce departments are in better tandem with the U.S. Trade Representative's Office as well as a whole alphabet of entities - ExIm Bank, MBDA, MCC, OPIC, SBA, and USTDA, amongst others. All collaborate with the private sector to tackle African affairs. However, more still needs to be done in concert with Congress to produce a truly sustainable US footprint in Africa. Without timely intervention, Americans are not competitive in Africa's burgeoning capital and consumer goods industry, in their infrastructure and service sectors, and not even in the continent's beckoning agriculture or information technology fields.

Enhancing AGOA

Remarkably, in spite of a plethora of crises,* this may be *just* the conducive environment for the U.S. to craft a more expansive program and economic initiative for Africa - an enhanced AGOA. Instructively, as America's most significant Africa program, AGOA does, indeed, present a baseline for a more equitably beneficial partnership.

Hence, alongside the Transatlantic Partnership with the European Union and the Trans Pacific Partnership, Obama could achieve the kind of comprehensive program for Africa many, both in Africa and the U.S. hoped for at the start of his novel presidency.

However, before legislative action on an initiative of this potential can be commenced, we must acknowledge that AGOA has been inadequate in transforming Africa's sectors into equitable partners of global supply chains and distribution networks. This possibly, was because AGOA came at a time when, except for a handful of economic success stories, Africa's development lagged behind the rest of the world.

But the U.S. must not live in the past. Today, only 13 years into the new century, entrepreneurs from Brisbane to Sao Paulo, Seoul and in between reap super normal profits from their Africa ventures. And in overly relying on the inadequate trade provisions in AGOA, the U.S. loses strategic ground each day to third countries.

From this standpoint, those advocating simple continuity of AGOA or pushing for small ball reform independent of the bigger picture may actually be the greatest threat to a more progressive U.S. - Africa program - even more dangerous to American progress than traditional protectionist and isolationist views.

* The expiration of the Bush Tax Cuts, the Sequestration and the looming Debt Ceiling negotiations, plus a flurry of legislative activity.

Anyone suggesting a simple rollover of AGOA ought to look beyond the status quo to see that this does not scratch the surface of what can be achieved in Africa. To their credit, the big American boys Coca Cola, Microsoft, Walmart, GE, Procter & Gamble, amongst others continue to fly the American flag in the region. But Witney Schneidman in a recent *Brookings* publication argues that these represent only 1% of U.S. FDI, and U.S. exports to Africa are just over $ 22 billion - about only 2% of worldwide exports. Besides, the big boys do not necessarily need AGOA!

Time is of the essence: AGOA expires in 2015. Because we mustn't wait for the 114th Congress to sit in January 2015, collaboration between Obama and the 113th Congress on a well coordinated approach to stave off China's influence and EU preferences in Africa must start soon. We recommend that the next 18 months not only be used to renew and enhance AGOA but ensure that the renewal is part of an overall US approach towards the region.

Potential Ingredients to Effective Policy

1. American stakeholders must agree that collectivity is better than unilateralism, and all arms of government and private sector must collaborate in a public - private partnership to garner the kind of legislation that will change the current downward trajectory of America's business in Africa.
Here, America's humanitarian, national security and economic interests are much better served by agencies and private sector leveraging potential coordination.

Brookings suggests that the U.S. must build sustainable health systems that reduce the need for large international responses to disaster; leverage assistance programs to stimulate economic growth and governance in Africa. Likewise, any new plan should continue to require that agencies with African components work closely with the MBDA and SBA to promote African American, Diaspora investment and SME business activities with specific targets such as doubling U.S. exports to Africa within set periods of time.

2. We applaud Congress' effort towards doubling US exports: In a recent article, Delaware Senator Chris Coons, Africa Subcommittee Chair of the influential Senate Foreign Relations Committee, called for more commercial officers to be sent to Africa - including those from ExIm Bank and OPIC. However, this by itself, will do little to offset the billions of dollars being spent by the Chinese Government to support that country's expanding commercial presence in the region.

US commercial goals require that US increase support to African efforts to remove barriers to the free flow of products and factors of production within the region. Fortunately such assistance is not that expensive and can be achieved through reprogramming existing programs as well as by adopting the smarter use of scarce resources.

For instance, the U.S. should establish special purpose vehicles to support US participation in regional infrastructure beyond specific borders. In addition, one could utilize a revised MCC through requiring that 20% of compact resource be allocated for projects contributing to regional integration.

Concurrently, while an initiative must encourage creative financial instruments that benefit American firms in Africa, vital proposals such as the *Boozman, Coons, Durbin, Rush + Smith* congressional proposal to target $10 billion a year of the recent $40 billion increase in ExIm lending ability to Africa should conform to projected business suggestions and represent off budget activities not impacted by sequestration.

Amongst their recommendations to the Second Term Obama Administration, the Corporate Council on Africa suggests that a target be set at presidential level for $ 10 billion in funding for infrastructure projects, agriculture, health, ICT, energy and heavy machinery.

The Council also recommends that a U.S. Trade Development Authority evergreen fund support African feasibility studies to be used by the African Development Bank or World Bank.

3. The U.S. must not accept the status quo or be too cautious to tackle the big issues because of concern over partisan rancor in Congress. Besides, policy on U.S. - Africa trade relations is one of the few areas where bipartisan agreement between Republicans and Democrats is still alive and thriving.

With Obama freed from having to prove heritage, a more open and aggressive commercial policy towards the region can now be implemented. Besides, Republicans who still control the House realize that their best hope to increase votes may lie in championing as many pro-minority programs. A pro-Africa program could mean addition to the more than 100,000 AGOA created American jobs.

4. The U.S. must not be blinded by a desire to negotiate closer relations with Europe under the Transatlantic Trade and Investment Partnership (T-TIP). The EU policies that force African countries to provide preferential access for European exports in sub Saharan markets pose a clear and present danger to U.S. commercial interests and also, the survival of AGOA in its present form.

Illustrative Initiatives

A solid body of ideas and proposals for an enhanced U.S. - Africa economic partnership exists. Like already mentioned, various parties, including *Corporate Council on Africa* as well as continuous work by *Brookings*, *Heritage* and this collaboration between *Wilson Center* and *Manchester Trade* are in the process of putting suggestions up for discussion.

Secondly, the current Washington trade agenda is not crowded. With the exception of possibly considering renewal of Trade Promotion Authority (TPA) - something that could take months of consultations before a bill is presented - these are ideal conditions for crafting of successful U.S.-Africa legislation.

The WTO's DOHA Round is, at best, moribund; the Transatlantic Trade + Investment Partnership yet to be launched, and even the optimistic don't expect TPP negotiation to conclude before the end of 2013 at the earliest, meaning that any agreement resulting from these negotiations will not be presented to congressional committees until mid 2014. This should allow time for the respective committees to complete work on a transatlantic initiative on Africa.

Whatever the case, a new U.S. - Africa program must be put through Congress' rigorous legislative process. Also, considering that the basic architecture of AGOA was developed in the last century, renewing or tweaking aspects of it does not do justice to recent latent synergy between the world's largest economy and a region that's growing at a pace much faster than fathomable less than 10 years ago.

Thus, our three *supra-AGOA* proposals are geared towards adjusting existing programs to have a greater commercial impact with a view to supporting regional integration and also U.S. investment in Africa.

Proposal 1: *Adjustment to Existing Programs*

i. The new legislation should, first and foremost, address oft repeated but still pertinent proposals on agricultural products by adding currently excluded exports subject to tariff rate quotas to AGOA eligibility. This step could double the value incorporated in non-petroleum imports entering the US under the program.

Also, all AGOA provisions, including those applicable to textiles, should be extended for a long enough period - at least ten years - to avoid the uncertainty caused by the short term extensions in the past.

ii. AGOA should become part of an overall Congressional approach. Since these bills oftentimes originate in the House, they should be coordinated by either the House leadership or by a joint working group of Chairmen and Ranking Members of the Foreign Affairs, Ways & Means, Financial Services & Commerce committees or appropriate subcommittees. Here, AGOA should be stand-alone legislation and part of an overall approach fully coordinated with other stand-alone legislation passed out of different committees.

Additional bills could also cover programs under ExIm, MCC, OPIC, TDA + USAID among others with a focus on creating a level playing field for American businesses, promoting their participation in the development of regional infrastructure and in Africa's productive capacity.

iii. Relatively, all programs must re-enforce each other: For instance, MCC and USAID investments in Africa should be linked, wherever possible, to loans from ExIm Bank, OPIC and USTDA.

iv. Because Congress does not treat failure kindly, federal agencies may be justified in their precaution. However, being much too process and procedure driven goes against the grain of economic activity, and the meme that U.S. programs have onerous conditionality must be dealt with immediately or continue the risk of being further shunned by the private sector. The premise here would be a *whole-of-government* approach that allows for the inevitability of venture failure.

v. Given the fact that Africa is still divided into 48 separate countries, the continent must work out its own trade policy in the context of integration efforts. Thus, the U.S. must temper her trade priorities, at least, in the short term. To this, the U.S. Trade Representative must modify or delay a natural proclivity to gain reciprocity from African countries in the tariff area, ensuring that AGOA is renewed or enhanced with the program's non-reciprocal status.

Nonetheless, the US should continue efforts to support American investors through such measures as liberalizing non-tariff measures, improving protection of Intellectual Property Rights (IPRs) and entering into Bilateral Investment Treaties (BITs).

Striving to strengthen its relationship with the East African Community, the US is working on a regional Trade and Investment Framework Agreement (TIFA). This sort of relationship intensification and effort to improve regional integration conditions should be extended to other African RECs. The expectation should be that the African Union and RECs will use this extended AGOA period to progress towards a continental FTA + CET by the end of the decade.

We address this in Proposal 2.

vi. These changes to current programs should also address the important issue of sanctions and conditionality. No matter how laudable, there's little impact on strengthening democratic practices in an African country through unilateral withdrawal of AGOA benefits or a cessation of MCC or USAID development programs.

Instead, whenever a country is suspended or sequestered, US firms lose business to countries like China which simply supplant American firms, further undermining the AGOA's positive intent - even weakening the very groups that may oppose heavy handed regimes.

The deleterious effect of suspending programs with long run development outcomes beyond the restoration of democracy can be avoided by targeted sanctions. Interpretively, ICJ proceedings, arms embargoes, travel restrictions and freezing of assets would be imposed on 'dictators', their 'henchmen' and their families.

Following a military coup in Madagascar, the U.S. took unilateral action in removing that country's AGOA eligibility. However, this very action not only affected the economy, but especially the Malagasy women producing under AGOA.

In a parallel illustration, American businesses in the Democratic Republic of Congo lost vantage points to Chinese investment when the country was removed from those benefitting from AGOA. While this sanction was meant to end barbarous practices used by both sides in that country's civil war, America's reaction had no discernible impact - except to cause a direct hit to U.S. investors.

We recommend that automatic + unilateral suspension of benefits be replaced with a collective approach. For example, peer pressure by one or more African countries on dictatorial neighbors has been effective in 'helping' West African leaders be more democratically conscious.

vii. Given present technology, Africa should remain reliant on fossil fuels for many years. Thus, while we support special incentives to promote the use of clean energy, the US must lift prohibitions on supporting fossil fuel development when cleaner forms of energy are not feasible or competitive.

Proposals

Proposal 2: *Regional Integration*
To help Africa achieve a more sustainable path to development, the U.S. must make the support of regional integration a much higher priority than currently is the case. There's no question that if Africa is to reach middle income status in the foreseeable future, it must be integrated into the supply chains and distribution networks which increasingly dominate international trade.

Sub Saharan African countries are at the stage where an enduring partnership is necessary for their emergence. The economies of almost all of the 48 countries into which Africa is subdivided are too small to effectively participate in world-class supply chains and distribution networks.

Thus U.S. multinational firms can only optimally operate in Africa if borders do not hinder the free flow of goods. Effective regional integration is, undoubtedly key for big business.

With this in mind, we suggest the following:

i. That the U.S. use the *bucket of global issues* under the impending negotiations for a Transatlantic Trade and Investment Project (T-TIP) to develop consensus on issues of mutual concern with the EU.

The two powerful economic entities should develop a joint approach towards reciprocity from the region: The U.S. should renew AGOA in its present non-reciprocal form until 2025, and the EU should delay its negotiations of economic partnership agreements (EPAs) until the next decade as well.

This would not only allow Africa sufficient time to complete negotiations for a continental FTA and CET but once in place would allow Africa the benefits of negotiating as a group - including eliminating the obstacles to regional integration posed by tariff commitments undertaken by some but not all sub Saharan African countries under EPAs.

If the EU persists in its current efforts to conclude such agreements with the more advanced countries in the region (non- LDCs) in the short term, they will seriously cripple a real chance for African regional integration.

These EPAs will force other countries, including the US, to demand the kind of concession that force African countries to do away with tariff protection before they are ready - ending the potential for the formation of a single market.

ii. Proposals that focus on USAID efforts and those on assisting WTO business facilitation must work towards ensuring that most border formalities are progressively reduced and eventually dispensed with completely. Commodities and other factors of production entering a regional economic community through normal procedures should be as free to flow as those produced within the REC borders. In fact, all factors of production should flow freely.

Proposal 3: *Investment Promotion*
Any new initiative should, in addition to trade measures, seek to include specific non-trade provisions on promoting US investment. These are, mostly, encapsulated in the *Corporate Council on Africa* recommendations to be released April 17, 2013.

Conclusion
No way etched in stone, our proposals are simple stakeholder considerations to urge a comprehensive review of U.S. business conditionality. In the end, the U.S. must adopt a comprehensive legislative plan that, first and foremost ***shakes off an uncoordinated engagement strategy*** that prevents U.S. businesses from achieving their full potential in Africa. Secondly, the plan must assure U.S. investors that a ***sizably sufficient space exists for them to operate in the sub Saharan Africa region.*** Lastly, any AGOA enhancement must show that Africa's future and place in the global economy is ***no longer driven by donor aid but the need for partnership between equals.***

If Obama were to launch a three-point plan like this one at the 50th Anniversary Africa Union celebrations, China, the European Union and other third countries around the world will have to grapple with the fact that Africa has a true friend in America after all.

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SM . SL . DM | Washington, DC | April 2013