

**A DECADE (2000-2010) OF AFRICAN-U.S. TRADE UNDER THE
AFRICAN GROWTH OPPORTUNITIES ACT (AGOA): CHALLENGES,
OPPORTUNITIES AND A FRAMEWORK FOR POST AGOA
ENGAGEMENT**

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ABSTRACT: The African Growth and Opportunity Act (AGOA) has been part of the US international cooperation efforts for Africa since 2000. It entails a series of incentives provided to African countries by the US opening its market for exports originating from these countries. The unilateral preferential trade arrangement also sets a framework for partnerships in the field of trade and investment. The present paper seeks to assess the progress and achievements of AGOA over the past decade with a view to determine how these efforts have contributed to Africa's long-term growth. Among other elements, the paper critically reviews the perspectives of the public and private sector stakeholders involved in the AGOA forums, the implications of bringing AGOA in conformity with WTO rules, and the challenges the African region faces in terms of complying with standards and SPS in the US export markets, eliminating supply-side constraints and diversifying trade. Finally, the paper also analyses the importance of AGOA relative to other preferential schemes such as the EU-ACP, emphasizing differences with regards to the type of access and its conditions and the resultant utilization rates. The paper concludes with a discussion of the prospects, options and policy recommendations for African countries post-2015, when the current arrangement is expected to expire.

Key Words: African Growth and Opportunity Act (AGOA), Africa, preferential trade schemes, Generalized System of Preferences, international trade, foreign direct investment, economic development.

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1. INTRODUCTION

The African Growth and Opportunity Act (AGOA) was signed into law by president Clinton on May 18, 2000 as part and parcel of the US Trade and Development Act of 2000 and was billed as a historical turning point in US – African relations. Since then, AGOA has been the centerpiece of U.S. trade with Sub-Saharan Africa. The legislation provides for preferential treatment of exports from Africa in the form of duty-free and largely quota-free access to US markets. The legislation, which was to expire in September 2008, has been amended a number of times as reflected in Section 3108 of the Trade Act of 2002, AGOA Acceleration Act of 2004, and the African Investment Act of 2006 (referred to as AGOA, II, III and IV respectively). In addition to making substantial changes to the original provisions, these amendments have also extended the life of the Act which is now in effect until September 2015.² With just five years left to its expiration, concerns have been raised as to the extent to which AGOA has met its objectives of increasing African-US trade, diversifying African exports and facilitating Africa’s integration in the global economy.

Africa remains a small player in global commerce, accounting for a relatively small share of international trade, 3.2% as of 2008.³ Generally, Sub-Saharan African countries have been characterized by weak export growth, low diversification of exports and low foreign investment levels.⁴ The US, by purchasing nearly a quarter of Africa’s exports, has been the region’s largest single country market.

By granting duty free and largely quota-free access of African exports to the American market, AGOA was expected to promote exports to the US, as well as attract investments to Africa, thereby helping stimulate economic growth. Touted as a transition path from development assistance to economic self-reliance, it was hoped that AGOA would unleash a wave of bilateral trade and US investment in the region, exemplifying a ‘trade-not-aid’ approach to fostering long-term economic development.

AGOA grants duty-free and largely quota-free treatment to selected exports additional to that allowed under the Generalized System of Preferences (GSP), provided they are not deemed import-sensitive, from qualified Sub-

² Other notable provisions include the “doubling” of the apparel cap for African made apparel with regional yarn from 3 to 7 percent; extending the third country fabric provision, which allows beneficiary countries to source inputs from anywhere in the world, until 2012; granting Namibia and Botswana lesser developed beneficiary country, thus allowing them to use third country fabric in qualifying apparel; and encouraging bilateral investment treaties.

³ UNECA (2010).

⁴ Africa had the slowest export growth averaging 13% during 1996-2006 when compared to other world regions over the past years, despite the increase in most commodity prices according to calculations of UNECA (2010). In turn, SSA FDI inflows represent 1.8 per cent of worldwide FDI inflows in 2007, according to the US Department of Commerce (2009).

Saharan African countries. AGOA eligibility is reviewed annually and the US has the option of unilaterally revoking benefits on the basis of AGOA eligibility criteria. AGOA places heavy emphasis on Africa's emerging textile and apparel industry as the primary sector for trade benefits. This sector is considered to hold the highest potential of fostering Africa's export competitiveness and export led pro-poor growth by generating greater employment due to its relative labor-intensiveness.

Currently, 38 SSA nations are AGOA eligible⁵ of which 27 have eligibility for textile and apparel benefits. The Act also provides for technical assistance to promote firm-to-firm business relationships, assist African states with market-based economic reforms and encourage greater African participation in WTO negotiations (notably, with an emphasis on deepening services trade liberalization in the region, a sector where Africa countries have undertaken relatively less market access liberalization commitments than developed country members of the WTO). Finally, AGOA also seeks to encourage more US investments by establishing a more reciprocal partnership based on the negotiation and enactment of bilateral trade agreements with interested African countries.

Ten years since coming into force, the success of AGOA in achieving the objectives envisaged have come into question. A large number of studies show that the largest share of US imports from Africa continue to be concentrated in oil and other energy products.⁶ As such, the preference scheme has not contributed towards increasing the diversification of African economies. In addition, benefits from AGOA accrue to a limited number of countries.⁷ Overall, it is therefore not clear that AGOA has contributed to Africa's economic growth and whether it is desirable to continue with the scheme in its present state, especially in light of other preference schemes, a concern which African governments themselves have expressed during the Ministerial Consultative Group Meeting on AGOA in 2009.

This paper seeks to provide an assessment of the experience with AGOA over the last 10 years. The paper evaluates the extent to which the key objectives of increased exports, greater export diversification and increased FDI flows have been met. The paper also discusses the main challenges faced by African exporters within the context of AGOA, taking into account other impediments such as compliance with standards and SPS, supply-side constraints and lack of export diversification, which currently impede a full reaping of the benefits from this preferential scheme. Finally, the study seeks to contribute to the discussions in the context of the latest AGOA Forum held in Washington in August 2010 and

⁵AGOA eligible countries currently include: Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Chad, Comoros, Republic of Congo, Democratic Republic of Congo, Djibouti, Ethiopia, Gabon, The Gambia, Ghana, Guinea-Bissau, Kenya, Lesotho, Liberia, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, South Africa, Swaziland, Tanzania, Togo, Uganda, Zambia.

⁶ See Thompson (2004), Brenton and Hoppe (2006) and Mattoo, A et al. (2006).

⁷ Kimenyi (2009).

also proposes a set of policy recommendations for debate and consideration by the African Union Ministers in order to map out a way forward towards maximizing the utilization of the trade preferences set out in the Act to realistically meet Africa's long-term economic growth and development needs with a balanced trade-led strategy.

This paper is structured as follows: The first section serves as introduction. Section 2 then provides a brief overview of the AGOA framework, its provisions, eligibility criteria and some of the initiatives taking place under the act. Section 3 assesses AGOA achievements, analyzing its impact on trade performance and the divergent views which exist on this initiative. After that, Section 4 reviews some of the challenges of a post-AGOA framework beyond 2015, in terms of preference erosion, FDI diversion and specialization, as well as concerns on employment loss and gender equality. In turn, Section 5 discusses some of the issues which need to be addressed if AGOA is extended beyond 2015. Finally, Section 6 concludes by highlighting some of the policy recommendations for African countries participating in AGOA.

2. OVERVIEW OF THE AGOA FRAMEWORK

A country is deemed eligible for AGOA benefits if it has established or is making progress toward establishing market-based reforms, an open rules-based trading system, rule of law and due process, political pluralism, the elimination of barriers to US trade and investment, economic policies to reduce poverty and improve health care and education, a system to combat corruption and bribery, and protection of internationally recognized worker rights. In addition, beneficiaries may not engage in activities that undermine US national security or foreign policy interests, engage in gross violations of internationally recognized human rights, or provide support for acts of international terrorism.

With regards to conditionalities, AGOA preferences are afforded to countries meeting certain economic, political and human rights conditions, and are equally withdrawn if countries fail to comply with these conditions, as was recently the case of Madagascar, Guinea and Niger. Apart from the eligibility criteria, another form of conditionality is the "graduation" of countries on the basis of economic development criteria, such as a threshold of US\$ 1,500 GNP per capita. Correspondingly, Gabon, Mauritius, Seychelles and South Africa, which have a higher GNP per capita than the threshold, do not fully classify as lesser developed beneficiary countries and therefore do not benefit from the Special Rule for Apparel under AGOA. This "Special Rule" affords duty and quota free access for apparel with fabric originating from anywhere in the world to lesser developed beneficiary countries⁸

⁸ Interestingly, though Botswana and Namibia also surpassed the GNP threshold, they were granted "Special Rule" preferences under AGOA II, as mentioned in fn. 2.

Acknowledging that the objectives of AGOA cannot be met through market access alone, the US works closely with African governments and businesses to help maximize AGOA trade benefits by launching other trade-related initiatives. Accordingly, the centerpiece of US support for building trade capacity for the last five years has been the \$200 million African Global Competitiveness Initiative (AGCI), chief among its programs being to aid African countries make the most of the trade opportunities available under the Act. It operates under four USAID-funded regional hubs in Botswana, Kenya, Ghana and Senegal. In 2009 alone, these hubs facilitated over \$71million in transactions in the textile and apparel, specialty food, cut flowers, and other product categories mostly under AGOA. Additionally, they continue to address sanitary and phyto-sanitary (SPS) issues, specifically in the areas of food and safety, plant and animal health, as well as working to improve protection of intellectual property rights (IPRs).

AGOA also holds relation with the Overseas Private Investment Corporation (OPIC). With a target capitalization of \$875 million, OPIC envisages the support of five new private equity investment funds focusing on SSA, to afford more investment opportunities under AGOA in the region. Further, other initiatives related to AGOA include Trade and Investment Framework Agreements (TIFAs), Trade, Investment and Development Cooperative Agreements (TIDCAs) and Bilateral Investment Treaties (BITs). In May 2009, the US signed its 11th TIFA with Angola, which joins other SSA partners such as Ghana, Liberia, Mauritius, Mozambique, Nigeria, Rwanda, South Africa, COMESA, the EAC and UEMOA, in tightening their relations with the Western hemisphere. In addition, the US has a TIDCA with Southern African Customs Union (SACU) and BITs with Rwanda, Cameroon, the Democratic Republic of Congo, Senegal, Republic of Congo and Mozambique.

BITs are deemed to promote economic growth and at the same time help protect US investment by advancing important reforms and encouraging the adoption of liberal policies that facilitate and support foreign investment. In turn, TIFAs provide a formal mechanism to address bilateral trade issues and to help enhance trade and investment relations between the US and key SSA trade and investment partners, and finally TIDCAs address issues such as customs and trade facilitation, technical barriers to trade, sanitary and phyto-sanitary (SPS) measures, and trade and investment promotion.

3. ASSESSING THE AGOA FRAMEWORK

a. Trade Performance under AGOA

Statistics reveal that AGOA has had a measurable and sizeable impact on African trade with the US since its entry into force. Overall, total US imports have increased significantly, albeit from a very low base of \$5 billion, almost five-fold until 2005, reaching over \$25 billion. Between 2005 and 2010, imports have been fluctuating, decreasing markedly between 2005 and 2006 to \$21.2 billion, on

account of the expiration of the MultiFibre Agreement, as well as a fall in world commodity prices on which almost all of the AGOA countries are highly dependent. Table 1 presents the individual trade performance of AGOA eligible countries from the inception of the AGOA to date, emphasizing US AGOA imports (excluding GSP), and summarizes the total monetary values by country at the HS 8-digit level.

Table 1: Annual US Imports from AGOA-Eligible Countries

(General Customs Value, at HTS8 Level)
(In 1,000 Dollars)

Country	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010 YTD*
Angola	0	0	0	1,349.411	3,662.774	4,127.605	3,898.345	8,119.377	3,018.965	2,520.493
Botswana	0	3.707	6.343	20.119	30.044	27.688	31.331	15.803	12.362	4.778
Burkina Faso	0	0	0	0	0	6	0	0	0	1
Cameroon	36.731	98.332	115.570	196.025	87.377	138.340	164.246	362.103	62.428	16.317
Cape Verde	0	0	2.452	2.902	2.115	85	0	0	0	0
Chad	0	0	14.438	252.904	551.662	125.792	80.397	64.563	86.924	0
Congo (ROC)	99.288	59.933	239.395	267.733	450.282	708.281	1,441.966	1,218.323	378.330	266.523
Djibouti	0	0	0	0	0	0	0	0	17	0
Ethiopia	215	1,319	1,706	3,532	3,646	5,000	4,741	9,392	6,723	3,374
Gabon	598.320	737.990	268.764	1,391.036	1,571.305	294.438	430.611	111.044	53.584	0
Gambia	0	0	0	0	0	0	0	0	0	5
Ghana	30.424	22.165	29.156	59.209	49.927	34.874	56.151	31.494	2.303	635
Guinea	0	0	0	0	0	0	27	1	1	0
Guinea-Bissau	0	0	0	26.131	0	0	0	0	0	0
Kenya	55.225	123.783	180.529	279.898	272.131	264.838	249.450	252.243	204.982	84.267
Lesotho	129.242	317.660	372.614	446.494	388.344	384.452	379.464	338.686	276.885	106.109
Madagascar	92.110	75.647	186.485	314.533	273.113	229.541	281.443	277.051	210.004	0
Malawi	24.089	53.534	58.154	37.888	41.214	26.662	28.147	26.693	42.705	15.967
Mali	0	1	0	3	0	3	9	4	62	1
Mauritius	38.874	106.499	134.958	147.822	146.815	145.858	112.354	97.291	98.747	48.406
Mozambique	0	186	2,179	2,213	2,685	781	825	129	0	184
Namibia	0	1,543	32.132	75.904	53.058	33.019	28.579	6	0	0
Niger	0	0	2	0	24	1	27	1	3	0
Nigeria	3,496.388	2,774.292	4,746.936	12,748.305	17,612.682	14,127.186	15,715.178	15,174.498	7,167.939	4,317.594
Rwanda	265	0	0	0	1	0	0	5	63	5
Senegal	0	0	11	7	9	14.239	14	10.229	1.585	5
Sierra Leone	0	0	0	3	0	0	0	0	0	0
South Africa	416.999	441.446	727.752	668.101	330.515	385.818	608.964	1,699.046	1,016.314	519.715
Swaziland	8.314	74.130	127.477	175.908	160.269	135.492	135.736	125.629	94.718	39.388
Tanzania	16	500	1,110	3,338	2,812	3,022	2,815	1,527	1,006	245
Uganda	0	13	1,444	4,022	4,854	1,490	1,189	473	222	77
Zambia	10	52	37	22	0	8	73	5	20	0
Total	5,026.510	4,892.732	7,249.646	18,473.463	25,697.660	21,214.520	23,693.785	28,000.851	12,736.892	7,944.088

Source: US International Trade Commission, 2010

Not all countries above are *current* beneficiaries of the Act, namely Madagascar, Niger and Guinea. Those beneficiaries that did not import any goods to the US until the present date have not been included.
* Denotes Year-to-Date values from January to June 2010

2009 registered an even sharper decline in US imports to a low of \$12.7 billion, most probably as a result of the financial crisis and the possible impact of stimulus packages for US producers to the detriment of AGOA beneficiaries, to name a few, although a modest rise has been noted this year. Percentage wise, import growth has not seen similar rates to the first five years: 2005 recorded a 500% growth in total US AGOA imports compared to 2001 (AGOAs first full year in effect). Further, it is evident that utilization rates vary significantly among beneficiaries with only a handful of countries such as Nigeria, South Africa, Angola, Lesotho, Kenya, Madagascar, Mauritius, Congo and Swaziland primarily reaping AGOA preference benefits.

In turn, Table 2 shows the latest (2009) annual figures of leading US imports from AGOA-eligible countries at the HS 8-digit level. Energy related products take the lion's share of imports; accounting for almost 90% of imports, at a value of \$30 billion, portraying that diversification remains an enduring challenge. After that, the next leading imports were transportation equipment (valued at \$1.4 billion, accounting for 4.2%), textiles and apparel (valued at \$918 million, accounting for 2.7%) and minerals and metals (valued at \$413 million, accounting for 1.2%). Other chief imports included: agricultural products (\$290 million), chemicals and related products (\$263 million), miscellaneous manufactures (\$43 million), machinery (\$23 million), electronic products (\$21 million) and footwear (\$494 thousand).

Table 2: Leading US Imports from AGOA-Eligible Countries
(In 1,000 Dollars)

Sector	2009 Import Value*
Energy Related Products	30.295.551
Transportation Equipment	1.436.008
Textiles and Apparel	918.240
Minerals and Metals	413.129
Agricultural Products	290.422
Chemicals and Related Products	263.462
Miscellaneous Manufactures	43.141
Machinery	23.618
Electronic Products	21.912
Forest Products	3.323
Footwear	494

Source: Compiled from official statistics of the US Department of Commerce

*These figures include GSP provisions of the AGOA act

Tadesse and Fayissa (2008) take into the account the impact of AGOA on the initiation of imports (i.e. trade initiation, when AGOA product or country imports were negligible prior to its enactment) and on the volume of exports (trade intensification), using data at the HS 2-digit level⁹. They find that a trade-intensification effect for coffee, tea, mate, spices and knit apparel, which collectively make up 15% of AGOA exports (and for 14 other HS-2 products with minimal shares). They also find evidence of substantial export initiation for 12 products, most of which had very small trade shares including cosmetics, plastics and cotton (knit apparel was also included).

Notwithstanding the prominence of energy, mineral and related products in overall US imports, the textile and apparel sector represents a rising share of US AGOA imports. In terms of sector value added and structural transformation,

⁹ Since the trade values are insignificant for many HS-2 products, those considered where those accounting for at least 2% of exports.

this sector had been touted as the primary conduit. Hence, the emphasis of the majority of assessments of this import category.

Table 3: US Textile and Apparels Imports of AGOA-Eligible Countries
(General Customs Value, at HTS8 Level)
(In 1,000 Dollars)

Country	2001	2002	2003	2004	2005	2006	2007	2008	2009	YTD*
Botswana	0	3708	6344	20118	30043	27687	31333	15802	12361	4778
Burkina Faso	0	0	0	0	0	6	0	0	0	1
Cameroon	0	0	0	0	0	0	0	0	35	33
Cape Verde	0	0	2.452	2.902	2.115	85	0	0	0	0
Ethiopia	163	1297	1684	3327	3509	4872	4560	9357	6619	3312
Ghana	0	324	4.254	7.099	4.986	8.807	7.517	766	275	596
Kenya	51.684	121.312	176.224	271.480	266.615	258.905	244.778	246.154	194.834	79.447
Lesotho	129.242	317.660	372.614	446.494	388.344	384.452	379.464	338.686	276.885	106.109
Madagascar	92.048	75.415	186.253	314.185	272.962	229.499	281.432	277.036	209.943	0
Malawi	4.696	11.402	22.388	25.485	22.450	18.187	19.824	12.671	9.015	3.619
Mali	0	0	0	0	0	0	0	2	0	1
Mauritius	38.874	106.498	134.958	147.798	146.811	145.776	112.346	97.016	98.622	48.251
Mozambique	0	187	2179	1805	2512	658	161	0	0	0
Namibia	0	1539	32131	75906	53058	33010	28576	0	0	0
Nigeria	0	0	0	0	0	18	0	0	0	0
South Africa	30.487	85.261	126.885	114.616	61.621	41.978	21.335	15.955	10.114	2.200
Swaziland	8.195	73.719	126.841	175.641	159.175	134.486	134.533	124.412	94.164	39.280
Tanzania	0	124	851	2520	2811	2994	2810	1501	996	245
Uganda	0	0	1414	4010	4840	1253	1134	403	138	57
Zambia	0	0	0	22	0	7	0	0	0	0
Total	355,389	798,446	1,197,472	1,613,408	1,421,852	1,292,680	1,269,803	1,139,761	914,001	287,929

Source: U.S. International Trade Commission (2010)

* Denotes Year-to-Date values from January to June 2010

These figures are that of AGOA excluding GSP

Table 3 illustrates trade flows from all AGOA-eligible countries regarding textiles and apparel (excluding GSP) at the HS 8-digit level, throughout the life of the act to date (recently non-eligible countries such as Madagascar have been included to provide a holistic assessment of benefits reaped since AGOA's inception). In terms of overall imports, there has been a significant supply response during the years 2001 and 2004, from \$355 million to \$1.6 billion, amounting to an over 400% increase. There has been an evident economic payoff for countries such as Kenya, Lesotho, Madagascar, Mauritius, South Africa, Swaziland, Botswana, and to a lesser extent Ghana, Ethiopia, Malawi, Tanzania, Uganda and Cape Verde. There was a sharp decline in 2005 to \$1.4 billion as the effects of the MFA expiration began to be felt. Since then, textile and apparel imports have been gradually declining to a low of \$914 million in 2009, although this is still higher than 2001 levels. More importantly, preference utilization is essentially limited to thirteen countries only, less than half of textile and apparel beneficiaries (as has been noted in previous sections, there are special rules that apply for textile and apparel eligibility).

In terms of sector value added, the expansion has primarily been in the apparel sector with a small increase in the value-added in the sugar-related sectors.¹⁰ Furthermore, the benefits to African economies should not be overstated.¹¹ For instance, although Kenya appears as a major beneficiary in the sense that clothing exports to the US rose four-fold, this was from a minimal pre-AGOA base and the majority of firms involved are recent entrants, non-Kenyan

¹⁰ See Guseh and Emmanuel (2009)

¹¹ See Stevens and Kennan (2004).

arrivals located in export processing zones. Another instance is that of Lesotho where clothing exports under AGOA are ‘cut, make and trim’ by subsidiaries of (primarily Asian) multinationals which provide all the inputs; there are limited linkages to the local economy and the exports are susceptible to modifications in AGOA rules of origin. Almost half of South Africa’s clothing exports to the US do not avail themselves of AGOA preferences due to producers finding it more cost-efficient to import textiles (primarily from Asia, especially China) and hence do not meet stringent rules of origin requirements. By some estimates, benefits of AGOA for Africa would be approximately five times greater if exporting countries were not subject to restrictive rules of origin.¹² Although AGOA has helped to increase exports, it is far from evident that it has helped to establish a viable, sustainable and competitive export sector in SSA, not least due to its limited and uncertain ‘window of opportunity’ faced by investors as will be further explained in the following section.

In sum, although AGOA has met one of its objectives of increased exports, it appears that it has not succeeded in meeting its primary goal of lasting export diversification as the much lauded textile and apparel sector accounts for less than 3% of US imports currently. Sustainable long-term economic growth and development entails structural transformation of the economy, which persists as an intractable Sub-Saharan African challenge.

b. Current discussions on AGOA

Both the US and Africa see optimism in fostering closer trade and investment ties between the two regions through AGOA. However, perspectives as to its benefits and challenges thus far differ. The present chapter covers these differing views of the Act.

i. US Perspective on AGOA

From the perspective of the United States, AGOA continues to have a profound and positive impact on US – Sub-Saharan Africa (SSA) trade and investment. It has expanded the two-way economic relationship, providing duty free access for over 6000 products from the 38 AGOA-eligible countries. It has stimulated new trading opportunities for businesses, created tens of thousands of jobs, and brought millions of much-needed investment to Africa. Total trade (exports plus imports) between the two regions has nearly tripled since 2001. Since then, AGOA and General System of Preferences (GSP) imports have increased more than five-fold, reaching \$44.2 billion in 2007¹³. Non-oil imports more than doubled registering \$5.1 billion in 2008. The US merchandise trade deficit with SSA continued to widen in 2008 to \$67.5 billion, up from \$53 billion in 2007.¹⁴

¹² See Matoo et. al. (2006)

¹³ USTR (2008).

¹⁴ US Department of Commerce (2009).

By complementing GSP market access, AGOA has opened the US market to almost all goods produced in AGOA-eligible countries and has helped to increase both volume and diversity of US – SSA trade. It has provided new market opportunities for African exports, particularly those of non-traditional and value-added products, and as such has aided African firms to produce higher value products and become more competitive internationally. This has boosted African economic growth and contributed to poverty alleviation.

Being SSA's leading export, oil has also been the primary export commodity under AGOA, with Nigeria, Angola, Chad and Gabon as the main AGOA beneficiaries. However, AGOA's primary focus has continuously been export diversification and hence, the Act has facilitated sizeable export growth across a wide range of non-oil products such as apparel, chemical products, footwear, machinery, electronics, toys, sportswear, fruits, nuts and cut flowers.¹⁵ The number of countries exporting non-oil products has gradually risen since the enactment of the legislation. Noteworthy among these are South Africa, Botswana, Cameroon, Ethiopia, Ghana, Madagascar, Rwanda, and Tanzania. Other major non-oil exporters include Kenya, Lesotho, Mauritius, Malawi, Namibia, Swaziland, and Uganda.

In addition, by offering incentives and support for African economic reforms, AGOA fosters an improved business environment in numerous African nations by undertaking concerted efforts to forge closer cooperation between the government and private sector to improve infrastructure, eliminate bureaucratic red-tape, facilitate customs procedures, and build experience in producing and marketing value-added products for the US market.¹⁶ This has also aided the creation of new opportunities for US foreign direct investment (FDI). Africans are increasingly seeking US inputs, expertise, and joint-venture partnerships. The US has been a leading provider of FDI to Africa. By 2007, its direct investment position was \$13.8 billion, a 52 percent rise from 2001, which is indicative of more Africa trade support and an enhancement of US-African business partnerships.¹⁷

¹⁵ US Department of Commerce (2009).

¹⁶ In general, the latest 2010 figures show that economies with higher rankings regarding their business regulatory environment seemed to have benefited more from AGOA, although there are notable outliers. Mauritius, South Africa, Botswana, Rwanda, Ghana, Kenya and Ethiopia to name a few scored higher in the *ease of business index* compared to their counterparts. However, other major AGOA beneficiaries such as Nigeria, Angola and Gabon scored lower. With regards to the *trading across borders sub-index*, the dynamic changes, with Togo, Liberia, Senegal, being economies which have not profited as much from AGOA, scoring higher points than the primary AGOA beneficiaries mentioned above. According to the *Logistics Performance Index (LPI)*, the results are mixed. More than half of the economies which improved the most were those that did not gain most from AGOA; however, Mauritius, Ghana, Uganda and Tanzania demonstrated significant progress. A number of chief beneficiaries' LPI index actually worsened, noteworthy examples including Angola, Ethiopia and South Africa.

¹⁷ Overall African FDI inflows rose to a high of \$88 billion in 2008 resulting in an increase of FDI stock to \$511 billion, although the latter part of year registered a slowdown on account of the global financial crisis. SSA attracted 73% of these flows in 2008, up from 64% in the previous

Among the numerous and diverse AGOA successes the US lauds, the following are noteworthy: South Africa exports the widest range of AGOA products including luxury automobiles, citrus fruit, wine, and footwear; Lesotho has become the leading SSA exporter of apparel to the United States; Kenya's AGOA exports include fresh cut roses, sporting fishing supplies, nuts, plastic products, jewelry, and essential oils, as well as apparel; Ghana's value-added export under AGOA include chocolates, jewelry, baskets, and preserved pineapple. Furthermore, numerous African businesses, which prior to AGOA had never considered the US market, are attending trade shows and receiving export orders for various products ranging from Ugandan organic cotton T-shirts to Mauritian seafood, Malian tote bags, and Ethiopian flowers.

Further, some of the successes the US attributes to ACGI hubs mentioned in the previous section 2 include: strengthening the beef and cattle sector in Botswana, providing assistance to Ugandan pest regulatory framework, standardizing customs in South Africa, improving financing in West Africa, helping Rwanda make inroads into US specialty coffee market, aiding e-commerce in cargo transportation and assisting implementation of an IT Corridor in East and Central Africa.¹⁸

At the previous AGOA Forum of 2009, the US also noted that challenges remain in realizing the full potential of AGOA. It affirmed its commitment to provide more trade capacity building assistance and "aid for trade" to African countries as well as aiding their regional integration efforts. However, it continues to call on the region to do its part by increasing diversification efforts as well as competitiveness through improved African business and investment climate, private sector involvement, which may in turn nurture joint entrepreneurial initiatives. This is viewed as critical for developing joint ventures in specific product sectors with US - African investors and companies, which may create opportunities for increasing vertical integration of companies that add export value; removing trade barriers affecting US exporters and implementing other necessary reforms so as to increase trade; improve infrastructure; adopt and meet international standards; and finally, address other numerous supply-side challenges. In conclusion, it is through shared responsibility that AGOA may catapult long-term sustainable growth in SSA.

ii. African Perspective on AGOA

From the African perspective, a rise in trade between the US and SSA has also been attributed to AGOA. Trade is seen as an engine for sustainable economic growth and poverty alleviation, thus the potential of AGOA in

year. The main sources of FDI in the region have remained the traditional developed-country investors, in particular the United States, the United Kingdom and France, although the involvement of emerging developing countries from Asia has been growing gradually of late. For instance, Chinese FDI registered a marked increase in Nigeria between 2007 and 2008, as has been the case in Uganda and Madagascar.

¹⁸ For details, see *The African Growth and Opportunity Act: Achieving Success through the African Global Competitiveness Initiative (2006)*

removing single-commodity dependency¹⁹ and lack of value added²⁰ is pivotal. However, trade between the two regions still remains low and highly concentrated in oil and oil-related products, despite a modest increase in non-oil exports since the inception of AGOA.

Improving AGOA utilization by beneficiary countries is still seen as a major challenge. Although an increase in apparel and agricultural goods under AGOA has been observed, the need for export diversification remains. Furthermore, AGOA lacks sufficient coverage of products with are of export interest to African exporters, particularly agricultural goods and textiles²¹. This calls for ‘meaningful rules of origin’²², especially in the textile sector, and clear sanitary and phyto-sanitary standards and requirements such as those for product visas. Some of the key issues which hinder US market penetration are annual AGOA eligibility reviews. These create uncertainties which in turn impede African countries from realizing the full potential of AGOA. In addition, US investment appears to be limited in extractive industries to the detriment of the manufacturing, agriculture and tourism sectors, thereby limiting AGOA’s potential of directly enhancing Africa’s industrialization efforts.²³

¹⁹ The lion’s share of export income continues to be accounted for by few export commodities in the majority of African countries. The latest figures show that out of 45 primary commodity exporting nations, 34 countries depend on three or less commodities and 23 fully depend on one commodity. For details, see UNCTAD (2008).

²⁰ “Africa only gets 10% of value when raw materials are exported.” Quote from AGOA 2007 Forum, The Whitaker Group, US Private Sector.

²¹ AGOA provides duty and quota-free benefits for handloomed, handmade, folklore articles, or ethnic printed fabrics, made in beneficiary sub-Saharan African countries. This provision is known as ‘Category 9’. However, numerous textiles in this category remain excluded from AGOA benefits.

²² Often, rules of origin are so restrictive that they create unnecessary obstacles to trade and thus lose their ‘meaning’ .i.e. instead of serving their primary purpose of preventing trade deflection and, arguably, fostering industrialization in developing countries through the development of vertically integrated production structures domestically, preference receiving countries often cannot comply with such strict rules or can only do so at a prohibitive cost, therefore losing the benefit of the preference. Although there is no simple answer to finding the optimal rules of origin which strike a balance between costs imposed on the recipient on the one hand and providing incentives to add value to the recipient on the other, African country experiences thus far have not been favorable.

²³ Data from the *World Investment Report 2009* shows that a large share of African FDI inflows continues to be in the form of greenfield and expansion projects prospecting for reserves of base metals and oil, in addition to some investments in infrastructure development, thus a notable bias to the extractive industries. FDI inflows to the region were not evenly distributed, being largely concentrated in a few natural-resource-rich countries, targeting petroleum/oil exploitation and other mining activities. The main recipients included Angola, Nigeria, Guinea, Equatorial Guinea, the Democratic Republic of Congo and South Africa. In West Africa, the significant increase from \$18 billion in 2007 to \$26 billion in 2008 was mainly a rise in new projects in Nigeria’s oil industry and investments in mining industry project upgrades. In Central Africa, most of the \$6 billion investments were directed towards Congo and Equatorial Guinea in the primary sector. In East Africa, the lion’s share of 2007 and 2008 \$4 billion FDI inflows were primarily in expansion projects relating to several natural resource exploitation ventures. In Southern Africa, although Angolan FDI was linked to the extractive industry, cross-border M&As (Mergers & Acquisitions)

Finally, just as preferential trade schemes such as AGOA are a crucial contribution to development efforts, they also harbor preference erosion as these proliferate and there is a generalized fear among African countries that their preferences will be diluted as development partners such as the US and European Union (EU) engage in negotiations at the bilateral, regional and multilateral levels with other beneficiaries. Hence, there is a need to enhance and safeguard the current benefits of AGOA beyond its expiration in 2015.

c. AGOA and the Generalized System of Preferences of the WTO

The World Trade Organization (WTO) abides by a core set of rules which govern international trade among its Members States. These rules are the pillars for a more transparent, predictable and rules-based multilateral trading system since the formal adoption of the Uruguay Round Agreements in 1994. Two core principles of the multilateral trading system are most-favoured nation (MFN) and national treatment (NT), which ensure non-discriminatory treatment among the 150+ members for trade in goods under the General Agreement for Trade in Goods (GATT 1994).

An overarching exception to such non-discriminatory treatment in the WTO is contained in the “Enabling Clause”, a legal provision which allows for deviations from the norm.²⁴ The Enabling Clause explicitly sets out the conditions under which developed Member States may circumvent general obligation to confer Special and Differential Treatment (SDT) to developing and least-developed countries (LDCs). In other words, the Enabling Clause allows for the violation of MFN and NT principles for the sake of preferential market access to the developing world. There are several modalities through which developed countries may offer SDT; however, the most important mechanism is the Generalized System of Preferences (GSP).²⁵

The foundations for establishing a GSP originated under the auspices of the United Nations Conference for Trade and Development (UNCTAD) in the

were a very important aspect of South African FDI. However, such investments are clearly in the minority in terms of overall African inflows. Market access initiatives such as AGOA are supposed to aid the region attract FDI into the manufacturing sector, although many African countries are unable to exploit these opportunities adequately given that they face constraints relating to domestic costs and capacities. Some investments aimed at taking advantage of textile exports to the US under AGOA continued to be withdrawn in 2008 as the expiration of the MFA in 2005 led to a rise in production costs in the host economies, whereas Asian locations proved more competitive. See UNCTAD (2009), Ch. 2 for details.

²⁴ The Enabling Clause is formally known as the *Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries*, adopted in 1979. It was preceded by the *Waiver Decision on the Generalized System of Preferences, 25 June 1971*, better known as the “1971 Waiver”, which exempted developed countries from the MFN obligation to provide SDT to developing countries through the GSP for a 10-year period.

²⁵ For a categorization of such modalities see Kessie (1999 and 2000).

1960s.²⁶ The rationale behind the GSP was to encourage export-led growth and economic development of developing countries by providing these with more advantageous trading conditions, enabling them to compete in international markets and to obtain greater export earnings. Further, any treatment conferred under the GSP had to be mutually acceptable and is of a non-binding and temporary nature. These principles still guide the GSP as of today. Thus, the GSP not only recognizes the crucial role of international trade for development, it also acknowledges the disadvantages developing countries face when trading under equal terms with developed countries, by providing preferential market access to overcome these disadvantages.

The main principle of the Enabling Clause for affording SDT through the GSP is contained in paragraph 2 (a), footnote 3, which states that the granting of preferences on behalf of developed countries to goods stemming from developing countries should be done in a *generalized, non-reciprocal and non-discriminatory* basis. In other words, the language of the Enabling Clause seems to suggest that for a GSP scheme to be consistent with WTO law, preferences must be granted on an equal basis and in a manner that does specifically exclude certain developing country members or groups, does not demand or generate the expectation of preferential treatment in return, or accords differentiated treatment which may lead to discrimination among these countries.

As such, the Enabling Clause does not establish criteria to qualify or distinguish between developing countries. It is based on the principle of self-nomination, meaning, countries may self-proclaim themselves as developing nations. This contrasts with the concept of LDCs, which are nominated on the basis of a set of defined criteria by the United Nations, and which are also beneficiaries of GSP schemes under the Enabling Clause.²⁷ Nonetheless, several GSP mechanisms under the WTO do differentiate among developing countries, as is the case of AGOA, which, not only discriminates among developing countries, but also establishes a set of conditionalities, as was briefly explained in section 1 of this paper.

Differentiation and conditionalities under certain GSP schemes have led to a heated debate and even legal challenge through the WTO Dispute Settlement Mechanism.²⁸ With regards to differentiation, some developing countries have questioned the consistency of the European Communities' GSP, which similar to AGOA, provides unilateral market access for exports of developing countries.²⁹

²⁶ A key instrument laying the foundations of the GSP are the *Agreed Conclusions of the Special Committee on Preferences*, which originated from deliberations under UNCTAD's First and Second Sessions, held in 1964 and 1968, respectively.

²⁷ For a list of the 49 LDCs as well as defining criteria see: <http://www.un.org/special-rep/ohrls/ldc/list.htm>.

²⁸ Much has been written on this regard, for example Mason (2004) and Howse (2003), are scholars which question the legal and moral basis of the differentiated and conditional GSP treatment.

²⁹ India challenged the EU GSP, arguing an export loss worth USD 300 millions due to more favourable treatment conferred to Pakistan. The Panel and Appellate Body of the WTO ruled in

As a result of the legal rulings, the WTO has argued that developed countries should not discriminate among developing countries when conferring preferences and that this should be done on an equal basis. This sets a legal precedent for questioning other unilateral preferential trade schemes, such as AGOA, which exclusively targets African countries and also distinguishes among them on the basis of their level of economic development and fulfillment of a set of conditions.

Advocates of differentiation argue that different treatment under the GSP does equate discriminatory treatment, so long as the condition of paragraph 3 (c) of the Enabling Clause is respected, and which establishes that any SDT must respond positively to the *development, financial and trade needs of developing countries*. In other words, if a GSP schemes which differentiates among developing countries does contribute to the improvement of development, financial and/or trade of beneficiaries without resulting in discrimination, then it may be duly justified. However, it is very difficult to observe and establish a direct link between such measures within a GSP scheme and an improvement of development, financial and trade conditions of developing countries.

In summary, from the present analysis, the US GSP³⁰ including AGOA differentiates among beneficiaries on 3 levels, namely by: (i) grouping developing countries into regions; (ii) imposing conditionalities such as labor and political requirements and (iii) graduating countries on the basis of economic development parameters.³¹ There are serious grounds for incompatibility between AGOA and the WTO GSP, since this differentiation violates the basic principle of affording SDT in a *generalized, non-reciprocal and non-discriminatory* manner, as is established in the Enabling Clause.

In this sense, even though the WTO recently passed a waiver for AGOA,³² developing countries members have the alternative of challenging it under the Dispute Settlement Mechanism, as India did recently with the EU GSP. In the past, China has been opposed to the extension of the preferences given to African countries by the US under AGOA and this opens the door for the possibility of a dispute on the consistency of AGOA under the WTO. This calls for reflection of a critical revision of this preferential scheme, especially given the unilateral, non-permanent and conditional nature of AGOA, as well as the high costs of adherence conditionalities and differentiation represent for sub-Saharan African beneficiaries.

favor of India. See *WTO Appellate Body Report on European Communities -Conditions for the Granting of Tariff Preferences to Developing Countries*.

³⁰ The US GSP includes AGOA, Caribbean Basin Economic Recovery Act (CBERA) and Andean Trade Preferences Act (ATPA).

³¹ See Manson (2003), pp. 521-526 for a detailed legal analysis.

³² The WTO Council for Trade in Goods in its session of the 24th March 2009 approved the request of the US dating back to 2005 for a waiver for the US GSPs. See WTO (2009).

d. AGOA and other Trade Preference Schemes

There are several GSPs schemes which, similar to AGOA, provide trade preferences to African countries. Notable among these are the European Union's GSP scheme, which includes a standard GSP, and the Everything But Arms Initiative. A common denominator of these schemes is their unilateral, temporary and conditional character.

A first strand of the EU GSP scheme is the Everything But Arms Initiative (EBAs). The EBA is an initiative of the EU to grant LDCs more favorable and differential treatment than the rest of the developing countries. Currently, 33 African countries benefit from the EBA. It is the most favorable regime currently available for developing countries when compared to other GSP schemes such as AGOA, providing duty-free and largely quota-free access for 7,140 products from LDCs, with the exception of arms and ammunitions.³³ Despite these laudable international cooperation efforts, empirical research indicates that LDCs have not been able to fully take advantage of these preferences.³⁴ Arguably, this may be partly due to some quantitative restrictions on products with export potential for (African) LDCs, namely sugar and rice, and which were only recently phased out in 2009, in addition to the well-known supply side constraints of LDCs, complex rules of origin and NTBs of the EU markets. Further, though there are no conditionalities under this scheme, countries are subject to graduation once these are no longer categorized as LDCs according to the UN list of LDCs, as was the recent case of Cape Verde in 2008, which has been given a transition period for the phasing-out of its preferences until the end of 2010. Similar GSP schemes for LDCs are offered by Canada, Japan and South Korea, and China and India have also announced trade preference schemes for LDCs.

The second strand of the EU GSP scheme is known as the general or standard GSP, which is accessible to 176 developing countries. It offers preferential market access for 6,244 products covered by over 6,200 tariff lines. This general GSP is less advantageous than the EBA, in that it provides market access on the basis of product types. Correspondingly, "non-sensitive products" from developing countries enjoy duty-free market access conditions, as opposed to "sensitive products" which are subject to below MFN tariffs.³⁵ As with AGOA, this scheme envisages conditionalities and graduation as well as similar product coverage. However, the EU scheme is less restrictive given more favorable tariff conditions for "sensitive products", as opposed to AGOA which establishes volume caps on apparel imports from beneficiaries.³⁶ In this sense, when African

³³ Product coverage of the EBA is of 100%. For details on the special arrangement for LDCs, see Regulation (EC) No 980/2005 and No 2501/2001.

³⁴ See Brenton (2003) and also Center for Global Development (2010).

³⁵ See Council Regulation (EC) No 2501/2001.

³⁶ In essence, volume caps function as quotas and have more restrictive effect than tariffs. From a political economy perspective tariffs, will punish the least competitive of the producers and, though prices may rise, they generate revenue which can be used to cushion against trade

exports surpass these thresholds, they are subject to normally applicable tariffs and have to compete with more competitive exports.³⁷

Finally, a third strand of the EU GSP scheme is the Preferential Duty Regime for African, Caribbean and Pacific States (ACP), which offers preferential tariffs to countries from these three regions through respective ACP-EU agreements known as Economic Partnership Agreements (EPAs).³⁸ Though formally not conceived as GSP because of their reciprocal nature, these agreements are being negotiated to replace the previous trade provisions under the former Lomé Convention with a new trade regime which includes market access and rules of origin provisions through three preferential duty regimes, as follows: i) Comprehensive EPAs; ii) Interim EPAs (IEPAs), and iii) application of the general GSP arrangement for countries (or EBA in the particular case of LDCs) which have not concluded relevant EPAs or IEPAs negotiations. African countries are mostly scattered across the second and third regimes, whilst few are in the midst of negotiating comprehensive EPAs.

There is a fundamental difference between these EPAs and AGOA, in that EPAs are *bilateral* agreements negotiated by both parties, which generate binding commitments based on reciprocity, whereas AGOA is a *unilateral* arrangement affording preferences to African countries. From a legal perspective, both parties to an EPA are held accountable for the observance of the agreement. In principle, because an EPA agreement is legally enforceable, any party may seek legal redress if the other party violates or fails to comply with the agreement. With AGOA, preferences may be terminated unilaterally, without prior consultation. In this sense, EPAs may be viewed as superior to AGOA, even though in terms of preferences, the latter may render more market access opportunities for African exports than the former.

Finally, in addition to the EBA and the general GSP scheme, the EU also has a GSP+ scheme which offers additional tariff reductions for 6,336 products from developing countries complying with a set of (positive) conditionalities. Under these conditionalities beneficiaries are “vulnerable” countries in terms of their size or limited export diversification and have to comply with a set of human rights, labor, sustainable development and good governance standards. Though currently no African countries benefit from this regime, the list of countries is subject to continuous review and is open to those African non-LDCs which are not negotiating EPAs or IEPAs. As mentioned before, the US GSP – including AGOA – applies negative conditionality, meaning preferences which apply to all beneficiaries are either withdrawn or refused, as opposed to the “positive

distortions, whereas the rents of quotas only accrue to domestic producers, distorting competition and foregoing revenue generation which may be redistributed.

³⁷ For example, apparel from African countries made with regional yarn is subject to a cap of 7% of all apparel articles imported to the US, as per AGOA II and a 3.5% volume cap for the third country fabric provision, as per AGOA IV.

³⁸ The Conotou Agreement of 23 June 2000 lays the legal foundation for the ACP-EU EPAs for a period of 20 years.

conditionalities” approach of EU GSP+ scheme, which offer additional benefits to compliant countries. While the former type of conditionalities erode the beneficiary status of a country, the latter type can arguably promote further compliance to a set of desirable performance parameters.

In conclusion, there are several GSP schemes which are afforded to African countries. Though they may share the same purpose and are unilateral, temporary, conditional in their nature, these foresee variable product and country coverage. In this myriad of preferences, AGOA appears to be one of the more stringent schemes, burdening beneficiaries with compliance requirements and unpredictable market access opportunities for their products. This begs the question of how countries may be best equipped to overcome these burdens in order to harness the potential of improved trade, investment and employment opportunities offered by AGOA.

4. CHALLENGES OF A POST-AGOA FRAMEWORK

Having reviewed and compared some of the preferential trade schemes applying for African countries with the AGOA preferences, and given its temporary, unilateral and conditional nature, the question of a post-AGOA scenario arises. What are the main challenges the expiry of such preferences may pose on the African continent? What could be reasonably expected beyond 2015 if AGOA is not renewed? How could Africa fare under this scenario? This section seeks to address these questions by focusing on the challenges a post-AGOA scenario may raise in terms of preference erosion, loss of FDI and employment opportunities.

a. Preference Margin Erosion

AGOA affords duty free and largely quota-free access with 98% product coverage. Despite this broad coverage, there are important exclusions on specific agricultural products, such as sugar, peanuts, dairy and tobacco, which are among the main revenue generating exports sustaining many African countries.³⁹ Nonetheless, it sets the framework for market access to one of Africa’s most important export markets.

The margin of preference currently afforded to African countries under AGOA is of 7.7%, while the average duty on excluded products is above 30%.⁴⁰

³⁹ Cote D’Ivoire, Burkina Faso, Cameroon, Ghana, Malawi, Mauritius, Uganda and Zambia are among the countries which export these goods.

⁴⁰ A preference margin can be defined as the additional preference to that which is conferred on a most-favoured nation basis to a beneficiary. It is measured as the MFN tariff minus the preferential tariff, both generally being expressed as specific tariffs (or the specific tariff equivalents of the actual *ad valorem* tariffs). See Tangerman (2002) for further explanations.

These preference margins are rather low⁴¹, given that products liberalized under AGOA already enjoy duty and largely quota-free access under the US GSP, which washes down any preferences for African nations as they compete with other beneficiaries, such as Cambodia and Bangladesh in the particular case of textiles.⁴² Moreover, preference-receiving countries do not fully reap the preference margins under AGOA due to the presence of intermediaries such as transport and logistics companies, importers with market power and administration costs.⁴³ In addition, these preferences are further washed down by US subsidies for domestic producers, such as the cotton subsidies. These subsidies artificially lower world cotton prices, thereby reducing revenues of African cotton exporters with negative spillover effects on the development of a textiles and apparel sector in Africa.⁴⁴

For agricultural commodities, AGOA adds 541 products to the 519 which already benefit under the US GSP, which again means that the preference margin on half of these goods is permeated when preferential treatment is afforded to other non-African developing countries. Furthermore, more than 200 tariff lines, representing 17% of the total number of dutiable agriculture tariff lines, do not enjoy preferences neither under AGOA or the US GSP. Products under this last group are also subject to considerable tariff escalation, eliminating virtually any market access opportunities for African agricultural products.⁴⁵

Currently, over 82% of the goods entering the US under AGOA are petroleum, followed by mineral products. These stem from a handful of SSA countries. Woven and knit apparel, which are ranked 6th among the top 10 exports, barely report 1.3% of US imports from Africa, followed by ores, cocoa, organic chemicals and gases.⁴⁶ Putting this in context, total US apparel imports during that same year were valued at \$93 billion, of which SSA accounted for \$1.1 billion (i.e. 1.26 % of the total market). This sum becomes even more modest

⁴¹ For a substantive discussion on the level of preference margins afforded under GSPs such as AGOA and their effects on specialization, see Hoekman, Martin and Braga (2008).

⁴² Gibbon (2007) notes that in the first years of AGOA when the MFA was still in place (i.e. 2000-2004), African countries were waived of paying the quota of US\$2-3 per dozen of cotton products, as well as an average tariff rate of 17% of landed value on clothing.

⁴³ See Francois et al. (2005). African exporters assume but a third of available rents from exports of clothing under AGOA (Ozden and Olarreaga, 2005).

⁴⁴ Competition in the US market for Africa's cotton exports are greatly distorted by US subsidies. An Oxfam study on the US market points out that American cotton producers receive an annual subsidy of three billion dollars which, if removed, would raise the price of cotton by 6-14%, which in turn would allow West African producers to gain 5-12% on the value of their cotton exports. See OXFAM (2002). A more recent study on the price effects of US subsidies on cotton argues that if the US had agreed on the subsidy cuts suggested by African countries, world prices of this commodity would have risen by 6%, thereby bringing significant gains to cotton farmers in the developing world. See Jales (2010).

⁴⁵ See Ghanaian Chronicle (2007).

⁴⁶ Africa exports to the US are highly concentrated among Nigeria, Angola, South Africa, and Republic of Congo), accounting for 83.7% of U.S. imports in 2008. Of these countries, only South Africa is a non-oil producer, exporting platinum, diamonds, vehicles, iron and steel. Other top oil exporters are Equatorial Guinea, Chad and Gabon. See US Department of Commerce (2009).

if we consider that Bangladesh alone exported \$3.5 billion worth of apparel, which is more than double the total SSA apparel exports.⁴⁷ Thus, the expectation of AGOA creating an opportunity for manufactured and more diversified exports for a great majority of its beneficiaries is yet to be fulfilled and calls for an improvement of the current conditions so as to afford meaningful market access opportunities in US markets.

And yet, despite the daunting reality of an unchanged structure of African exports to the US, there is evidence that some countries have managed to diversify their exports, create jobs and attract FDI, particularly in the textiles and apparel sector, such as Lesotho, Kenya, Madagascar and Swaziland.⁴⁸ Further, some countries have also taken advantage of AGOA to promote S-S trade and FDI and create value chains, which in turn have been catalysts for regional integration, as has been the case of cotton exports from Tanzania to Kenya for textile production, or the example of South Africa and Mauritius which have invested in the textile sector in other African countries, in addition to other countries such as France, Taiwan, China, Hong Kong, Singapore, India, Bahrain and Israel. Finally, some countries have also managed to diversify their exports to include agricultural products, such as South Africa, Kenya and Mauritius.⁴⁹

It is in the light of these examples and potential in Africa that a phase-out of AGOA calls for reflection. Countries which have not benefited from AGOA so far (approximately 50% of SSA beneficiaries) will not harness trade, FDI and job creation opportunities afforded by AGOA if it is not renewed. Equally, SSA beneficiaries already benefiting from AGOA will most likely lose both traditional and newly gained markets to competitors once preferences expire.

b. FDI Diversion and Specialization

Most of the discussions about AGOA have tended to focus mainly on the trade dimension. One of the successes highlighted from the African perspective is that AGOA-inspired exports have risen from US\$21 billion in 2000 to US\$86 billion in 2008. While most of the export gains for Africa have been in the oil-sector, there has also been significant growth in some non-oil African exports. The automobiles sector in South Africa and the textiles and clothing sectors of Kenya, Mauritius, Lesotho and Madagascar have thrived, spurred-on by the AGOA preferential terms. Automobile and transport related exports from South Africa to the US have risen phenomenally from US\$148 million to US\$1.9 billion. African exports of apparel articles have risen from US\$350 million in 2000 to US\$1.3 billion at the peak of AGOA, before the expiry of the Multifibre

⁴⁷ See Kimenyi (2009).

⁴⁸ For example see Lall (2003) and Gibbons (2003b) for empirical evidence. Other countries which are reported to have also benefited from the visa systems qualifying them to duty-free access to the U.S. market through the special rule for apparel, though arguably with less success, have been: Ethiopia, Malawi, Mauritius, Rwanda, Uganda and Zambia. For a complete list see: <http://www.agoa.gov/AGOAEligibility/index.asp>.

⁴⁹ See Thompson (2004) and Ahmed et al. (2003).

Agreement (MFA)⁵⁰ fostered deeper competition from Asian countries such as Bangladesh. In 2009, African apparel exports under AGOA were worth US\$900 million. Therefore, in a sense, though concentrated in product and origin portfolio, AGOA has nonetheless helped in the diversification process, though at a weaker pace than was anticipated.

The other side of the story is that besides promoting trade between the US and Africa, AGOA is also expected to be a catalyst for investments in Africa. Domestic and foreign investments aimed at taking advantage of the AGOA preferences are expected to crowd-in additional investments from the US. Specifically, as the African producers expand their production in order to increase their market shares, US and non-US investors are expected to play a significant part in this.

On the investment front, it is also a challenge to attribute FDI flows specifically to AGOA. However, in its early days, as benefiting countries built small industries especially for textiles and apparel, there are figures that indicate that more than US\$1 billion FDI flows stemming from the US were directly related to AGOA.⁵¹ An increase in export-oriented FDI linked to AGOA has certainly taken place⁵² as UNCTAD (2002) notes:

- A US company investing in a tuna processing plant
- In Malawi, AGOA has led to FDI in two garment factories by European and Taiwanese companies and the creation of at least 4350 jobs. It was estimated total employment would increase by 10, 000 for a total of 20,000 workers
- In Mauritius, FDI worth \$78 million took place. Prospects of Asian and European companies building cotton-yarn spinning mills were strong.
- In Senegal, a leading Senegalese apparel and textiles company planned to enter into a partnership with a US textile manufacturer and a Malaysian firm to export to the US with a potential creation of 1,000 jobs.
- In Tanzania, a textile mill was expanded in partnership with a US firm involving 1,000 jobs

⁵⁰ The Multifibre Agreement (MFA) under the WTO established a temporary regime for trade in textiles, which allowed member countries to apply quota restrictions to avoid surges of textiles and apparel imports through “grandfather clauses”. The MFA was to be phased out in 2004. Its expiry was supposed to help African and other developing countries ensure market access to those countries which had “grandfather clauses” for their domestic market. However, the downward trend of Africa’s trade in these markets after the phase-out of the MFA, is indicative of a loss in market share to other competitors, once the playing field for textile trade was “leveled”. Thus, contrary to the general perception prior to the MFA phase-out, it was only beneficial for the more competitive Asian exporters and not for Africa as a whole.

⁵¹ According to the US Department of Commerce (2009), major destinies of FDI stocks from the US in 2007 were South Africa, which received 36.5%, followed by Mauritius (21.9%), Equatorial Guinea (16.2%) and Angola (6.6%), Liberia (3.4%) and Gabon (3.2%). The rest of AGOA beneficiaries received the remaining 12.2% of FDI stock.

⁵² See Lall (2005) and Roberts and Thoburn (2003)

- In Cape Verde, a fish-processing company was acquired by a US company, and two new Portuguese investments in the garment industry were announced.
- In South Africa, the establishment of a new \$100 million clothing facility by Malay investors expected to employ 13,000 workers.

Comparisons of pre-AGOA and post-AGOA (2004-2005) demonstrated an increase of inflows by up to 77% in the AGOA countries rising from \$7.1 billion (1999-2000 average) to \$12.5 billion (2004-2005 average).⁵³ According to UNIDO, between 2003 and 2005, developing country investors doubled their employment in Africa. In addition, there is also evidence of Southeast Asian FDI in garment manufacturing factories, which also benefit under the AGOA provisions.⁵⁴ Transnational corporations from mainland China, Hong Kong, Singapore and Taiwan have been among the most active investors,⁵⁵ underscoring the importance of AGOA in galvanizing FDI from emerging economies and strengthening South-South trade.

It is in this context that FDI-driven specialization in textiles and apparel raises a major concern, especially if AGOA preferences are to expire in 2015. FDI in this sector is very mobile and can be quickly dismantled, which could replay a MFA scenario of loss of markets to Asian competitors leading to de-industrialization as during the MFA phase-out.⁵⁶ This would also mirror the short-lived experience of Caribbean countries under a parallel preferential scheme known as the Caribbean Basin Initiative, which experienced a dismantling of their incipient textile industry (and respective FDI) once exposed to NAFTA and later on, Chinese competition.⁵⁷

c. Loss of Employment and Gender Equality

Beyond trade and investments and the requisite improvements in socio-economic and political framework necessary for these objectives to be attained, the main overarching goal of AGOA remains that of helping African countries to reduce poverty. Yet poverty reduction is only possible if trade and investment

⁵³ See Frazer and Biesebroeck (2007)

⁵⁴ See for instance Tranberg (2004), Thompson (2004) and Ahmed et al. (2003).

⁵⁵ See UNCTAD (2003) and World Investment Report 2010

⁵⁶ The MFA's expiry at the beginning of 2005 had an adverse impact on employment levels in the textile industry. In the aftermath of the quotas lapse, numerous Asian firms attracted by AGOA preferences uprooted their investments. Thousands of jobs have been cut in Malawi, Lesotho, South Africa and Swaziland. In Malawi, which registered nine textile companies under AGOA as of 2005 employing more than 11,000 workers faced a cut of 2,511 jobs between January and March of 2005 when a Taiwanese firm, relocated to Taipei. This same company rendered 10,000 textile workers jobless in Lesotho in 2004. In Swaziland, where AGOA products constituted 83% of the country's exports, 30,000 jobs were at stake according to a March 2005 survey conducted by the Common Market for Eastern and Southern Africa (COMESA). Further, in South Africa, over 300,000 textile workers were vulnerable to the cheaper influx of Chinese goods after the expiry.

⁵⁷ The Caribbean Basin Initiative was predecessor to the CBERA mentioned in fn. 26. See Martin (2004) for a discussion on the effect of preference erosion in the Caribbean textile sector.

lead to higher growth (and hence increased income) and/or reduce inequality through an improved redistribution of wealth.

A key factor to the growth and inequality nexus in achieving the poverty reduction goal is employment creation. Therefore, any discussions about AGOA ought also to consider the jobs that the various investments have created. In the lead up to the AGOA Forum of 2009, it was estimated that over the nine years the initiative was in place (i.e. since 2000), over 300,000 new jobs have been created in Africa⁵⁸. This is an average of over 30,000 new jobs per year.

Estimating the number of jobs that AGOA has helped create over the last 10 years would be a daunting task. One can however rely on evidence available from some of the beneficiary countries to try and paint the picture of how AGOA has helped foster employment. For instance, in the first two years of AGOA certification, Lesotho experienced a 36 per cent increase in employment from 29,000 to 45,000. This expansion in employment was due to the establishment of new companies that intended to take advantage of the AGOA preferences. Most of these companies set up operations in textiles, clothing and footwear, sectors that tend to be labour-intensive and female-workers friendly. Therefore, though not envisaged, AGOA in Lesotho has not only fostered new investments and employment, but also helped empower women by affording them access to a regular income. In Kenya, AGOA was credited with the creation of more than 30,000 jobs by 2004 as previously idle capacity in Kenya for textiles and clothing manufacturing was brought back into operation. In Zimbabwe, 2003 estimates pointed to AGOA supporting 28,000 jobs in the export sector AGOA.⁵⁹ Swaziland and Malawi have also experienced similar job creation advantages, particularly on account of the textile and apparel sector expansion. Finally, Versi (2003) attributes the creation of a total of 200,000 jobs during 2000-2002 to AGOA.

An important caveat to these milestones relate to the human development dimension of such jobs. If FDI is not accompanied by skills creation and technology transfer, the opportunity to foster economic development, competition and greater specialization may be lost. Most of the textile manufacturing companies have established themselves in export processing zones (EPZs), attracted by tax exemptions and other incentives. As already mentioned, these types of “maquila” industries have the particularity of quick dismantling. They generally fail to promote the much sought industrialization and economies of scope in the host country as they are part of a vertically integrated value chain of multinational enterprises, which rely on the sourcing of inputs from their international suppliers and respond to a global strategy defined by the mother

⁵⁸ See Whitaker (2009).

⁵⁹ See Lucke (2004).

company. Further, there have been reports of sweatshop conditions violating basic human rights of workers.⁶⁰

With the Special Rule which allows for the use of third-country yarn and textiles in LDCs, it is most likely that foreign textile manufacturers in EPZs merely become centers for re-export with very little value addition in the countries where they are located, especially in the presence of very lax rules of origin. Though there is evidence of some skills creation under AGOA, as is the case of Lesotho, training so far has been limited to basic production needs.⁶¹ If AGOA is to meaningfully contribute to improving the human conditions relating to trade, greater emphasis on skills development, decent working conditions and enhancing the gender equality dimension are necessary.

5. WAY FORWARD

As 2015 approaches, Africa faces two alternatives: the renewal of AGOA or the definite phase-out of this trade preferences scheme. Either alternative poses important concerns for the continent, which need to be weighed out carefully. The present section reviews both scenarios, discussing the main issues at stake from a beneficiary country perspective.

a. An Extension of AGOA beyond 2015

In the event AGOA is extended beyond 2015, several issues need to be addressed in order to improve the participation of African countries in the scheme, as exports to the US benefiting under the current scheme are highly concentrated in a handful of countries and goods, whilst FDI portrays a heavy bias towards the textiles and apparel sector.

Renewal should take into account major shortcomings to render AGOA more *inclusive, accessible* and *permanent*. Preferences ought to be strengthened, enhanced and improved so that trade and investment which so far rely on transient preferential market access may be channeled towards sector with export potential in a durable manner. This is key, especially since of the 38 beneficiary countries, only a half have been able to seize opportunities under AGOA.

If the AGOA objective of increasing and diversifying trade and boosting FDI conducive to sustainable growth and development is to bear fruit, several key issues merit urgent attention. These include: compliance with standards and sanitary and phytosanitary measures (SPS); eliminating supply side constraints; diversifying export production and destinies, and affording sectoral carve outs for NT and MFN treatment. Most of these issues may be best addressed through targeted technical assistance and capacity building, which are also at the heart of AGOA, as is further commented below.

⁶⁰ See Thompson (2004), Ahmad et al. (2004), Loxley (2003) and Gibbon (2003a).

⁶¹ See Lall (2003).

i. Compliance with requirements, standards and SPS in export markets

One of major constraints impinging on African exports destined to US markets relates to non-tariff measures (NTMs). As the name suggests, though these measures are not a direct tax on trade, they come in the form of standards, sanitary and phytosanitary measures and administrative requirements, which pose additional capacity and financial demands on trade. This is one of the main reasons why many African countries fail to export to US markets under AGOA, despite the largely quota-free and duty-free access. Indeed, market access opportunities under GSPs such as AGOA are foregone due to restrictive rules of origin and administrative costs, which explains why many countries fail to benefit from these preferential schemes.⁶²

In the case of sanitary and phytosanitary measures, in addition to having the knowledge and being able to produce animal and vegetable products which fulfill these measures, a certifying body with high-level expertise is required. In many African countries, such bodies lack the sufficient physical and human capacities to be recognized as certifying institutions or may not be able to fulfill the rigorous accreditation procedures of the US. In others, such institutions may not even exist, meaning exporters wishing to access US markets will need to incur additional costs of sending samples to certifying bodies outside their country requiring time and money.

In the particular case of labeling requirements, additional production costs may result from differentiated labeling, as is the case of labels reflecting environmental standards, not only additional production costs may result from differentiated labels. These standards may also require considerable interventions in processes and production methods (PPM) which demand technological and financial resources. This is particularly relevant for the textiles sector, where eco-and/or bio-labeling requirements are on the surge.⁶³

Other requirements, such as special documentary requirements also put considerable strains on African export to the US. For example, such is the case of the certificate of origin for textiles and apparel under AGOA, where eligible countries must undergo a visa verification system for transshipment, from which LDCs are exempted under the “Special Rule”.

In all the cases portrayed above, technical assistance and capacity building are crucial to obtain the necessary expertise, infrastructure facilities, as well as capacity to respond to these requirements. AGOA already serves as a framework under which such expertise may be afforded through the TIDCAs, which address issues such as customs and trade facilitation, technical barriers to trade and sanitary and phyto-sanitary (SPS) measures. However, since these agreements are negotiated on a *bilateral* basis, they are not offered to all SSA beneficiaries as a group. Currently, only members of the Southern African Customs Union (SACU) have a TIDCA in place, which calls for greater engagement and inclusiveness in affording such technical assistance in the continent.

⁶² Olarreaga and de la Rocha (2003).

⁶³ See UNEP and IISD (2005) for a discussion on eco-labeling.

Finally, AGOA may have a greater impact if it undertakes a simplification of rules and requirements. In conjunction with capacity building activities delivered by the US under the Act, SSA beneficiaries may be able to implement such simplified rules for textiles and apparel, as well as other sectors which are of interest to several African nations.

ii. Eliminating supply-side constraints

Structural constraints within Africa, such as weak distribution networks and communications and transport infrastructure, are the main challenges of African trade. Therefore, market access to the US market which is not accompanied by measures of addressing African supply-side constraints is unlikely to result in a substantial expansion of exports or develop the backward linkages which are necessary for economic development.

The African Global Competitiveness Initiative (AGCI) has had some positive contribution to the improvement of trade-related infrastructure and productive capacity, as has been noted in this article for countries such as Botswana, Uganda, South Africa and Rwanda and some subregions such as East and Central Africa. Such aid should be further extended to all SSA countries and be brought under the regional economic commissions (RECs), as these may be more familiar with their respective subregion's supply-side constraints and more able to channel funding towards developing intra-African trade. It is through the RECs that opportunities for value-chain creation across countries may be best provided, because these are aware of the complementarities of the different economies in their region. Such an approach would foster the inclusion of those countries which so far have not been able to take advantage of AGOA.

iii. Diversifying export production and destinies

African countries are characterized by poor export diversification, as the great majority still depend on few commodities. Though AGOA has greater export diversification as one of its key objectives, product coverage remains insufficient as preferences are not far-reaching enough because of the current product exclusion of rice, sugar and peanuts (products where many African countries have a comparative advantage). In addition, AGOA preferences are being permeated by other GSP arrangements, as well as subsidies, which in addition to restraining access to the US, severely affect export revenue of African producers in the global market as is the case of cotton subsidies previously discussed.

This paper has noted that though AGOA has afforded FDI and job creation opportunities in the textiles and apparel sector, there is little value added linked to these activities. However, value addition may afford African countries the opportunity to penetrate niche markets with growth prospects such as those of "fair" and "organic" trade. This will also require adequate technical assistance and capacity building.

iv. Sectoral carve-outs of NT and MFN Treatment

Another area of major concern raised by African ministers in the context of AGOA forums in the past has been the need to defend AGOA preferences from reform initiatives which are currently on the table in the US Government. Several bills⁶⁴ which are currently being considered by the US Congress pose another risk in terms of preference erosion since they may put AGOA beneficiary countries at a disadvantage, particularly with regards to textiles and apparel products. Indeed, it has already been noted that AGOA preferences could be further washed down if the US Congress approves some of these proposals, which will extend the same duty- and largely quota-free access to countries such as Bangladesh and Cambodia.

An important consideration in this regard is the predictability and sustainability of AGOA preferences in the textiles sector. Historically, African textile exports have been highly correlated with the different mechanisms the US has in place to avoid a surge of more competitive imports, as was evidenced in the aftermath of the MFA phase-out, where many African countries lost out to Asian exporters.⁶⁵

Notably, in the years when the MFA quota system (2000-2004) was in place, AGOA textile exports remained stable. It was the temporary protection of AGOA during this last trench of the MFA phase-out that enabled African countries such as Mauritius, Kenya and South Africa to develop their textile industries. In combination with the AGOA general rule which required the non-LDC countries to either use local, African or US inputs in their textile production (as opposed to the third-country fabric option under the Special Rule for LDCs), this fostered the creation and strengthening of their local industry. In light of these examples, AGOA should include sectoral carve-outs for sectors such as textiles, to afford continued protection to those countries which have not yet been able to (as opposed to temporary protection via safeguards or anti-dumping and countervailing duties), or who are facing de-industrialization as Asian textile and apparel exporters penetrate the US markets.⁶⁶ In this sense, a careful balance and sequencing between this option and that of relaxing the “Special Rule” for LDCs must be struck, since evidence points to their apparel exports to the US having increased 7-fold in the first 5 years.⁶⁷

b. Post-AGOA Scenarios

There could be three scenarios shaping US-African relation of a post-AGOA framework. A first scenario entails the US wanting to opt for **deepening**

⁶⁴ See *Proceedings from the 4th African Ministerial Consultative Group Meeting on AGOA*. These bills include: The Trade Act, which grants AGOA type preferences to non-African LDCs, which includes special provision on textiles and apparel; The ROZ Bill, which grants special preferences for certain textile and apparel products in specially designated areas within Pakistan and Afghanistan; and The Save Act, which extends duty-free status to a list of specifically identified apparel products manufactured in the Philippines regardless of origin.

⁶⁵ See Kelly (2010).

⁶⁶ See Collier (2007) and Gibbon (2003a).

⁶⁷ Collier and Venables (2007).

the implementation of the BITs, TIFAS and TIDCAFs which are already in place with some African countries and RECs. This scenario, which is highly likely even if AGOA is renewed, begs the question of what will happen to those SSA countries which are currently beneficiaries of AGOA but are not part of any of these arrangements. For these countries, prospects of leveraged agreements with the US may be meek if they engage in bilateral negotiations, such as those which the US undertook with some Central American countries under the Bush administration, when the project of a hemispheric Free Trade Area of the America (FTAA) lost ground in 2004.

A second scenario may comprise the US's interest of wanting to **consolidate gains through regional BITs, TIFAS and TIDCAs at a subregional level**. This will demand greater coordination on behalf of the countries engaged in regional negotiations, and may pose considerable challenges – as is the case with some of the current Economic Partnership Agreement (EPAs) being negotiated with the EU – if such negotiations end up cutting across the existing RECs structure in the regions.

A third scenario, which is probable and equally challenging for African countries, relates to the US seeking that these **bilateral agreements go deeper than the EPAs reciprocal treatment**. In other words, if these agreements require African counterparts to make greater commitments, countries may lose out on the opportunities of having adequate policy space for their development needs and considerations. In addition, concerns similar to those of current EPAs negotiations, such as burdening regional integration efforts, trade diversion in favor of US suppliers, loss of export earnings and further dismantling of their local industry could arise.

In the event of any of these scenarios, African beneficiaries need to define possible actions and weigh out the advantages and challenges such agreements may pose to their international trade, regional integration and national development objectives. Finally, in parallel to this exercise, SSA countries also need to review the policy options which are available to them as a group in order to improve AGOA, given that the framework has not been phased out yet.

6. CONCLUSIONS

This paper reviews the main achievements, challenges and opportunities of the African Growth Opportunities Act (AGOA). It also elaborates on how AGOA may be improved to address the issues that are at the heart of African trade and economic diversification and discusses the implications of a post-AGOA scenario.

In retrospect, AGOA has fostered US-Africa trade. Even non-oil exports have grown and greater FDI and employment have been witnessed in the

continent. However, the benefits have been unevenly distributed and there is uncertainty pertaining to AGOA's future, which makes the consolidation of the gains a major challenge.

This paper argues that if the goal of AGOA is to promote lasting growth and development, then it needs to be reformed into a more inclusive, accessible and permanent framework. Relevant policy recommendations which may help define an extension of AGOA beyond 2015 and contribute to shaping a more meaningful US-Africa trade and investment relationship are:

- African countries should advocate for a longer time horizon, as there is need for AGOA certainty beyond 2015;
- There needs to be a better linkage of the Aid for Trade Initiative with AGOA to address identified constraints being faced by SSA;
- The US should work on simplifying the rules of origin for African beneficiaries under AGOA, conducive to greater value addition at national and regional level, and,
- A greater focus on enhancing regional dimension of the AGOA framework is also required, especially in the context of the regional integration agenda of the RECs.

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