

Building a Strategy for Workers' Rights and Inclusive Growth— A New Vision for the African Growth and Opportunity Act (AGOA)

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THE AFRICAN GROWTH AND OPPORTUNITY ACT (AGOA) was enacted in 2000 to “promote stable and sustainable economic growth and development in Sub-Saharan Africa.”¹ It is the “cornerstone” of U.S. trade policy in the region² and the primary economic tool of engagement beyond global trade preference programs for developing countries like the Generalized System of Preferences (GSP).³ However, while AGOA’s primary mechanism is a narrow tariff preference system, the act always has been strategically aimed at promoting wider goals of supporting democratic governance, enhancing civil society, combating corruption and promoting the rule of law. In the 15 years AGOA has been in effect, it has failed to meet these loftier ambitions. AGOA’s success relies not only on improved trade flows, but also on the creation of a coherent policy strategy toward Africa that links AGOA to other programs that promote meaningful investment in building Africa’s manufacturing and infrastructure capacity. This document focuses specifically on AGOA’s potential and current shortcomings and offers recommendations to strengthen the trade benefit program that should be part of a broader strategy for Africa that promotes inclusive economic growth.

AGOA is due for reauthorization on Sept. 30, 2015. Reauthorization is an opportunity to promote a new vision for an economic and trade agenda that benefits Africa’s workers and addresses the challenges of a changing global economy and Africa’s place within that framework through an emphasis on shared prosperity. AGOA should reorient away from a narrow focus on tariffs and embrace a more comprehensive strategy to promote economic growth and opportunity tied to provisions that ensure workers share in the wealth they help create, fundamental rights are respected and everyone has the chance to live with dignity.

What is AGOA?

AGOA was promoted as a way to increase trade and investment between the United States and sub-Saharan Africa, promote the rule of law, encourage economic reform, eradicate poverty, develop civil society and political freedom, build a vibrant private sector and combat corruption.⁴ Some argue AGOA is merely a trade promotion law and view it in those strict terms, focusing on the aspects of the law designed to reduce tariffs and facilitate investment. Indeed, the primary mechanism by which AGOA sets out to achieve its goals is by offering eligible African countries duty-free access to the United States market for certain exports.⁵ However, from its inception, AGOA had greater goals. The core vision was to spur economic development—not just to increase trade for its own sake—by using trade incentives to promote the good governance necessary to foster a robust and fair economic system.⁶

To qualify for the tariff benefits under AGOA, countries must meet certain criteria. In addition to the criteria set out in the Generalized System of Preferences,⁷ countries must meet AGOA-specific criteria.⁸ Countries must establish or demonstrate “continual progress toward establishing” a market-based economy and the elimination of barriers to U.S. trade and investment, “the rule of law, political pluralism, and the right to due process, a fair trial, and equal protection under the law,” “economic policies to reduce poverty, increase the availability of health care and educational opportunities, expand physical infrastructure, promote the development of private enterprise, and encourage the formation of capital markets through micro-credit or other programs,” “a system to combat corruption and bribery,” “protection of internationally recognized worker rights, including the right of association, the right to organize

and bargain collectively, a prohibition on the use of any form of forced or compulsory labor, a minimum age for the employment of children, and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.” Countries also cannot engage in activities that undermine U.S. national security or foreign policy interests, or engage in “gross violations of internationally recognized human rights or provide support for acts of international terrorism.”⁹

The tariff benefits under AGOA include all categories covered under the GSP and additional products the president determines are not import-sensitive.¹⁰ There are special provisions for apparel that give eligible sub-Saharan nations distinct advantages relative to other regions. “Least-developed countries,” defined as countries “with a per capita gross national product (GNP) of less than \$1,500 in 1998 as measured by the World Bank,” can import thread and fabric from any country in the world and still qualify for the benefits, rather than complying with rule-of-origin requirements generally applied to the industry.¹¹

AGOA includes provisions for technical assistance and capacity building in the region. The language specifies funding should be targeted at developing relationships between firms in the United States and sub-Saharan Africa, particularly in agribusiness; promoting fiscal and financial reforms; increasing trade in services; and harmonizing standards with the World Trade Organization.¹² In the 2012 fiscal year, the U.S. government reported spending approximately \$94.6 million on technical assistance and capacity building in AGOA countries, a decrease from spending over the previous five years, which averaged more than \$600 million a year. In 2012, \$12.4 million was directed at infrastructure development, \$25.8 million was spent on agriculture projects, and \$27.7 million went to initiatives on “competition policy, business, environment, and governance.”¹³

Every year, the United States Trade Representative (USTR) conducts a review to determine whether countries already eligible for AGOA have met eligibility requirements or are making continual progress toward meeting them, and whether additional countries should be considered.¹⁴ USTR’s findings are submitted in a report to the president, who has ultimate authority to determine which countries

remain or become eligible. If a country is not complying with AGOA requirements, it can have its benefits revoked.¹⁵

How Has It Been Used?

Overall, trade between the United States and the region has increased, but as one report observes, “at best a small share of these increased exports can be directly attributed to AGOA.”¹⁶ AGOA added approximately 1,800 additional tariff line items to the 4,600 already included under GSP, but only around 300 have been utilized.¹⁷ Oil and gas constitute between 80% and 90% of all exports under AGOA,¹⁸ but it is unclear how strong an effect the legislation itself actually has on the trade. The “top 5” oil exporters are Nigeria, Angola, Chad, Gabon and Republic of Congo.¹⁹

Only a handful of countries significantly harness the program for nonenergy products. When oil and petroleum were excluded, South Africa accounted for about 75% of all other U.S. imports under AGOA in 2012, for goods like vehicles, chemicals and minerals.²⁰ Least-developed countries particularly have not benefited from the program. One UK study concluded “[o]utside of the apparel sector there is little or no evidence of AGOA induced gains in any other sectors for [least-developed countries].”²¹

Apparel is among the most significant sectors because it contains special benefits beyond those offered under GSP. A handful of countries take advantage of AGOA’s benefits to export a significant amount of apparel under the program, primarily Lesotho, Kenya and Mauritius.²² Cote d’Ivoire exports a large amount of cocoa products under the program, making it the fifth-largest overall exporter under the program in 2012.²³

Has It Worked?

AGOA has increased exports to the United States but cannot be tied to significant job growth. While AGOA is said to have created anywhere from 300,000 to 1.3 million jobs in sub-Saharan Africa, directly and indirectly, these numbers still are far below original expectations.²⁴ Job growth has not necessarily meant an increase in decent work, with problems in Swaziland’s garment factories being the most notable example of low-wage job growth.²⁵ Additionally, AGOA has not produced dramatic economic growth, or met the broader and more complex

goals of increasing social development, the rule of law, respect for fundamental rights and good governance.

Decent Work

The ILO has defined decent work as work that “involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.”

See: www.ilo.org/global/topics/decent-work/lang-en/index.htm.

AGOA should do more to ensure imports under the program come from workplaces that provide fair wages and equitable treatment. This not only enhances individual dignity, it fosters local economic development by creating more purchasing power and greater productivity. Labor productivity in Africa remains low, in part because of continued problems with access to education, training and the prevalence of diseases like HIV.²⁶

Overall, the pattern of exports under AGOA reflects the fact that most African countries still are heavily dependent on commodities, without substantial value-added production or linkages between or within other sectors of the economy.²⁷ As discussed in a 2013 UN report, commodity-driven growth has “limited” impact on employment and social development. This weak foundation “has been aggravated by liberalizing reforms and globalization that, in the absence of serious government policies to promote economies’ productive capacities and ability to compete in international markets, have left a legacy of inappropriate incentives and institutions that threaten economic and political stability as well as social cohesion.”²⁸

To truly spark sustainable, broad growth, it is critical that African economies make the transition from raw materials into value-added and more complex production through specialization, local sourcing and regional integration.²⁹ Unfortunately, AGOA has done too little to encourage policies that build links between industry and communities, build domestic demand, enhance educational and training opportunities or build crucial infrastructure.³⁰

Instead, AGOA has demonstrated that broad economic development goals cannot be reached solely through tariff reduction. It is unclear how much effect tariff reductions have on oil and gas exports, but the overwhelming dominance of the sector reflects a continued reliance on extractive-led growth, which has not resulted in wider social development.³¹ Instead, reliance on extractives is linked to corruption and conflict.³² It also risks exacerbating environmental degradation, precarious employment and the nontransparent or forceful acquisition of land. In Nigeria’s oil-producing Niger Delta, an increase in oil exports has not translated into improved workers’ rights and working conditions. In the Niger Delta, there is a growing strain on workplace relations where workers’ rights and access to proper wages and benefits steadily are being taken away through the use of subcontracting, revolving short-term work contracts and temporary work agreements. The low pay and benefit-free “precarious” work, as well as environmental degradation, is a common concern of unions in oil, gas and mining industries in Africa.³³

The apparel sector has created much-needed employment, but unfortunately a substantial percentage of the profits from the industry do not remain in Africa, where they could support increased capital investment and wealth accumulation.³⁴ The vast majority of textile and apparel companies are foreign-owned, often by so-called “flying investors” that scour the world for short-term trade incentives but often pull up stakes once these run out.³⁵ Most are established in export processing zones and import virtually all inputs, which minimizes the value to the local community.³⁶

One of the underlying hypotheses of AGOA is that low-skill exports eventually would spur the creation and growth of increasingly complex and higher-skilled areas.³⁷ Unfortunately, this is not a process that can happen without a coherent, dedicated industrial policy aimed at promoting local investment, training and resources. AGOA should encourage programs to help indigenous firms gain a foothold and build connections.³⁸ One of the underlying goals of AGOA was regional integration, which some analysts have argued is critical to promoting substantial economic growth.³⁹ Unfortunately, there have not been enough efforts to build this needed integration.

One of AGOA's primary goals was to create the necessary foundation for stable market economies. One area of particular importance is creating robust and equitable protection of property rights. However, the past 15 years have shown a worrying increase in the acquisition of land and drilling rights through nontransparent and even violent means, referred to as "land grabbing."⁴⁰ This practice has been linked to oil, but also booming industries like palm oil, rubber and other large-scale agriculture enterprises.⁴¹ AGOA's measures relating to property rights, corruption and the rule of law have not managed to address this troubling issue.

AGOA's special garment provisions particularly impact women workers. There have been some efforts to increase capacity-building for women entrepreneurs,⁴² but no systematic effort to ensure women are afforded fundamental protections or given opportunities for advancement.

Another crucial element to promote equitable growth is to recognize the important role played by informal workers, and ensure these workers have access to employment benefits and social protections. Formal job growth in sub-Saharan Africa has remained sluggish, so the informal economy has served a particularly vital role in ensuring individual livelihoods, particularly for women and young workers.⁴³ The African Development Bank estimates the informal sector is responsible for more than half of GDP in sub-Saharan countries. In the ILO's latest survey, the percentage of nonagricultural informal workers in sub-Saharan Africa varied, "ranging from 33 per cent in South Africa to 82 per cent in Mali." In most countries, more women are in informal work than men.⁴⁴ Individuals in the informal economy often are trapped in poverty without access to crucial benefits or the ability to earn a stable livelihood. Encouraging access to markets, mainstream economic resources and social protections is critical to ensure sustained and equitable economic growth.⁴⁵

How can AGOA be improved?

A. Update Eligibility Criteria

Eligibility criteria should be updated to ensure robust workers' rights protections and encourage democratic government.

Workers' Rights Provisions:

Currently, the "internationally recognized worker rights" explicitly enumerated are "the right of association, the right to organize and bargain collectively, a prohibition on the use of any form of forced or compulsory labor, a minimum age for the employment of children, and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health."

More Robust Baselines. AGOA's labor rights language should state that countries must meet all core rights laid out in the corresponding ILO Conventions, which are reflected in the ILO Declaration of Fundamental Principles and Rights at Work. There also should be an explicit reference to elimination of the worst forms of child labor and freedom from discrimination, including the rights to equal remuneration and freedom from discrimination in employment and occupation enshrined in ILO Conventions 100 and 111, particularly essential given the importance of women workers in the garment sector. It should be clarified that the right to acceptable conditions of work with respect to minimum wages includes, among other things, any legally or contractually required pay (such as overtime, bonus and holiday pay) and any legally or contractually required contributions to pensions, health care, disability insurance and the like.

Decent Work. Countries must commit to making significant progress to ensure export sectors support decent work jobs. Decent work, a concept developed at the ILO, focuses on ensuring that all women and men have the opportunity to "obtain decent and productive work, in conditions of freedom, equity, security and human dignity."⁴⁶ A decent work program focuses on creating opportunities and social mobility, guaranteeing rights and respect on the job, promoting social dialogue through strong worker organizations, and enhancing social protections including safe working conditions, access to health care and family leave, sufficient workers' compensation and allowance for "adequate free time and rest."⁴⁷ Countries must commit to treating workers holistically and ensuring jobs do more than just pay survival wages. If AGOA is to help spur inclusive growth, exports must contribute to investment in local communities.

Continual Improvement. Commitments to upholding workers' rights should not be static or aimed solely at creating a minimal baseline of acceptable conditions. Instead, AGOA countries should agree to meet the basic rights already referenced and to continually enhance labor protections over time, elevating standards and living conditions in tandem with economic growth.

Democracy and Human Rights Provisions. Democracy as a term is not used in AGOA's eligibility criteria. Countries are required to establish, or take steps toward establishing, "the rule of law, political pluralism, and the right to due process, a fair trial, and equal protection under law."⁴⁸

The United States should include a more specific democracy clause in AGOA. Linking market access and democracy is not without precedent. For example, the members of the Southern Cone Common Market (MERCOSUR), which includes Argentina, Brazil, Paraguay and Uruguay, signed onto the Ushuaia Protocol on Democratic Commitment in the Southern Common Market in 1998.⁴⁹ In the event of a "breakdown of democracy" in any of the member states, Article 5 of the protocol allows that the other state parties may apply measures that range from suspension of the right of the offending nation to participate in various bodies to the suspension of the party's rights and obligations under the Treaty of Asuncion (the MERCOSUR foundational agreement). AGOA benefits should be limited, suspended or withdrawn if a breakdown of democracy occurs that reduces "the rule of law, political pluralism, and the right to due process, a fair trial, and equal protection under law."

Resource Transparency. Commodity-driven growth too often supports autocratic regimes and results in little direct benefit to the majority of citizens. To address this problem, AGOA should contain transparency provisions that empower civil society with the information needed to engage with local governments and hold corrupt actors accountable. AGOA should contain measures that require countries to develop and implement transparency standards,⁵⁰ and AGOA benefits should be limited, suspended or withdrawn for beneficiaries that fail to develop or implement such standards. The overwhelming dominance of oil, gas and petroleum products imported under AGOA presents a particularly important opportunity

to ensure the wealth obtained is widely shared. There should be provisions supporting community engagement and tripartite dialogue.

Responsibility to Protect. Under the UN Principles on Business and Human Rights, states have the fundamental responsibility to protect their citizens from human rights abuses committed by businesses, including the responsibility to furnish an adequate remedy when those rights are violated. Countries should commit to taking steps to ensuring private actors do not violate core human rights.

The above recommendations should be mandatory criteria for all AGOA-eligible countries. The documented failures should be grounds for continuing review and eventual limitation or suspension of benefits.

B. Improve Certification and Reauthorization

AGOA-driven trade often is impacted by uncertainty surrounding the renewal process. A five-year renewal period creates much-needed stability.

After each legislative renewal, countries should have to request recertification. Civil society should be empowered to report ongoing issues relating to the goals of AGOA, and the country in question would have to produce a response. USTR then should conduct a review that would include considering any cases of core labor standards violations lodged at the ILO; a country's status on a Tier 2 Watch List of the State Department's Trafficking in Persons Report; and any goods identified by the Department of Labor as being made by forced or child labor. The review should be conducted in a transparent process that allows for public dialogue and participation.

C. Enhance Eligibility Oversight

Currently, many countries are not protecting fundamental workers' rights, taking needed measures to address corruption, and failing to promote democratic governance and civil liberties. Right now, the only mechanism to respond to these problems is by completely revoking AGOA benefits. Unfortunately, a regime that sees benefits revoked due to autocratic governance is unlikely to absorb the harm to AGOA-driven export sectors, and is far more likely to pass the losses on to the workers who derive their livelihoods from these industries.

To prevent this unfortunate dynamic, there should be intermediate steps, like investigations, hearings, partial loss of benefits or other responses beyond total removal from AGOA. While far from perfect, the Generalized System of Preferences contains a detailed review process and other problem-solving strategies, including targeted reduction of benefits or removing specific tariff lines.⁵¹ There also could be provisions that allow for independent monitoring in return for better market access. This change would enhance the ability to address rights abuses without unduly impacting workers who rely on export-oriented employment to make a living.

D. Expand Capacity Building and Technical Assistance

Capacity-building is crucial to spark broader development and ensure the gains from trade result in inclusive economic growth. AGOA must be accompanied by a robust development strategy and the United States must invest in building stronger democratic institutions, enhancing social protections and developing needed human and resource capital if AGOA is to live up to its ambitious goals.

The African workforce is dynamic and different than it was when AGOA originally was implemented. Light industry, agriculture and the informal economy are known to rely heavily on women workers as well as migrants, either within countries from rural to urban areas or cross-border. While improved eligibility criteria encompassing nondiscrimination is noted above, improved awareness of the integrated nature of these workers also is needed, particularly informal workers into global supply chains. Given the complexity of these supply chains, governments should support transparency initiatives and strengthen monitoring and oversight of corporate supply chains, including due diligence by companies operating in localities.

Rights-based training programs to help workers monitor and push back against many of the noted problems that plague garment and footwear production worldwide—low wages, sexual harassment and discrimination, and unsafe workplaces—are necessary as well as work to help workers gain access to such nonwage benefits as paid leave, maternity care, pensions and health care that can

better integrate workers, particularly women workers, into structures of economic stability.

Addressing migrant abuse and migration-related crimes, including migrant smuggling and human trafficking, are critical considerations if a renewed AGOA is to work toward the goal of greater internal cooperation in Africa, particularly among regions. Government capacity to understand and defend the rights of migrants, and the need for capacity building among migrant rights advocates and organizations, is critical in such potential migration-impacted sectors as agriculture, if problems of migrant exploitation in the workplace, lack of access to social services, and the potential rise of xenophobia are to be understood and prevented.

Congress should explicitly authorize funding for initiatives that provide workers both in formal and informal employment with education and skills training; support indigenous informal economy unions and worker-driven organizations, particularly through access to credit; and strengthen civil society groups, including formal trade unions and worker organizations, particularly in the areas where violations of labor and environmental rights are prevalent. Training and funding also must be provided for indigenous entrepreneurs so all wealth is not extracted from the country. Increased funding for education and health care ensures workers can continue to educate themselves and take care of their family's health care needs.

Funding for investment in infrastructure is critical. Only when the roads and ports are developed will the goods produced in Africa be able to be exported. Reducing tariffs alone will not produce the needed decent work and economic development for Africa.

Given the prevalence of informal workers, there should be an emphasis on funding initiatives that provide these workers with protections and opportunities. These would include building workers' associations, strengthening social dialogue and tripartite structures, developing and extending legal protections and social services, and developing access to financing and paths to formalization.

Unfortunately, HIV/AIDS continues to ravage the continent, and other epidemics, notably drug-resistant tuberculosis,

are also on the rise. Currently, the AGOA legislation makes reference to these crippling diseases but provides no concrete measures to address the impacts these diseases have on the continent and on the economy. Fighting these epidemics throughout AGOA-linked workplaces also should be included in capacity-building, in conjunction with the U.S. President's Emergency Plan for AIDS Relief (PEPFAR).⁵² There have been successful initiatives that use workplaces as staging grounds for education, addressing behavioral norms and increasing testing, treatment and new procedures. Effectively combating HIV/AIDS particularly requires empowering women to stand up for their own health and that of their children. The prevalence of women in AGOA industries suggests programs to reach out through the workplace might be particularly effective in these areas.

Conclusion

There is no dispute that trade, investment and access to markets are necessary elements for growth and job creation—and AGOA has enormous potential to pave the way to inclusive, comprehensive development in African countries. However, these policies must be properly structured: with adequate protections for workers' rights, and policies that build on long-term goals, and invest in and build up long-term relationships. They also must be coordinated and the U.S. government should create a mechanism for coordinating Africa policy across agencies. Trade programs must be accompanied by a coherent economic development agenda and a political commitment by governments to effectively implement these programs. The goal of AGOA and complementing economic development should spur not just job growth but job growth that is fair, sustainable and provides a decent living for African workers and their families.

ENDNOTES

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5 Department of Commerce, African Growth and Opportunity Act, *available at* <http://trade.gov/agoa/>.

6 19 U.S.C. § 3702.

7 19 U.S.C. § 2462.

8 19 U.S.C. § 3703.

9 *Ibid.*

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11 19 U.S.C. § 3721; Brock R. Williams, "African Growth and Opportunity Act (AGOA): Background and Reauthorization," Congressional Research Service, May 27, 2014, *available at* www.fas.org/sgp/crs/row/R43173.pdf.

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