New York City Bar Association
Committee on African Affairs

Strengthening The African Growth and Opportunity Act: Delivering on Africa's Promise through NEPAD and the African Diaspora to Reinvigorate the Commercial Relationship Between the United States and Sub-Saharan African Countries[1]

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ABSTRACT

Initially signed into law on May 18, 2000,[2] the African Growth and Opportunity Act (AGOA) was welcomed by many as a beacon of hope for Africa's socio-economic development. AGOA has since been amended multiple times and is set to expire in September 2015 if not renewed. By the time this paper is published, government officials from Africa and the United States, together with global business leaders, will have concluded their meeting in Ethiopia for the annual AGOA conference (AGOA Forum 2013). Undoubtedly, what will have been discussed is how AGOA has achieved undeniable successes, such as increasing African exports and creating jobs both in Africa and the United States. However, AGOA has not yet fully achieved its primary goal of significantly improving the lives of millions of African families through sustained economic development and increased access to the United States market, nor has it fundamentally altered the course of trade relations between sub-Saharan African countries and the United States in the long term.

At the same time, for many, Africa is no longer considered as an investment destination for only the brave or reckless. The 23rd World Economic Forum on Africa,

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[2] AGOA was signed into law as Title 1 of The Trade and Development Act of 2000, Pub. L. No. 106-200 (2000), http://www.gpo.gov/fdsys/pkg/PLAW-106publ200/pdf/PLAW-106publ200.pdf (last accessed Sept. 6, 2013).

held in Cape Town, South Africa in May 2013, declared through its theme "Delivering on Africa's Promise" that now is the time to capitalize on Africa's unprecedented economic growth. In line with such theme, this paper will discuss the origins of AGOA, its achievements, shortcomings and its potential to still serve as a foundation for meaningful trade relations between sub-Saharan African countries and the United States. This paper will also examine the New Economic Partnership on Africa's Development (NEPAD) framework, and explore ways that NEPAD's policies can create better synergies with AGOA to benefit African people. Finally, this paper seeks to articulate ways that AGOA can be strengthened to achieve its envisioned objectives, highlighting the role that the African diaspora community in the United States, and African governments, can play.

THE AGOA FRAMEWORK

AGOA has been amended several times since its initial enactment in 2000. In 2002, the law was amended to further increase market access for products from sub-Saharan Africa. In 2004, Congress passed legislation to extend AGOA benefits beyond the original deadline and to clarify certain provisions. This legislation also included directives to the President regarding investment initiatives and technical assistance. Congress passed legislation in 2006 to further amend AGOA, and extend certain provisions concerning textile and apparel imports to 2012. This provision was recently extended through September 2015.[3]

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[3] Vivian C. Jones & Brock R. Williams, *U.S. Trade and Investment Relations with sub-Saharan Africa and the African Growth and Opportunity Act* 1 (Nov. 14, 2012), http://www.fas.org/sgp/crs/row/RL31772.pdf (last accessed Sept. 6, 2013)(paper presented for members and committees of Congress) (hereinafter, Jones & Williams).

AGOA provisions allow for duty-free and quota-free treatment for "qualifying articles," which include: apparel made of United States yarns and fabrics; apparel made of sub-Saharan African yarns and fabrics (subject to a cap); apparel made of yarns and fabrics not produced in commercial quantities in the United States; textile or textile articles originating entirely in one or more lesser-developed beneficiary sub-Saharan Africa countries; certain cashmere and merino wool sweaters; and eligible handloomed, handmade, or folklore articles, and ethnic printed fabrics.[4]

The crux of the AGOA apparel program[5] is the so-called "third-country fabric" (TCF) provision, also known as the "Special Rule for Apparel", which allows only least-developed AGOA beneficiaries to incorporate yarn and fabric from any country in the world, such as India or China. Countries with a per capita gross national product (GNP) over $1,500 in 1998[6] do not enjoy extended preferences available under the TCF provision.[7] That is, those countries falling outside the TCF provision may only use fabric inputs from other AGOA beneficiaries. Arguably a "win-win" for both sub-Saharan African countries and the United States, AGOA's TCF provision has helped generate hundreds of thousands of jobs in sub-Saharan Africa, while also helping American retailers reduce their costs, diversify their supply chains, and provide greater low-cost

[4] *See* U.S. Dep't of Commerce, Int'l Trade Admin., *Trade Preference Programs - The African Growth and Opportunity Act (AGOA) Apparel Provisions*, http://web.ita.doc.gov/tacgi/eamain.nsf/d511529a12d016de852573930057380b/1e85488eb01fd2fd852573940049047d?OpenDocument (last accessed Sept. 6, 2013) (hereinafter, *AGOA Apparel Provisions*).

[5] Effective October 1, 2000, "in order for countries to be eligible for apparel benefits, they must have in place an effective visa system to prevent illegal transshipment and use of counterfeit documentation, as well as effective enforcement and verification procedures. Specific requirements of the visa systems and verification procedures were promulgated by African governments through United States embassies on September 21, 2000. The Secretary of Commerce is directed to monitor apparel imports on a monthly basis to guard against surges. If increased imports are causing or threatening serious damage to the United States apparel industry, the President is required to suspend duty-free treatment for the article(s) in question." *AGOA Apparel Provisions (Eligible Countries).*

[6] Under the law, GNP is measured by the World Bank. AGOA § 112(b)(3)(B)(ii).

[7] *See AGOA Apparel Provisions (Eligible Countries – AGOA Preferences Chart).* Countries that fall outside of the TCF provision include, for example, Gabon, Seychelles, and South Africa.

apparel options for American consumers. The TCF provision accounts for 95 percent of apparel imports under AGOA[8], and was recently extended through September 2015.[9]

BENEFITS FROM AGOA

Supporters of AGOA note the positive impact it has had on the African continent including a 500% increase in African exports ($ 8.51 billion in 2001 to $53.8 billion in 2011).[10] This has created as many as 1.3 million jobs, benefitting 10 million people throughout Africa. AGOA has also benefited the United States economy by creating 100,000 jobs in the United States through exports to Africa.[11]

In Lesotho, for example, there was a 36 percent increase in employment in the first two years of AGOA's execution.[12] This increase was attributable to new manufacturing firms establishing in the textile, apparel, and footwear industries. In Kenya, AGOA has been credited for creating more than 30,000 jobs by reviving a previously indolent capacity for textile and clothing manufacturing in the country.[13]

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[8] Witney Schneidman & Zenia A. Lewis, *The African Growth and Opportunity Act: Looking Back, Looking Forward* 4 (Africa Growth Initiative, The Brookings Institution June 2012), http://www.brookings.edu/~/media/research/files/reports/2012/6/agoa/agoa_full_report.pdf (last accessed Sept. 6, 2013) (hereinafter, Schneidman & Lewis).
[9] *Jones & Williams*, *supra*, at 1.
[10] Schneidman & Lewis, *supra*, at 6.
[11] U.S. Dep't of Commerce, Int'l Trade Admin., *United States Export Fact Sheet: Export Statistics* (July 12, 2011), http://trade.gov/press/press-releases/2011/export-factsheet-july2011-071211.pdf (last accessed Sept. 6, 2013).
[12] Laura Páez *et al.*, *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* 24 (African Dev. Bank Grp. Sept. 15, 2010) http://www.afdb.org/fileadmin/uploads/afdb/Documents/Knowledge/Session%20II.2.2_2.%20A%20decade%20(2000-2010)%20of%20African-US%20Trade%20under%20the%20AGOA.pdf (last accessed Sept. 6, 2013) (hereinafter, Páez *et al.*).
[13] *Ibid.*

AGOA also brought 28,000 jobs to Zimbabwe's export sector.[14] Finally, both Swaziland and Malawi expanded their textile and apparel sectors due to AGOA.[15]

AGOA is regarded by some as one of the best opportunities for economic engagement between Africa and the United States. A report by United States Senator Coons of Delaware, Chair of the Senate Foreign Relations Subcommittee on African Affairs, called for speedy reauthorization of AGOA well before its scheduled expiration date of September 2015, noting that AGOA was enacted to offer trade preferences to African countries to assist them in opening their economies and building free markets.[16] According to the report, AGOA has supported a growing African middle class, reduced dependence on development assistance, and further opened African markets to American companies.[17]

AGOA'S CHALLENGES

Nevertheless, AGOA has yet to reach its full potential. Diversification in product coverage remains an issue with petroleum and energy products constituting 83 percent of the total value of United States imports.[18] Many African countries are still not yet capable of producing goods competitively, and lack the industrial capacity needed to fully exploit AGOA's opportunities. Some countries even remain unaware of AGOA and its possibilities.[19] Value-chains in certain industries remain underdeveloped. Moreover,

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[14] *Ibid.*
[15] *Ibid.*
[16] U.S. Sen. Foreign Relations Comm., *Embracing Africa's Economic Potential: Recommendations for Strengthening Trade Relationships Between the United States and Sub-Saharan Africa* 3-4 (Mar. 7, 2013), http://www.coons.senate.gov/embracing-africas-economic-potential (last accessed Sept. 6, 2013) (hereinafter, *Embracing Africa's Economic Potential*).
[17] *Id.* at 3.
[18] U.S. Dep't of Commerce, Int'l Trade Admin., *U.S Trade with sub-Saharan Africa, January-March 2013* (2013), http://trade.gov/agoa/pdf/Jan-Mar2013-US-SSA-Trade.pdf (last accessed Sept. 6, 2013).
[19] AGOA eligible countries currently include: Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Chad, Comoros, Congo, Cote D'Ivoire, Djibouti, Ethiopia, Gabon, The Gambia,

as discussed, AGOA has arguably extracted wealth from sub-Saharan Africa to the detriment of African families. Against this backdrop, it is unclear how (or if) AGOA has brought about sustainable economic development in its present state. This section discusses in more detail the areas in which AGOA has fallen short of its full potential.

Development of Value Chains

AGOA, together with Africa's regional economic communities (*i.e.*, the Southern African Development Community, the East African Community, the Common Market for Eastern and Southern Africa, and the Economic Organization for West African States), provide enormous potential to develop value chains for many products. However, this potential has yet to be realized. In Kenya, AGOA export growth draws a sharp contrast with performance at lower levels of the value chain. Cotton production, for example, falls below 10 percent of demand.[20] Additionally, there is limited regional trade in raw materials and other inputs. What has resulted is that more than 90 percent of Kenyan textile exports use non-originating raw materials.[21] Another example is in Lesotho where all AGOA exports are manufactured using multinational (primarily Asian) inputs, with the overall effect being a nascent textile sector with limited ties to local communities.[22] Meanwhile, in South Africa, AGOA's stringent rules of origin requirements have served to stymie export growth potential where, since the TCF

Ghana, Kenya, Lesotho, Liberia, Malawi, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, South Africa, South Sudan, Swaziland, Tanzania, Togo, Uganda, and Zambia. *AGOA Apparel Provisions (Eligible Countries – AGOA Preferences).*

[20] Christopher Onyango & Moses Ikiara, *Reflections on Kenya's Experience Under AGOA: Opportunities and Challenges* 26 (Africa Growth Initiative, The Brookings Institution May 2011), http://www.brookings.edu/~/media/research/files/reports/2011/6/01%20improving%20agoa/0601_improving_agoa_onyango_ikiara.pdf (last accessed Sept. 6, 2013) (hereinafter, Onyango & Ikiara).

[21] *Ibid.*

[22] Páez *et al., supra,* at 10.

provision does *not* apply, clothing exports are not eligible for AGOA preferences because producers find it cheaper to import fabrics from China.[23]

FDI Diversion

Domestic and foreign investors seeking to take advantage of AGOA were expected to attract a surge of investments from the United States as African producers sought to expand production to increase their market share. This has not yet materialized. For example, while countries like Kenya appear to be among the major AGOA beneficiaries—evidenced by a 400 percent rise in clothing exports to the U.S[24]—this was from a "minimal pre-AGOA base" where the vast majority of companies involved were recent entrants, and non-nationals setting up shop in EPZs.[25]

Furthermore, although foreign direct investment (FDI) is intended to help alleviate poverty, AGOA has arguably resulted in allowing profits to be extracted from

[23] Economists have estimated that without such restrictive rules of origin, AGOA exports would be five times greater. *Ibid*. "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." *Id*. at 13.
[24] *See* Páez *et al., supra,* at 9-10. Export Processing Zones (EPZs) are areas where commercial merchandise, both domestic and foreign receives the same customs treatment it would if it were outside the commerce of the United States. EPZ sites are subject to the laws and regulations of the United States as well as those of the host country in which they are located. While in the zone, merchandise is not subject to United States duty or excise tax. Certain tangible personal property is generally exempt from state and local ad valorem taxes. Merchandise of every description may be held in the EPZ without being subject to Customs duties and other *ad valorem* taxes. This tariff and tax relief is designed to lower the costs of United States-based operations engaged in international trade and thereby create and retain the employment and capital investment opportunities that result from those operations. Customs duty and federal excise tax, if applicable, are paid when the merchandise is transferred from the EPZ for consumption.
[25] Páez *et al., supra,* at 9-10.

Africa via FDI.[26] Foreign owned factories in the textile and garment industries are very mobile and, thus, can quickly dismantle once foreign entrepreneurs are no longer able to take advantage of the trade preference scheme. In essence, this situation would emulate that of the Caribbean textile industries, which, after benefiting from the Caribbean Basin Initiative, experienced a dismantling in the face of NAFTA and Chinese competition.[27] In Kenya, only one out of the eighteen apparel producers is Kenyan owned.[28] In fact, all of Kenya's initial AGOA-related investors were foreigners.[29] Employment grew 500 percent due to the textile industry boom and advanced manufacturing technologies and practices, which were introduced, and workers were trained accordingly.[30] Among these investors, however, were "flying investors," who specifically travel the world in search of short-term trade breaks, then leave when such opportunities are no longer available. Indeed, Kenya—once poised to be a major AGOA beneficiary banking heavily on its textile industry—suffered economically after the United States opened its market in 2005 to increased apparel exports from Southeast Asia. Sales, profits, and the workforce plummeted because apparel producers could no longer compete.[31]

Social Development in Africa

Improved social conditions are paramount to achieving economic transformation in Africa, and thus, can serve as a barometer for measuring AGOA's impact on sub-

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[26] Edmund Sanders, *Struggling to make it in Kenya*, L.A. TIMES, Aug. 5, 2009, http://articles.latimes.com/2009/aug/05/world/fg-africa-trade5 (last accessed Sept. 6, 2013) (hereinafter, Sanders).
[27] Páez *et al.*, *supra*, at 23.
[28] Sanders, *supra,* http://articles.latimes.com/2009/aug/05/world/fg-africa-trade5.
[29] *Ibid.*
[30] *Ibid.*
[31] *Ibid.*

Saharan Africa economies. Unfortunately, the social development pattern in most sub-Saharan African countries has not changed much over recent years.[32] Even where positive changes do exist, progress is slow and not commensurate with the strides made in economic growth.[33] Africa's labour productivity remains low owing in part to poor levels of education and high prevalence of diseases, such as HIV and AIDS. Beyond increasing trade and investment, AGOA's ultimate goal was to reduce poverty in sub-Saharan Africa by creating more sustainable jobs. However, real poverty reduction under AGOA has not been achieved because the gains from AGOA are not distributed equitably.[34]

AGOA's employment achievements come with serious socio-economic development caveats. Hardly any of the FDI that AGOA has attracted has been put towards developing skills and technology that go beyond basic production needs, and only a few investments have been put towards building a solid commercial infrastructure that could support economic development, competition, innovation, and specialization in Africa.[35] Textile and apparel manufacturing companies, the lion's share of non-oil sector FDI, only establish themselves in EPZs, which have merely become mobile centers for reexporting goods bringing negligible value addition to the host countries in which they are located. Moreover, these EPZs cannot adequately industrialize developing economies because they essentially are subsidiary divisions that are part of a vertically integrated chain of multinational conglomerates, which often rely

[32] *See* U.N. Econ. Comm'n for Africa, *Making the Most of Africa's Commodities: Industrializing for Growth, Jobs and Economic Transformation - Economic Report on Africa* 35 (2013), http://www.uneca.org/sites/default/files/publications/era2013_eng_fin_low.pdf (last accessed Sept. 6, 2013) (hereinafter, *Economic Report on Africa 2013*).
[33] *Ibid.*
[34] *See* Ntsebeng Motsoeli, *We are over-worked and under-paid, say textile workers*, LESOTHO TIMES, Apr. 4, 2011, http://www.lestimes.com/?p=5840 (last accessed Sept. 6, 2013) (hereinafter, Motsoeli).
[35] *Ibid.*

on inputs from foreign suppliers and operate within an overall global business framework defined by the parent entity.[36]

With no real commercial infrastructure, AGOA host countries often use low labor costs (*i.e.*, employee wages) to attract companies. This explains some reports of employees (namely women) working in near sweatshop-like conditions.[37] In Lesotho, the textile industry has grown to become one of the country's leading sources of employment.[38] With almost half of the population unemployed, textile workers in Lesotho are considered "lucky" to be paid approximately $86 and $103 per month.[39] Government ministers have gone on record to state that the country's cheap labor gives it a competitive advantage, and hence, is its *only* means to attract foreign investors.[40] After spending approximately ten hours behind sewing machines in a textile factory, the typical factory worker seeks refuge in a "matchbox" house that sits on a begrimed honeycomb of similar edifices used primarily by factory workers in remote regions of the country.[41] With only as much as about $14 remaining per month for food, after all utilities and living expenses are paid, employees still live in dire poverty.[42] Consequently, even though AGOA has caused a roar in the textile industry, and political benefits for African governments through the impression that AGOA has created many jobs, real social development is yet to be achieved. Most Africans remain poor with few marketable skills and limited economic self-reliance.

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[36] *See* Sanders, *supra,* http://articles.latimes.com/2009/aug/05/world/fg-africa-trade5
[37] Motsoeli, *supra*, http://www.lestimes.com/?p=5840.
[38] *Ibid.*
[39] Caswell Tlali, *Moleleki defends cheap labour*, LESOTHO TIMES, Dec. 22, 2010, http://www.lestimes.com/?p=5148 (last accessed Sept. 6, 2013).
[40] *Ibid.*
[41] Motsoeli, *supra*, http://www.lestimes.com/?p=5840.
[42] *Ibid.*

POTENTIAL IMPROVEMENTS OF AGOA (U.S PERSPECTIVE)

A number of proposals have been offered by those who have studied AGOA to improve its effectiveness. The Committee identifies a number of them below as worth considering by U.S. policymakers. African experts and authors Steve McDonald, Stephen Lande and Dennis Matanda. in a collaboration with the Wilson Center and Manchester Trade, recommend that all provisions of AGOA should be extended for at least ten years in order to limit uncertainty, thereby providing current and new participants a sufficient time frame to evaluate the investment landscape.[43] They have also argued that reforming AGOA to meet its intended goals involve amending the law to add currently excluded agricultural products such as: groundnuts; tobacco; and cocoa.[44]

Witney Schneidman, Nonresident Fellow, Brookings Africa Growth Initiative, advocates amending AGOA to specifically mandate the United States Department of Agriculture (USDA) to play important role and support the goals of AGOA, including enabling USDA officers to work with USAID, USTR and others in capacity building efforts to increase assistance for Sub-Saharan Africa's agricultural exports.[45]

AGOA should also address the key concern of assisting African producers to meet US sanitary and phytosanitary standards through providing expert training on food safety and animal health while also examining whether some of its import approval procedures could be streamlined (without risking safety) in order to encourage greater

[43] Steve McDonald *et al.*, *Beyond AGOA: An Updated Case For A Trans-Atlantic Trade & Investment Partnership Between Africa & The United States* iv (Wilson Center & Manchester Trade Nov. 20, 2012), http://www.wilsoncenter.org/sites/default/files/The%20Case%20for%20AGOA%20-%20An%20Update.pdf (last accessed Sept. 6, 2013).
[44] *Ibid.*
[45] Schneidman & Lewis, *supra*, at v.

trade from Africa.[46] Additionally, Mwangi Kimenya, director of Africa Growth Initiative noted that African products that have attained acceptable international standards (*e.g.*, E.U. certification) need not be subject to further testing under AGOA.[47]

Finally, AGOA presently lacks measures that sufficiently promote U.S investments in Africa. Although we have not analyzed the fiscal ramifications, we suggest that policymakers consider including provisions in AGOA that incentivize U.S companies to invest in the continent such as a tax holiday for the repatriation of profits from job creating non-energy investments in the region, and tax inducements for U.S equity funds, pension funds, and other aggressive foreign investors to encourage investment in sub-Saharan Africa[48]

POTENTIAL REFORM OF AGOA (AN AFRICAN PERSPECTIVE)

While there are many legislative and policy reforms the United States can (and should) employ to cause AGOA to more effectively enhance trade between the United States and sub-Saharan African countries, such reforms do not absolve African governments of their responsibility to develop appropriate local policies to develop infrastructure, strengthen human and technological capabilities, foster regional integration, and protect human rights. Moreover, African governments must pursue policies that reduce economic inequality between women and men, promote local job

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[46] Int'l Food & Agric. Trade Policy Council & P'ship to Cut Hunger & Poverty in Africa, *Joint Policy Brief: AGOA and Agriculture* 3 (Aug. 2009), http://www.agritrade.org/Publications/documents/PCHPAIPC_JointPolicyBrief_Aug3.pdf (last accessed Sept. 6, 2013).

[47] Mwangi S. Kimenyl, *Toward a Transformative Africa Growth and Opportunity Act: State Presented at the U.S. Congress* 5 (Africa Growth Initiative, The Brookings Institution May 2011), http://www.brookings.edu/~/media/Research/Files/Reports/2011/6/01%20improving%20agoa/0601_improving_agoa_kimenyi.pdf (last accessed Sept. 6, 2013).

[48]Manchester Trade Ltd., Inc., *AGOA Enhancement through a Partnership for Regional Integration Investment, Competitiveness and Employment (PRIICE)* 2-3 (Feb. 2012), http://www.manchestertrade.com/22FEB-BAS-PRIICE.pdf (last accessed Sept. 6, 2013) (paper prepared for presentation to the 113th Congress convening January 2013).

creation and ownership, and increase social protection to render economic growth more conducive to social development.

The NEPAD process has come to be accepted by African countries, regional economic communities (RECs) and Africa's development partners as the framework for Africa's development efforts. Synergies between NEPAD and AGOA should be explored and designed to ensure that AGOA leads to sustainable social and economic development in sub-Saharan Africa.

Background on NEPAD

NEPAD is a plan to redevelop the African continent designed by and for Africans. It is the culmination of a merger of the Millennium Partnership for the African Recovery Program (MAP), an initiative led by South African president Thabo Mbeki and the OMEGA Plan, an initiative crafted by Senegalese president Abdoulaye Wade. The purpose of MAP was for Africans to take more leadership and responsibility for the development of the continent, instead of relying on, or blaming non-Africans. The OMEGA plan took a slightly different approach from MAP. It sought to focus on African countries' need to achieve development in key areas that are critical to becoming more economically competitive (such as education, health, agriculture and infrastructure). OMEGA contemplated intense investment in African countries until such countries were able to leverage their significant human capital and natural resources using modern technology. This would allow African countries to focus on direct production, thereby becoming more competitive players in the global economy.

OMEGA and MAP were most distinct in the area of funding. OMEGA sought to redirect large financial reserves, invested by African countries, in Western markets to

Africa. OMEGA further sought to encourage economically developed countries to invest in African resources using treasury bills.

NEPAD combines the goals of MAP and OMEGA into four main objectives: 1) promoting accelerated and sustainable development, 2) eradicating widespread and severe poverty, 3) ending the marginalization of Africa in globalization, and 4) accelerating the empowerment of women. Its broad approach was born out of a meeting of the 36th Heads of State and Government Assembly of the Organization of African Unity (OAU) held in Algeria in 2000 in which government representatives from Algeria, Egypt, Nigeria, Senegal and South Africa sought to develop an integrated socio-economic framework for Africa. The subsequent 37th summit of the OAU, held in July 2001, formally endorsed NEPAD. In January 2010, the 14th African Union (AU) summit strengthened the NEPAD program by endorsing its integration into the AU as its development agency.

The United Nations (UN) Secretary-General established the Office of the Special Adviser on Africa (OSAA) to increase international support for NEPAD, to coordinate UN system efforts in support of NEPAD, and to report annually to the General Assembly on progress in the implementation of and international support for NEPAD. Consequently, NEPAD is widely seen as an apparatus through which support to Africa's development efforts can be best delivered.

NEPAD's Policies Supporting AGOA

NEPAD's priorities pertaining to AGOA are captured in the African Productive Capacity Initiative (APCI).[49] APCI's approach can be summarized as follows:

- build an African common vision of productive capacity – based on the *value chain* approach;
- highlight sectoral priorities as part of specific segments of the value chain based on comparative advantage;
- harmonize industrial policies/strategies at national/regional levels based on cooperation/collaboration;
- facilitate the implementation of the African Peer Review Mechanism[50] on industrial performance/competencies—based on benchmarking;
- suggest sub-regional programs for productive capacity upgrading—backed by a financial facility.[51]

Policy Recommendations for NEPAD

Using its comprehensive framework, NEPAD can create and better coordinate initiatives to help solve the persistent developmental challenges that sub-Saharan African countries continue to face under AGOA. Some potential solutions include the following:

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[49] *Economic Report on Africa 2013*, supra, at 106.
[50] The African Peer Review Mechanism (APRM) is a mutually agreed program, voluntarily adopted by the member states of the African Union, to promote and re-enforce high standards of governance. The peer review mechanism is a self-monitoring mechanism. APRM's mandate is to ensure that the policies and practices of participating countries conform to the agreed values in the following four focus areas: democracy and political governance, economic governance, corporate governance and socio-economic development. As part of the APRM there are periodic reviews of the participating countries to assess progress being made towards achieving the mutually agreed goals. *See* APRM website, http://aprm-au.org/mission (last accessed Sept. 6, 2013).
[51] Chibo Onyeji, *African Productive Capacity Initiative (APCI): A Review* 3 (SADC Expert Grp. Meeting Dec. 2006), http://www.unido.org/fileadmin/import/60497_SADCIntro_ChiboOnyeji.pdf (last accessed Sept. 6, 2013).

a. *Eliminate supply-side constraint*

Weak distribution networks due to lack of communications and transportation infrastructure continue to be the primary structural constraints that stymie African trade. Policies, therefore, need to be put in place to ensure that measures addressing African-supply side constrains accompany all programs seeking to provide sub-Saharan Africa countries access to global markets.

Recall that AGOA's rules of origin allow beneficiaries to use raw materials, and other inputs, from other AGOA beneficiary countries. Consequently, production sharing among members of existing regional trading partners via Africa's RECs is not only possible but is essential for supporting regional trade investments that will ultimately bolster sub-Saharan Africa supply to the United States market. NEPAD's role as the AU's coordinating agency is most suited to facilitate this via APCI.

Currently there exists the African Cotton and Textile Industries Federation (ACTIF).[52] ACTIF's formation was a response to the need for a unified approach to address various issues facing the African cotton, textile & apparel industries, such as the need to:

- increase competitiveness in the global post-quota environment;
- address key policy issues;

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[52] African Cotton and Textile Industries Federation (ACTIF) is a not for profit regional industry/trade body, based in Kenya and formed in June 2005 by the cotton, textile and apparel sectors from Eastern and Southern Africa covering the Common Market for Eastern and Southern Africa (COMESA), the Southern African Development Community (SADC), and the East African Community (EAC) trading blocks. ACTIF currently includes members of National Associations from 18 countries (Botswana, Egypt, Ethiopia, Kenya, Lesotho, Madagascar, Mozambique, Namibia, Nigeria Sudan, Mauritius, Malawi, South Africa, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe). *See* ACTIF website, http://www.actifafrica.com/page.php?id=2 (last accessed Sept. 6, 2013).

- build a platform for reducing constraints in regional trade;
- exchange information, collect market data and share regional expertise; and
- promote a regional supply chain and build partnerships, alliances and networks.

To ensure that efforts are not being duplicated, NEPAD should coordinate efforts like ACTIF at regional levels.

b. Invest in the development and "upskilling" of workers.

Until now, even the most prosperous AGOA beneficiaries do not own a majority of their industries. In Lesotho, much like Kenya, locals do not own the garment industry—the country's most successful industry—Chinese nationals do.[53] It is undisputed that investments from Asia have brought many great economic benefits to Africa.[54] However, in a number of instances Chinese factory managers, who at times consider their local employees "simple-minded," have workers specialize in simple patterns as opposed to more complex designs, choosing to produce those designs in other countries (mainly in Asia).[55] With the garment industry choosing not to invest in the development and upskilling of workers, indigenous workers do not acquire the skills needed to adapt to an evolving wide-ranging market. Thus, more strategic investments in training from the Lesotho government, as well as other local African governments,

[53] *See* Sebabatso Manoeli, *Of Culture and Clash: Asian Big Business in Lesotho*, THE EAST IS READ (blog), Apr. 24, 2013, http://eastisread.wordpress.com/2013/04/24/of-culture-and-cash-asian-big-business-in-lesotho/ (last accessed Sept. 6, 2013) (hereinafter, Manoeli).
[54] *See*, *e.g.*, Páez *et al.*, *supra,* at 22-23.
[55] *See* Manoeli, *supra*, http://eastisread.wordpress.com/2013/04/24/of-culture-and-cash-asian-big-business-in-lesotho/.

would position African countries to maximize the impact of AGOA, and hence, reap greater economic rewards. Such strategic investments would also better position African people to own local industries.

c. Help sub-Saharan African entrepreneurs access markets

Limited credit facilities hinder African businesses—particularly those owned by women, who are often placed at an economic disadvantage by customary property laws—from taking advantage of AGOA. Of paramount importance are the development of export credit facilities, or micro-credit institutions, for small and medium-sized enterprises, which require funds to overcome production constraints. Such economic credit facilities should conform to United States import market requirements. Increasing local ownership of textile and apparel industries would also allow Africans and foreign investors to operate on more equal-footing—thereby minimizing opportunities for culture clashes and prejudices, which have emerged in AGOA-beneficiary countries, particularly those that have attracted particularly high levels of FDI.[56]

The African Productive Capacity Facility (APCF) is the funding vehicle that was envisioned for APCI. Endowed with an initial sum of € 5 million from the now defunct Industrial Development Decade for Africa Fund, APCF is a pool of resources dedicated to the support of Africa's regional productive capacity initiatives. It provides loans, loan guarantees, grants, technical assistance, fiscal measures, and contributions in kind. As the AU's planning and coordinating agency for development, NEPAD is charged with

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[56] In Lesotho, for example, locals and Asian foreigners have endured strained relationships where Asian employers are blamed for introducing unfair competition into the market and have become notorious for poorly treating their employees and paying them meager salaries. Manoeli, *supra*, http://eastisread.wordpress.com/2013/04/24/of-culture-and-cash-asian-big-business-in-lesotho/.

tailoring APCI to each sector and value chain identified as critical to developing the productive capacity of each region. Unfortunately, APCI's potential has been limited by its meager resources, which have not significantly increased since its initial endowment.

Garnering more financial support for APCF is by no means an impossible feat, however. In Lesotho, the government has spent millions to bail out foreign-owned companies in an effort to "breathe life into the crucial textile industry."[57] In 2011 alone, the Lesotho government provided approximately $12.7 million to help support Asian companies.[58] The government justified the bailout by citing the objective of stabilizing employment.[59] However, such investments typically do very little for social development in Africa, where the only dividends Africans receive are employment wages. NEPAD should work with African governments to redirect their spending to more strategic programs that promote African ownership, contain industry dividends, and increase Africa's overall market share.

Funds could, for example, be used to encourage the leveraging of informal cooperatives—which predominate and are typically led by women in rural communities throughout sub-Saharan Africa—to engage in exporting business under AGOA. Funds could also be used to sponsor participation in trade shows to improve market knowledge. Through the African Global Competitiveness Initiative (ACGI),[60] for

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[57] IRIN Africa, *Lesotho: Textile industry gets a lifeline*, IRIN NEWS, Nov. 24, 2011, http://www.irinnews.org/Report/94302/LESOTHO-Textile-industry-gets-a-lifeline (last accessed Sept. 6, 2013).
[58] *Ibid.*
[59] The textile industry "contributes close to about 20 percent of Lesotho's annual gross domestic product, and it is also [the nation's] largest employer in a country where unemployment is around 40 percent." *Ibid.*
[60]The Africa Global Competitiveness Initiative is an important part of the United States Agency for International Development's (USAID's) contribution to sub-Saharan Africa's economic development. *See* U.S. Dep't of State, *African Global Competitiveness Initiative Fact Sheet* (July 19, 2005), http://2001-2009.state.gov/p/af/rls/fs/49817.htm (last accessed Sept. 6, 2013).

example, six Ethiopian textile, clothing, and handicraft entrepreneurs attended the 2005 Apparel Sourcing Association Pavilion global sourcing trade show in Las Vegas, Nevada.[61] With such access to the right marketing information and export design the participants garnered orders worth $10 million in value.[62] NEPAD, through ACPI, could similarly support African entrepreneurs.

Additionally ACTIF, with the support of Southern Africa Trade Hub and other partners, hosted two seminars during the Source Africa event that took place from April 9-12, 2013, in Cape Town, South Africa.[63] The Source Africa event showcased the quality, creativity, reliability and sophistication of textiles, clothing and footwear manufacturing in Africa. Industry leaders and decision makers from across Africa, Europe and United States were gathered in one place providing opportunities to network with international buyers and African manufacturers. More recently, ACTIF pioneered countrywide outreach programs to encourage more Kenyans to take advantage of AGOA and promote value addition and exportation into the AGOA market.[64] NEPAD would be remiss to not build on this momentum by encouraging and coordinating similar efforts throughout all RECs.

BROADER ECONOMIC ENGAGEMENT BETWEEN THE UNITED STATES AND SUB-SAHARAN AFRICA

[61] U.S. Dep't of State, *The African Growth and Opportunity Act: Achieving Success through the African Global Competitiveness Initiative* 3 (June 2006), http://2001-2009.state.gov/documents/organization/89439.pdf (last accessed Sept. 6, 2013).
[62] *Ibid.*
[63] Joseph Nyagari, *ACTIF Hosts Two Breakfast Seminars At The Source Africa Event In Cape Town 2013,* ACTIF AFRICA. May 6, 2013,http://www.actifafrica.com/news.php?newsid=34#.UZacvZV_2a4 (last accessed Sept. 6, 2013).
[64] Justin Ochieng, *Kenyan Traders Told to Increase AGOA Exports*, THE STAR, May 17, 2013, http://www.the-star.co.ke/news/article-120777/kenyan-traders-told-increase-agoa-exports (last accessed Sept. 6, 2013).

Improving AGOA in advance of its reauthorization demonstrates the United States government's interest in making its economic policy toward sub-Saharan Africa more coordinated, comprehensive and effective. Senator Coons' report noted:

> [T]here is a clear and pressing need for increased U.S. economic engagement in sub-Saharan Africa. Increased trade facilitates growth for U.S. businesses as well as our African partners, simultaneously strengthening our own economy and Africa's emerging markets.[65]

The report offered concrete recommendations, including[66]:

- "[s]upport African-led efforts to improve the business climate on the continent and remove barriers to trade";
- "[r]eauthorize and strengthen the *African Growth and Opportunity Act* well in advance of its 2015 expiration";
- "[i]mprove coordination between U.S. government agencies and develop a comprehensive interagency strategy for increased investment in sub-Saharan Africa";
- "[i]ncrease the presence of U.S. Foreign Commercial Service Officers in sub-Saharan Africa to help U.S. companies navigate the business climate in the region";
- "[i]ncrease support for agencies that provide financing to encourage U.S. commercial engagement overseas, mitigate investment risks, and generate a profit for American taxpayers"; and

[65] *Embracing Africa's Economic Potential, supra,* at 3.
[66] *Id.* at 4.

- "[e]ngage the African diaspora community in the United States to strengthen economic ties".

Engaging the African Diaspora Community

Senator Coons' recommendations provide useful insight into improving the commercial relationship between the United States and sub-Saharan Africa. In addition to the renewal and improvement of AGOA, engaging African diaspora communities is perhaps the most important element of effective engagement between the regions.

While it is difficult to pinpoint the exact number of people in the African diaspora community in the U.S, a good estimate comes from the Migration Policy Institute, which estimates the number of African immigrants residing in the United States in 2009 at about 1.5 million, with the top countries of origin being Nigeria, Ethiopia, Egypt, Ghana, and Kenya.[67] Contributions from a diaspora are often attributed to the value of remittances sent back to a country of origin. According to the Hudson Institute, in 2010, remittances from the United States to other countries totaled $95.8 billion, of which $4.6 billion went to sub-Saharan African countries.[68] While the benefits of remittances cannot be underestimated, the African diaspora can provide a critical link in serving as commercial ambassadors of AGOA.

As noted earlier, beneficiaries of AGOA are typically foreign investors, notably from Asia. Often this is the case because though domestic African investors may have the local know how and risk appetite to invest in the apparel industry via AGOA, they

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[67] Kristen McCabe, *African Immigrants in the United States* (Migration Policy Inst.July 2011), http://www.migrationinformation.org/USfocus/display.cfm?id=847 (last accessed Sept. 6, 2013).
[68] Center for Global Prosperity, *The Index of Global Philanthropy and Remittances 2012* 20 (Hudson Inst. 2012), http://www.hudson.org/files/publications/2012IndexofGlobalPhilanthropyandRemittances.pdf (last accessed Sept. 6, 2013).

might not have sufficient access to capital. Meanwhile, United States-based investors might have investment capital but no local know how, which reduces the appetite to invest in Africa. The African diaspora community in the United States is in a unique position to fill this gap because of cultural ties to their home countries, a keener appreciation of the risk assessment capability of their countries of origin, and access to capital networks in the United States which will enable them to be more viable participants in AGOA, and key drivers of Africa's growth overall.

Current programs that seek to encourage African diaspora's participation in sub-Saharan African investments are promising. The International diaspora Engagement Alliance (IdEA), launched in 2011, is a non-partisan, non-profit organization that engages global diaspora communities, the private sector, civil society, and public institutions in a collaborative effort to support economic and social development. IdEA also helps promote and support diaspora-centered initiatives in entrepreneurship, volunteerism, philanthropy, diplomacy, and social innovation in countries and regions of origin.[69] The Global Diaspora Forum held every year since former United States Secretary of State Hillary Clinton launched it in May 2011 has been well attended by members of the African diaspora, signaling that members of the diaspora community are ready to contribute to improved economic engagement between the United States and sub-Saharan Africa.

The African Diaspora Marketplace (ADM) is another example of an initiative that has been highly effective and provides solid linkages between United States entrepreneurs and sub-Saharan African enterprises. ADM is a business plan

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[69]*See* IdEA website, http://diasporaalliance.org/about-us (last accessed Sept. 6, 2013).

competition intended to sustain the entrepreneurial spirit and resources of the United States-based African diaspora community and other entrepreneurs who have a demonstrated relevant connection to or experience in Africa. It collaborates with USAID and private enterprises that seek to encourage sustainable economic growth in Africa by supporting United States-based members of the African Diaspora with innovative and high-impact ideas for start-up and established businesses in Africa.[70] ADM's objective is to promote economic development in Africa by facilitating diaspora direct investment (DDI) in small and medium business enterprises (SMEs).[71] Winners receive grants to match their own funds to execute their business plans.

Though these initiatives are laudable, there is a need for more. Programs, including targeted job fairs and networking events, can match United States businesses that are interested in sourcing through African imports or exporting goods or services to Africa, with members of the African diaspora who seek to combine their heritage with their United States education and business experience. The Corporate Council of Africa (CCA)[72], a premier American non-profit organization with the goal of promoting business and investment between the United States and Africa, can also function as an important vehicle in connecting diasporan communities to parties interested in engaging Africa. Within CCA lies a joint program with USAID called the U.S.-Africa Business Center (USABC).[73] This joint program works to increase two-way trade and investment between the United States and sub-Saharan Africa countries. The program focuses on building the capacity of SMEs in the agriculture and information,

[70] *Ibid.* Western Union is an example of a company that has benefitted from this initiative.
[71] *See* ADM website, http://www.diasporamarketplace.org/about-adm (last accessed Sept. 6, 2013).
[72] *See* CCA website, http://www.africacncl.org/about (last accessed Sept. 6, 2013).
[73] *See* USABC website, http://www.africacncl.org/usabc-main (last accessed Sept. 6, 2013).

communications and technologies sectors so they can fully benefit from the infusion of active diaspora participation. United States universities can also play a role by facilitating study abroad programs in Africa and internship and volunteer opportunities for members of the African diaspora to work with United States businesses operating in Africa. Universities should also share knowledge of United States market dynamics with local African businesses seeking to find better ways of accessing the United States market.

Members of the African diaspora in professions such as science and technology, business, law and education should also be encouraged to serve as conduits of vital information to African governments, private sector and civil leaders. Often equipped with the linguistic and cultural familiarity of their countries of origin, such individuals are uniquely equipped to provide professional and technical advice. For example, African diaspora attorneys trained in the United States, who understand the regulatory and legal environments in both the United States and their countries of origin, can play an important role in advising both United States entrepreneurs and investors seeking entrance into Africa, and African exporters seeking to navigate the rules and regulations for entering the United States market.

Dr. Wole Soboyejo, a Nigerian-American professor of mechanical and aerospace engineering at Princeton, who also serves as President of the African University of Science and Technology in Abuja and the Director of the U.S-African Materials Institute, is an excellent example of a professional who is using his diaspora linkages to promote collaboration between United States and African scientists in materials research and education, thereby stimulating economic development and improving the quality of life on the continent.[74] Fully utilizing the professional skills and contributions of African diasporan professionals could turn what is often called "brain drain" into "brain gain" for Africa.

Additionally, increased financing and support of African diasporan entrepreneurs interested in ventures in their country of origin should be explored. In March 2011, Belstar Development LLC, a Miami-based company formed by a Ghanaian-American received approval from the Overseas Private Investment Corporation (OPIC) to provide medical equipment, services and infrastructure to benefit up to 100 hospitals throughout all 10 administrative regions of Ghana.[75] Government and private resources could be pooled to form a greater investment base targeting both large and small African diasporan-led initiatives on the continent.

Mimi Alemayehou, a top executive of OPIC, noted that diasporans are quickly becoming her agency's most important clients because of their strong understanding of the risk assessment profile of their countries of heritage, and a deep commitment to seeing these places thrive. African diaspora investors tend to be more resilient during tough times and have a longer-term outlook than the average investor.[76] Hillary Clinton perhaps said it best: we believe so strongly that one of the great strengths of America is our diversity. And we want to celebrate it, but more than that, we want to put it to work.

CONCLUSION

[74] Princeton Univ. Sch. of Mechanical and Aerospace Eng'g Faculty Profile for Winston (Wolo) Soboyejo, http://www.princeton.edu/mae/people/faculty/soboyejo/ (last accessed Sept. 6, 2013).

[75] Overseas Private Investment Corporation Press Release,*OPIC Board Approves $250 Million in Insurance to Provide Medical Equipment for Hospitals in Ghana* (Mar. 10, 2011), http://www.opic.gov/press-releases/2011/opic-board-approves-250-million-insurance-provide-medical-equipment-hospitals-gh (last accessed Sept. 6, 2013).

[76] Mimi Alemayehou, *Investing in Development*, IdEA (Nov. 21, 2012), http://diasporaalliance.org/investing-in-development/ (last accessed Sept. 6, 2013).

Africa is increasingly described as a continent on the rise. *The Economist* had a cover titled "Africa Rising." *Time Magazine* has also highlighted Africa as the "world's next economic powerhouse." Ernst & Young has forecasted African GDP growth rates of 4-5 percent per annum and expects FDI to reach $150 billion by 2015. President Obama recently traveled to Tanzania, South Africa and Senegal, noting this is a moment of promise for Africa and "creates opportunities for a new kind of relationship between the United States and Africa—a partnership rooted in equality and shared interests. And it starts by building on the progress that we're seeing and empowering Africans to access even greater economic opportunity."[77] He also unveiled the Power Africa initiative with the focus on doubling access to power in sub-Saharan Africa[78], which together with the U.S. Department of Commerce's Doing Business in Africa campaign[79], will help boost trade on the continent.

There is, therefore, no better time to build on Africa's unprecedented economic growth by reenergizing the trade relationship between United States and sub-Saharan Africa. As this paper has demonstrated, a renewed and updated AGOA has the capacity to improve employment and the standard of living in sub-Saharan African countries and also spur export growth in the United States. To fully harness the power of AGOA

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[77] White House Press Release, *Remarks by President Obama at Business Leaders Forum* (July 1, 2013), http://www.whitehouse.gov/the-press-office/2013/07/01/remarks-president-obama-business-leaders-forum (last accessed Sept. 6, 2013).

[78] Power Africa aims to bring 10 gigawatts (GW) of electricity to sub-Saharan Africa, bringing energy to 20 million households and businesses for the first time. Over the next five years, it seeks to double the people who have access to energy. The US will contribute $7 billion over a 5 year span and seven companies that stand to benefit are investing an initial $9 billion. The United States and its partners will work with an initial set of Power Africa partner countries, including Ethiopia, Ghana, Kenya, Liberia, Nigeria, Tanzania and also partner with Uganda and Mozambique on responsible oil and gas resources management. *See* White House Press Release, *Fact Sheet: Power Africa* (June 30, 2013), http://www.whitehouse.gov/the-press-office/2013/06/30/fact-sheet-power-africa (last accessed Sept. 6, 2013).

[79] Acting Commerce Secretary Rebecca Blank launched the Doing Business in Africa (DBIA) Campaign in Johannesburg, South Africa in November 2012 to help U.S. business access export and investment opportunities in Africa. *See Doing Business in Africa Campaign Fact Sheet* (Nov. 26, 2012), http://export.gov/africa/index.asp (last accessed Sept. 6, 2013).

requires reevaluating the structural framework within African countries (*i.e.*, NEPAD) that is conducive to sustained economic development, as well as encouraging the participation of African diasporans in strengthening the economic relations between the United States and sub-Saharan African countries.