

**A PRELIMINARY [RE]-ASSESSMENT OF THE IMPACT OF THE ‘AFRICAN GROWTH & OPPORTUNITIES ACT,’ (AGOA) AND SOME POLICY RECOMMENDATIONS FOR 2015  
WITH SPECIAL REFERENCE TO KENYA-US TRADE RELATIONS**

By George Odera Outa\*

**I. INTRODUCTION: THE GENESIS OF AGOA AND SOME ITS PRESENT CURRENTS**

The main objective of this brief essay is to attempt a critical [*re*]-consideration of the impact of the *African Growth and Opportunities Act*, usually known by its more popular acronym: AGOA. For the past nearly fourteen years, ‘AGOA’ has been canvassed as “the cornerstone” of US-Africa trade relations,<sup>1</sup> with nearly every other commentator taking the general position that it remains some sort of “trade panacea” that Africa needs in order to be able to resolve the huge (if not historic) trade imbalance between Africa and the USA. To be sure, trade was only but one of the major aspects of AGOA, because, inbuilt into the AGOA legislation has been a whole range of other equally noble intentions and aspirations.<sup>2</sup> Historically speaking, AGOA seems to have been intended as a one-off intervention by the US government aimed at assisting Sub-Saharan African (SSA) countries benefit from enhanced trading access to the US. Accordingly, it should have expired in 2008 (almost to coincide with the end of President George W. Bush’s first term). However, subsequent bi-partisan agreements among congressmen; coupled with some extensive lobbying by some of the better-placed business interests led to various amendments and hence the extension by Congress to 2012, and later to a new end deadline of September 2015. At the time of this reflection, the big question has revolved around what should happen beyond that promulgated ‘final’ deadline.

The question uppermost in this analysis is therefore, really whether, both in its conceptualization and subsequent implementation, AGOA has had the impact that should have been expected. This is considered against the backdrop of a rather mixed bag of reactions; including, notably, assertions that suggest that it helped generate “thousands of jobs” and contributed immensely to the noble goal of reducing poverty in Africa. Indeed, it appears that some of the business lobby groups as well as the predominant analytics (including those sponsored under the umbrella of the African Union), have been less than forthright in their critique. They have chosen as it were, to make what are clearly diplomatic, rather than well-substantiated economic arguments. While this analysis is certainly not capable of doing full justice to the many issues raised under this matter, it does in part, seek to provoke some new insights, including policy recommendations that are worthy of consideration particularly by African governments, and equally so, by various US Government authorities and interest groups that may be interested in establishing a more permanent lifeline for the AGOA and like initiatives.

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\* Dr. George Odera Outa served as a UNDP appointed Advisor to the Government of Kenya (2003-2012) and also served term as the pioneering *Information and Communications Advisor* at Kenya’s first

<sup>1</sup> See, for instance: <http://thewhitakergroup.us/wordpress/about-2/staff/rosa-whitaker>

<sup>2</sup> As further mentioned in the essay, “the Act” (AGOA) has other more far reaching and certainly well-intended aspirations, including the overall “poverty reduction” goal as well as the equally critical linkage with issues of good governance and the rule of law to be imperatives practiced by any beneficiary countries.

*A Proposed “Thorough Study” by the US Government*

As the AGOA extension debate has raged among concerned parties, it is critical to indicate that the US Government Accountability Office (GAO) has been formally requested by no fewer than sixteen (16) US senators to undertake a thorough study and analysis of AGOA in order to determine, *inter alia*, “the ability of African Businesses to utilize the full range of opportunities available under AGOA...”<sup>3</sup> In particular, some eleven(11) questions have been directly posed by the senators including two that are considered pertinent here; i.e. the steps that AGOA-eligible countries have taken to utilize and maximize its effectiveness within their respective countries (question 5), and; how actions by Brazil, Russia, India and China (the BRICs) and the European Union(EU), including the imposition of EU’s Economic Partnership Agreements and bilateral trade initiatives in Africa, have affected the effectiveness of AGOA (question 7).

Assuming that GAO will undertake the requested study, the proposition here is that there is a case for a thorough review, particularly of section 104 of the AGOA legislation. The long and short is that they may be shocked to realize just how some near-naïve idealism may have prevailed in the drafting of the aforesaid section; particularly the presumption that “privatization” is in everyone’s best interest. Taking Kenya as a basic case in point, it suffices to point out that perhaps nothing has been as controversial as the whole idea of “privatization” of public enterprises in playing fields that are clearly not as open in their business processes. The result remains the all-familiar claims that such solutions, apart from being derided as impositions from the West-have only benefited some few “crooks” who routinely exploit their connections to turn long-standing and beneficial public enterprises (ready examples are Railways and Telkoms) into personal enterprises. Not only have so many jobs been lost, but the futures of these enterprises, even in the hands of their new private owners have been quite murky; but this is a separate story altogether.

The point at this stage is therefore simply that Private Sector driven enterprises, based on some nebulous model of “market driven economies”, are essentially the wrong constructs to replicate in much of Africa. Moreover, the undeniable fact remains that privately controlled enterprises are themselves not free of other undesirable malfeasants, as the act seemed to have assumed. And lastly, privatization has clearly engendered even more serious social consequences than may have been apparent at the advent of AGOA; notably, losses of jobs in their thousands.

## II. SOME PASSING COMMENTS ON “AGOA” AS LEGISLATION

As implicit already, the essence of AGOA was to provide a legal mechanism that would extend US Government’s “General System of Preferences” (GSP) permitted under WTO rules, to certain products imported into the US market from Sub-Saharan African (SSA) countries. The record indicates that the original promoter was Congressman Jim McDermott who was a former US Foreign Service officer in Zaire, teaming up with Senator John Kerry who was already active in the area of international trade. The two were responding to decades of activism by people like Paul Speck of the Environmental and Energy Institute and other staff who had served in Africa, all who seem to have felt the need for more realistic and sustainable efforts in having a developed country uplift a continent otherwise pronounced as the world’s “hopeless” continent.<sup>4</sup>

<sup>3</sup> See, letter dated December 12 2013, to the Hon Gene L Dodaro and signed by sixteen congressmen led by Senator Edward Royce, Chairman, and Committee on Foreign Affairs.

<sup>4</sup> For a useful summary, see:

The AGOA legislation was thus originally enacted in May 2000 as “Public Law 106 (200<sup>th</sup> Congress) and meant to cover an initial eight year period. The subsequent three amendments provided for the hitherto un-intended extensions and also added special provisions touching on the special place of the importation of apparels into the US; the question of “availability of commercially adequate quantities from the “eligible countries,” as well as embracing WTO’s “Multi-Fiber Agreement” (MFA) that permitted the use of yarn or fiber “from third countries”. Instructively, the MFA had a ten (10) year grace period (1974-2004) and it is only by sheer coincidence that its last three years coincided with AGOA. Quite ironically however, most commentators hold that it was the MFA that almost single-handedly delivered nearly all the benefits ever reaped under AGOA. While this may well be true for those last minute three years or so, this writer holds the slightly divergent view, that there are other critical variants that ought to be factored into this equation; notably that the MFA also did put local (African) producers to stiff business competition from India, Bangladesh and a few other countries who promptly left once this incentive was removed.<sup>5</sup> The consequence is that ordinary African entrepreneurs –or potential ones at that were substantially strangers to this entire exercise. Whereas a detailed assessment of the AGOA act is clearly well beyond the present scope of analysis, a few comments are considered pertinent for the perspective being adopted here.

First, as a legally enabling legislation, AGOA implies that the considerably huge list of “eligible” products are imported and made available to US buyers “duty free.” It means that some 7000 products are at least, nominally, allowed into the US market, in addition to another 1400 “product lines” under some of the later amendments. The products are supposedly given much lower duty thresholds; distinct from what would have been imposed under permissible WTO international trade agreements; (so long as the duties so levied are applied equally to similar domestically produced products under the “Most Favored Nation Treatment” clause: the Article 1 of WTO).

The promoters of AGOA certainly hoped that such an incentive would strengthen US-African trade ties while also directly contributing to the quest for economic growth and development in Africa through the much touted, “trade and not aid” doctrinal premise. As I argue here however, the AGOA legislation, has in practice, remained something of an enigma and it is open to question if it has actually facilitated “better trade relations” than was the case prior to its advent. The act itself is fairly short, yet, certainly complex in many ways, including the counter-references to numerous other pieces of American legislation that govern the totality of international trade with the US market. Besides, the Act is clearly, an “insert” amid other laws and regulations, which makes it an instrument not so easy to navigate by ordinary business folk; let alone the implications in the course of trade; unless of course, traders have to also massively invest on essential legal and compliance assistance. Additionally, like every other international trade

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[http://en.wikipedia.org/wiki/African\\_Growth\\_and\\_Opportunity\\_Act](http://en.wikipedia.org/wiki/African_Growth_and_Opportunity_Act). Note that on May 18, 2000, the UK’s rather influential; The Economist ran the infamous cover story declaring Africa as, “the hope less continent” a perspective that in part, engendered a somewhat paternalistic view of the continent and hence triggering such philanthropic concerns.

<sup>5</sup> See, Chemengich, M, et-al (2013) study undertaken for the *African Cotton and Textile Industries Federation* and various studies and comments by the Kenya Government’s, *Kenya Institute of Public Policy Research and Analysis* (KIPPRA)

instrument AGOA has to be read concurrently within the framework of the general harmonized schedule of tariffs for products entering the US market.

Whereas it can in fact, be argued that meeting the permissible tariff quotas under AGOA may well be the easier part, the one other aspect that is equally acknowledged by the most ardent AGOA supporters is the complex terrain of higher health standards imposed by the Sanitary and Phyto-Sanitary (SPS) regime of the WTO as well as the “Rules of Origin” clauses with the latter also being cognizant of various labor practices and standards in the countries in which products are exported from. And all these, to be sure are only a minor aspect of the totality of the legal landscape.

### *A. In Search of More Nuanced Theories of International Trade*

As may be clear by now, this analysis is deliberately situated within the theoretical perspectives that have quite convincingly questioned much of the “justification rhetoric” around international trade institutions (Joel Paul, 2003). In two interesting-if not most illuminating perspectives, penned (fortunately) before the advent of AGOA, Professor Paul has rather persuasively, not just questioned, “the myth of economic interdependence”, but more relevant here , “the idea that international trade institutions promote economic growth”(2003: 287). As he writes, “...these assumptions rarely conform to the realities of the contemporary international market.” More pertinently however, he asserts, “ ... *empirical studies of the gains from trade cast doubt on the assumption that trade liberalization necessarily leads to worldwide economic growth.* Professor Paul posits unequivocally, that the gains from the trade are often less than “the sunk costs” from lost resources that result from import competition...”<sup>6</sup> Taking the analytical queue from the foregoing premise, this author argues that similar assertions are substantially correct even in the case of an exporting African country operating within the prevailing AGOA framework. Thus, in seeking to make their case for “Consolidating gains from Africa-US Trade”, two laudable African economists<sup>7</sup> assert (much to my surprise!) that, “AGOA has opened the US market to over 6000 products from 38 AGOA-eligible countries,” and that “this has helped to increase both the volume and diversity of US-SSA trade”. Without presenting much in terms of evidence, these writers appear to have simply swallowed “hook, nail and sinker” the stated intentions of AGOA and assumed it to have been effectuated on the ground.

To begin with, a simple disclosure: in my own two-year tenure at the *Private Sector Development Strategy Secretariat* (PSDS) under Kenya’s then Ministry of Trade and Industry, nothing else sprouted up more frequently than the realization that not many potential AGOA beneficiaries knew absolutely anything about the other “7000 or so, AGOA” products. And to date, it seems the entire discussion is focused on just one single product line called ‘the apparels’. Yet if this were dismissed merely as anecdotal evidence, what is more confounding are the ranges of clearly un-examined assertions that perhaps, only economists can make. One, for instance, is the assertion that “exports from AGOA countries rose from 23 billion in 2000 to \$81 billion in 2008” (Karingi, Kimenyi as above). In fact, as late as 2014, many senior US trade officials also simply regurgitate some of these

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<sup>6</sup> For Professor Paul’s unorthodox perspectives on International Trade, see especially: “*The Myth of Economic Interdependence*” in WASEDA UNIVERSITY JOURNAL OF COMPARATIVE LAW (Undated), and “Do International Trade Institutions Contribute to Economic Growth and Development?” in 44 VIRGINIA JOURNAL OF INTERNATIONAL LAW, 285 (2003)

<sup>7</sup> Karingi, N.S; Kimenyi, M.S et-al “Consolidating Gains from Africa-US Trade- Post AGOA Options Beyond 2015.

figures without really delving into their real significance. The real fundamental point here is really that an export value that in my estimation, translates to roughly 7.25 per year (over a period of 8 years), cannot really be considered to be much or worthwhile, particularly given the size and complexity of Africa. But the reality sinks much more deeply when these numbers are further subjected to a more rigorous significance, or ‘per-capita analysis.’ It really means that over eight years, each AGOA eligible country exported something less than 0.6 billion. If you add this to the fact that of nearly forty listed “eligible countries”, less than ten have so far participated, the analysis by economists becomes even more perplexing, if not outrightly wanting.

The other fantastic claim is that “AGOA-related trade investments created over 300,000 new jobs (US officials routinely talk of “hundreds of thousands of jobs”!). Again when this is aggregated across the targeted countries, this figure becomes even more abysmal and difficult to appreciate. But perhaps, even more fundamental is the fact that for one to fully bank the AGOA jobs, one has to examine them in relation to far more important considerations like; the job-types; the average salaries earned; the labor standards as well as the general compliance with basic International Labor Organization (ILO) standard requirements. Needless to say, during its peak, it was never uncommon for workers in the specially designated AGOA zones to be on strike in Kenya, apparently decrying various low wages, poor working conditions and other labor-related concerns. That they were also substantially attractive to only women employees also belies a certain outlook that merits independent analysis beyond more usual concerns with gender parity in the jobs market.

The one analysis that really seems to depart from some of the familiar “justification rhetoric” as Joel Paul calls them, is clearly the one attributed to one Eckart Naumann (Trade Law Centre (TRALAC), Cape Town, South Africa). Naumann indicates - even if only in passing- that, “*in practice, actual exports are significantly lower than the quota ceiling imposed under the act and therefore are of no effect...*” The point that then merits further scrutiny here is precisely the one that the orthodox economists do not explore any further: that a positive growth trajectory (sometimes big or small) is not necessarily a direct correlation of any trade measures undertaken, but rather that it would, indeed have resulted *even in the absence of an act such as AGOA*. Indeed, Naumann gestures to some other “underlying drivers” which may have led to some temporary and seemingly transient gains during the AGOA peak years (especially in 2004), before in fact, tapering downwards to the less than satisfactory performance of 0.5-1.0 mark. Whereas this paper is incapable of further interrogating these numbers, it is simply tempting to agree that the graphical illustrations seem to bare it out, that AGOA has certainly not necessarily accelerated growth in Africa, let alone achieving its other intended consequences.

Quite significantly too, one must also contend with the assumption that we have to look elsewhere in order to find more rational explanations for the very few positive stories around AGOA. For instance, why would relatively small countries such as Lesotho, Botswana or Madagascar (when it was eligible) emerge better than the continents giants, like Kenya? The view is that the answer appears to lie in the deliberate political will and policy options that a particular government puts in place rather than the incentives offered by multi-lateral or bi-lateral institutions. Put differently, the argument is that no amount of preferential treatment can save any African country when impunity is allowed to reign in its midst while good governance and the rule of law take a back seat. Moreover, it is highly telling that under the act, some 36 countries were initially designated as eligible with the US president authorized to remove or re-designate non-compliant countries and it simply suffices to also point out that most of these countries have undergone such



complex political changes, including the infamous Arab spring in some countries such as Egypt and Libya as to render section 104 of the act, almost un-enforceable today.

### *B. A Word on Subsidies and its Ill-Logic*

In this section, I very briefly address a few other concerns that present day AGOA analytics are clearly glossing over. It is asserted for instance, that the expansion under AGOA took place, “even though the US continues to subsidize products such as cotton” (Kaimenyi and Karingi, above). The one thing that these authors are probably not reckoning with is that the subsidy of cotton was long permitted under prevailing WTO/GATT rules. Clearly therefore, it is not a persuasive factor in analyzing US-African Trade. Moreover, if AGOA implies that “import subsidies” are actually extended to African countries, then it should really imply (under WTO) that the African products are not suffering any unfavorable treatment in the USA. Accordingly we must seek other explanation as to why the total impact on the US market is still far too small (less than 1%-according to the TRALAC report), to have any effect. In addition a correct analysis would also be aware that under WTO, developing countries would arguably have been given (ever since the Uruguay round) concessionary treatment under the “Safeguard Measures” provision (Art X1X) with the upshot that the specific AGOA subsidy would then be superfluous, unless it can be demonstrated that it indeed has some substantial effect and that any pre-existing subsidies would not be to blame for its failures. Lastly, the MFA which has, ironically, been praised provided a gateway for the more established third country businesses to mount such competition as to leave the ordinary apparel exporter from Africa completely out- maneuvered.

The last and perhaps most important issue in this discussion may have to do with the idea of “Sunk Costs.” In establishing incentives for the export market, a country like Kenya goes to great lengths to “attract”, presumably much needed Foreign Direct Investment (FDI). The incentives list, say, under the Export Processing Zone (EPZA) program is simply a study in “spoiling” the foreign businessman: from two decades of tax holiday, to ready- made high class business premises as well as immediate and easy access to customs officers! Whether these special categories of “import subsidies” are permissible under WTO –merely because of the “third world status” is altogether a separate question, but the key point here is simply that without factoring in such substantial investment costs into the trade balance sheet, the whole scheme is rendered highly questionable.

### **III. PRELIMINARY CONCLUSION AND SOME POLICY IMPLICATIONS**

This analysis has raised critical questions around the manner in which AGOA was both conceptualized and implemented. It has also underscored the importance of the study that has been requested by a team of US senators. One obvious conclusion to be drawn is simply that unless a more rigorous re-appraisal model is considered, AGOA, just like many other policy and legal experimentations undertaken in the name of uplifting the “developing world” may well be another opportunity lost. It is certainly not enough to be in the business of whimsically extending a piece of legislation purely on the basis of transient political moments such as has been clearly evident in the past; (e.g. when a US President is visiting Africa; or the Trade Representative has a sudden meeting with African leaders). My case is that a post 2015 scenario calls for a harder look at the more difficult, if not controversial questions; not just for consideration by the US government, but as a cardinal responsibility of recipient countries in Africa. The one such question is the one the previous legislation touched upon, yet rather eclectically implemented: Africa’s perennial question of political

governance. As this paper has suggested, it goes without saying that the essential reason why many African countries cannot simply tap into the US market have more to do with the governance and leadership question than the mere absence of incentives. In particular, we submit that Africa does not need any more such legal, or policy favors, especially those that soon become mistaken for some sort of entitlements to a younger brother. Kenya and, indeed the whole continent of Africa must be under pressure to compete very hard and with the very best internationally and up its game in a whole range of internally determined political and economic spheres. Only under such pressure will our continent appreciate its world standing, and that no one else owes it a living. As hopefully highlighted in the analysis, one can never fail to notice that the few countries that reaped anything meaningful off AGOA, were also those countries that were prepared to go the extra mile and that these countries are certainly not the most infamous for perennial attempts to subtly subvert the ideal of democracy and the rule of law.

But politics aside, the view here is also simply that to get Africa to do things at much higher standards than they do today is not really an option. Beyond some of the familiar rhetoric, African leaders of their own convictions ought to be able to realize that policy and political choices do really have certain enduring consequences; including whether or not they would wish to be part of the international community. In a sense, this is the shortest answer to the call for, “reforms and accompanying measures that address the current concentration of benefits to a limited number of countries.” By the same token, AGOA can only be practically “more inclusive, accessible and permanent” as these commentators have averred, if it places the responsibility where it truly belongs: on the African political leadership and by extension, the people of Africa. In this analysis, one holds the view that it is simply naïve to impute that one country however endowed, will permanently aid another in its quest for progress even if that country has placed itself on a permanent “self-destruct” mode; insisted on near-infantile claims to sovereignty or practiced exclusivist policies that marginalize so many members of its own potentially productive population merely on account (for instance) of ethnic origins.

Conclusively, one notes that a number of efforts have been made in the past to try and bail out Africa; including the establishment of exclusive business advocacy resources that are expressly supported by consortiums of developed countries in the effort to help them unpack complex legislative instruments such as AGOA. Perhaps the problem then seems to lie in the fact that many such efforts also focus too much attention on a “predatory elite” that dominate Africa’s capital cities and political centers while conspicuously ignoring Africa’s grass roots. Future intervention measures and policy options must therefore try applying themselves to rural areas where the majority of Africans live. A new AGOA legislation (if it must be) could for instance tie in the modernization and transformation of African agriculture as one sure way of strengthening the link already identified by Chemengich and others (above), as the “backward linkages”. The point is then that when trade remains a top-end, urban measure, it clearly becomes an erroneous conceptual framework and hence not surprisingly, the failure of AGOA to have significant turnaround effect for the majority in Africa.