# AFRICAN DEVELOPMENT AND TRADE PREFERENCE PROGRAMS

The United States and Europe have promoted global free trade as a way of encouraging development. As part of this advocacy of the virtues of liberalized trade, the United States and the European Union have instituted unilateral trade preference programs for developing countries. These programs provided for additional tariff concessions beyond the Most Favored Nation rate for eligible developing countries exporting to rich country markets. While most developing countries are eligible for these Generalized System of Preferences programs, Africa, because of its extreme poverty, is the beneficiary of additional programs (such as the U.S. African Growth and Opportunity and Act and the EU African, Caribbean, and Pacific Program and Everything But Arms Initiative) that provide greater tariff benefits.[1] Although these programs continue to be renewed, trade has yet to solve the problem of underdevelopment in Africa. The question remains whether these trade preferences have even had a marginal impact on African economic growth.

[1] *See* AGOA Acceleration Act of 2004 108 P.L. 274 [H.R. 4103] (2004) (§2.7: "Expanded trade because of the Act has improved fundamental economic conditions within sub-Saharan Africa. The Act has helped to create jobs in the poorest region of the world, and most sub-Saharan African counties have sought to take advantage of the opportunities provided by the Act."); *see also* Cotonou Agreement, EU-ACP, June 23, 2000 (Title II, §34: "Economic and trade cooperation shall aim at fostering the smooth and gradual integration of the ACP states into the

U.S. African Growth and Opportunity Act (AGOA)

Enacted in 2000 and renewed until 2015, AGOA has allowed 98% of imports from eligible countries to enter into the U.S. market duty-free. Of the 37 eligible countries, 25 have also received additional apparel benefits, including some with third country fabric provision that allows the countries to source the fabric from anywhere in the world.[2] This program is the cornerstone of the U.S.'s economic policy towards the continent of emphasizing trade, not aid. Since the start of the program in 2000, U.S. imports from Africa have increased by 40% to $50.3 billion in 2005.[3] But this value contains a large amount of oil exports (62.5% in 2002). Even with this increase in trade, African countries still have a negligible impact on the U.S. economy since all of the AGOA beneficiaries combined still account for less than 1% of total U.S. trade.[4]

Eligibility for AGOA is determined by an evaluation by the executive branch of the African country's political and economic set-up (i.e. AGOA trade and investment, market economy/economic reform/elimination of trade barriers, political pluralism/rule-of-law/anti-corruption, poverty reduction, labor/child labor/human rights, etc.). If a country's performance violates the minimum standards set by the U.S., the country will lose its trade benefits.[5] For example, both Mauritania and the Central African Republic had their benefits revoked after military coups. Currently, there are eleven counties in sub-Saharan Africa that are AGOA-

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world economy, with due regard for their political choices and development priorities, thereby promoting their sustainable development and contributing to poverty eradication in the ACP countries.")

[2] USTR, 2006 COMPREHENSIVE REPORT ON U.S. TRADE AND INVESTMENT POLICY TOWARD SUB-SAHARAN AFRICA AND IMPLEMENTATION OF THE AFRICAN GROWTH AND OPPORTUNITY ACT [2006 AGOA Report].

[3] *Id.*

[4] WILLIAM R. CLINE, TRADE POLICY AND GLOBAL POVERTY 91-94 (Center for Global Development and the Institute for International Economics 2004).

[5] Trade and Development Act of 2000, Title I Extension of Certain Trade Benefits to Sub-Saharan Africa, 19 USCS 3701, 106 P.L. 200 §104 [H.R. 434] (2000) [AGOA 1].

ineligible based on their failure to make progress towards the standards set by the U.S.[6] On the other side of the spectrum, countries can receive additional apparel benefits if they are able to establish a visa system to prevent illegal transshipment.[7] Due to changing circumstances, the eligibility of each country is reviewed annually by the U.S. Trade Representative in its annual report to Congress.[8]

AGOA builds upon the general U.S. Generalized System of Preferences (GSP) by allowing for more flexibility, such as providing for culmination among beneficiary African countries to meet the rules of origin threshold, as well as granting additional tariff conditions.[9] In contrast, under the GSP, beneficiary countries face more limited duty-free access, competitive-need limitations, graduation requirements, and a 35% value-added requirement.[10] While Least Developed Countries (from the United Nations list of the poorest countries in the world) qualify for additional duty-free treatment for an additional 1770 products (compared to the normal 4650 products), all qualifying African countries receive the increased benefits of AGOA.[11] In addition, GSP excludes import-sensitive articles such as textiles that are often the first step in a country's industrial development. AGOA, on the other hand, provides qualifying African countries with more apparel benefits. These African countries receive unlimited duty free access for apparel made with U.S. fabric. If using fabric from their own domestic industry or from other African AGOA beneficiaries, they will receive duty-free access up to a cap of 3.5% of total U.S. apparel imports. Countries that qualify under the Special Rule for Lesser Developed Countries (if they had per capita GNP under $1500 in 1998) are allowed to source

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[6] 2006 AGOA Report, *supra* note 2.
[7] AGOA I, *supra* note 5 at §113.
[8] *See* 2006 AGOA Report, *supra* note 2.
[9] AGOA I, *supra* note 5 at §111.
[10] USTR, U.S. GENERALIZED SYSTEM OF PREFERENCES GUIDEBOOK (2006). [U.S. GSP Guidebook]
[11] 2006 AGOA Report, *supra* note 2.

fabric from anywhere in the world and still receive duty-free access to the U.S. market (the third-country fabric provision).[12]

EU African, Caribbean, and Pacific Countries (Lomé Convention/Cotonou Agreement)

The EU designed its preferential trade programs to benefit its former colonies (including all of sub-Saharan Africa) as many of these countries have retained close economic ties to their former colonial powers. Currently, this program is the process of a major transition from the more limited framework of the Lomé Convention (in place from 1975 to 2000) to the more comprehensive approach enshrined in the Cotonou Agreement. The Cotonou Agreement attempts to better integrate the institutional and policy context in beneficiary countries and to focus more attention on poverty reduction in designing its program. The Cotonou Agreement seeks to increase the involvement of civil society, the private sector, and other economic and social actors.[13]

The Cotonou Agreement (valid until 2020, with revisions every five years for more flexibility) is based on five pillars: (1) a comprehensive political dimension (2) participatory approaches (3) a strengthened focus on poverty reduction (4) a new framework for trade cooperation and (5) a reform of financial cooperation.[14] For the new trade regime, the EU is moving away from solely preferential tariffs (as established in the Lomé Convention) to more reciprocal Economic Partnership Agreements in order to anchor economic reform. This transition will last until 2008 at the latest with the current tariff structure remaining in force until superseded by new agreements. Non-LDC countries are obligated to enter negotiations for these

[12] Trade Benefits Under the African Growth and Opportunity Act, §3108 (amendment to AGOA I)
[13] EUROPA – Development and Relations with African, Caribbean, and Pacific States – The Cotonou Agreement, http://ec.europa.eu/comm/development/body/cotonou/overview_en.htm (last visited Nov. 5, 2006). [EU ACP Website]

Economic Partnership Agreements, even though alternatives can be explored if that is not feasible.[15]

Under the EU Common Provisions on Rules of Origin, a beneficiary country needs to establish originating status by showing that the product is "wholly obtained" (as with natural resources) or sufficiently worked or processed.[16] While there is a general tolerance rule that permits manufacturers to use non-originating material up to a specific percentage (for the ACP, 15% of the ex-works price of the final product), if this threshold is exceeded the product will not be considered as originating from the final country. While the EU does allow culmination among all the ACP countries (i.e. products manufactured in one ACP state can be counted towards the threshold requirement for any other ACP state), this remains a difficult burden to meet in the manufacturing sector.[17]

Under its Common Agricultural Policy, the EU developed the Common Organization of the Market of Sugar (CMO) to support its domestic sugar producers by guaranteeing a minimum price for sugar. After the accession of the United Kingdom to the EU in 1975, the CMO incorporated the UK commitments to certain ACP countries to import their raw cane sugar and to for processing and resale. The subsequent ACP Protocol established quotas for these countries and guaranteed them the minimum EU price.[18] These selected ACP countries benefit from the inflated prices (which are currently three times the world price) and less competition (even though it can inhibit downstream development of other industries and leads to dumping of

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[14] EU ACP Website, *supra* note 13.
[15] *Id.*
[16] EUROPA – Taxation and Customs Union/Preferential Origin, http://ec.europa.eu/taxation_customs/customs/customs_duties/rules_origin/article_774_en.htm#cumulation (last visited Nov. 5, 2006).
[17] EUROPA – Taxation and Customs Union/Rules of Origin – The Countries of Africa, Caribbean, and the Pacific (ACP), http://ec.europa.eu/taxation_customs/customs/customs_duties/rules_origin/article_785_en.htm (last visited Nov. 5, 2006).

sugar in other market). But, this program has come under international pressure and found to be in violation of global trade rules. Therefore, the EU has agreed to phase out the quotas and open the sugar market to imports from LDCs in 2009 and to cut the guaranteed minimum price for sugar by 36%.[19]

Despite the close economic ties of the former colonies with Europe, this preferential trade program has little effect on the EU economy and its beneficiaries remain in much the same state of poverty they were in before. Since any potentially sensitive goods are still protected by tariffs, only 35-45% of ACP exports to Europe benefiting from preferences.[20] During the time of the Lomé Convention, ACP share of the EU market declined from 6.7% in 1976 to 3% in 1998, with 60% of these exports concentrated in ten products.[21] Furthermore, 37 out of the 77 ACP beneficiaries rely on only one product to provide more than 50% of their exports to the EU.[22] Although the EU developed the Contonou Agreement in response to the ineffectiveness of the Lomé Convention, it has remained to be seen if this new approach will have better results in the struggle against underdevelopment.

## EU Everything But Arms Initiative

Started in 1971, the EU GSP was the first trade preference program for the developing countries. It now contains three different arrangements for duty-free access and tariff reductions (the general agreement, the Everything But Arms initiative for the Least Developed Countries, and GSP+ for countries implementing international standards on human and labor rights,

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[18] EUROPEAN COMMISSION AGRICULTURE DIRECTORATE-GENERAL, A DESCRIPTION OF THE COMMON ORGANISATION OF THE MARKET IN SUGAR (Sept. 2004).
[19] EUROPA - CAP Reform: EU agricultural ministers adopt groundbreaking sugar reform, http://europa.eu/rapid/pressReleasesAction.do?reference=IP/06/194&format=HTML&aged=0&language=EN&guiLanguage=en (last visited Nov. 5, 2006).
[20] CLINE, *supra* note 4 at 75-80.
[21] EU ACP Website, *supra* note 13.

environmental protection, the fight against drugs, and good governance measures). Under the general agreement, tariff preferences vary according to the sensitivity of the goods to the EU market (with super-sensitive goods such as apparel receiving little if any additional tariff concessions).[23] With the Everything But Arms (EBA) initiative, Least Developed Countries (which includes 32 African countries) receive duty and quota free access into the European market for all goods except arms and munitions.[24]

But these increased benefits have yet to translate into African economic growth. The benefits from all of the EU GSP programs have been concentrated among recipients with imports from China, India, and Thailand receiving 50% of the total benefits. Often for other countries, the incremental advantage of an increased tariff concession did not warrant utilization of the program with its high bureaucratic costs and stringent rules of origin. Overall, the program has only had a marginal impact on developing countries and an even smaller effect on the EU.[25]

Differences between U.S. and EU Programs

While the U.S. and EU both have trade preference programs that target Africa, the bureaucratic requirements of the two have not been harmonized and countries seeking to export to both markets can face differing rules. For example, the U.S. programs have more liberal rules of origin, only requiring 35% value added in a beneficiary country to qualify for preferences, whereas the EU tends to only allow 15% of the value of the price to be from non-

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[22] CLINE, *supra* note 4 at 75-80.
[23] EUROPA – Trade Issues: Generalised System of Preferences, http://ec.europa.eu/trade/issues/global/gsp/index_en.htm (last visited Nov. 5, 2006).
[24] *See* EUROPA – Trade Issues: Generalised System of Preferences, "EBA" Everything But Arms initiative, http://ec.europa.eu/trade/issues/global/gsp/eba/index_en.htm (last visited Nov. 5, 2006). When the program was enacted in 2001,tariffs and quotas remained in place for bananas, sugar, and rice. For these products, the duties will be gradually reduced until they are eliminated (bananas in January 2006, sugar in July 2009, and rice in September 2009). Until 2009, LDCs will receive duty-free quotas for rice and bananas.
[25] CLINE, *supra* note 4 at 67-71.

originating material. In addition, the EU still retains tariffs (for those countries that do not qualify for EBA) on some of its covered products deemed to be super sensitive, whereas the U.S. provides duty-free access for any product that qualifies. Plus, each country has different procedures to establish proof of origin.[26]

Europe also has broader country coverage in its trade preference programs then the U.S. does. Whereas 11 countries have been declared ineligible for AGOA benefits, all sub-Saharan African countries qualify for ACP. While Europe has tried to adopt a more coherent policy framework towards, the U.S. tries to deal with good governance and other factors through a single trade bill. The U.S. includes labor standards as a factor for determining the eligibility of beneficiaries for its programs, whereas the EU has only recently added consideration of workers' right in its GSP+ program but is trying to take a more comprehensive approach to poverty reduction. The U.S. and EU methods themselves differ. Whereas the U.S. has pursued a negative incentive approach (e.g. a country will lose benefits if labor standards are found to be not appropriately enforced), the EU has tried a positive incentive approach (e.g. with countries being able to qualify for additional preferences by promoting labor rights).[27]

As will be shown below through comparative country studies, the trade preference programs have had little effect on promoting African economic growth and development. While Africa is a diverse continent, most of the economies are dominated by commodities – either agricultural products (such as cotton or sugar) or natural resources (such as diamonds or oil). For the country studies, countries (which have been relatively stable) were analyzed that represented some of the different economic situations and conditions in sub-Saharan Africa.

[26] *See* AGOA I; Cotonou Agreement.

While South Africa is the major industrial power in Africa, it was not studied since it has a separate free trade agreement with the EU and did not become a full member in the ACP until 2000.[28]

The countries chosen are: (1) Botswana – one of the most prosperous countries in Africa that is dependent on natural resources (2) Nigeria – a large oil exporter and regional power in West Africa (3) Cote d'Ivoire – a (previously) relatively better off economy dependent on agriculture (4) Mauritius – a small, island economy (5) Kenya – a regional hub in East Africa (6) Tanzania – a Least Developed Country in East Africa (7) Chad - a land-locked Least Developed Country

## *COUNTRY STUDIES*

### BOTSWANA

Botswana is one of the most prosperous and stable countries in Africa - one of the few states in the continent classified as a middle income country. As of January 2005, the World Bank had no active projects in Botswana and the country has actually become a contributor to the International Development Association.[29] In terms of the social and economic indicators as compared to the rest of Sub-Saharan Africa, Botswana has some of the best numbers (with the glaring exception being the HIV/AIDS adult prevalence rate that is estimated to be among the

[27] *See* 2006 AGOA Report, *supra* note 2; EUROPA - Generalised System of Preferences
[28] EUROPA – Development – EU Relations with South Africa, http://ec.europa.eu/comm/development/body/country/country_home_en.cfm?cid=za&lng=en&status=new (last visited Nov. 5, 2006).
[29] Botswana Country Profile - The World Bank, http://www.worldbank.org/afr/bw (last visited Nov. 5, 2006).

highest in the world at 37.3%). With an estimated per capita GDP of $10,700 in terms of purchasing power parity in 2005, Botswana is often hailed as one of the few African success stories.[30]

At independence in 1966 Botswana was one of the poorest countries in the world, but since then it has experienced sustained high economic growth for 40 years. While much of this growth has been fueled by the discovery of diamond mines in 1967 and the continued expansion of mining output, Botswana was able to avoid the curse of violence that has plagued so many other resource-rich countries (i.e., Angola and the Democratic Republic of the Congo). Much of this success has been credited to the role of domestic institutions that ensure a broad section of society has property rights. These institutions are a result of tribal institutions that encourage participation, constraints on political leaders, limits on the effects of British colonialism, and the power of rural leaders at independence.[31]

While institutions laid the necessary foundation for growth and development, trade provided the means. The diamond industry (in particular Dobswana, a division of De Beers) is the largest non-government employer in the country.[32] The export of diamonds is the source of the vast majority of Botswana's foreign reserves and has allowed the country to run continuous trade surpluses.[33] Botswana is the world's leading diamond producer by value as a result of the Jwaeneng pipe that is the richest diamond mine in the world.[34] Because of this richness in diamonds, Botswana's exports have remained very concentrated in terms of products and destinations. Of its $2.554 billion worth of exports, 87% of them are destined for Europe and

[30] Botswana - The CIA World Factbook, https://www.cia.gov/cia/publications/factbook/geos/bc.html (last visited Nov. 5, 2006).
[31] DARON ACEMOGLU, SIMON JOHNSON, AND JAMES A. ROBINSON, An African Success Story: Botswana IN SEARCH OF PROSPERITY 80-115 (Dani Rodrik ed., Princeton University Press 2003).
[32] *See* Debswana Diamond Company, www.debswana.com (last visited Nov. 7, 2006). Debswana is owned in equal shares by the government of Botswana and De Beers Centernary.
[33] Botswana – The CIA World Factbook, *supra* note 30.

over 97% of those exports are diamonds.[35] While there has been some attempt to diversify the economy through tourism, cattle raising, and financial services, the Batswanan economy has remained highly dependent on diamonds.[36]

Although a beneficiary of both U.S. and EU preferential trade programs, these benefits have not had a substantial impact on the economy. Diamonds already enter both the EU and the U.S. without any tariffs[37] (since there is no domestic production and therefore no fear of import competition), so the preference programs did not provide any additional stimulus to this important sector. Botswana's eligibility for additional textile benefits under AGOA has led to some new investment in the apparel sector, but this is relatively minor compared to the scope of the economy ($17.53 billion in terms of purchasing powering in 2005). Even though the United States has seen increased trade with Botswana under AGOA, its trade remains centered on Europe and diamonds.[38]

In conclusion, Bostwana's impressive growth is the result of domestic policy and institutions. While Botswana has benefited from trade, the U.S. and the EU preferential trade programs have only at most had an extremely minor role in the country's development.

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[34] Debswana Diamond Company, *supra* note 32.
[35] EUROPA Trade Issues – Africa, Caribbean, Pacific, http://trade.ec.europa.eu/doclib/docs/2006/april/tradoc_128152.pdf (last visited Nov. 6, 2006). [EU ACP Trade Statistics]; Botswana – The CIA World Factbook, *supra* note 30.
[36] Botswana – The CIA World Factbook, *supra* note 30.
[37] EUROPA - TARIC Consulation, Taxation and Customs Union, http://ec.europa.eu/taxation_customs/dds/cgi-bin/tarchap?Lang=EN (last visited Nov. 6, 2006). [EU Tariff Schedule]; Harmonized Tariff Schedule of the US (2006)-United States International Trade Commission, http://hotdocs.usitc.gov/docs/tata/hts/bychapter/0612HTSA.pdf (last visited Nov. 5, 2006). [U.S. Tariff Schedule]. The HS number for diamonds is 7102.
[38] 2006 AGOA Report, *supra* note 2 at 74-75; Botswana – The CIA World Factbook, *supra* note 30.

## NIGERIA

Africa's most populous country, Nigeria, with its extensive oil deposits, also has the largest economy in Africa. It is the largest oil exporter in sub-Saharan Africa, which also makes it the largest source of American and European imports from the region. Nigeria exported $24.239 billion to the United States and €8.337 billion to the European Union in 2005 (almost all of which was in petroleum products), more than double the value of imports from the next country in the region.[39] Despite this high volume of trade and its natural resource endowment, Nigeria remains highly impoverished and is still struggling with development. Oil revenues have been squandered through corruption and mismanagement as wealth is concentrated in the hands of the elite while over 90% of the population survives on less than $2 a day.[40]

Since the implementation of American and European trade preference programs, the Nigerian economy has only become more dependent on oil. After the oil boom of the 1970s, Nigeria's dependence on oil has only increased, despite the volatile market fluctuations and the negative effects of over-reliance on commodities. In 2002, Nigeria was the fifth largest foreign supplier of oil to the United States (behind Canada, Saudi Arabia, Mexico, and Venezuela).[41] Currently, the oil sector in Nigeria, which is capital-intensive in a labor abundant economy, provides 20% of GDP, 95% of foreign exchange earnings, and approximately 65% of budgetary revenue. While the oil sector has expanded, subsistence agriculture has failed to keep up with

[39] U.S. BUREAU OF ECONOMIC ANALYSIS, INTERNATIONAL ACCOUNTS - EXHIBIT 13: EXPORTS, IMPORTS, AND TRADE BALANCE BY COUNTRY AND AREA 2005, http://www.bea.gov/bea/newsrel/tradannnewsrelease.htm (2006) [U.S. Trade Statistics]; EU ACP Trade Statistics, *supra* note 35.

[40] 2004 World Development Indicators, World Bank

[41] Salih Booker and William Minter, *The U.S. and Nigeria: thinking beyond oil*, AFRICA ACTION, 2003, http://www.africaaction.org/featdocs/nig2003.pdf,

the rapidly growing population and Nigeria is even required to import food.[42] This overdependence on oil has also been detrimental to the communities in the oil-rich provinces of the country. These communities, which are often populated by minorities, lack the political power to protect their own environment or even to ensure that they receive an appropriate share of the oil revenues. These tensions have led to local groups, often comprised of women and the young, occupying and shutting down oil-producing areas, which have in turn led to military repression and further volatility in the oil market.[43]

The American and European trade preference programs were meant to encourage development and economic diversification in developing countries by providing advantageous access to rich markets. In both of these respects, these programs have failed to help Nigeria overcome its development obstacles. Despite the oil wealth of the country, the vast majority of Nigerians remain desperately poor. Nigeria's resource wealth is concentrated in the hands of a few, while the rest of the population has to suffer through mismanagement and corruption. While there has been some incremental progress in establishing a rules-based market economy since the transition from military to civilian rule, there remains much to be accomplished.[44] The preference programs have also failed to move Nigeria away from its dependence on oil. While $22.5 billion of exports from Nigeria received American preferential treatment,[45] the benefits were applied almost exclusively to petroleum products, which already have a low tariff rate. In the European Union, the preference programs are not applicable for these products since oil is already granted duty free entry.[46]

[42] Nigeria - The CIA World Factbook, https://www.cia.gov/cia/publications/factbook/geos/bc.html (last visited Nov. 6, 2006).
[43] Booker and Minter, *supra* note 41.
[44] 2006 AGOA Report, *supra* note 2 at 117-119.
[45] *Id.*
[46] U.S. Tariff Schedule, *supra* note 37; EU Tariff Schedule, *supra* note 37. The HS number for crude petroleum oil is 2709.

The Nigerian economy is operating under heavy burdens, such as massive external debt, that the U.S. and European preferential trade programs alone are largely unable to ameliorate. Because of its natural resource endowment and subsequent dependence on oil, Nigeria will not undergo a substantial structural adjustment of its economy because of a reduced tariff on other goods (especially when the price of oil is high). In conclusion, preferential trade programs have had little if any impact on Nigerian economic development.

## COTE D'IVOIRE

Before the outbreak of civil war in 2002, Cote d'Ivoire was one of the most prosperous countries in Sub-Saharan Africa. One ofhe largest producer of cocoa beans and palm oil in the world, Cote d'Ivoire was one of the few countries the European Union singled out as having benefited from its trade preference programs.[47] But, many of these gains were wiped out by the onset of violence between the largely Muslim north and the largely Christian south in the country. While the French brokered a peace agreement between the warring sides in January 2003, the domestic political and economic situations remain fragile.[48] The marginal benefits of additional tariff reductions were not enough to rescue the economy from the ravages of war.

Cote d'Ivoire experienced an unmatched record of economic growth in the 1960s and 1970s (with an average GDP growth of 7.5% per year) as well as 30 years of political stability. This growth was based on agricultural exports and close cooperation with France, its former colonial power. This expansion was facilitated by a national growth policy and a strong state

[47] EU ACP Website, *supra* note 13.

that provided infrastructure and institutions. After independence, there was no weakening of the bureaucracy (as happened in most other African states) and the country invested in the education of its civil servants.[49] Preferential trade privileges aided Cote d'Ivoire since a plurality of its exports are destined for the European Union.[50] These preferences also helped to encourage diversification and increases in production. In addition to the expansion of its primary agricultural exports (cocoa, coffee, and timber), the Ivorian economy also expanded to produce palm oil, cotton, rubber, fruit, as well as manufactured goods. As a result, new crops, such as cotton, have become an increasing portion of exports.[51] Cote d'Ivoire has also benefited from the European Union's special regimes for bananas and sugar, which has allowed the country to sell a certain quantity of these goods at the artificially high domestic European price.[52]

But despite better fundamentals then most of the rest of the continent, Cote d'Ivoire was still reliant on agricultural commodities and subject to the negative effects of bad weather conditions and drops in commodity prices. The decline in commodity prices in the 1980s led to a sharp increase in Cote d'Ivoire's debt burden, with the country currently having a higher per capita debt burden than per capita GDP.[53] The economy started staging a comeback after 1994, but that was disrupted in 2000 by the disputed election and difficult international conditions.

[48] Cote d'Ivoire - The CIA World Factbook, https://www.cia.gov/cia/publications/factbook/geos/bc.html (last visited Nov. 6, 2006).
[49] Richard C. Crook, *Patrimonialism, Administrative Effectiveness and Economic Development in Cote d'Ivoire*, 88 AFRICAN AFFAIRS (Apr. 1989).
[50] Cote d'Ivoire – The CIA World Factbook, *supra* note 48.
[51] Crook, *supra* note 49.
[52] *The EC banana regime, GATT/WTO challenges, and the evolving policy framework*, UNCTAD, http://www.unctad.org/infocomm/anglais/banana/ecopolicies.htm; *Informations sur le sucre*, UNCTAD, http://www.unctad.org/infocomm/francais/sucre/plan.htm.
[53] EUROPA: Relations UE – Ivory Coast, http://ec.europa.eu/comm/development/body/country/country_home_fr.cfm?cid=ci&lng=fr&status=new (last visited Nov. 6, 2006).

With the eruption of civil war in 2002, economic conditions deteriorated, and only recently has a measure of stability has returned to the country.[54]

While Cote d'Ivoire used to be one of the exceptional cases in Africa, in recent years it has fallen into the all too familiar trap of violence and stagnant economic growth. In fact, its AGOA trade benefits were revoked starting in 2005 for the government's unilateral violation of the United Nations-monitored cease fire.[55] While preferential trade programs were a positive factor in the development and diversification of the Ivorian economy, they were powerless to stop the economic deterioration due to price drops and violence.

**MAURITIUS**

Mauritius is another atypical African success story. With one of the highest per capita GDPs in the region, Mauritius transformed itself from a small mono-crop economy into a newly industrialized nation. In addition to its large sugar industry, Mauritius has developed a diversified economy with growing industrial, financial, and tourist sectors.[56] This economic growth has been accompanied by impressive improvements in human development and socioeconomic indicators, as well as macro and political stability. Economic growth and diversification were supported by the high quality of Mauritius' domestic institutions, which

[54] Cote d'Ivoire - The CIA World Factbook, *supra* note 48.
[55] 2006 AGOA Report, *supra* note 2 at 86.
[56] Mauritius – The CIA World Factbook, https://www.cia.gov/cia/publications/factbook/geos/mp.html (last visited Nov. 7, 2006).

encouraged a culture of transparency and participatory politics.[57] The country presents a startling contrast to the stagnant performances of much of the rest of the continent.

While the country pursued a mixed opening of its economy, the success of this transformation was largely a result of its preferential access to the European market, especially for sugar.[58] The 1974 EC Sugar Protocol granted Mauritius a high price for its sugar (around triple that of the world price) in addition to a guaranteed quota every year. In 2003, Mauritius exported 491,030 tons of sugar (with 41,890 tons guaranteed) to the European Union. Mauritius has used this income from sugar to develop its economy and to diversify into new sectors (i.e., textiles and tourism).[59] The complex global textile quota system and the country's cheap, skilled, and stable labor force allowed Mauritius to develop a vibrant manufacturing sector and thereby lessening its dependence on a single commodity.

Mauritius was able to take advantage of these opportunities, despite unfavorable initial conditions of being an isolated island nation without natural resources, because of the strength and skill of its bureaucracy and widespread political agreement among the various parties and ethnic groups.[60] Social and economic progress was promoted through industrialization and local capital accumulation. And while many sugar planters initially opposed the sugar agreement with Europe because of the then prevailing commodity price, the Mauritian bureaucracy was able to negotiate the beneficial access that spurred the economy's later development. After the recession of the late 1970s brought the World Bank and the IMF to the country, the bureaucracy was able to tailor a select number of long-range proposals for the future development of then Mauritian

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[57] Thomas Meisenhelder, *The Development State in Mauritius*, 35 THE JOURNAL OF MODERN AFRICAN STUDIES (1997).

[58] ARVIND SUBRAMANIAN AND DEVESH ROY, Who Can Explain the Mauritian Miracle?: Meade, Romer, Sachs, or Rodrik? IN SEARCH OF PROSPERITY: ANALYTIC NARRATIVES ON ECONOMIC GROWTH (Dani Rodrik ed., Princeton University Press 2003).

[59] Ackbarally, Nasseem, "Mauritius: Sugar loses its sweetness" *African Business*. London: November 2004, issue 303.

economy. The bureaucracy also coupled Mauritius' economic growth with an OECD-style welfare system, with benefits such as free health care and free education.[61]

But since Mauritius achieved its spectacular growth through preferential market access, it will be facing severe economic challenges as these preferences from are eroded or phased out. In January 2005, the global quota system for textiles and apparel that has contained China's production capacity ended. This danger to smaller manufacturers is coinciding with increasing labor costs in Mauritius that are eroding the country's competitiveness in the textile industry.[62] In the sugar sector (where Mauritius has greatly benefited from the old framework), the European Union is planning to fully liberalize its sugar regime by July 2009. Despite these obstacles, both the public and the private sector have been developing economic strategies to confront these challenges and economic performance in the country has remained relatively strong.[63] Trade preferences spurred Mauritian development, and now the question is whether Mauritius can move its economy beyond relying on these same preferences.

**KENYA**

Kenya is the hub of East Africa – a center of finance and commerce for the region. But unlike Cote d'Ivoire, Kenya has not experienced the same type of economic growth nor the same civil war-related violence that has recently plagued its western counterpart. And while Kenya has made democratic process with its recent peaceful transfer of power, the country's economy

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[60] Meisenheld, *supra* note 57.
[61] *Id*.
[62] *African Economic Outlook 2002/2003 – Mauritius* 10 OECD DEVELOPMENT CENTER, SOURCEOECD EMERGING ECONOMICS (Apr. 2003). [OECD African Economic Outlook]

remains hampered by corruption and an over-reliance on several agricultural commodities. Although the country once showed tremendous promise, the economy has stagnated, with GDP growth failing to keep up with population growth. Corruption is so pervasive in the country that the IMF has suspended lending to Kenya several times, most recently in 2001. While the new government under President Kibaki has made some progress in confronting corruption and encouraging donor support, Kenya still has many obstacles (such as crumbling infrastructure, high levels of poverty, the HIV/AIDS epidemic) to overcome on its path towards development.[64]

One of the largest economies on the continent, Kenya's exports, like many other African countries, are dominated by agricultural commodities - primarily cut flowers, vegetables, tea, and coffee.[65] These agricultural products, especially tea, face stiff international competition and are subject to volatile price swings. Despite the unstable nature of the market, the majority of Kenyans still work in agricultural-related activities, ranging from subsistence farming to wage labor on large estates. Government efforts to assist poor farmers have often just resulted in more mismanagement and corruption.[66] While trade preferences have not moved Kenya away from its agricultural base, they have helped to spur diversification of the economy, mainly in the cut flower sector and in the textile and apparel industry.[67]

While Kenya is not as dependent on the European market as some other countries in Africa as it has a variety of export partners,[68] the country faces the threat of preference erosion. With the deadlines set in the Cotonou Agreement with the European Union, unless Kenya negotiates a reciprocal trade agreement before 2007, it will experience a rise in European tariffs

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[63] OECD African Economic Outlook, *supra* note 62.
[64] Kenya - The CIA World Factbook, https://www.cia.gov/cia/publications/factbook/geos/ke.html (last visited Nov. 7, 2006).
[65] EU ACP Trade Statistics, *supra* note 35.
[66] York W. Bradshaw, *Perpetuating Underdevelopment in Kenya: The Link between Agriculture, Class, and State* 33 AFRICAN STUDIES REVIEW (Apr. 1990).
[67] 2006 AGOA Report, *supra* note 2 at 102-103.

to the less beneficial GSP level that applies to all developing countries. This will have an especially detrimental impact on the Kenyan economy since neighboring Tanzania and Uganda (who produce similar products for export) are classified as LDCs and will continue to face no European tariffs under the Everything But Arms Initiative. Since Tanzania and Uganda benefit from the EBA arrangement, they stand to pick up European market share at the expense of Kenya.[69] Cut flowers and horticultural products will be the sectors most affected – for cut flowers, the European tariff will increase from 0% to 5%.[70] These sectors developed in Kenya, helped by tariff preferences, in an attempt to diversify the economy and reduce dependence on traditional export commodities (such as coffee and tea) that have been experiencing a strong downward trend in price.[71]

Sadly, the story of Kenya's economy to date is all too typical of many countries in Africa. Corruption has consistently robbed the country of its promise. While there has been optimism about the country's prospects since the peaceful change in government in 2002, Kenya will continue to face tough economic challenges.

**TANZANIA**

Lying just south of Kenya, Tanzania faces many of the same obstacles to development. With a GDP per capita of only $700 measured in terms of purchasing power parity and 36% of

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[68] Kenya – The CIA World Factbook, *supra* note 64.
[69] *Respecting the Rights of Least Developed Countries: The East African Community and Future Trade Relations with the EU*, EUROPEAN RESEARCH OFFICE (Mar. 2003) available at http://tanzania.fes-international.de/doc/cotonou-the-eac-and-future-trade-relations-with-the-eu.pdf.
[70] EU Tariffs, *supra* note 37. The HS number for cut flowers is 0603.
[71] *Respecting the Rights of Least Developed Countries*, *supra* note 69.

the population below the poverty line, Tanzania is also one of the poorest countries in sub-Saharan Africa.[72] While Kenya pursued a more capitalist approach to development, Tanzania followed a socialist platform. But while President Nyerere emphasized rural development, nationalization of foreign capital, and overall equality, over time the country became more and more dependent on foreign aid and loans. Although there has been no marginalization of the peasantry and a diminishing divergence between urban and rural standards, this heavy debt burden inhibited ambitious social change.[73] In fact, in 2001, Tanzania was one of the first African countries to receive enhanced debt relief under the HIPC (Heavily Indebted Poor Countries) initiative.[74]

While the economy has been growing briskly recently and development indicators have been improving, further growth has been hindered by corruption, poor infrastructure, and bureaucratic inefficiencies.[75] During the 1980s, the Tanzanian bureaucracy attempted to build capital investment and industrial infrastructure through extracting the surplus from peasant agriculture by rural aggregation and communal production. This strategy did not transform the economy, instead it only caused declining output per labor unit and a switch from cash crops to subsistence agriculture.[76] Since then, the economy has remained heavily dependent on agriculture (e.g., coffee, tea, cashew nuts, and cotton) and natural resources (e.g., gold).[77]

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[72] Tanzania - The CIA World Factbook, https://www.cia.gov/cia/publications/factbook/geos/tz.html (last visited Nov. 9, 2006).

[73] P.F. Nursey-Bray, *Tanzania: The Development Debate*, 79 AFRICAN AFFAIRS (Jan. 1980).

[74] IMF and IDA Support Debt Relief for Tanzania – International Monetary Fund, http://www.imf.org/external/np/sec/pr/2000/pr0026.htm (last visited Nov. 9, 2006).

[75] Tanzania - The World Bank, http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/TANZANIAEXTN/0,,hlPK:261262~menuPK:258804~pagePK:141159~piPK:141110~theSitePK:258799,00.html (last visited Nov. 9, 2006).

[76] Deborah Fahy Bryceson, *Peasant Commodity Production in Post-Colonial Tanzania*, 81 AFRICAN AFFAIRS (Oct. 1982).

[77] Tanzania - The CIA World Factbook, *supra* note 72.

Trade preferences from the European Union and the United States have not given Tanzania a large enough incentive for the country to develop an industrial base to diversify its economy. Tanzanian socialism failed to provide an impetus for self-sustained development, and only recently have reforms been made to enhance the private sector, improve competitiveness, and attract more foreign investment and trade.[78] And although AGOA has helped to spur a domestic textile industry, the United States remains only a minor trading partner.[79] Although Tanzania's access to the EU is secured through the EBA initiative, the country continues to export overwhelmingly primary (as opposed to finished) products.[80]

While recent economic growth has been led by a pickup in industrial production and an increase in the output of minerals such as gold, the economy remains subject to volatile commodity prices and a reliance on foreign assistance. In addition, the European Union is pressing Tanzania to renounce its EBA benefits and join with neighboring Kenya and Uganda to negotiate a reciprocal preferential trade agreement. If Tanzania agrees to this arrangement, it would likely face a dwindling trade surplus with the European Union as it would have to remove its trade barriers to a major trading partner without receiving additional tariff benefits.[81]

**CHAD**

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[78] 2006 AGOA Report, *supra* note 2 at 129-131.
[79] *Id.;* Tanzania – The CIA World Factbook, *supra* note 72.
[80] Tanzania – Country Fiche - EUROPA Trade Issues: Bilateral Trade Relations-African Caribbean Pacific, http://trade.ec.europa.eu/doclib/docs/2006/april/tradoc_128285.pdf (last visited Nov. 9, 2006).
[81] *Respecting the Rights of Least Developed Countries*, *supra* note 69.

One of the world's least developed countries, Chad is a land-locked, conflict-prone, authoritarian, poverty-ridden, petroleum-rich country beset by political instability.[82] Although still highly dependent on cotton, the start-up of the Chad-Cameroon Petroleum Development Project in 2003 significantly increased the importance of oil to the economy. The country has also undertaken reform to privatize several sectors of the economy and to modernize the civil service. Corruption and poor governance continue to hamper economic growth, despite some small progress in developing democratic institutions.[83] This small bit of progress threatens to become undone by spreading turmoil from the humanitarian crisis in Darfur, Sudan. In a country that can barely support itself and has already endured three decades of ethnic warfare and invasion, there are currently 200,000 Sudanese refugees as well as rebel groups flowing freely across the border.[84]

Economic growth must occur within this volatile political context. The completion of the oil pipeline has also caused a shift in Chad's exports away from the European Union towards the United States, even though the European Union still remains a larger trading partner.[85] Before 2003 Chad did not export any products under AGOA, whereas in 2005 it exported $1.2 billion worth of petroleum under the law's provisions.[86] While the pipeline generated a lot of controversy, the World Bank endorsed the project in exchange for a government promise that the oil revenue would be used for social and economic development.[87] Therefore, it is the pipeline,

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[82] Chad – The CIA World Factbook, https://www.cia.gov/cia/publications/factbook/geos/cd.html (last visited Nov. 9, 2006).
[83] 2006 AGOA Report, *supra* note 2 at 82-84.
[84] Chad - The CIA World Factbook, *supra* note 82.
[85] Chad – Country Fiche - EUROPA Trade Issues: Bilateral Trade Relations-African Caribbean Pacific, http://trade.ec.europa.eu/doclib/docs/2006/april/tradoc_128282.pdf (last visited Nov. 9, 2006).
[86] 2006 AGOA Report, *supra* note 2 at 82-84.
[87] Michael T. Klare, *Geopolitics Reborn: The Global Struggle over Oil and Gas Pipelines*, 103 CURRENT HISTORY (Dec. 2004).

not American and European trade preferences, which brought about this growth and shift in the economy towards a greater reliance on natural resources.

In terms of agriculture, while Chadian cotton does not face any tariff barriers coming into the United States or the European Union,[88] the country cannot match the production subsidies given to developed country farmers. Unable to compete in terms of price, Chad is left at a competitive disadvantage in its most important non-oil export. In fact at the Cancun Ministerial Meeting for the World Trade Organization in September 2003, Chad, along with Benin, Burkina Faso, and Mali, demanded compensation of $250 million to $1 billion for the detrimental effects of these cotton subsidies. While United States Trade Representative promised to work on eliminating production subsidies, currently they still remain in place.[89]

Trade preferences have not encouraged economic development or growth in Chad. The economy remains dominated by a single agricultural crop (cotton) and a single natural resource (oil). Battling against chronic political instability and disadvantageous initial conditions, economic prosperity seems as far away as ever.

## CONCLUSION

Trade preferences have not proven to be the solution to the massive problem of African underdevelopment. Since the implementation of these programs, African countries have overwhelmingly remained mired in poverty with their economies dependent on volatile commodities. Those countries (such as Botswana) that have made progress on development

[88] EU Tariffs, *supra* note 37. U.S. Tariffs, *supra* note 37. The HS number for cotton is 5200.

have largely done so on the strength of their domestic institutions. Even Mauritius, which has benefited from trade preferences, capitalized on the opportunities that the preferences through its domestic institutions.

Despite this lack of success, the U.S. and EU should retain their trade preference programs. Even if most African countries have yet to fully utilize them, the opportunities need to at least by present. And while trade preference programs alone will not solve the problem of African underdevelopment, the programs can be better designed to allow African countries to take advantage of the American and European export markets. A first step would be to harmonize the U.S. and the EU trade preference programs so that if an exporter meets the requirements for one market he would automatically be eligible for the other one. But, the most important reform would be to liberalize the rules of origin to require less value-added in an African country for a product to qualify for the additional tariff concessions. Since Africa does not have a broad industrial base, it can lose out on the benefit of the preferences because there is not enough local content. By loosening these rules, more products will qualify for the tariff preferences, which should help generate economic growth.

On the flip side, countries also need to be careful not to rely too much on preferences. Countries have been facing preference erosion as over time unilateral preferences have become less valuable as general tariff rates applied to all trading partners have been reduced as part of global trade negotiations. Especially as the EU has already committed itself to phasing out its quota program for sugar, rice, and bananas, further preference erosion in the future is inevitable. Even if the Doha Development Round of the World Trade Organization is not concluded, the U.S. and the EU have been prolific in establishing bilateral free trade agreements that lower trade barriers for partner countries. As more countries receive preferential access to these markets, the

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[89] Jagdish Bhagwati, *Don't Cry for Cancun,* 83 FOREIGN AFFAIRS (Jan./Feb. 2004).

comparative value of the African preferences will lessen as it faces more competition at these reduced rates. In addition, many of the current barriers to trade take the form of non-tariff barriers (such as health standards or domestic subsidies) that are not addressed in trade preference programs.[90]

African countries remain over-reliant on commodities, which tend to suffer from volatile market swings and declining terms of trade. African countries need to try to use their preferential access to the American and European markets to encourage industrial development and export diversification in order to help buffer themselves from shocks in the global economy. With the ever increasing manufacturing strength of China and continued preference erosion, African countries need to act as soon as possible to build up their economies. While tariff concessions alone will never give as much of an incentive to develop an industry as do quotas (e.g. the development of the apparel industry in Lesotho as a result of the Multi-Fiber Agreement), they do provide governments with an additional benefit they can offer an industry to set up in their country. While the trade preference need to be reformed by the U.S. and the EU to enhance their contributions to development, African countries should work to try to maximize their effectiveness by factoring them into their economic planning. Although African countries face tremendous and multiple obstacles in their path to development, trade preferences have the potential to be a helpful tool for growth.

[90] CLINE, *supra* note 4 at 70-74.