

SYMPOSIUM ON AFRICA AND THE FUTURE OF INTERNATIONAL TRADE REGIMES

INTRODUCTION TO THE SYMPOSIUM ON AFRICA AND THE FUTURE OF INTERNATIONAL TRADE REGIMES

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On September 30, 2015, the World Trade Organization (WTO) waiver that allows the United States to extend trade preferences to African countries under [the African Growth and Opportunity Act \(AGOA\)](#)¹ will come to an end.² This symposium examines the possible future directions of U.S.-Africa trade relations in the post-2015 period.

The four contributions to this symposium address a range of issues, including: What strategies should African countries pursue between now and 2015 to fully utilize the market access opportunities under AGOA? What challenges lie ahead for a post-2015 U.S.-Africa trading relationship that may not be anchored on preferential trading access to the United States for African countries? Would a reciprocal trading relationship between the United States and African countries be ideal? Most importantly, given the potential realignment of United States trade policy in general under a Trump or even a different future Administration, what challenges lie in defining and redefining U.S.-Africa trade relations? What impact would such realignment have on the Africa Union's ongoing efforts to establish a Continental Free Trade Area (CFTA)? How much flexibility would the United States have in not using its model free trade agreement (FTA) in negotiations with African countries post-2015, such that the United States could create more and better opportunities for trade-driven growth and poverty reduction in Africa?

In her essay, [Joy Kategekwa](#) argues that U.S. trade preferences to African countries should be redirected to prioritize the development of productive capacities and value addition of African products. She argues that this can be done through targeted United States investments in agriculture, services, and industry so that African economies can transition from being primary product producers and suppliers to producing products at higher rungs of the global value chain.³ In her view, such a U.S.-Africa trade relationship would not only place preferences in their "proper developmental context," but would also entail having African countries commit to encourage local ownership and capacity development. Doing so would increase Africa's gains from international trade, which at the moment are among the lowest relative to other regions. Such increases in gains in trade would in turn unleash

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¹ See [African Growth and Opportunity Act \(AGOA\)](#), OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE.

² Paragraph 3 of Article IX of the WTO Agreement allows waivers of WTO Member obligations under Paragraph 1 of Article I and Paragraphs 1 and 2 of Article XIII of the General Agreement on Tariffs and Trade 1994. The current AGOA waiver was approved by the WTO General Council on November 30, 2015 and the WTO Goods Council on November 10, 2015. See [Goods Council Approves AGOA Waiver, Hears Call for Talks on Illicit Trade](#), WORLD TRADE ORGANIZATION (Nov. 10, 2015).

³ Joy Kategekwa, [Rethinking the AGOA Model: How to Create a Pro-Structural Transformation of the U.S.-Africa Trade Relationship](#), 111 AJIL UNBOUND 372 (2017).

trade's potential to work for Africa's development and to meet the global [Sustainable Development Goals](#), such as eliminating extreme poverty by 2030.⁴ For these reasons, she argues against basing U.S.-Africa trade relations in the post-2025 period on a reciprocal-based trading arrangement, a structure often seen in the [Economic Partnership Agreements between African countries and the European Union](#).⁵ She also counsels against incorporating limiting timeframes that would require periodic renewal, as has been the case with AGOA, because the uncertainty surrounding renewals would not augur well for the kind of long term investments from the United States she envisages in this post-2025 trading regime.

On his part, [William Davis](#) argues that African countries should prepare for a nonreciprocal trade relationship with the United States after September 2025 by accelerating the ongoing negotiations and subsequently implementing the commitments in the African Union-led [CFTA](#). Relying on studies conducted by the [Economic Commission for Africa](#) (ECA),⁶ Davis shows the adverse trade consequences Africa is projected to suffer as a result of various megaregional trade agreements around the world.⁷ The studies Davis cites make the case for the CFTA to be designed to counteract and off-set these adverse consequences and to set in motion economic growth through increased intra-African trade. He argues that if a fully implemented CFTA in the form envisaged by the ECA becomes the foundation upon which negotiations between African countries and the United States are conducted, it would be a win-win situation for the United States as well. After all, he argues, the entire African market under the CFTA would be open to United States traders and investors. Davis emphasizes the importance of African countries formulating and following up strategies to fully utilize AGOA preferences, as Ethiopia has successfully done, increasing its share of industrial exports to the United States. Indeed, as Davis shows, since AGOA was enacted, fossil fuels have accounted for no less than 65 percent of imports to the United States from Africa. The imperative to increase nonfossil fuel exports to the United States through strategies of [structural transformation of African economies is an imperative that the African Union has set for itself](#) and is a common theme among all four symposium contributions.⁸

[Kathleen Claussen's](#) contribution examines the stakes involved in figuring out the extent to which the CFTA will converge or diverge from what she calls the "new era of deeper and faster regulatory alignment outside the WTO."⁹ The United States embodies these new commitments in similar form and content in virtually all of its FTAs and in various megaregional trade agreements such as the Trans-Pacific Partnership and the Transatlantic Trade and Investment Partnership. More specifically, she is skeptical that there is much scope for radically altering U.S.-Africa trade relations because the framework Congress and the executive branch have put in place to negotiate and approve trade agreements, known as Trade Promotion Authority, imposes detailed negotiating objectives on U.S. negotiators that have been difficult to deviate from in practice. However, Claussen notes that there are good reasons for alternative economic instruments to govern U.S.-Africa trade relations so that they are not embedded in this growing global convergence of "shared principles across agreements and across geographic areas" embodied in traditional U.S. FTAs. For example, she argues in favor of alternative models, such as [Trade and Investment Framework Agreements](#),¹⁰ nonenforceable jointly agreed action plans, or memoranda of understanding. Adopting such alternatives, she argues, would be justified by "the significant disparities in

⁴ See [Sustainable Development Goals](#), UNITED NATIONS.

⁵ See James Thuo Gathii, [The Cotonou Agreement and Economic Partnership Agreements](#), in *REALIZING THE RIGHT TO DEVELOPMENT* (United Nations ed., 2013).

⁶ See [Regional Integration and Trade](#), UNITED NATIONS ECONOMIC COMMISSION FOR AFRICA.

⁷ William Davis, [The African Growth and Opportunity Act and the African Continental Free Trade Area](#), 111 AJIL UNBOUND 377 (2017).

⁸ See African Union Comm'n, [Agenda 2063, First Ten-Year Implementation Plan](#) (Sept. 2015).

⁹ Kathleen Claussen, [The Next Generation of U.S.-Africa Trade Instruments](#), 111 AJIL UNBOUND 384 (2017).

¹⁰ See [Trade & Investment Framework Agreements](#), OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE.

market power between the United States and some of the poorest African economies.” Finally, Claussen reminds us that hinging a future U.S.-Africa trade relationship around the various [overlapping subregional African trade blocs](#) that are designed not by economic advantage but by historical and other strategic interests may ignore other avenues that would give voice to the “municipal level actors,” who she notes often have “limited opportunity to contribute to trade law making.”¹¹

Last but not least, [Stephen Lande and Dennis Matanda](#) argue that AGOA presents the United States with an opportunity to challenge China’s trade model (which is deindustrializing Africa) and instead to pursue a trade relationship that would “diversify trade, build capacity, and integrate [African] economies into higher rungs of global value chains.”¹² These objectives, they argue, are mutually beneficial since African economies would in turn produce intermediary goods for American supply chains. In their view, these objectives can be met by “making modest changes to a few AGOA provisions.” For example, they argue in favor of expanding AGOA’s duty free and quota free access beyond the 1,835 beneficiary products—especially agricultural and agroprocessed products—as a strategy for stimulating Africa’s exports to the United States. This would also involve removing tariff rate quotas on agricultural commodities such as sugar, cotton, and peanuts. They also propose changes to AGOA rules of origin to allow more African fabrics from leading retailers and light manufacturers to enter the United States. They argue that the United States should not pass up the “huge economic opportunities” that Africa presents, particularly given the commitment on the continent to diversify economies and to raise productivity in agricultural and nonagricultural sectors. Ultimately, for Lande and Matanda, opening up the United States market for more African produce and products and in return opening up the African market for United States traders and investors is a win-win scenario for both sides. They argue that this is particularly true because with the CFTA Africa will create a single market of over a billion people with a collective GDP of over US\$3 trillion.

These four thoughtful contributions together outline some of the choices and pathways for a post-2025 United States Africa trade relationship. They also offer examples of strategies that have worked to maximize AGOA’s potential for African countries that can now be used for the remainder of the statute’s tenure. Further, they offer suggestions for expanding the scope of AGOA before its expiry while recognizing the challenges that enacting and implementing these changes will entail. The proposals on reconfiguring U.S.-Africa trade relations beyond 2025 discussed in this symposium—to focus on developing Africa’s export potential beyond exports of raw materials and increasing United States foreign investment and trade in Africa—will hopefully contribute to shaping the debate and outcomes on evolving trade relations between the United States and Africa.

¹¹ See James Thuo Gathii, [African Regional Trade Agreements as Flexible Legal Regimes](#), 35 N.C. J. INT’L L. & COM. REG. 571 (2009).

¹² Stephen Lande & Dennis Matanda, [Defining and Redefining U.S.-Africa Trade Relations During the Trump Presidency](#), 111 AJIL UNBOUND 389 (2017).