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MEMORANDUM

TO:	House Subcommittee on Africa, Global Health, Global Human Rights and International Organizations
FROM:	Peter C. Hansen
DATE:	May 7, 2013
RE:	Increasing U.S. Exports to Africa: Why U.S. Investment Is First Necessary

This memorandum has been prepared to accompany my oral testimony before the Committee on May 7, 2013. I am grateful to Chairman Chris Smith for his invitation to provide views and insights on U.S. exports to Africa from the often overlooked perspective of U.S. investors.[1]

Before proceeding to the substance of my testimony, I would like to bring to the Subcommittee's attention the efforts of the Working Group on U.S. Investment in Africa, which I have had the honor to chair. This informal and non-partisan group of technical experts was assembled to advise the Romney Campaign's Advisory Committee on Africa, a policy-development body co-chaired by Ambassador Tibor Nagy. The Working Group provided a wealth of briefing memoranda and action plans grounded in their experiences in corporations, law practices, relief organizations and other capacities. Their work, which dealt with almost every aspect of U.S. engagement with Africa, is being transmitted to the second Obama Administration in the spirit of non-partisanship. Moreover, the Compendium of their work has been widely circulated online, having been downloaded over 1,250 times from my firm's website alone.[2] The Working Group remains active, and its members would make extremely useful witnesses for the Subcommittee given their profound real-world experiences working with Africa.

I would also like to draw to the Subcommittee's attention two of my other recent publications on the topic of Africa, as they supplement and expand on my testimony today. The first is my Heritage lecture, "Unleashing the U.S. Investor in Africa: A Critique of U.S. Policy Toward the Continent."[3] The second is my interview with the New York City Bar, "Legal Considerations for Investing in Africa."[4]

[1] All references to Africa in this testimony refer exclusively to Sub-Saharan Africa unless expressly stated otherwise.

[2] Working Group on U.S. Investment in Africa, *Compendium* (published Jan. 1, 2013), *available at* http://www.peterhansenlaw.com/Publications/Members/WorkingGroupOnAfricaCompendium.pdf (accessed Apr. 29, 2013).

[3] Hansen, "Unleashing the U.S. Investor in Africa: A Critique of U.S. Policy Toward the Continent" (Heritage, Feb. 4, 2013), *available at* http://www.heritage.org/research/lecture/2013/02/unleashing-the-us-investor-in-africa (accessed Apr. 29, 2013).

[4] Hansen, "Legal Considerations for Investing in Africa: An Interview with Peter C. Hansen, Esq." (New York City Bar, July 2012), *available at* http://www.nycbar.org/african-affairs/business-in-africa-law-project/1633-legal-considerations-for-investing-in-africa-an-interview-with-peter-c-hansen-esq (accessed Apr. 29, 2013).

My testimony today takes place in the context of the "Increasing American Jobs through Greater Exports to African Act of 2013" introduced by Chairman Chris Smith and currently under consideration by the Subcommittee. Having read the Act, I think it is a strong step in the right direction. It is refreshing to see that the Act acknowledges the role of U.S. investors in drawing U.S. exports to Africa. If signed into law, and particularly if some minor modifications are made, it would not only be helpful in itself, but it would also serve as a solid platform for further reforms. To assist the Subcommittee in its review of the Act, I have organized my contributions under rubrics that track the Act's sections.

1. THE ACT'S FINDINGS AND PURPOSE - § 2

The Act properly points out many of Africa's highly positive economic factors, but its call for a 200% increase of U.S. exports to Africa over ten years (at p. 1) is hardly ambitious enough.

U.S. Exports to Africa Are Miniscule

U.S. exports to Africa are currently valued at a mere $21.1B.[5] This is slightly more than sportswear company Nike's annual revenues.[6] In other words, if all U.S. exports to Africa ceased, we would lose the equivalent of the revenues of one company, our 136th largest, which amounts to less than 2% of the 2012 U.S. budget deficit, or just over 1/10th of 1% of our GDP in 2012.[7] The insignificance of such a loss is highlighted by the fact that the U.S. Postal Service lost $15B in FY12. That deficit – irritating but hardly deemed a national priority let alone calamity – equals 71% of our annual exports to Africa.[8]

Taiwan Imports More than Does Africa, Despite Having a Far Smaller Population

The U.S.'s woeful export performance vis-à-vis Africa is painfully revealed by the fact that Taiwan, which has 1/38th of Sub-Saharan Africa's population,[9] imports more in absolute terms from the U.S. – $26B of goods, which is equivalent to Macy's annual revenue.[10] (This leaves aside a further $11B in U.S. services exported to Taiwan, which would make a total $37B that is slightly higher than Goldman

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[5] *See* "Africa" (meaning Sub-Saharan Africa), U.S. Trade Representative's Office website, *available at* http://www.ustr.gov/countries-regions/africa (accessed Apr. 29, 2013).

[6] The revenues of Nike (our 136th largest company) in 2012 were $20.86B. *See* CNN's list of Fortune 500 companies, *available at* http://money.cnn.com/magazines/fortune/fortune500/2012/full_list/101_200.html (accessed Apr. 29, 2013).

[7] *See* Table S-1 ("Budget Totals"), FY2014 Budget, *available at* http://www.whitehouse.gov/sites/default/files/omb/budget/fy2014/assets/tables.pdf (at p. 3, accessed Apr. 29, 2013).

[8] Ron Nixon, "Postal Service Reports Loss of $15 Action," NY Times, available at http://www.nytimes.com/2012/11/16/us/politics/postal-service-reports-a-nearly-16-Action-loss.html?_r=0 (accessed Apr. 29, 2013).

[9] Taiwan has 23.3 million people, and Sub-Saharan Africa 874,841,049 in 2011. *See* "Taiwan," CIA Factbook, *available at* https://www.cia.gov/library/publications/the-world-factbook/geos/tw.html (accessed Apr. 29, 2013); and Trading Economics, "Population; Total in Sub Saharan Africa," *available at* http://www.tradingeconomics.com/sub-saharan-africa/population-total-wb-data.html (accessed May 1, 2013).

[10] *See* "U.S.-Taiwan Trade Facts," U.S. Trade Representative's Office website, *available at* http://www.ustr.gov/countries-regions/china/taiwan (accessed Apr. 29, 2013). The revenues of Macy's (the 110th-largest U.S. company) in 2012 were $26.4B. *See* CNN's list of Fortune 500 companies (Nos. 101-200), *available at* http://money.cnn.com/magazines/fortune/fortune500/2012/ full_list/101_200.html (accessed Apr. 29, 2013).

Sachs' annual revenues.[11]) If Africans imported goods alone at the same rate as Taiwan does, we would export $988B worth of goods annually to Africa. This is more than twice the revenue of the largest U.S. company in 2012, Exxon Mobil.[12] An increasingly prosperous Africa – certainly no pipe dream and indeed a process already underway, as the Act points out – could be an amazing boon for U.S. exporters.

The U.S. Built Taiwan's Consumption by Building Its Economy, but Has Not Done So in Africa

Why should African consumers be compared to the Taiwanese? The Africans are poor, after all, while the Taiwanese are prosperous. The answer is that the Taiwanese were not always rich. They have become so partly because of U.S. "development exports" that gave the island ever-greater economic capacities, and a corresponding ability to absorb U.S. exports. By way of illustration, the USTR's office observed that the "top export categories … [for Taiwan in 2011] were: Electrical Machinery ($5.0[B]), Machinery ($4.6[B]), Iron and Steel ($1.9[B]) Optic and Medical Instruments ($1.9[B]), and Organic Chemicals ($1.4[B])."[13] Moreover, the U.S. by 2010 had also invested $21B in Taiwan, "mostly in the finance/insurance, manufacturing, and wholesale trade sectors."[14] With such economic engagement, it took a compound U.S. export increase rate of just under 6% annually from 1980 to 2011 to produce a Taiwan that, with little more than 2.6% of Sub-Saharan Africa's population, consumes more U.S. imports than Africa, plus an amount of U.S. services almost half again as large.[15]

If the U.S. had engaged Africa as it has Taiwan since 1980, Africa would today have a far larger ability to consume U.S. exports. Given Africa's low standing in the economic firmament, it is perhaps unsurprising that it is difficult to find online any U.S. export data for Africa running back to 1980. After a lengthy online search, a figure for U.S. exports in 1995 turned up: $5.3B.[16] Depending on which end-year is selected, the compound annual growth rate of U.S. exports to Africa is between 8.2% and 9%.[17] This is not far from the Act's call for an 11.62% growth rate with ten years.[18] It is also rather faster than the 6% growth rate of U.S. exports to Taiwan.[19] U.S. exports to Africa by 1995 were, however, less than

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[11] *See* "U.S.-Taiwan Trade Facts," *supra* n. 10. The Goldman Sachs Group is the 80th-largest U.S. company. *See* CNN's list of Fortune 500 companies, *supra* n. 6.

[12] The 2012 annual revenue of Exxon Mobil, No. 1 on the 2012 Fortune 500 list, was $452.9B. *See* CNN's list of Fortune 500 companies, *supra* n. 6. The $988B sum comes from Taiwan's $21B import rate multiplied by its 38-fold population differential with Sub-Saharan Africa.

[13] *See* "U.S.-Taiwan Trade Facts," *supra* n. 10.

[14] *Id.*

[15] *See* calculator provided by Moneychimp, *available at* http://www.moneychimp.com/calculator/compound_interest_calculator.htm (accessed Apr. 29, 2013). For the export figures (rising from $4.3B in 1980 to $25.9B in 2011), *see* "U.S.-Taiwan Trade Facts," *supra* n. 10. It is unclear if the dollar amounts are stated in real or nominal terms.

[16] USITC, "U.S. Trade and Investment with Sub-Saharan Africa: First Annual Report," USITC Pub. 3371, Inv. No. 332-415, p. 6, Table 1-1, *available at* http://www.usitc.gov/publications/docs/pubs/332/pub3371.pdf (accessed Apr. 29, 2013).

[17] To reach the U.S. export figure of $21.1B for 2011 requires a 9% compound annual export growth rate. *See* Moneychimp calculator, *supra* n. 15 (over a period of 16 years). This is perhaps overly fast, however, since U.S. exports to Africa are so erratic that they jumped up 23% from 2010. "Africa," *see supra* n. 5. If 2010 had been the target year instead, the increase rate would have been a bit less than 8.2%. *See* Moneychimp calculator, *supra* n. 15 (to reach $17.15B over 15 years).

[18] This growth rate assumes a 200% rise from $21.1B over 10 years. *See* calculator provided by Moneychimp, *supra* n. 15.

[19] *See supra*, n. 15 and accompanying text.

a third of U.S. exports to Taiwan,[20] so that Africa had a lot of catching up to do. Thus, despite nearly two decades of a higher African import growth rate, Taiwan today remains significantly ahead of Africa as a U.S. export destination.[21] Thus, given the corporate comparators used above, one could say that if the Taiwanese all shop at Macy's, a crowd of Africans still have to share one pair of Nike sneakers.

The U.S. Has Ignored Africa as an Investment Destination, Which Severely Limits U.S. Exports

Africa lags so badly against Taiwan as an export destination in large part because its U.S. export bundle is not growth-boosting as it is for Taiwan. The U.S. export bundle sent to Africa consists mostly of vehicles and raw materials rather than industrial goods: "Machinery ($4.0[B]) Vehicles and Parts ($3.5[B]), Non-Crude Oil ($1.8[B]); Cereals ($1.7[B]); and Aircraft and Parts ($1.5[B])."[22] As for U.S. investment, the USTR's website does not even bother to mention it.[23] The CRS for its part observes that 77% of all U.S. investment in Africa (including North Africa) is in mining, with only 10% in manufacturing.[24] The CRS also notes that the U.S. has invested $36.6B in Sub-Saharan Africa.[25]

While the U.S. investment position in Africa is 74% higher in absolute terms than the U.S. investment position in Taiwan, it is comparatively smaller and less productive. First, it is concentrated in resource-extraction rather than in resource-use. Second, Sub-Saharan Africa's population is around 3,800% that of Taiwan's, its land area is 65,500% that of Taiwan,[26] and even its GDP is 86% larger.[27] Africa would be getting over $2.4B more in U.S. investment than it does currently if the U.S. simply distributed its investments equally on the basis of GDP.[28] The U.S. investment position in Africa would also be shifted away from resource extraction and toward Taiwan-style industrialization. Even such a dramatic change would be only a tiny first step in meeting the continent's potential. If U.S. investments were distributed equally by population at the Taiwanese rate, Africa would have received $761.4B more than it actually

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[20] "U.S.-Taiwan Trade Facts," *supra* n. 10. U.S. exports to Taiwan in 1994 had already reached $17.1B.

[21] *See supra*, pp. 2-3.

[22] "Africa," *supra* n. 5. Since a Boeing 747-8 cost an average of $352M in 2012, U.S. "aircraft and parts" exports to Africa were equivalent to about 4 passenger jets and some parts, which is hardly impressive. Boeing, "Commercial Airplanes: Jet Prices," *available at* http://www.boeing.com/boeing/commercial/prices/ (accessed Apr. 29, 2013).

[23] "Africa," *supra* n. 5.

[24] Hansen, Briefing Memorandum in Compendium, *supra* n. 2, at p. C135.

[25] *Id. See also* CRS (Vivian C. Jones), "U.S. Trade and Investment Relationship with Sub-Saharan Africa: The African Growth and Opportunity Act" (Feb. 4, 2010), p. 10, *available at* http://fpc.state.gov/documents/organization/138718.pdf (accessed Apr. 29, 2013). This was but 1% of all U.S. foreign direct investment in 2008. *Id.*

[26] Sub-Saharan Africa is 9,107,600 square miles in size, and Taiwan is 13,892 square miles including its water territory. *See* Trading Economics, "Sub-Saharan Africa – World Bank Data," *available at* http://www.tradingeconomics.com/sub-saharan-africa/indicators-wb (accessed May 1, 2013, and converting 23,587,900 sq. km to 9,107,600 sq. miles), and World Atlas, "Taiwan – Land Statistics," *available at* http://www.worldatlas.com/webimage/countrys/asia/taiwan/twlandst.htm (accessed May 1, 2013).

[27] Sub-Saharan Africa's GDP is $869,151,248,478. *See* Trading Economics, "Sub-Saharan Africa – World Bank Data," *supra* n. 26. Taiwan's GDP in 2011 was $466,830,000,000. *See* Trading Economics, "Taiwan – National Statistics," *available at* http://www.tradingeconomics.com/taiwan/indicators (accessed May 1, 2013).

[28] Africa's $36.6B investment from the U.S. is 174% that of Taiwan's $21B. An investment position that is 186% of Taiwan's is just over $39B.

has.[29] One can imagine how such an influx of U.S. productive capacity (only 69% of one year's U.S. budget deficit, incidentally[30]) would transform the continent's economic capacities and ability to absorb U.S. exports, not to mention how many U.S.-taxable profits it would generate for U.S. investors.

Unfortunately, the U.S. has ignored Africa in terms of investment, which renders the present discussion about boosting U.S. exports to Africa largely moot. Africa is not hiding money in the mattress. Africa is poor because the U.S. gives it no way to earn serious money in the way the U.S. did for Taiwan. Africa is not paying for its U.S. imports out of the proceeds of a growing industrial economy, as Taiwan does. Instead, Africa relies on its sales of raw material exports, as if it were still 1913 rather than 2013. AGOA, intended to boost African industrialization (without corresponding U.S. investment), has ironically facilitated the continuation of ancient African trade patterns, with fully 91% of AGOA imports to the U.S. consisting of crude oil.[31] Moreover, of a total $74.2B in African exports to the U.S. in 2011 (*i.e.* both AGOA and non-AGOA exports), fully 87.8% were of raw materials.[32] Meanwhile, the remaining top categories of U.S. imports from Africa – apparel and vehicles plus vehicle parts – came to just over $3B, or a mere 4% of all African exports to the U.S.[33] This bodes ill for Africa's ability to achieve prosperity through industrial production, and for Africa's ability to absorb more U.S. exports.

From a Rostowian perspective,[34] largely rural Africa does not even have the opportunity to reach an economic take-off point by becoming an agricultural exporter to the U.S. Subsidized U.S. cereal exports aggressively squelch that market.[35] Rather than engage in a Ricardian division of labor,[36] importing food and exporting manufactured goods (as the U.S. does in reverse with Taiwan),[37] the U.S. seeks to export both food and manufactured goods to Africa. In other words, the U.S. endeavors to be the winner in every high-end industry and in a natural African growth sector. This leaves Africa little choice other than to export resources such as oil, in the extraction of which Africa has some competitive advantage.

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[29] A U.S. investment position 38 times larger than Taiwan's $21B is $798B, which after subtracting the current U.S. position in Africa of $36.6B leaves $761.4B.

[30] The U.S. budget deficit in 2012 was $1.1T. *See* Annie Lowrey, "Federal deficit for 2012 falls to $1.1 trillion," New York Times (Oct. 12, 2012), *available at* http://www.nytimes.com/2012/10/13/business/federal-deficit-for-2012-fiscal-year-falls-to-1-1-trillion.html?_r=0 (accessed May 1, 2013). The $761.4B figure is also close to Sub-Saharan Africa's GDP today in the region's present state of extreme underdevelopment and isolation from U.S. investment flows. *See supra*, n. 27.

[31] Hansen, Briefing Memorandum in Compendium, *supra* n. 2, at pp. C136-C137.

[32] "Africa," *supra* n. 5. Of the 87.8%, $59.8B (80.4%) consisted of crude oil, $4.3B (5.8%) of precious stones and metals, and $1.2B (1.6%) of cocoa products.

[33] *Id.*

[34] This refers to the theory developed in 1960 by W.W. Rostow, a political economist, who posited that surplus agricultural production provides fuel for economic diversification and "take-off" to higher planes of economic development. *See* http://en.wikipedia.org/wiki/Rostow %27s_stages_of_growth (accessed Apr. 29, 2013).

[35] The U.S. exported $1.7B in cereals to Africa in 2011. "Africa," *supra* n. 5.

[36] David Ricardo (1772-1823) devised the theory of comparative advantage, which holds that trade is maximized when the parties concentrate on making items which they are relatively better at producing. (U.S. agriculture subsidies distort this process.) For an informal introduction to Ricardo's theory, *see* "Ricardian Economics," *available at* http://en.wikipedia.org/wiki/Ricardian_economics#Comparative_advantage (accessed May 1, 2013).

[37] *See* "U.S.-Taiwan Trade Facts," *supra* n. 10. Ironically, industrialized Taiwan – otherwise the 6th largest importer of U.S. food – in 2011 also exported $294M in agricultural products to the U.S., including nursery products, cut flowers (sent across the Pacific), snack foods (including chocolate, unlike Africa's "cocoa products"), and processed fruits and vegetables. *Id.*

This economic cornering of Africa largely explains the present U.S.-Africa trade situation, and why Africa remains a severely limited trade partner.

The Contrasting U.S. Approach to Developing the PRC Has Created a Strategic Rival in Africa

One country that has been able to rely on U.S.-supported growth and diversification to backstop a high rate of importation from the U.S. is the People's Republic of China ("PRC"). U.S. goods exports to the PRC rose from $3.8B in 1980 to an astounding $104B by 2011,[38] at a compound annual growth rate of just under 11.3%.[39] In other words, the PRC has already enjoyed for 31 years the U.S. export growth rate which the Act wishes to achieve for Africa ten years from now. As anyone familiar with compound interest knows, the out-years provide the greatest gains. Thus, rising from a comparable start, China has blown past Africa to afford nearly five times as many U.S. exports today as Africa does. Indeed, all U.S.-Africa trade today is equivalent to only about one-third of the U.S. trade deficit with the PRC.[40]

What makes possible the PRC's massive consumption of U.S. exports is China's industrialization, which has been spurred to breakneck speed by $60.5B in U.S. investment "led by the manufacturing and banking sectors."[41] This sum is far greater than the $36.6B that the U.S. has invested in Africa, and has been put into sectors that are far more profitable and sustainable than Africa's gradually depleting mines.[42] The PRC's massive enrichment has now been turned into capital for investment – in Africa:

> Exacerbating the strategic situation [facing the U.S.] is the fact that while the U.S. seeks through gifts to build Africa's "capacity" to absorb industrial investment, it is China which is actually supplying such profit-seeking projects. In other words, we are training and medicating China's workers. This arrangement is not just foolish, but fatal. China has a clear profit motive to expand its strategic interests and positions on the continent, while U.S. "aid" allows it to ignore Africa's non-business needs. (In other words, China can treat Africa in the same cold-eyed business fashion as the U.S. has treated China.) Meanwhile, the U.S. bureaucratic-industrial "aid" complex – being essentially parasitic on U.S. taxpayers and not intended ever to repay its costs – can expand only insofar as a prudently grudging Congress will sanction new giveaways. Thus, the very structure and nature of the "aid" model is a recipe for U.S. decline and disappearance from the continent in the face of a commercially imperialist China.[43]

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[38] For U.S. exports to the PRC in 1980, *see* Wayne M. Morrison, "China-U.S. Trade Issues," CRS Report for Congress (updated March 7, 2008), *available at* http://fpc.state.gov/documents/organization/102624.pdf (accessed Apr. 29, 2013). The 2011 figure is drawn from "The People's Republic of China," U.S. Trade Representative's Office website, *available at* http://www.ustr.gov/countries-regions/china-mongolia-taiwan/peoples-republic-china (accessed Apr. 29, 2013).

[39] *See* Moneychimp calculator, *supra* n. 15. Exports of $104B fall between the annual revenues of Citigroup and IBM, the 20th and 19th largest U.S. companies, respectively. *See* CNN's list of Fortune 500 companies, *supra* n. 6.

[40] *See* Hansen, Briefing Memorandum in Compendium, *supra* n. 2, at pp. C140-C142 (observing that the U.S. trade deficit with the PRC is $282B on $539B in annual trade, while all U.S.-Africa trade comes to only $95.3B, which is a mere 17.7% of U.S.-China trade).

[41] "The People's Republic of China," *supra* n. 38.

[42] *See supra*, nn. 24-25 and accompanying text.

[43] Hansen, Briefing Memorandum in Compendium, *supra* n. 2, at pp. C141-C142.

The U.S. has actively fostered a rival in the PRC, and that rival has sensibly been working to exploit a huge market in Africa that the U.S. has casually abandoned. The U.S. even relies on PRC-led economic growth to boost U.S. exports. The U.S. investment focus on resource-extraction has, after all, ceded higher-growth development sectors to PRC investors (as well as to many other countries' players).[44] As the Chinese settle into Africa and begin to build private commercial empires, U.S. sellers heading to African markets will find that they have to deal with local buyers and governments who have long been under PRC commercial influence and whose loyalties default to PRC brands. This will greatly hamper U.S. export prospects, and in turn threaten the U.S. strategic position in Africa.

AGOA Has Failed to Date Because of a Lack of U.S. Investment, Harming U.S. Strategic Interests

Note must finally be taken of AGOA's role in the PRC's ascendancy in Africa. AGOA is a Beltway favorite, and a generation of Africa hands made their careers passing and implementing it. Criticizing AGOA thus falls somewhere between bad manners and heresy. Nonetheless, the truth is that AGOA in the absence of U.S. investment does little good and significant harm to the U.S. position in Africa.

The intent of AGOA is that African manufacturers will export their way to national prosperity, much as the Asian Tigers have done. This is wishful thinking: "[T]he fundamental mistake in an AGOA model for Africa is to assume exporters who do not actually exist, and who are unlikely to appear in the face of a temporary U.S. trade opening. Africa was not waiting for AGOA with factories at the ready."[45] Indeed, around 91% of AGOA imports today are of crude oil, which hardly requires – yet receives – duty-free entry.[46] Most AGOA subsidies thus appear to benefit either African oil ministries notoriously plagued by corruption,[47] or multinational oil corporations. (It is difficult to find out online who specifically benefits from AGOA duty-free oil entry.) Even worse, AGOA's tax concessions leave Africa with extra funds to buy goods from the PRC, which traditionally runs a surplus vis-à-vis Africa where the U.S. runs a deficit.[48] These purchases in turn help fund Chinese investments in Africa, now at $16B and rising rapidly.[49] Put simply, AGOA currently does little but help Africa develop its relationship with the PRC.

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[44] India has an investment presence in Africa nearly as large as the PRC's (*i.e.* $14B to the PRC's $16B), while Malaysia's investment position surpasses that of the PRC, although the Malaysian portfolio is mainly focused on Mauritius whereas the PRC's is spread across the continent. *See* Reuters, "Malaysia, not China, is Asia's top investor in Africa" (Mar. 25, 2013), *available at* http://www.cnbc.com/id/100589783 (accessed Apr. 30, 2013).

[45] Hansen, Heritage lecture, *supra* n. 3, at p. 8.

[46] *See* "Africa," *supra* n. 5.

[47] *See* Eckart Naumann, "AGOA at 10: Reflections on U.S.-Africa trade with a focus on SACU countries," Tralac Working Paper 05/2010, p. 16, Fig. 4 ("Top 20 exporters to the U.S. and share of AGOA eligible exports (2009)") (Oct. 2010), *available at* www.agoa.info/download.php?file=108 (accessed May 2, 2013).

[48] *See* "Africa," *supra* n. 5. *See also* Forum on China-Africa Cooperation (FOCAC), "China-Africa Trade and Economic Relationship Annual Report 2010" (June 22, 2011) ("Trade between China and Africa is generally balanced, though in most years [at least through 2009] China ran a trade surplus."), *available at* http://www.focac.org/eng/zxxx/t832788.htm (accessed Apr. 30, 2013).

[49] Reuters, *supra* n. 44.

AGOA is by design only a marginal tool.[50] After all, a narrowly tailored set of manufacturers approved to enjoy a minor tax break for exports are hardly likely to haul a vast region of nearly 900 million people into the middle class.[51] Moreover, as even the U.S. State Department explicitly recognizes, Africa's poor infrastructure is a massive obstacle to producing and shipping AGOA exports, especially in new sectors like manufacturing that do not follow traditional resource-extraction pathways.[52] AGOA has nothing to say about the vast range of needed investments, such as in infrastructure, that fall outside its tax-privileged field of manufacturing for export.[53] Instead, the "present hope under AGOA is that Africans will send clothes to the port along Chinese-built roads, [even though] it should be U.S. contractors building the roads, and the port, and the factory."[54]

AGOA's lack of connection to U.S. investment, even within its limited manufacturing field, is revealed in U.S. official postings. One piece vaguely notes that an AGOA goal is to spur reforms in Africa to create "more attractive commercial partners for U.S. companies."[55] The AGOA III legislation repeatedly discusses "investment," but not specifically "U.S. investment" or any intention for U.S. investors to

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[50] See Niall Condon and Matthew Stern, "The effectiveness of African Growth and Opportunity Act (AGOA) in increasing trade from Least Developed Countries" (Mar. 2011), *available at* http://r4d.dfid.gov.uk/PDF/Outputs/SystematicReviews/AGOA-Report.pdf (accessed May 2, 2013). After examining 178 reports and studying 21 in depth, the authors found that "[o]utside of the apparel sector there is little or no evidence of AGOA induced gains in any other sectors for LDCs [*i.e.* Least Developed Countries]," and that three high-quality studies "assess[ing] product coverage under AGOA all come to the conclusion AGOA offered limited additional coverage to LDCs over and above what they previously enjoyed under the GSP [*i.e.* Generalized System of Preferences]." (*Id.*, at pp. 3, 12-20, 34-35.)

[51] AGOA's limitations and complexities have almost certainly reduced the already limited field of U.S. investors currently interested in Africa as a manufacturing platform. Leaving aside AGOA's torturously complex rules on apparel, AGOA largely holds U.S. investors to the existing 35% locally added value component required by the otherwise applicable Generalized System of Preferences (GSP). See Mattoo, Roy and Subramanian, "The African Growth and Opportunity Act and its rules of origin: Generosity undermined?" (IMF, 2002), p. 7, *available at* http://info.worldbank.org/etools/docs/voddocs/201/393/africa-ver2.pdf (accessed May 2, 2013). This significantly restricts the sorts of AGOA-privileged industrial work that can be done by U.S. investors in Africa. For example, it would likely prevent a U.S. investor from using Africa as a low-cost platform for assembling and finishing an item (such as a car) from components produced in various other countries. AGOA's allowance of 15% of U.S. material to be included in this 35% is not much of a concession to modern industrial realities. See the Trade and Development Act of 2000 (*i.e.* "AGOA I"), 106 H.R. 434, § 111(a), *available at* http://www.agoa.gov/agoa_ legislation/agoa_legislation.html (accessed May 2, 2013). Coupled with already rather unpredictable U.S. rules of origin for components, such restrictions have no doubt quietly driven off many margin-calculating investors. CRS (Vivian C. Jones), "Generalized System of Preferences: Background and renewal debate" (Jan. 9, 2013), p. 28, *available at* https://www.fas.org/sgp/crs/misc/RL33663.pdf (accessed May 2, 2013). A more flexible customs regime that allowed less local value to be added, perhaps in return for some duty to be paid (such as for the components imported into Africa), might attract more U.S. producers to Africa. Here is where consultations with the private sector are key. If the goal is to attract economic actors, the incentives have to be those workable ones actually desired by those actors.

[52] See U.S. Department of State, "AGOA Forum 2012," *available at* http://www.state.gov/p/af/rt/agoa/2012/index.htm (accessed May 3, 2013), which lists as a "key objective" for the ministerial portion of the Forum the development of "transport, energy, telecommunications, and other 'hard' infrastructure to improve African competitiveness and promote regional and U.S.-sub-Saharan Africa trade."

[53] In five years of practice specializing in African investment law, I have met very few clients or prospective clients interested in conducting an AGOA-related export activity. The vast majority of investors and would-be investors that I can recall have been interested instead in developing Africa's infrastructure and Africa's internal market.

[54] Hansen, Heritage lecture, *supra* n. 3, at p. 8.

[55] Export.gov, "Summary of AGOA I," *available at* http://www.agoa.gov/agoa_legislation/agoa_legislation.html (accessed May 2, 2013).

enjoy AGOA's benefits.[56] The USTR in a 2008 report cited a 52% rise in U.S. investment from 2001 through 2006 – which really amounted to only a modest increase of $4.8B over five years[57] – but the USTR did not tie this new investment to AGOA, thus suggesting causation where there was only correlation and no reason to assume the investment was for export-development. In 2010, a USTR press release celebrating AGOA's tenth anniversary did not even mention the word "investment."[58]

From the strategic perspective, AGOA has to date been a pointless distraction. For more than a decade, Washington's economic engagement with Africa has centered on what amounts mostly to a tax break for African oil, and which largely benefits two already flush oil producers (Nigeria and Angola) and one existing regional industrial power (South Africa).[59] In that same decade, the PRC has been running rampant across the continent, locking up access to the natural resources which AGOA is supposed to draw to the U.S., and snapping up non-export investment opportunities (such as road-building) that U.S. investors should be undertaking. Meanwhile, the U.S. has failed to secure even basic legal protections in most of Sub-Saharan Africa, such as bilateral investment treaties (BITs) and double-tax treaties (DTTs or DTAs),[60] so that U.S. investors face insurmountable risk profiles and so avoid the continent.[61]

Rather than develop and execute a blueprint for massive U.S. investment in Africa, which would draw the continent economically and strategically toward the U.S. while also creating a vast market for U.S. exports, the U.S. Government has instead spent a lot of energy worrying about what apparel should be admitted under a trade measure that even after 11 years and intensive buzz has attracted only an annual $5B of non-oil imports – little more than twice what Americans spend on getting tattoos.[62] For trade relations between an economic hyperpower and a continent, this is nothing short of disastrous.

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[56] See generally the text of the AGOA III legislation, *available at* http://www.agoa.gov/agoa_legislation/AGOAIII_text.pdf (accessed May 2, 2013).

[57] USTR, "Report shows AGOA continues to grow and diversify U.S.-Africa trade" (May 2008), *available at* http://www.ustr.gov/report-shows-agoa-continues-grow-and-diversify-us-africa-trade (accessed May 2, 2013). The USTR stated that U.S. investment in Africa at the end of 2006 stood at $13.8B (*id.*), which does not jibe with the CRS's finding of a $36.6B position the end of 2008. *See supra* n. 25 and accompanying text. This would have made for an astounding threefold increase in two years, but the USTR does not even note today's U.S. position. *See supra* n. 23 and accompanying text.

[58] USTR, "United States Trade Representative Ron Kirk celebrates 10th anniversary of AGOA with Members of Congress" (May 2010), *available at* http://www.ustr.gov/about-us/press-office/press-releases/2010/may/united-states-trade-representative-ron-kirk-celebrates (accessed May 2, 2013). The press release did, however, state that non-oil AGOA trade had reached $3.4B by 2009, an amount already reached in 2007 according to the 2008 USTR report. See the USTR posting of 2008, *supra* n. 57. In all events, this pitifully low amount of non-oil exports seems to have been produced in large part by an already relatively prosperous and industrial South Africa, along with a tiny and significantly falling amount of agricultural products ($271.5M). Nauman, *supra* n. 47, p. 16. A U.K. report found that of the $3.4B in exports, over a third ($1.3B) consisted of apparel, and that the agricultural component had dropped 25% from 2006. See Condon and Stern, *supra* n. 50, p. 23. In other words, AGOA has to date largely benefited those already doing well, such as oil producers and industrial South Africa, and done little for those enormous masses struggling at the bottom.

[59] *See* Nauman, *supra* n. 47.

[60] *See* Hansen, "A Briefing for the State Department" (Mar. 23, 2013), pp. 13-22 of 44, *available at* http://www.peterhansenlaw.com/Publications/Members/PCHatStateDepartment032313.pdf (accessed May 3, 2013).

[61] *See* Hansen, Heritage lecture, *supra* n. 3, *passim*.

[62] *See* "Africa," *supra* n. 5. Americans spend $2.3B annually on getting tattoos. *See* Lucas Reilly, "By the Numbers: How Americans spend their money" (July 17, 2012), *available at* http://mentalfloss.com/article/31222/numbers-how-americans-spend-their-money (accessed May 3, 2013). Other comparators found on MentalFloss are equally unflattering.

Full-Spectrum Economic Engagement with Africa Is a Strategic Imperative for the U.S.

To build a strong strategic position in Africa, the U.S. must go far beyond the charitable admission of goods which Africa is seldom in a position to produce. The U.S. must embrace Africa as a full economic partner, and do business with Africa like the U.S. has done with Taiwan and even with its repressive communist rival, China.[63] This does not mean that the U.S. should abandon AGOA.[64] Instead, AGOA must be placed within a framework for expansive U.S. economic engagement with Sub-Saharan Africa.

This means helping all those in the U.S. who wish (or can be drawn) to invest and do business in Africa. This includes not just U.S. manufacturers, but also U.S. investors who can facilitate African exports by developing physical infrastructure like roads, or intangible infrastructure like accounting, legal reform, skilled management or one-off projects such as coordinated traffic-signal systems. Treaty protections must be secured so that such "infrastructure investors" can be safely hired by U.S. manufacturers as well as by local governments and private parties.[65] U.S. aid programs should be recast from isolated projects into industry-wide reforms that maximize viability and growth by attracting private U.S. investment to an industry's various theaters through public-sector aid projects that anchor private U.S. initiatives.[66]

Most importantly, U.S. export policy toward Africa must be restructured to develop and benefit from growing African internal markets. Many African countries are already rapidly growing, and intra-African trade presents a further enormous potential for economic growth. Rather than focus on efforts to stimulate largely non-existent export industries, the U.S. should do everything possible – and especially through U.S. investment – to support the development of domestic African economies. A richer Africa means greater disposable income and a larger market for U.S. exports. Goodwill for U.S. products will be greatly enhanced if U.S. investors first help shape and advance Africa's internal development.

2. THE ACT'S CALL FOR A COMPREHENSIVE U.S. STRATEGY – § 4

The Act properly calls, at § 4(a), for the President to "establish a comprehensive United States strategy for public and private investment, trade, and development in Africa." This helpfully puts investment front and center, in accord with U.S. practice in other regions.[67] A rethink of U.S. policy from top to

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[63] *See* the proposed "Mature Market Model (M3)" for Africa, Hansen, Briefing for the State Department, *supra* n. 60, at pp. 32-42 of 44; and Hansen, Briefing in Compendium, *supra* n. 2, at pp. C142-C149. An example of the M3 in action using the hypothetical of the Kenyan meat industry is provided at *id.*, pp. C148-C149.

[64] Indeed, even AGOA's tax break for oil makes a certain facial strategic sense, in that it helps to attract to the U.S. a critical economic input that might otherwise go to the PRC. Whether it really works and is worth the money is a different matter.

[65] The new Model BIT is so much longer and more complex than traditional BITs that it will be difficult to conclude many even over the medium term. A multilateral treaty providing a minimum of basic protections along traditional lines should therefore quickly be developed and concluded with as many African countries as possible. *See* Hansen, Heritage lecture, *supra* n. 3, *passim*. *See also* Hansen, Briefing in Compendium, *supra* n. 2, at p. C144.

[66] *See* the proposed "Aid and Investment Model (AIM)" for Africa, along with a proposal for DARPA-style prizes for business-facilitation initiatives, and a call for a far-broadened African project-insurance market to be pioneered by the U.S. Government, all in Hansen, Briefing for the State Department, *supra* n. 60, at pp. 32-42 of 44; and in Hansen, Briefing in Compendium, *supra* n. 2, at pp. C142-C149. An example of the AIM in action using the hypothetical of the Kenyan meat industry is provided at *id.*, pp. C148-C149.

[67] *See* Working Group, Compendium, *see supra* n. 2, at pp. C40-C44 (calling for aggressively pro-investment U.S. policies).

bottom is needed.[68] In this process, the U.S. Government should make a point of involving a broad array of existing and potential private stakeholders, who have not always been welcomed.[69] As for the Act's proposals for the strategy's content, these seem quite sound. A few minor changes would, however, strengthen the Act's call for a new policy of productive, full-spectrum engagement.

The Rate of Proposed U.S. Export Growth Should Be Raised to at Least 300% – § 4(b)(1)

The Act's call for a mere tripling of U.S. exports to Africa over ten years is overly modest since it amounts to increasing existing U.S. export growth by only about a third.[70] The Act should call instead for a quadrupling (*i.e.* 300% increase) of U.S. exports – a compound growth rate of 15% annually, rather than the 11.6% called for with 200% growth, and around 9% currently.[71] Africa can at this time almost certainly absorb U.S. exports at a far higher rate of growth than the PRC has historically experienced.[72]

For such rapid growth to occur, however, U.S. exports need to be heavily re-weighted toward tools that help Africa climb the economic ladder, including large-ticket items such as waste-to-energy plants, advanced machine tools, and modern farm equipment. Demand for such items, and the dollars available to pay for them, would be massively raised if U.S. investors were thick on Africa's ground. Such U.S. "exports" would in effect then be essentially an overseas form of U.S. consumption by U.S. investors. This system would have the further beneficial effects of creating U.S.-taxable overseas businesses, building local wealth and consumption (including of U.S. products), and fostering a swarm of market researchers and shapers who could assist U.S. exporters in meeting market demands.

The Act Properly Recognizes Africa's Right to Pursue Its Own Development Priorities – § 4(b)(2)

The Act properly recognizes the "development priorities" of African governments at § 4(b)(2). Far too often, African development has been treated by the U.S. and other major powers as a plaything for their public sectors. This has led to centralized economic planning, the capture of many market sectors by governments, and an overbearing and harmful "aid" industry.[73] An important aspect of letting Africa choose its own path is freeing and facilitating the African and U.S. private sectors.

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[68] While the Administration issued a strategy statement for Africa in June 2012, this was widely considered a hasty job that contributed few if any new ideas. It sank quickly into oblivion, to the point that it does not even turn up in the first ten pages of a Google search for "Obama Africa policy," except through a White House press release. *See* "U.S. Strategy Toward Sub-Saharan Africa" (June 2012), *available at* http://www.whitehouse.gov/sites/default/files/docs/africa_ strategy_2.pdf (accessed Apr. 30, 2013).

[69] *See* Hansen, Heritage lecture, *supra* n. 3, at p.7.

[70] *See supra*, p. 3. This would add over ten years a bit less than the equivalent of Safeway's operations today, Safeway, the 63rd largest company in the U.S., had $43.63B in revenues in 2012. *See* CNN's list of Fortune 500 companies, *supra* n. 6. The tripling of U.S. exports to Africa would add $42.2B in value. This would bring the value of U.S. exports to Africa in 2023 only to the level of Dell's operations today. Dell was the 44th largest U.S. company in 2012. *See* CNN list. This larger sum would be little more than 6% of what would be exported if Africans imported like today's Taiwanese. *See supra*, pp. 2-3.

[71] *See supra*, p. 3.

[72] *See supra*, p. 6. *See* also the calculator provided by Moneychimp, *supra* n. 15.

[73] *See* Hansen, Briefing in Compendium, *supra* n. 2, at pp. C132-C142.

The Act Should Make Clear that Full-Spectrum Engagement Is Sought – § 4(b)(3)

The Act's § 4(b)(3) helpfully calls for U.S.-African relationships to be established in certain sectors, nearly all of which involve infrastructure. The text of § 4(b)(3) should, however, be tweaked to reflect full-spectrum engagement, perhaps as follows: "businesses*, including those* that have an expertise."

Ideally, the Act would also be amended to include a forthright requirement that U.S. investment in Africa be facilitated. Thus, perhaps after § 4(b)(2), the following text could be added:

> § 4(b)(2*bis*) doubling United States private investment in Africa within ten years, across a broad range of sectors, including through the securing of investment and tax treaty protections, the inclusion of private investment initiatives in United States aid projects, expanded public financing of United States exports ordered for United States investments in Africa, and improved insurance protections for United States investments in Africa;[74]

The Act's Call for Greater Understanding Should Include Public-Sector Training – § 4(b)(7)

The Act at § 4(b)(7) rightly seeks a "greater understanding among United States business and financial communities of the opportunities Africa holds for United States exports." [75] This paragraph, however, overlooks a major problem – the deep unfamiliarity of many federal civil servants with the needs of private-sector businesses and the investment process, including with respect to investment and tax treaties. Training civil servants – including through the ongoing consultation of private-sector advisory groups – is needed to make the U.S. Government more effective at fostering U.S. investment and export growth. The text of § 4(b)(7) could in this vein be expanded as follows (with additions in italics):

> (7) encouraging a greater understanding among United States business and financial communities of the opportunities Africa holds for United States *investment and* exports*, as well as a greater understanding by United States citizens and United States officials of the pathways and mechanisms for privately investing in and exporting to Africa*;

The Content of the President's Report Must Include Information Relating to Investment – § 4(d)(3)

The progress report required of the President three years after the Act's enactment (see § 4(d)(2)) does not currently need to contain any specific information on U.S. investment in Africa. It is critical that the report spell out the steps taken by the U.S. Government to facilitate a doubling of U.S. investment on the continent within ten years. (*See* the proposed § 4(b)(2*bis*) above for a list of strategic goals for U.S. investment.) A new requirement could be added in this vein, perhaps as § 4(d)(3)(B-*bis*):

> (B-*bis*) has been successful in increasing U.S. private investment in Africa, including through treaties, aid programs, and increased export financing and project insurance;

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[74] This would add $36.6B to the U.S. investment position in Africa over 10 years. See *supra*, p. 4. This would mean a compound annual growth rate of a rather modest 7%. See Moneychimp calculator, *supra* n. 15.

[75] U.S. businesses today are not given adequate information about Africa's actual risks, leading to unbridled fear and an avoidance of the continent. *See* Hansen, Heritage lecture, *supra* n. 3, at pp. 1-2.

3. THE ACT'S CALL FOR A SPECIAL AFRICA STRATEGY COORDINATOR – § 5

This is a wise step, particularly if this official is given a bureaucratically central perch – at the White House, for example, as has been suggested by some members of the Working Group on U.S. Investment in Africa.[76] The Act's call for a Coordinator misses one element however, this being a specific mandate and duty to facilitate U.S. investment as called for by the Act's existing § 4(a). The Coordinator's full title should therefore instead be the "Special Africa *Investment and* Export Strategy Coordinator."

4. THE ACT'S CALL FOR A TRADE MISSION TO AFRICA – § 6

This is another wise step taken by the Act, but like § 5 it omits any mention of investment. This should be corrected. The text could also be strengthened by calling on the President to head the mission.[77] This would hardly be an extraordinary request or gesture, given that President Xi of the PRC made an extensive tour of Africa on his first foreign tour after assuming office.[78] The text of § 6 could therefore perhaps read as follows (with italics showing suggested additions):

> It is the sense of Congress that, not later than 1 year after the date of the enactment of this Act, *the President,* the Secretary of Commerce and other high-level officials of the United States Government with responsibility for *foreign direct investment and for* export promotion, financing, and development should conduct a joint *investment and* trade mission to Africa.

5. THE ACT'S CALLS FOR ADDED PERSONNEL – § 7

The Act's Call for Additional Commercial Service Officers Must Address Investment – § 7(a)

The Act's call for 50 new United States and Foreign Commercial Service officers to be added over five years is a good first step. Such new personnel, if skilled and dedicated,[79] could do a great deal to facilitate U.S. investments and exports destined for Africa. As with other civil servants, however, it is critical that these officers be properly trained for the specific work they will do. The following sentence (stated in italics) could therefore be added to the end of § 7(a)(1):

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[76] *See* Working Group, Compendium, *supra* n. 2, at pp. C23-C24 (calling for a coordinator in the same manner as the Act, and providing a number of specific recommendations for such coordination).

[77] This step, as part of a trade mission like the one envisioned by the Act, was urged by a member of the Working Group on U.S. Investment in Africa, Jon Vandenheuvel. *See* Working Group, Compendium, *supra* n. 2, at p. C19.

[78] VOA News, "Chinese President hails ties with Africa on Tanzania visit" (Mar. 25, 2013), *available at* http://www.voanews.com/content/chinese-president-hails-ties-with-africa-on-tanzania-visit/1627883.html (accessed May 3, 2013). President Xi's actions and statements bear noting, as they reflect the PRC's determined engagement of Africa and highlight the U.S. Government's current lassitude in respect of the continent: "Chinese President Xi Jinping has hailed China's relationship with African countries on his first visit to the continent and the first trip outside his homeland since assuming office, earlier this year. Xi is in Tanzania, where he met Sunday with his counterpart, President Jakaya Kikwete. After talks, the two leaders witnessed the signing of several trade, cultural and development accords. A key emphasis of his trip is to tell African leaders China 'will intensify not weaken' its relationship to the continent." *Id.*

[79] *See* Hansen, Heritage lecture, *supra* n. 3, at pp. 6-7 (observing the career pressures faced by U.S. officials in Africa).

> § 7(a)(1) IN GENERAL. …. *Such officers shall be fully trained in investment promotion and facilitation, and in the specific conditions of the markets to which they are assigned.*

The Act Properly Calls for an Expansion of Export-Import Bank Operations – § 7(b)

The Export-Import Bank of the United States is a critical tool for boosting U.S. exports to Africa, but it is severely understaffed. For at least the medium term, no U.S. policy seeking to increase U.S. exports or investments to Africa on any serious scale can succeed without Ex-Im's active involvement.

At its current, skeletal levels of staffing and budgeting, it would be impossible for Ex-Im's Africa office to handle the massive increase in work that a serious economic engagement with Africa would entail. The Subcommittee should seek to ensure that the new staff and equipment called by the Act will be sufficient to cover the expected new level of activity and all tasks required to evaluate and process applications in an expert and efficient manner.

The goal for this legislation should be to have an Africa office at Ex-Im that is confident in its ability to handle applications for the large-ticket items needed to supply the U.S. investors who should double U.S. investment in Africa (*i.e.* by a further $36.6B) over ten years.[80]

The Act's Call for More OPIC Staff Should Not Have a Ceiling – § 7(c)

The Act's call for no more than five new OPIC staff (at § 7(c)(1)) seems arbitrary and could be replaced by more flexible language that allows for changing (and presumably far improved) business conditions for U.S. investment in Africa. For example, the language of § 7(c)(1) could be augmented as follows (with the addition in italics):

> § 7(c)(1) STAFFING. … the Corporation shall use sufficient funds to increase by not more than 5*, unless business needs justify more,* the staff needed to promote stable and sustainable economic growth and development in Africa ….

It may be noted in passing that OPIC requires that an investor secure protections found in investment treaties (*i.e.* BITs) to secure project insurance.[81] Since the U.S. Government has not seen fit to conclude BITs with 89% of Sub-Saharan African countries,[82] the U.S. Government has placed the burden of negotiating terms squarely on the shoulders of investors, including small U.S. enterprises. This defeats the purpose of OPIC as an insurer of projects in high-risk countries. While this problem cannot feasibly be addressed as a separate matter in the Act, it does reinforce the need for the U.S. Government to conclude BITs and DTTs in Sub-Saharan Africa. It also supports the inclusion of the proposed new § 4(b)(2*bis*) paragraph calling for doubled U.S. investment and the conclusion of protective treaties.[83]

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[80] *See supra*, p. 12, for proposal of § 4(b)(2*bis*) provision calling for doubling of U.S. investment over ten years.

[81] *See* Hansen, Briefing Memorandum in Compendium, *supra* n. 2, at p. C147.

[82] *See* Hansen, Briefing for the State Department, *supra* n. 60, at pp. 16-17 of 44. Arab North Africa has 60% coverage. *Id.*

[83] *See supra*, p. 12, for proposal of § 4(b)(2*bis*) provision calling for doubling of U.S. investment over ten years.

6. THE ACT'S CALL FOR STANDARDIZED TRAINING – § 8

The Act sensibly calls for a standardized training program for officers at different agencies, but does not include any mention of training in how private investments and exports are actually undertaken. Such training should be specifically required, to which end § 8(1) could be augmented as follows, with the additions given in italics:

> § 8(1) … United States Trade and Development Agency*, as well as to the work and methods of United States private investors and exporters, and also to the challenges faced by such investors and exporters when dealing with Africa*; and

7. THE ACT'S CALL FOR INCREASED EX-IM BANK FINANCING – § 9

This is a positive step, and properly worded to allow for natural growth. Significantly increased Ex-Im Bank financing, not to mention the long-term reauthorization needed to provide business stability, is necessary to provide affordable financing for the exports that will be needed to supply and support a vastly larger U.S. investment cadre in Africa, plus the knock-on purchases of a more affluent Africa. It is also necessary to have such financing available to counter the trade-distorting effects of other countries' non-OECD-compliant export facilities, such as those of the PRC.

8. THE ACT'S CALL FOR THE CONCLUSION OF TREATIES – § 11

The Act's call for the "exploration of opportunities" to conclude various trade and investment treaties does not reflect the urgency of the Act's existing § 4 call for expanded investment. Nor does it reflect the imperative strategic need to increase dramatically the level of U.S. investment in Africa.[84]

The Act does not here even call for the conclusion of bilateral investment treaties (BITs), but merely for "investment promotion agreements." Such agreements could thus include legally useless Trade and Investment Framework Agreements (TIFAs) which amount to little more than agreements to establish talk-shops, and which do not encourage investment in any practical sense.

The Act further requires that the President ensure that any existing agreement be "implemented in a manner that maximizes the positive effects for United States trade, export, and labor interests." This is overly vague and would in practice give a license to the President to cater to special interests who object to U.S. economic involvement with Africa in a specific instance or more generally. There is also a risk that such a directive could be seen as anti-African or even racist, as the U.S. has willingly shipped a vast number of industrial jobs to China without U.S. Government intervention. To adapt a currently favored trade-law term, a "normal investment relations" approach should be applied in U.S. investment policy vis-à-vis African countries, so that they are treated like other countries:

> [A] new, equality-based approach can be readily defended as ending discrimination and normalizing relations with Africa. Under this form of engagement, Africa will be put on

[84] *See supra*, p. 12, for proposal of § 4(b)(2*bis*) provision calling for doubling of U.S. investment over ten years.

> the same plane as China, for which economic empowerment has been seen as the prerequisite to a political evolution away from a repressive Communism and toward a democracy rooted in a vast middle class. (In the case of Africa, decentralized economies, extreme ethnic diversity, weak government control, and a large number of democracies provide much better chances for such a diffusion of economic and political power.)
>
> It may be argued that Sub-Saharan Africa deserves the same respect as all other parts of the developing world. This does not mean that programs to fight corruption or raise living standards must be shelved. It means instead simply that African social and political development is officially seen as a product of broad economic development, not Washington fiat. We did not require China – or Mexico or Vietnam for that matter – to become Switzerland before we engaged with them economically. It may properly be argued that Africa's right to grow should not be obstructed, and that growth will cure many of the ills now being fought.[85]

For all such reasons, § 11 of the Act could be recalibrated as follows in line with the Act's existing § 4, with the retained text not italicized:

> *Wherever possible,* the President shall *undertake to* negotiate *and conclude* bilateral, subregional, and regional agreements that encourage *investment and* trade*,* and *that* eliminate nontariff barriers to trade between countries, such as investor friendly *bilateral investment treaties,* double-taxation treaties and *free-trade agreements*. United States negotiators in multilateral *fora* should take into account the objectives of this Act. To the extent any such agreements exist between the United States and an African country, the President shall ensure that the agreement is being implemented in a manner *that comports with United States expectations as to the implementation of its agreements with other investment partners,* as well as *with* the economic development of the *African country which is a partner to the agreement*.

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[85] *See* Hansen, Briefing Memorandum in Compendium, *supra* n. 2, at pp. C143-C144, at section entitled "Stop uniquely burdening Africa to 'earn' U.S. partnership."