Chapter 11

TTIP and Sub-Saharan Africa: A Proposal to Harmonize EU and U.S. Preferences

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The Transatlantic Trade and Investment Partnership (TTIP) has generated a great deal of commentary about its economic potential for the EU and the United States. Much less consideration has been given to its impact on third countries and the global trading system. Will a preferential trade agreement covering so much of world trade, further undermine the multilateral trading system, sucking negotiating energy out of the WTO, just as the WTO, following its Bali Ministerial, appears to be recovering from its slide to irrelevance?

Preferential trade agreements (PTAs) discriminate against non-participants, as they may divert trade from cheaper non-member to more expensive member sources. Poor non-members, currently enjoying preferences, see their preferential margins erode, as overall levels of protection are reduced. To what extent will a TTIP lead to trade diversion at the expense of third countries, especially poor ones? Will there be offsetting positive effects? Obviously, if tariffs and non-tariff barriers between the United States and the EU decline or are eliminated, the relative barriers to market entry faced by third countries become higher. The evidence on trade diversion of previous PTAs is quite mixed. The WTO in a comprehensive review reported significant trade diversion in some cases (MERCOSUR vis-à-vis the Caribbean) and little in others.[1]

The highly concentrated nature of exports from Sub-Saharan Africa (SSA) implies that the erosion of preferences in a small set of specific product categories (textiles, clothing and footwear[2] and spe-

[1]WTO, World Trade Report, *The WTO and Preferential Trade Agreements: from Coexistence to Coherence* (Geneva, 2011).

[2]EU and U.S. tariffs are typically more (and often much more) than 10% on textiles and clothing.

cific agricultural products such as fish, bananas and sugar) can have important negative consequences for these countries. More rigorous standards might be more difficult to comply with or even lock out SSA exporters. And more advanced intellectual property rules might affect the introduction and production of generic drugs and their supplies to SSA.

One of the few efforts to quantify the potential impact of a TTIP has been undertaken by the Bertelsmann Stiftung. Its report, *Transatlantic Trade and Investment Partnership (TTIP): Who benefits from a free trade deal?*[3], predicts that the main losers will be developing countries including Sub-Sahara Africa, a region that contains most of the world's poorest countries. If that were allowed to happen it would be contrary to existing European and U.S. policies, which aim, however imperfectly, to improve market access and export prospects for Sub-Saharan Africa.

At present both the United States and the EU operate a complex set of preferential trade arrangements vis-à-vis Sub-Saharan Africa. The TTIP creates the opportunity to codify, align and extend these arrangements instead of undermining them; and it can do so as a part of the architecture from the outset, not as an afterthought following years of exclusive negotiations. This chapter focuses on how TTIP can be used to help rather than hinder Sub-Sahara Africa, the region that not only has most to fear from a TTIP, but also most desperately needs generous access to rich country markets. Caring about SSA would be consistent with core Western values. And showing compassion is the more opportune, as the West is losing the battle for African "hearts & minds."

Sub-Saharan Africa's Trade and the TTIP

Sub-Saharan Africa needs to expand exports in order to create jobs, raise incomes, and, ultimately, reduce poverty and aid dependency. Domestic markets in most SSA countries are simply too small to enable local industry to achieve economies of scale. Increased trade

[3]Bertelsmann Stiftung, *Transatlantic Trade and Investment Partnership (TTIP): Who Benefits from a Free Trade Deal?* (Gütersloh, 2013).

opportunities would encourage both domestic and foreign investment that is critical to long term development.

The region's exports have been growing rapidly, about 14% per annum in the last decade. But the bulk of the growth has come from increased exports of oil and raw materials. The important emergence of global value chains virtually bypassed the region: by 2010 SSA had lower ratios of parts and components in its imports than in 1980.[4] And its overall share of world trade is a miniscule 2.2%. This marginalization of the region is critical in holding back its development.

For SSA to improve its capacity to exploit trade opportunities and diversify its economies, many obstacles have to be tackled: first and foremost it is critical to establish a single common regional market to reduce "internal" trade costs.[5] In addition, much remains to be done regarding the supply side: investment is needed in reliable energy; in infrastructure to reduce transport costs; in human capital and institutional capacity; and in general in improving the investment and business environment.

Africa's improved trade and economic performance over the last decade shows that many of these issues are in fact being addressed. But more can also be done to improve the external environment.

Trade policies around the world discriminate against the manufacturing and agricultural exports of poor countries. Average tariffs in rich countries are in the low single digits, but tariffs are still high in sectors where poor countries do well. This is supposedly being addressed by preferential schemes offered by the EU to the least developed countries (LDCs),[6] and, in the case of the United States, to a larger group of countries in Sub-Saharan Africa. But the utilization of the European scheme has been quite limited and in the case of the U.S. scheme, relevant products are excluded and those countries that need preferences most have not benefitted significantly from them.

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[4] C. Michalopoulos, *Emerging Powers in the WTO* (Houndsmills: Palgrave/ Macmillan, 2013).

[5] P. Collier and A. Venables, "Rethinking Trade Preferences: How Africa Can Diversify its Exports," *The World Economy*, 30(8), 2007, pp. 1326-45.

[6] These are the 49 countries that meet the UN criteria involving per capita income, industrial and human development indices; 27 of these are in Sub-Sahara Africa.

From the standpoint of a foreign investor deciding on a project, an African exporter looking for markets or an African government official deciding on policy, the present hodgepodge system of preferences is a nightmare: different schemes cover different countries, with different product coverage and different rules of origin. No wonder transaction costs in Africa are high.

On top of this, the TTIP, by providing preferences to U.S. and European exporters, would undercut SSA access to both markets. How big the effect will depend on the TTIP design. The Bertelsmann report suggests that the poorer countries would suffer, particularly Africa, as their exports to Europe would be pushed out by goods from the United States. African countries will also be among the largest net losers from reduction in non-tariff barriers if the TTIP succeeds in creating "deep liberalization."

The report from a "Transatlantic Task Force on Trade and Investment"[7] promoting the TTIP acknowledges that "the capacity of such an agreement to generate positive systemic consequences, and improve conditions for trade beyond the Atlantic region, depends on the design of a transatlantic trade agreement and how it links up with common EU and U.S. initiatives with other countries." The Task Force advocates that TTIP should address the integration, harmonization and modernization of their current preferential trade agreements (PTAs) with third countries, to "limit the negative effects of trade diversion and help to reduce so-called "spaghetti-bowl" effects.

If the United States and the EU do not want the TTIP to harm the poorest continent, it would be best for their relations with SSA, to deal with this now, as a precursor to an overall agreement, rather than as just one of many issues on the EU-US negotiation agenda somewhere in the future.

The TTIP provides an opportunity to rationalize country, product coverage and rules of U.S. and EU preferential schemes[8] towards SSA

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[7]"A New Era for Transatlantic Trade Leadership," Report from the Transatlantic Task Force on Trade and Investment, co-chaired by Ewa Björling and Jim Kolbe, The European Centre for International Political Economy (ECIPE) and the German Marshall Fund of the United States (GMF), 2012.

[8]The African Union Conference of Ministers of Trade (2011, Accra) produced a "Proposal for a Common and Enhanced Trade Preference System for Least Developed Countries

that need to be done any way. This chapter presents a proposal that would not just minimize further erosion of SSA market access, but improve, harmonize and modernize present schemes by establishing one common and generous system of trade preferences for low and lower middle income Sub-Saharan African country exports into the European and U.S. markets.

U.S. and European Trade Preferences Schemes for Sub-Saharan Africa

At present there are several different preferential trade arrangements in favor of low income and least developed countries in Africa, with different country and product coverage and different requirements regarding the rules of origin that permit goods to qualify for preferential treatment.[9] The complexity of these arrangements presents serious challenges for countries in Africa with limited institutional capacity. As a consequence, their utilization of the preferences is limited and the benefits they derive are much less than they could be.

U.S. Scheme: The African Growth and Opportunity Act (AGOA)

AGOA was signed into law on May 18, 2000 as Title 1 of The Trade and Development Act of 2000 and extended until September 30, 2015.

AGOA's *country eligibility* requirements are onerous. The Act authorizes the President to designate countries as eligible to receive the benefits of AGOA if they are *inter alia* determined to have established, or are making continual progress toward establishing market-based economies, the rule of law and political pluralism; elimination of barriers to U.S. trade and investment; protection of intellectual

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(LDC's) and Low Income Countries (LIC's)". www.au.int/en/sites/default/files/TI6204%20_E%20Original%20TD11.doc). As the beneficiaries of this proposal would not be limited to SSA, in order to ensure compatibility with WTO rules it suggests the prior establishment of a custom union among LDCs, a prohibitive requirement, given the daunting challenges of such a process.

[9]In addition to the schemes focused on Africa and the LDCs, developed countries have also established so called Generalized Schemes of Preferences (GSP) for developing countries more generally, which however, typically involve less advantageous preferences and product coverage.

property; combating corruption; policies to reduce poverty, protection of human rights and worker rights. Recognizing the progress Sub-Saharan African countries have been making in these areas, AGOA provides at present preferred access to the U.S. market for 40 of the 48 Sub-Saharan African countries. Among those excluded are Sudan, the Central African Republic, Eritrea and Zimbabwe.

However, as eligibility is not limited to relatively poor countries, AGOA includes the Upper Middle Income Countries (UMIC) in the region[10] with per capita incomes above $4000, which are much better positioned to make use of such preferences. The countries that really need preferences hardly benefit: 90% percent of SSA exports under AGOA consists of petroleum products. Of the $3.5 billion in non-oil AGOA exports in 2008, about $2 billion were automobiles, manufactured in South Africa[11] with massive domestic subsidies and limited job creation.[12] Just over $1 billion was clothing, mostly from Kenya, Lesotho, Madagascar, Mauritius, and Swaziland.[13]

AGOA's *product coverage* is less than generous. It removes tariffs on roughly 98% of products, but excludes key agricultural products, such as cotton, exactly those in which poor African countries have a comparative advantage and the sector that employs the vast majority of the poor. Restrictions on imports of sugar and dairy products discourage African cocoa exporters from processing cocoa beans into chocolate and other value-added products. As with all preferential schemes, there are complex rules of origin which limit the number of products eligible for preferential treatment (see below).

Another problem with AGOA is that the preferences are granted through an unpredictable political process and for a limited time. This uncertainty deters both exporters and investors. The program is

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[10]Angola; Botswana; Gabon; Mauritius; Namibia; the Seychelles; and South Africa.

[11]Kimberly Elliot, "Open Markets for the Poorest Countries: Trade Preferences That Work," CGD Working Group on Global Trade Preference Reform (Washington, DC: Center for Global Development, 2010), of which the author was a member.

[12]IPS, http://www.ipsnews.net/2013/04/should-south-african-taxpayers-subsidise-car-making-robots/.

[13]Kimberly Elliot, "Reviving AGOA," CDG Brief (Washington, DC: Center for Global Development, 2010).

scheduled to expire in 2015; and while the U.S. Administration is committed to renewal, the decision is up to Congress.

European Preferential Schemes

Everything But Arms (EBA)

EBA entered into force on March 5, 2001. It allows all imports to the EU from the LDCs duty free and quota free (DFQF), i.e. completely free access except for *armaments*.

Country coverage is limited to the group of Least Developed Countries (LDCs), which encompasses 27 countries in Sub-Saharan Africa. This is problematic, as regional integration is presently high on the political agenda of SSA—as it should be. But these efforts[14] span both LDCs and non-LDCs (e.g. Ghana, Kenya, and Nigeria), complicating the creation of truly common markets in the region. More fundamentally, by limiting this preferential access to LDCs, EBA excludes the countries that are low-income, such as Kenya, or lower middle income,[15] which are precisely those African countries best-placed to take advantage of preferences for export diversification.[16]

The present disaggregation of industrial production processes across several countries has potential for the region.[17] But the economies of poor small countries are simply too narrow. In order to be able to specialize in a limited range of activities (or transformation steps) and participate in global value chains, they must be able to rely on their neighbors to provide necessary inputs. Excluding the most feasible locations (Kenya, Ghana) also denies opportunities for their poorer neighbors (Tanzania, Liberia).

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[14]ECOWAS, the Economic Community of West African States; CEMAC, la Communauté Economic et Monétaire de l'Afrique Central; SADC, the Southern African Development Community; EAC, the East African Development Community and ESA (Eastern and Southern Africa),

[15]Cameroon; Cape Verde; Congo; Cote d'Ivoire; Ghana; Lesotho; Nigeria; Sao Tome and Principe; Senegal; South Sudan; Sudan; Swaziland and Zambia.

[16]D.G. Greenaway, P. Collier, and A. Venables, "Rethinking Trade Preferences: How Africa Can Diversify its Exports," *The World Economy*, Chapter 7, "Global Trade Policy," 2009.

[17]Ibid.

Product coverage is very generous (99.8%); currently it only excludes arms and ammunitions. The complexity of its rules of origin has recently led the EU to efforts to improve liberalize them without visible improvements (see below).

European Partnerships Agreements (EPAs)

For decades the EU has granted preferential access to its market for former colonies in Africa, the Pacific and the Caribbean (ACP countries). As these preferential arrangements became apparently incompatible with WTO rules, since 2002 the EU has been trying to replace them with "Economic Partnership Agreements" with regional groupings in SSA, the Pacific and the Caribbean, which are reciprocal, and presumably open to all developing countries in the region.

This course of action was unfortunate for several reasons. Given the limited capacity for trade negotiations of most countries in the region, their efforts should have focused on deeper integration within the African market and on the much more relevant Doha Round.

Moreover, the requirement of reciprocity and coverage of substantial all trade in such agreements (as required by Article 24 of the WTO) was probably unnecessary, given the state of development of most of the region and the way Article 24 has been applied. The EU also included issues that go beyond trade in goods (services, intellectual property, government procurement, abolishing export duties, etc.) which will create unnecessarily burdensome obligations for these countries and may distract from or could be inconsistent with their more immediate development priorities.

The membership of the various African regional groupings overlaps; and most of them include LDCs that already have access through the EBA scheme, creating problems for groupings that have common external tariffs.

It is no surprise that, though a few interim-agreements were signed, since the launch of EPA negotiations in 2002, with January1, 2008 as deadline, no EPA has been ratified with any of the African groupings. A deal was signed only with the ECOWAS Commission, but this Commission lacks the authority to ratify or implement the EPA and many African countries do not see the rationale for continuing negotiations on them. In the meantime the EU has upped the stakes by threatening to remove from the current duty free treatment under Regulation 1528/2007 by October 1, 2014 those non least developed countries that have not ratified and implemented their interim EPA.

The time has come for the EU to reconsider its trade policy vis-à-vis Sub-Saharan Africa.

Rules of Origin

All preference schemes are underutilized, some more than others. Partly this is because of supply constraints. But a common problem is the complexity of requirements exporters need to meet to benefit with regard to the preferential rules of origin (RoO). The WTO recognized the need to simplify RoO in its Ministerial Conference in Bali. Alas, the 2013 Ministerial Decision lacks any commitment ("Members should endeavor") and is only applicable to the limited group of LDCs.[18]

The purpose of the rules is to prevent "trade deflection" or simple transshipment, where products from non-beneficiary countries are redirected through a preference beneficiary, perhaps with minimal working and relabeling to avoid payment of higher customs duties. Rules of origin define how much processing must take place locally before goods and materials are considered to be the product of the exporting country and be rewarded with preferential market access.

This sounds simple enough but it in practice is a daunting obstacle. First, RoO can raise production costs, if, to meet the requirements, (parts of) the product must be produced in a different manner or place, than would be the case otherwise. Second, exporters have to adhere to documentation requirements, based on (at times) complicated cost accounting and apportionment, detailed and lengthy record keeping, exporter registration and so forth. Administrative costs are not limited to traders, but also represent a burden to customs authorities with limited institutional capacity. The ad valorem cost of RoO is estimated to be about 4%.[19]

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[18]WTO, 2013. *Ministerial Conference: Ninth Session, Bali, 3-6 December, WT/MIN(13)/42, WT/L/917* (Geneva: WTO, 2013).

[19]J. Francois, B. Hoekman and Manchin, "Preference Erosion and Multilateral Trade Liberalization," *World Bank Economic Review* 20 (2), 2006.

Rules of Origin in the EU EBA Scheme

In the case of the EBA scheme the rules of origin defined access so restrictively and inflexibly, that the scheme was underutilized and had minimal impact on LDC exports to the EU. A decade after the introduction of EBA the European Commission acknowledged "a correlation was indeed proven between the stringency of the rules of origin and the utilization rates of the tariff preferences. In addition, product specific rules were considered too complicated. Lastly, compliance was considered too costly and burdensome, both for exporters and administrations."[1] The EU introduced revised rules of origin as of January 1, 2011, simplifying and liberalizing the rules for EBA beneficiaries. For example, for most industrial products, the threshold of valued-added required from LDCs was reduced to 30% (against 50% per cent for non-LDCs). For textiles and clothing, single transformation has been granted without quotas. And EBA's cumulation provisions were changed to facilitate limited cumulation between countries of a regional group with different levels of market access to the EU. To what extent these changes are sufficient to increase utilization remains to be seen.

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[1]S.Laird, "A Review of Trade Preference Schemes for the World's Poorest Countries," Issue Paper 25 (Geneva: ICTSD, 2012), p. 35.

A third problem with RoO is that preference granting countries employ substantially *different methodologies* to define origin (a specific proportion of the total value added; and/or that the product has undergone sufficient transformation so as to be classified in a different tariff category). This obliges beneficiary producers to adapt their manufacturing processes in order to comply with the various conditions that they impose, sometimes incompatible with each other and/or substantially different.

As a result, developing countries are faced with a myriad of rules, depending on the export destination. For example, an exporter based in Tanzania will face different rules when exporting goods to Europe or the United States, each of which also differs when compared to the RoO under the regional COMESA trade agreement.

The differences in these rules impedes diversification in Sub-Saharan Africa, as it is easier to diversify by selling products that have been successfully sold in one market into other markets than selling different products into more markets, as new investments may be needed to penetrate each new market.[20]

The fourth and most fundamental problem with current RoO is that, since their creation decades ago, the world globalized: production of a good became fragmented between many countries, with each specializing in one narrow task. Comparative advantages are less and less at the level of whole products, but simply a specific transformation step. As Pascal Lamy has phrased it, "Global value chains have profoundly changed the way we trade. Whereas before we traded in goods, today we trade in tasks."[21] UNCTAD's 2013 *World Investment Report* shows how global value chains form the nexus between trade and investment: the vast majority of global trade—some 80%—is linked to the international production networks of transnational corporations.[22]

By requiring substantial value added, RoO can be prohibitive to participate in global value chains, as SSA typically has limited industrial capacity. RoO based on the assumption that a poor country can create a significant share of value added are unrealistic and a strong limitation in promoting manufacturing specialization. The reality is that in Sub-Saharan Africa few inputs are available domestically: the economies are narrow and need to rely on their neighbors to provide necessary inputs.[23]

One way to deal with this problem is for preferential schemes to permit *cumulation*. This allows inputs from other countries within a cumulation zone to be counted as being of local origin when further

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[20]Ibid., p. 10. This helps explain why Lesotho has significant exports of apparel to the United States, but not to the EU.

[21]Pascal Lamy, http://www.ipsnews.net/2013/08/the-world-trade-organisation-after-eight-transformational-years/.

[22]UNCTAD, *World Investment Report 2013*, http://unctad.org/en/PublicationsLibrary/wir2013_en.pdf.

[23]Francois et. al, op cit., p.7.

processed there. *Bilateral* cumulation between the preference-giving and preference-receiving countries also allows inputs sourced from the one party to be considered as originating in the exporting country (and thus counted as local content) when further processed there. *Regional* cumulation permits countries in a regional group to contribute products for further processing by regional trade partners, thus reducing the restrictiveness of the relevant RoO. Regional cumulation is particularly relevant, in the case of schemes limited to LDCs, which often belong to the same Customs Unions (e.g. the East African Community (EAC) and the Southern African Customs Union (SACU), with non-LDC neighbors, which thus need to be included in expanded cumulation.

To allow cumulation is helpful in addressing the problem of limited value added in processing, but adds another layer of complexity in the documentation needed to ensure that a particular product is eligible for preferences as the origin of all the inputs needs to be traced and documented.

Global value chains offer potential for Africa, since it is much easier to develop capabilities in a narrow range of tasks than in integrated, vertical production of an entire product.[24] But for trade preferences to able to act as a catalyst for manufacturing exports, they need to be designed to be consistent with international trade in fragmented tasks (as opposed to complete products) and need to be open to countries with sufficient levels of complementary inputs such as skills and infrastructure.

As labor intensive export manufacturing is the key to African job creation and growth, it is time to update trade preferences to be relevant to the current disaggregation of production processes across countries. Expanding the cumulation provisions for Sub-Saharan Africa could help unlock trade flows and improve the region's market access.

Recommendations

The key to reform is to adopt the best elements of the EU and U.S. schemes that have been effective in helping utilization of preferences and harmonize them.

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[24]Greenaway, et. al, op. cit.

Rules of Origin in U.S. AGOA

The general rule of origin for AGOA with respect to non-apparel products is that the sum of the cost or value of materials produced in the beneficiary country plus the direct costs of processing must equal at least 35% of the appraised value of the article at the time of its entry into the United States. While the rules permit limited bilateral cumulation (up to 15% out of 35% of "local" materials may comprise U.S. materials) and full cumulation between AGOA beneficiaries, a value-added requirement of 35% is likely to be difficult for many small developing countries.

For apparel products, however, AGOA introduced a so-called special rule, allowing African clothing manufacturers flexibility in sourcing fabrics, provided beneficiary countries establish effective visa systems and institute required enforcement and verification procedures before any of their apparel exports to the United States can receive AGOA benefits.

26 poorer African countries exporting apparel to the United States were allowed to use fabric from any origin (single transformation) and still meet the criteria for preferential access. This simplification contributed to an increase in export volume of about 168% for the top seven beneficiaries or approximately four times as much as the 44% growth effect from the initial preference access under the Africa Growth Opportunity Act without the single transformation proving that a bold approach to rules of origin can provoke substantial supply responses from developing countries and help them build a more diversified export base.[1]

[1]World Bank, Doing Business 2013, http://www.doingbusiness.org/special-features/infograph.

Change Country Coverage

It is difficult to justify a U.S.-EU trade arrangement that provides different developing country treatment. What particular European or U.S. foreign policy interest would be served, for example, by the EU and the United States providing different access to Kenya's products?

In order for the initiative to benefit those countries that need it most, without excluding only slightly less poor countries that can make use of the preferences, the initiative should focus on all low income and lower middle-income countries in Sub-Saharan Africa, i.e. countries with per capita income less than $4,035, excluding higher middle income countries (World Bank Atlas classification). With no income per capita restrictions, the bulk of the benefits may go as they do in AGOA to countries, like South Africa, that do not need them. Thus, the United States should exclude the higher middle-income countries (notably South Africa) that presently qualify for AGOA, while the EU should expand its scheme, presently focused on LDCs only, to include all Lower and Lower Middle Income Countries in Sub Saharan Africa.

Product Coverage Should be 100% DFQF

Most SSA countries' exports are highly specialized, producing a very narrow scope of goods; in many cases, a few raw materials account for most of their exports.[25] Excluding even a small number of products can rob the initiative of any meaning,[26] since in most developed country markets 3% per cent of tariff lines cover 90-98% of exports from LDCs.[27]

In this respect the EU's EBA with its 100% coverage is far superior to the U.S. scheme. The exclusion of key agricultural products is a serious gap in the U.S. program: for sugar, tobacco, and peanut exporters, tight restrictions on access to the U.S. market constitute a serious barrier, the more as agriculture provides livelihoods for roughly two-thirds of all Africans. The U.S. AGOA needs to be expanded to include particularly those in which these countries have a comparative advantage: agriculture and labor-intensive manufacturing products, including apparel and footwear.

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[25]Oil and gas (Angola, Chad, Equatorial Guinea, Sudan); iron ore (Mauritania); diamonds (Central Africa Republic, Liberia, Sierra Leone); copper (Zambia); aluminum (Mozambique); agricultural crops like cocoa (Sao Tome, Togo), cotton (Benin, Burkina Faso, Mali, Togo)

[26]A. Bouet, et. al, "The Costs and Benefits of Duty-Free, Quota-Free Market Access for Poor Countries: Who and What Matters," *CGD Working Paper* (Washington, DC: Center for Global Development, 2010).

[27]D. Laborde, "Looking for a Meaningful Duty Free Quota Free Market Access Initiative in the Doha Development Agenda," Issue Paper 4 (Geneva: ICTSD, 2008).

Ensure That the Preferential Rules of Origin Provide Genuine Market Access

For Sub-Saharan Africa to be able to exploit preferential access, qualification requirements have to be relevant, simple and harmonized across preference givers. Updating the preferential RoO to the realities of production networks that define trading conditions in the 21st century is long overdue, as is international agreement on the methodology to define origin in order to harmonize these rules.

Negotiations on RoO have been dragging on for many years at the WTO without any results. While regulatory alignment is an essential part of the trade agreement as envisaged between the EU and the United States, these negotiations will be complex and thus time consuming.

In the meantime, the unilateral rules that guide exports from Sub-Sahara Africa could be relaxed to ensure genuine utilization of preferential market access.

Generous cumulation should be allowed, preferably regional, i.e. all Sub-Saharan Africa. The simplest way to create the necessary flexibility, which does not need any negotiations among the TTIP partners,[28] would be *mutual recognition* of origin regimes across preference givers, accepting an import eligible in one market as eligible in any other. This should be feasible as the TTIP is expected to rely extensively on the principle of mutual recognition, given the extent to which the U.S. and EU regulatory approaches differ.

Ensure Better Transparency and Predictability, and Therefore, Promote Trade and Investment, by Making Preferences Permanent or Long Lasting

The uncertainty that is associated with preference regimes that are changed frequently and may expire if not renewed periodically by parliaments (e.g. AGOA) can have very negative effects on investment decisions.[29]

Ideally, in order to provide over a long time horizon, preferences should be granted on a permanent basis preferably by binding them in

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[28]Elliot, “Open Markets,” op. cit.

[29]N. Phelps, J. Stillwell and R. Wanjiru, “Broken chain? Foreign Direct Investment in the Kenyan Clothing Industry,” *World Development* 37(2), 2008, pp. 314-325.

the WTO. If periodic reviews are unavoidable, they should be sufficiently long lasting (a minimum of 10 years) to provide the security to investors for real market access to materialize.

Conclusion

The timing is right for a new initiative to help Sub-Saharan Africa benefit from trading opportunities in today's increasingly globalized world. And it is particularly high time for the EU to reconsider its trade policies (EPAs) with SSA, as it seems that—even with the Commission threatening loss of all preferential market access—there is simply no appetite in Africa for this approach. Moreover, the EPA negotiations are disruptive to Africa's own regional integration efforts—which indeed should take precedent in the interest of development.

The new U.S.-EU Trade and Investment Partnership provides the ideal opportunity to improve market access for SSA by taking the best features and most effective provisions of their respective preference programs, making them compatible in terms of country and product coverage and by updating the rules to the current trading environment and agreeing to mutual recognition of rules of origin.

The TTIP would benefit from harmonization of agreements with third countries anyway. But instead of being just one of many issues on the EU-U.S. negotiations agenda somewhere in the future, focusing on the urgent needs of Sub-Saharan Africa now, as a precursor to the overall agreement, would help the region's economic transformation, give a tremendous push to its integration in the world economy, and lift millions of people out of poverty.

Such an action would help win "hearts and minds" in Africa. It would be in keeping with the spirit of the Marshall Plan, by which the United States allowed and even prompted Europe to prioritize regional economic integration, helping to create a Europe, closely bound in common purpose, premised on democratic governance, the free exchange of goods and services, and enduring transatlantic ties to the United States.[30]

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[30]Hitchcock, "The Marshall Plan and the Creation of the West," in Melvyn P. Leffler and Odd Arne Westad, eds., *The Cambridge History of the Cold War* (New York and London: Cambridge University Press, 2010).