Between Scylla and Charybdis: The Changing Nature of U.S. and EU Development Policy and Its Effects on the Least Developed Countries of Sub-Saharan Africa

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I. INTRODUCTION

In recent years, trade relations between the United States and the European Union have shaped the global economy in ways that are not in the best interest of many developing nations, primarily those in sub-

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Saharan Africa. The European Union initially had an internal policy granting preferential treatment to former colonies, the African-Caribbean-Pacific (ACP) states, under the Lomé agreements.[1] Over the twenty-five-year span of Lomé agreements, the European Union gradually scaled back its commitment to the ACP states.[2] With the signing of the Single European Act the European Union finally became a trading block to rival the United States and free trade became the new mantra.[3]

However, this goal was tested in the bananas dispute between the United States and the European Union.[4] While eventually resolved in favor of the United States, the dispute had a major impact on the way the European Union would handle its future trade relations with the ACP states.[5] Both the EU's Cotonou Accord (which effectively replaced the Lomé agreements) and the U.S. African Growth and Opportunity Act (AGOA), a sub-section of the Trade and Development Act of 2000, emerged out of this context, each with specific implications for sub-Saharan Africa.[6] These trade initiatives pursue all future trade agreements under the auspices of the World Trade Organization (WTO) and that organization's aim of liberalized global trade.[7]

The central contention of this Article is that sub-Saharan Africa is not in a position to benefit from liberalized trade with the European Union or the United States. The more the European Union and the

1. *See* discussion *infra* Part III. The ACP currently includes: Angola, Antigua and Barbuda, Bahamas, Barbados, Belize, Benin, Botswana, Burkina Faso, Burundi, Cabo Verde, Central African Republic, Cameron, Chad, Comores, Congo, Democratic Republic of Congo, Dominican Republic, Cook Islands, Côte d'ivoire, Djibouti, Dominica, Eritrea, Ethiopia, Fiji, Gabon, The Gambia, Ghana, Grenada, Guinea, Ecuatorial Guinea, Guinée-Bissau, Guyana, Haiti, Jamaica, Kenya, Kiribati, Lesotho, Liberia, Madagascar, Malawi, Mali, Marshall Islands, Mauritania, Mauritius, Micronesia, Mozambique, Namibia, Nauru, Niger, Nigeria, Niue, Palau, Papua New Guinea, Rwanda, São Tomé and Príncipe, Sénégal, Seychelles, Sierra Leone, Solomon Islands, Somalia, South Africa, St. Kitts and Nevis, St. Lucia, St. Vincent and The Grenadines, Sudan, Suriname, Swaziland, Tanzania, Togo, Tonga, Trinidad and Tobago, Tuvalu, Uganda, Vanuatu, Western Samoa, Zambia, and Zimbabwe. Lists and Maps of ACP Countries, *at* http://www.acpsec.org/gb/jointass/acplist.htm (last visited Mar. 25, 2003). All forty-eight sub-Saharan African states are members of the ACP. *Id.*

2. *See* discussion *infra* Part II.

3. *See id.*

4. *See* discussion *infra* Part IV.

5. *See id.*

6. *See* discussion *infra* Parts IV-V.

7. *See id.*

United States promote free trade under the WTO without complementary development assistance, the further behind sub-Saharan Africa will fall.[8]

Part II discusses the developmental challenges in Africa, such as their inability to benefit from liberalized trade and their unstable political structures. It also discusses how trade relations with Africa have changed since the United States has played a more active role; U.S. involvement has pushed towards liberalized trade and has usurped the role of the EU, including the more humanitarian principles expressed in Lomé. Part III discusses the Lomé agreements and the role they play in determining and continuing EU development policy towards Africa. Part IV discusses the WTO bananas dispute in the context of the eventual dismantling of the Lomé agreements, and the differences inherent in the EU and U.S. systems of development and trade which led to the bananas dispute. Part V discusses the African Growth and Opportunity Act in the United States and its role in shaping U.S. development and trade policy with sub-Saharan Africa as well as the place of the WTO, the World Bank and the IMF in relation to sub-Saharan Africa and the development policy outlined in the AGOA.

Finally, Part VI concludes that in spite of the circumstances, the European Union should preserve the general principles of Lomé. In short, trade agreements with sub-Saharan African nations should provide for differentiated reciprocity, rather than strict reciprocity, and should include complementary development assistance. The European Union and the United States should work collaboratively (under the WTO and with the World Bank and United Nations Development Programme) to reduce the international debt of sub-Saharan Africa, give special attention to the sensitive nature of agricultural trade, protect infant industries to help build economies of scale, use grants to help build the much needed infrastructure, support entrepreneurs (especially women), and find more creative ways to combat political corruption.

II. AFRICA'S PLACE IN THE GLOBAL ECONOMY

A. Developmental Challenges

"Without doubt the most formidable development challenge facing the world now is in [s]ub-Saharan Africa."[9] Of the forty-nine least developed countries (LDCs) in the world, thirty-four are in sub-Saharan

8. Kunibert Raffer, *Lomé or Not Lomé: The Future of European-ACP Co-operation*, *in* NEW PERSPECTIVES ON EUROPEAN UNION DEVELOPMENT COOPERATION 125, 141 (Marjorie Lister ed., Westview Press 1999).

9. WILLIAM RYRIE, FIRST WORLD, THIRD WORLD 207 (St. Martin's Press 1995).

Africa.[10] According to the United Nation's *Human Development Report*, sub-Saharan Africa accounts for 1.4% of world exports.[11] In essence, "Africa plays hardly any part in world trade. . . . If Africa disappeared off the map tomorrow, the world economy would hardly miss it."[12]

These countries simply lack the economic and political capacity to change this situation. One reason for this situation is that the forty-eight countries of sub-Saharan Africa spend approximately $13.5 billion per year servicing their more than $300 billion debt to foreign creditors.[13]

The sub-Saharan African development challenge is particularly important to the European Union, primarily because of the traditional relationship they share from colonial times.[14] The European Union is arguably responsible for much of sub-Saharan Africa's underdevelopment, as the European nations have historically held the lion's share of trade and development with the sub-Saharan countries.[15]

The European Union is, and has always been, sub-Saharan Africa's biggest trading partner.[16] In fact, the European Union receives more than half of sub-Saharan Africa's exports.[17] This is particularly important with regard to the export of agricultural products, sub-Saharan Africa's most important sector.[18] For the simple reason that "[t]he EU alone imports more agricultural goods from the developing countries than the US, Canada, Japan, Australia and New Zealand" combined.[19] Meanwhile, approximately one-third of all EU exports to the ACP states are vehicles, transport equipment, aircraft, or machinery.[20]

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10. *See Least Developed Countries (LDC): Introduction*, *at* http://www.europa.eu.int/scadplus/leg/en/lub/r/2400.htm.

11. United Nations Development Programme, *Human Development Report 2000*, at 82 (Oxford Univ. Press 2000).

12. CHARLES O. KWARTENG, AFRICA AND THE EUROPEAN CHALLENGE: SURVIVAL IN A CHANGING WORLD 233 (Avebury 1997) (citation omitted).

13. *See* Africa Action, *Statement to the First U.S.-Sub-Saharan Africa Trade and Economic Cooperation Forum* (Oct. 29, 2001), *at* http://www.africaaction.org/docs01/ec0110a.htm (last visited Oct. 11, 2002) [hereinafter Africa Action Statement].

14. *See* KWARTENG, *supra* note 12, at 152.

15. *See id.*

16. *See id.*

17. *Id.*

18. Africa Action Statement, *supra* note 13.

19. Dr. Franz Fischler, Agricultural Policy for the Future: Changing Concerns, Changing Objectives, Address at the Twenty-ninth North American/European Union Agricultural Conference (Oct. 19, 2001), *available at* http://europa.eu.int/comm/commissioners/fischler/cont_en.htm (last visited Oct. 11, 2002).

20. Eurostat, *Statistics in Focus: Theme 6 'External Trade': EU Trade with ACP Countries* (European Communities 2002), *available at* http://europa.eu.int/comm/trade/pdf/dev_ff_en2.pdf [hereinafter Eurostat, *EU Trade with ACP Countries*].

The development challenge of sub-Saharan Africa is likely to become more complicated as trade relations between the United States and the European Union evolve, and as liberal global trade continues to proliferate under the WTO. Both of these free trade movements have forced the European Union to reconsider its development strategies and trade relations with regard to African nations.[21] The central problem with negotiating free trade agreements between developed and developing nations is one of leverage; developing countries are simply in a weak position in these situations and subsequently lose out.[22] For instance, the Organization for Economic Cooperation and Development (ECD) predicts that Africa stands to lose approximately $2.6 billion annually as a consequence of the Uruguay Round.[23]

B. Global Free Trade Ramifications

One major reason sub-Saharan Africa stands to lose in the post-Uruguay/EU era is because sub-Saharan Africa is not sufficiently developed to take advantage of liberalized global trade. Sub-Saharan Africa lacks the institutional and technical infrastructure that was supposed to have developed under the twenty-five years of trade between the European Union and the ACP states.[24] In fact, sub-Saharan African

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21. *See* KWARTENG, *supra* note 12, at 86-89. The Uruguay Round is of practical significance for Africa specifically because of its interaction with the EU's economic integration plan. *Id.* As the Director-General of GATT noted, "the Uruguay Round is a departure from the days when GATT was negotiating only tariffs and few selected non-tariff barriers: domestic policies, border measures, and national legislation are now being negotiated." Address at the Wharton School of Business at the University of Pennsylvania, Philadelphia (Oct. 19, 1989), *reprinted in* KWARTENG, *supra* note 12, at 86. If the Uruguay Round succeeds completely in linking trade in goods and services to other matters such as developing countries' policies with regard to foreign direct investment, protection of intellectual property, and fair labor practices, then, the kind of self-reliance that develops from trade could be threatened. KWARTENG, *supra* note 12, at 87.

22. *See* KWARTENG, *supra* note 12, at 86.

23. J. Lahai Samboma, *Africa Must Renegotiate GATT*, NEW AFRICAN 25-26 (Apr. 1994). However, the Single Market and the WTO are not solely at fault. *See* Martin Holland, *Resisting Reform or Risking Revival? Renegotiating the Lomé Convention*, *in* THE STATE OF THE EUROPEAN UNION 390 (Maria Green Cowles & Michael Smith eds., Oxford Univ. Press 2000). For instance, "After a promising rise in the value of ACP exports under Lomé I and II, from a peak of 26.8b ECU in 1985, [it fell] to 18.6b ECU a decade later." *Id.* at 401. Similarly, "the value of EU exports to ACP [fell] from its 1985 peak of 17.4b ECU to 14.9b by 1994." *Id.* Clearly, the positive effects of Lomé were dissipating prior to the WTO. *See id.* The question is whether the liberal trade movement accelerated the trend toward the EU's inevitable abandonment of the Lomé framework.

24. *See* First ACP-EEC Convention of Lomé, Feb. 28, 1975, 14 I.L.M. 595 (1975) [hereinafter Lomé I]; Second ACP-EEC Convention of Lomé, Oct. 31, 1979, 19 I.L.M. 327 (1980) [hereinafter Lomé II]; Third ACP-EEC Convention of Lomé, Dec. 8, 1984, 24 I.L.M. 571 (1985) [hereinafter Lomé III]; Fourth ACP-EEC Convention of Lomé, Dec. 15, 1989, 29 I.L.M.

nations that were party to the Lomé agreements are now in a worse position than before the agreements.[25] Without a well-developed technical and institutional infrastructure, sub-Saharan African states cannot compete with more efficient ACP states, or with the European Union's new trading partners in Central and South America.[26] Why such development did not take place for sub-Saharan Africa, as it was supposed to under Lomé, is a question the European Union must entertain seriously if it is to avoid similar problems in the future.[27]

The reason such development did not occur in sub-Saharan African nations under Lomé is due in part to the evolution of the European Union

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783 (1990) [hereinafter Lomé IV]. Lomé agreements were formalized in 1975 and renewed every five years: 1975-1980 (Lomé I), 1980-1985 (Lomé II), 1985-1990 (Lomé III), and 1990-1995 (Lomé IV). *See* Lomé I, *supra*, art. 91; Lomé II, *supra*, art. 188; Lomé III, *supra*, art. 291; Lomé IV, *supra*, art. 366. Lomé consists of a system of preferences for African exports to the EC in which industrial goods are virtually free from tariffs and agricultural products and raw materials receive preferential treatment in the EC market. *See* Lomé I, *supra*; Lomé II, *supra*; Lomé III, *supra*; Lomé IV, *supra*. Additionally, many commodities received price supports under the STABEX index. *See* Lomé I, *supra*, arts. 16-19; Lomé II, *supra*, arts. 23-25; Lomé III, *supra*, arts. 147-50; Lomé IV, *supra*, arts. 186-189. Lomé was formally replaced by the Cotonou Agreement in June 2000. *See* Europa, *Development: Introduction*, *at* http://www.europa.eu.int/scadplus/leg/en/lvb/r12000.htm (last visited Oct. 15, 2002). Cotonou seeks the full incorporation of the ACP states into the WTO framework. *See id.* The central, unique characteristic of Lomé was the idea of "partnership." Holland, *supra* note 23, at 401. Partnership denoted equality and consensual decision-making, however, each successive Lomé agreement undermined the "partnership ideal." *Id.*

25. *See* KWARTENG, *supra* note 12, at 160. Africa's share of the developing countries' agricultural exports fell from seventeen percent to eight percent between 1970 and 1990. *See id.* In 1990, sub-Saharan Africa's share of value-added world manufacturing declined and remained at less than half of one percent. *See id.* Africa's share of global foreign investment also declined from 4.5% in 1980 to 0.7% in 1990. *Id.*

26. For an account of Africa's disadvantages, see KWARTENG, *supra* note 12, at 85-92. The EU currently accounts for twenty percent of Latin America's imports and exports and is the principle donor under the Andean Pact. *See id.* at 112-13. In contrast, "[t]he effects of Lomé IV and new GATT regulations put Africa at a competitive disadvantage." *Id.* at 92.

27. The European Union cannot ignore the problem as article 130u (now article 177) of the Maastricht Treaty specifically calls for "the sustainable economic and social development of the developing countries, and more particularly the most disadvantaged among them," and "the smooth and gradual integration of the developing countries into the world economy." TREATY ON EUROPEAN UNION AND FINAL ACT, Feb. 7, 1992, 31 I.L.M. 247 [hereinafter MAASTRICHT TREATY]. Similar problems exist with the EU's policy toward human rights. *See* Gráinne de Búrca, *Convergence and Divergence in European Public Law: The Case of Human Rights*, *in* CONVERGENCE AND DIVERGENCE IN EUROPEAN PUBLIC LAW 5 (P. Beaumont et al. eds., Hart Publ'g 2002). The EU Council's Annual Report on Human Rights asserts the importance of human rights issues in the external relations of the EU, "for example in the negotiations with various African states within the context of the Lomé Convention," but argues that the "conditionality clauses in external agreements do not themselves make human rights a field of policy within such agreements, but merely make respect for human rights an essential element of the agreement." *See id.* at 10-11 (citations omitted). The same can be said for development policy in general. *See* Holland, *supra* note 23, at 392.

itself during that twenty-five-year period.[28] Continued pressure, both international and domestic, toward liberalized trade, and the struggle to maintain efficient markets, forced the European Union to shift its development emphasis.[29] Additionally, there was never a consistent vision within the European Union on how to structure development aid or trade agreements with the LDCs (particularly African nations) under Lomé, and the same basic divisions among EU states still exist today.[30]

> The globalization of the world economy, and the emergence of the Single Market, are blowing out the last vestiges of [the] EU's linkages with their former colonies in Africa. The EU is adopting a more globalist approach in trade policy that has already undermined the preferential arrangements that undergird the Lome framework of Euro-Africa relations.[31]

In each successive Lomé agreement, the "anatomy of reform . . . confirm[ed] the process as one of unequal negotiation, agenda-management, and implicit coercion tantamount to a *fait accompli*."[32]

A second major reason sub-Saharan Africa stands to lose in the post-Uruguay/EU era is because the status of EU and sub-Saharan African trade relations has been fundamentally and permanently altered by the general process of globalization and more specifically by the evolving nature of U.S.-EU trade relations.[33] The agricultural sector is a prime example. One critic noted: "Africa is being treated as a no-man's land in a disastrous agricultural trade war with the U.S."[34]

A third reason sub-Saharan Africa will lose as U.S.-EU trade relations precipitate a liberal global market, is future trade agreements will be under the auspices of the WTO. Under that organization there is simply not enough emphasis on complementary development aid for

28. *See* Holland, *supra* note 23, at 394. In spite of Lomé preferences for former colonies in Africa, the need for African exports has faded dramatically. *See* Eurostat, *EU Trade with ACP Countries, Statistics in Focus*, *supra* note 20, at 1. "ACP countries' share of the EU market declined from around 7% in 1976 to 4% in 2000, while about 70% of their exports to the EU were concentrated in only 10 products." *Id.* Petroleum alone accounts for over twenty percent of all ACP exports. *Id.* at 6. It is followed closely by precious stones and metals (twenty percent), cocoa (three percent), and coffee, tea, and spices (three percent). *Id.*

29. *See* Holland, *supra* note 23, at 394. Domestically, the European Union was faced with the immediate challenge of incorporating Eastern European countries into the European market after the fall of the Berlin wall. *See id.*

30. *See id.* at 407. In light of the problematic nature of "competencies" within the European Union, the philosophical split on development policy is exacerbated. *See id.*

31. KWARTENG, *supra* note 12, at 151.

32. Holland, *supra* note 23, at 408.

33. *See* KWARTENG, *supra* note 12, at 57-58, 151.

34. *Id.* at 90 (citation omitted).

developing nations.[35] This strikes at the heart of this Article's claim: given the gravity of the economic situation in sub-Saharan Africa, the United States and the European Union must make a concerted effort to include complementary development aid with any new trade agreements or trade initiatives with sub-Saharan African nations.[36] Unfortunately, neither the United States' new AGOA nor the European Union's Cotonou Accord (which effectively replaces the Lomé agreements) has much in the way of development aid through complementary financial or technical assistance despite the fact that an explicit objective in both is to bring African nations into the WTO.[37]

Understandably, developing nation representatives have some trepidation about bringing all future trade under the auspices of the WTO.[38] "Developing country representatives fear that the [WTO social] clause would be constructed and used by developed countries to restrict developing-country imports, and not vice versa, thus worsening existing biases against them."[39] For example, developing countries are concerned that the United States and the European Union would impose trade restrictions on labor and environmental grounds in order to satisfy domestic interests.[40] Basically, these countries fear that the United States and the European Union could use the integration of labor and environmental standards in the WTO "to appease domestic constituencies by blocking developing-country imports, without any compensation to developing countries."[41]

New trade arrangements with either the United States or the European Union, which push to comply with WTO mandates, can be seen as an assault on the ability of African countries to chart their own course of development. Developing-country critics of the WTO demand fewer constraints on the ability to implement social and development policies and oppose trade restrictions on environmental and labor

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35. *See* Gregory Shaffer, *WTO Blue-Green Blues: The Impact of U.S. Domestic Politics on Trade-Labor, Trade-Environment Linkages for the WTO's Future*, 24 FORDHAM INT'L L.J. 608, 626-27 (Nov./Dec. 2000).

36. This is especially true in light of the dismantling of Lomé and the United States' poor track record on development aid. *See id.* "The United States . . . currently gives only 0.015% of its gross domestic product in foreign aid, much of it targeted to Israel and Egypt for political and security reasons. During the 1990s, the amount of U.S. foreign aid declined an average of 8% per year." *Id.* (citations omitted).

37. African Growth and Opportunity Act, H.R. 1432, 105th Cong. § 8(b)(1) (1997). For an excellent account of the need for future trade agreements under the WTO to be accompanied by complementary development assistance, see Shaffer, *supra* note 35.

38. *See* Shaffer, *supra* note 35, at 624-27.

39. *Id.* at 624 (citations omitted).

40. *Id.*

41. *Id.* at 624-25.

grounds, "particularly where they would be implemented through a unilateral determination by the United States."[42] They also demand "that developing countries be granted special status so that they retain more discretion to promote 'infant industries' and other policies through subsidies and import barriers than under WTO rules."[43]

Where the former arrangements under Lomé involved generalized principles and rules embodied in an overall reciprocity for trade in goods, new agreements are sector driven, product specific, and include reciprocity clauses.[44] These new arrangements disadvantage those ACP states that Lomé failed to help develop.[45] For instance, no reciprocity clause existed under Lomé. As a result, African nations' main concern today is the "phenomenon of ultra-liberalism in international trade negotiations, and its impact on Africa's privileged status in Europe."[46] The former Secretary-General of the ACP, Edwin Carrington, noted that the nonreciprocal preference is "being sacrificed on the alter [sic] of liberalism."[47] If only reciprocal trade relations remain, sub-Saharan Africa is in deep trouble.

C. Classic Economic Theory Ramifications

> In theory, globalization provides an opportunity to raise incomes through increased specialization and trade. This opportunity is conditioned by the size of the markets in question, which in turn depends on geography, transportation costs, communication networks, and the institutions that underpin markets. Free trade increases both the size of the market and the pressure to improve economic performance. Those who are most

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42. *Id.* at 612 (citation omitted). *See, e.g.*, CUTS Centre for International Trade, Economics & Environment, *Third World Intellectuals and NGOs' Statement Against Linkage* (Sept. 6, 1999), *at* http://www.cuts-india.org/Twin-sal.htm (arguing that the multilateral trading system is becoming strained due to the incorporation of nontrade issues into the WTO arrangement); TWN Third World Network, *Joint NGO Statement on Issues and Proposals for the WTO Ministerial Conference* ¶¶ 52, 74 (Dec. 1996), *at* http://www.twnside.org.sg/title/issue-cn.htm (last visited Oct. 5, 2002) ("[T]he environment should not be made use of as an issue for protectionism by the powerful for that would unfairly shift the adjustment cost to the weaker countries and people. . . . There should be no recourse to unilateral trade actions for any purposes.").

43. Shaffer, *supra* note 35, at 612 n.10.

44. *See* Lomé III, *supra* note 24, art. 1; KWARTENG, *supra* note 12, at 88. For example, the Uruguay Round represents one of the best chances for the United States to improve its balance of payments in export of United States services, as foreign governments would be expected to treat American insurance companies, law firms, and banks the same way they treat domestic firms. KWARTENG, *supra* note 12, at 88.

45. *See* KWARTENG, *supra* note 12, at 88.

46. *Id.*

47. *Id.* at 88-89.

> competitive take advantage of the enhanced market opportunities to survive and prosper.
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> Neoclassical economic theory predicts that poor countries should grow faster than rich ones in a free global market. Capital from rich nations in search of cheaper labor should flow to poorer economies, and labor should migrate from low-income areas toward those with higher wages.[48]

While theoretically persuasive, this has simply not been the course of economic development in the world since World War II.[49] There are still some two billion people in the world earning less than US$2 per day.[50] Mainstream economic theory that predicts the globalization of trade will lead to uniform improvement of incomes simply neglects the variable of human institutions.[51] "[A]cademic solutions may do as much harm as good, given their focus on economic stability and growth rather than on the institutions that underpin markets."[52] While *average* incomes have indeed grown, so has the income gap between rich and poor countries.[53] In other words, the rich are getting even richer, as the poor get poorer.

There are many reasons for statistics that challenge mainstream economic theory. For instance, one argument posits that, since World War II, markets have not actually been free and accessible.[54]

> In general, the loss to developing nations, as a result of protectionist tendencies in advanced nations, is about $500 billion a year—ten times more than the international aid they received from advanced nations. According to the UNDP's Human Development Report (1992), global markets are neither efficient nor free, and LDCs are prevented from fully exploiting the potential in the market.[55]

Nowhere is this more true than in sub-Saharan Africa. Although the total stock of direct foreign investment has risen from four percent of world GDP in 1980 to twelve percent in 1997, very little has gone to the poorest countries.[56] In fact, about seventy percent of direct foreign investment went from one wealthy nation to another, twenty percent went to eight developing countries, while over 100 poor nations scrambled for

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48. Bruce R. Scott, *The Great Divide in the Global Village*, FOREIGN AFF., Jan./Feb. 2001, at 160, 162.
49. *Id.* at 160.
50. *Id.*
51. *See id.* at 161-62.
52. *Id.* at 161.
53. *Id.* at 160.
54. *See* KWARTENG, *supra* note 12, at 151-52.
55. *Id.* at 152 (citations omitted).
56. Scott, *supra* note 48, at 164.

the remaining ten percent.[57] LDCs received about seven percent while, "[a]t the same time, the unrestricted opening of capital markets in developing countries [gave] larger [multinational corporations] the opportunity for takeovers . . . reminiscent of colonialism."[58]

The insistence of rich countries on developing countries opening their markets, and reducing their trade barriers against developed country products, puts developing nations in a Catch-22. Such conditions are inextricably linked to the present scheme of global market governance.[59] More specifically, the present transatlantic governance scheme between the United States and the European Union has disadvantaged sub-Saharan Africa in significant ways in spite of rhetoric to the contrary.[60] In reality, sub-Saharan Africa has little to offer the global market short of raw materials.[61] While the market for such resources may be important, it pales in comparison to the remaining market.[62] The market for "primary commodities (agriculture and minerals) . . . [has] shrunk from about 70 percent of world trade in 1900 to about 20 percent at the end of the century."[63]

Assuming that sub-Saharan African nations *did* have a significant proportion of trade-worthy commodities actively sought on the open-market, they would still suffer from the lack of significant infrastructure to participate in the global market. While "[g]lobalization offers opportunities for all nations . . . most developing countries are very poorly positioned to capitalize on them," due to "[m]alarial climates, limited access to navigable water, long distances to major markets, and unchecked population growth."[64]

The United States' view is that developing nations, especially those in sub-Saharan Africa must improve their political structures before

57. *Id.*

58. *Id.*

59. *See id.* at 164-65.

60. *See* discussion *infra* Part II.

61. *See* Holland, *supra* note 23, at 401; Scott, *supra* note 48, at 164.

62. *See* Scott, *supra* note 48, at 164-65.

63. *Id.* However, this raises the question whether or not the need for such commodities has actually changed, or if this is simply a matter of new market trends in value-added products such as electronics. *See id.* at 165. Either way, one thing is clear—there has been a shift in the world towards more "liquid capital," premised on globalization and technology, allowing concentrations of money to shift rapidly. *See id.* Sub-Saharan Africa lacks the technological capacity to participate in this type of economy. *See id.* As a result, while there may be a consistent need in the world for the type of commodities Africa produces (like oil, diamonds, and minerals), the flow of capital is not likely to follow. Hence, concentrations of wealth in the globalized market is able to dictate the value of Africa's commodities and exploit its dependency on that solitary market.

64. *Id.* at 174.

participation in the open market will have any positive effect.[65] This is not likely to occur without the necessary direct foreign investment.[66] However, substantial foreign investment will not be forthcoming unless the United States plays a more active role, which it is not likely to do, given its philosophy that such aid is contingent upon the establishment of a stable political environment; yet another Catch-22 for sub-Saharan Africa.

The larger travesty is the United States and the European Union are showing no signs of addressing these concerns. "Western protestors, Western academics, and often Western leaders and the Western media call for WTO authorization of unilaterally determined trade restrictions without any significant complementary financial assistance."[67] Without development aid, free trade will not enhance sub-Saharan Africa's chances of participating meaningfully in the global economy.[68] Simply put, financial assistance is a necessary precursor to meaningful participation in the global economy.

This effect can be seen in the European Union's gradual shift in attitude in each of the successive Lomé agreements.[69] Although the Lomé agreements were premised on the partnership ideal, the European Union displayed increasing indifference to the requests of the African ACP states, while other ACP states were being successfully integrated into the global economy.[70] The evolving U.S.-EU trade relations and system of transatlantic governance under the WTO undermined the Lomé conventions completely. As predicted at the time,

> the Lome Convention will have a limited benefit to Africa, despite its duty-free provisions for specified commodities, since the duty applied to most of the commodities from other countries [is] already low. Also, Africa's relative advantages may decline further as tariffs [placed on imports by African states—which are often as high as 30%] are cut after the Uruguay Round.[71]

This was precisely what transpired.

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65. This philosophy is reflected in the African Growth and Opportunity Act, 19 U.S.C. § 3701 (2000), which is discussed in Part V of this Article.

66. *See* discussion *infra* Part II.A-B.

67. Shaffer, *supra* note 35, at 612.

68. *See* discussion *infra* Part II.A-B.

69. *See* Holland, *supra* note 23, at 401.

70. *See id.*

71. KWARTENG, *supra* note 12, at 89 (citation omitted); Charlene Barshefsky, U.S.-Africa Trade Act Stands As "Watershed," Address to the D.C. Bar International Law Section (July 6, 2000), *at* http://usinfo.state.gov/regional/af/trade/a0070604.htm.

D. Effects of Renewed U.S. Interest

EU/EC development policy for Africa was premised on the fact that after decolonization,

> [t]he EC was anxious to protect itself from possible threats to regular supplies of raw materials from its erstwhile colonies. It also sought to promote a degree of political stability and economic development in Africa, and in so doing keep for Europe a measure of political influence in a world dominated by the two superpowers.[72]

Therefore, the EC engaged in a defensive development policy from the start; a policy "intended to safeguard it from the possible negative effects of decolonization."[73] All significant economic relations came under the Lomé Convention. But in the aftermath of the Uruguay Round, with its new dispute resolution mechanism in place and a greater emphasis on free-trade areas, "the Lome Convention [is] no longer . . . the centerpiece of EU development assistance policy."[74] In fact, the EC Director General for Development predicted there would probably be no Lomé Convention by the year 2000.[75]

In the tension between maintaining preferences for the LDCs, former colonies and ACP states, and the imperatives of liberalized multilateralism, the European Union was forced to abandon its commitments to the LDCs, former colonies and ACP states.[76] The European Union has stated that because it is a "liberal trading Community and allows market forces to determine trade flows within its trade regime," it would be impossible to talk about permanent guarantees for ACP states in the future.[77]

The European Union was already hedging on its pronounced development policy and continued to distance itself from its commitments (under Lomé I) progressively over a twenty-five-year period.[78] Not so coincidentally, at the same time the European Union experienced a shift in development philosophy, it also shifted its trade focus.[79] Exports from ACP states to the European Union declined in both volume and value, while the European Union significantly increased its

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72. Alfredo C. Robles, Jr., *European Union Development Assistance to the Year 2000 and Beyond: A Theoretical Approach*, Occasional Paper No. 4, at 16 (European Studies Program at the Univ. of the Philippines 1996).

73. *Id.* (citation omitted).

74. *Id.* at 19.

75. *Id.* at 19-20.

76. *See* KWARTENG, *supra* note 12, at 89.

77. *Id.*

78. *See* Holland, *supra* note 23, at 394.

79. *Id.* at 401.

trade with Latin American, Mediterranean, and Asian countries.[80] Thus, the ACP went from being the leading developing country exporter to the European Union to the bottom of the list.[81] As such, Lomé did not fail the ACP states so much as the European Union failed Lomé.

If changes in the global economy, the emergence of highly competitive Asian nations, the stabilizing economic effect of U.S. interventions in Central and South America, and the inherent division within the European Union regarding appropriate development policy all served to undermine the EU's commitment to the Lomé agreements, AGOA was probably the final nail in Lomé's coffin.

> The future of European cooperation with the ACP states [and countries in Africa in particular] . . . has brought about a wide discussion stimulated and encouraged by the European Commission's (1996) Green Paper in an unprecedented way. Analysing it in the light of Lomé's history suggests that Lomé will end, at least in all but name, an impression reinforced by the Commission's . . . basis for negotiations. After shifting Lomé from contractuality and partnership to conditionality and donor power Europeans seemed prepared to free themselves from the remnants of a unique system, once granted under exceptional circumstances. The Commission's basis for negotiations . . . however, is more accommodating though still somewhat vague on details. It proposes to preserve parts of the original Lomé arrangements until 2005. This appears to result from the new US interest in Africa, documented by US African Growth and Opportunity Act. [The] US-European rivalry for Africa—one reason for Lomé I—has been revived.[82]

In the face of the United States' revived interest in sub-Saharan Africa, the question remains whether the European Union should preserve any remnant of the Lomé agreements, or leave sub-Saharan Africa to fend for itself in the liberalized global market. In order to address this issue, one must examine those elements of the Lomé agreements that actually helped sub-Saharan Africa and compare them with the general structure of AGOA.

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80. *Id.*
81. *Id.*
82. Raffer, *supra* note 8, at 125.

III. THE LOMÉ AGREEMENTS AND CONTEXT

A. Origins

Historically, with the exception of its military interest, the United States has conceded Africa to Europe.[83] Europe received complete deference in establishing and maintaining trade relations and development policies.

The Lomé agreements comprised the main instrument of the EU's development policy toward sub-Saharan Africa.[84] Under these agreements, ACP countries enjoyed free access to the EU market for about ninety-five percent of their exports.[85] Sub-Saharan Africa sat within the uppermost tier of the EU's pyramid of preferences and consequently received important price supports.[86] These supports came from an export stabilization fund, STABEX, financed by the European Fund and designed to offset any value shortfall in the ACP countries' earnings from a list of specific agricultural commodities.[87]

B. Effectiveness

Skeptics argued that the Lomé agreements were neo-colonialist arrangements that kept Africa in a state of dependency.[88]

> The Lomé regime as a whole does not seem to give any promise of a release from a state of dependence to a state of mutually balanced sets of interest. Instead it deflects attention away from satisfaction of fundamental needs towards increased production, processing and trading, and with the latter, there is no guarantee that the terms of trade will be satisfactory, or

83. Stephen Wright, *The Foreign Policy of Africa*, *in* FOREIGN POLICY IN WORLD POLITICS 330, 350 (Roy C. Macridis ed., Prentice-Hall, Inc. 8th ed. 1992). Not until 1958 did the U.S. government establish a Bureau of African Affairs in the U.S. State Department. *Id.* Furthermore, before the Clinton Administration, Jimmy Carter had been the only U.S. President to visit sub-Saharan Africa with a serious development agenda while in office. *Id.* This does not count President George H.W. Bush's last minute foray into Somalia in 1993 because that was an isolated humanitarian intervention. *From Start to Finish*, N.Y. TIMES, Dec. 31, 1992, at A24.

84. *See* Holland, *supra* note 23, at 390; Lomé I, *supra* note 24; Lomé II, *supra* note 24; Lomé III, *supra* note 24; Lomé IV, *supra* note 24.

85. *See* KWARTENG, *supra* note 12, at 115. Major exceptions come under the European Union's Common Agricultural Policy, but even these are given preference over products from other developing countries not party to Lomé. *See* Eurostat, *EU Trade with ACP Countries*, *supra* note 20, at 2.

86. *See* KWARTENG, *supra* note 12, at 115.

87. *See* Eurostat, *EU Trade with ACP Countries*, *supra* note 20, at 6.

88. *See* I. William Zartman, *The Future of Europe and Africa: Decolonization or Dependency?*, *in* ALTERNATIVE FUTURES FOR AFRICA 259-77 (Timothy M. Shaw ed., Westview Press 1982); KWARTENG, *supra* note 12, at 48-52.

> that the spin-off effects from a possible industrialization process will accrue to the developing countries.[89]

While these reflections seemed accurate, a common response was to ask for an alternative. One alternative was to follow the pressure of the EU trading partners (United States and Japan), vitiate the Lomé system of trade preference, and force sub-Saharan Africa to compete outright with the other more advanced ACP states, in which case sub-Saharan Africa would have been at a serious competitive disadvantage.[90] That is to say, sub-Saharan Africa seemed relegated to a state of dependency no matter what action the European Union took.

The prevailing development philosophy from 1975 to 1990 held that it would be better to keep sub-Saharan countries actively engaged in trade relations, while simultaneously supplementing their infrastructure and offering technical expertise, so they could gradually become more self-reliant.[91] This was, in large measure, what the Lomé agreements aimed to accomplish.[92] This appears especially clear from 1985 to 1995, during which time trade with sub-Saharan Africa cost the EU consumers more, as they could buy most of the same products from North, Central, and South American suppliers at a cheaper rate.[93]

Many economists and commentators on the subject saw the matter from a more positive perspective.

> The association of former European colonies with the EU was not an act of decolonization, but a means of Europe protecting its former colonial markets, and opening the former colonies to European trade and investments. Even the small amount of manufactured products in sub-Saharan Africa's exports to the EU originate largely from European firms which have cooperation projects or local branches in ACP countries. Any withdrawal of such firms from African countries would worsen Africa's export capacity.[94]

Under this view "Lomé was depicted as an innovative partnership and [a] benevolent contribution to development."[95]

Unfortunately, the EU's commitment to that development philosophy waned over the agreements' twenty-five-year span.[96] The gradual

89. KWARTENG, *supra* note 12, at 116 (citation omitted).
90. *See* discussion *infra* Part II.
91. *See id.*
92. *See id.*
93. *See id.* One might conclude that the Lomé agreements should have been scrapped in favor of a liberalized trade regime much sooner, and that by perpetuating Lomé, the European Union was creating a more severe dependency. *See* Holland, *supra* note 23, at 401.
94. KWARTENG, *supra* note 12, at 117.
95. Holland, *supra* note 23, at 390.

distancing from the development philosophy in Lomé I had less to do with the purported failures to "improve" ACP states than it did with the mounting external pressures of liberalized global trade.[97] Therefore, by the 1990s, Lomé was characterized as "antiquated, unequal, and . . . increasingly out of kilter with the new direction of the global economy."[98] For the ACP states that had benefited under Lomé to the point of acceptance in the global economy, the Lomé system seemed no longer necessary. Similarly, for the ACP states whose situations seemingly worsened under Lomé, primarily sub-Saharan African states, there was no reason to keep the agreement.[99] As a result, the Lomé arrangement was formally replaced by the Cotonou Accord and, therefore, the only remaining question is what to do with sub-Saharan Africa.[100]

C. Post-Lomé African Development Strategies

For its part, the United States has made clear its development strategy with regard to sub-Saharan Africa by enacting AGOA.[101] That Act's aggressive stance on sub-Saharan Africa may challenge the European Union's commitment to its own development policy.[102] The language of the Lomé agreements was far more normative than that of AGOA, and the political freedom under Lomé lies in stark contrast with the political limitations under AGOA. Specifically, the Lomé Convention provided:

> The [EEC] Community and its Member States . . . and the ACP States . . . hereby conclude this co-operation Convention in order to promote and expedite the economic, cultural and social development of the ACP States and to consolidate and diversify their relations in a spirit of solidarity and mutual interest. . . . ACP-EEC co-operation, underpinned by a legally binding system and the existence of joint institutions, shall be exercised on the basis of the following fundamental principles: equality between partners, respect for their sovereignty, mutual interest and interdependence; the right of each State to determine its own political, social, cultural and economic policy options; security of their relations based on the acquis of

96. *See* discussion *infra* Part II.

97. *See id.*

98. Holland, *supra* note 23, at 390.

99. *See* discussion *infra* Part II.

100. *See* Europa, *African, Caribbean and Pacific States (ACP): Cotonou Agreement*, *at* http://www.europa.eu.int/scadplus/leg/en/ivb/r12101.htm (last visited Oct. 28, 2002).

101. *See* African Growth and Opportunity Act, 19 U.S.C. § 3701 (West 2000).

102. *See* Holland, *supra* note 23, at 405-07. Development policy in the EU has two significant problems: (1) who is responsible for it (issue of competencies) and (2) who is going to pay for it? *See id.* France and Germany provide almost half of the funding necessary to maintain the EU's development commitments. *Id.* at 405.

> their system of co-operation . . . . The ACP States shall determine the development principles, strategies and models for their economies and societies in all sovereignty.[103]

Lomé specifically addressed the issue of sovereignty and subjected the contracting parties to a legally binding system.[104] More importantly, these arrangements had a fundamentally different philosophy than that behind AGOA.[105] The Lomé agreements were an important expression of the European Union's personality: "Lomé forms part of the EU's 'presence' in the international system . . . . Once accepted as part of the EU's personality as an international actor . . . [if Lomé is eliminated completely] [a]t risk is the EU's credibility as the leading exponent of First-Third World relations."[106]

The Treaty on European Union (Maastricht Treaty) provides some insight into why the European Union's credibility in First-Third World relations is at stake.[107] The Maastricht Treaty sets forth a general guide to the objectives of EU development policy.[108] Article 177 in particular, states that Europe's development policies should be "complementary" to those of the Member States both politically and economically.[109]

> Politically, EU policy has to contribute to 'consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms.' Economically, policy has to foster 'sustainable economic and social development . . . particularly (of) the most disadvantaged,' to facilitate the 'gradual integration of the developing countries into the world economy,' and to serve to eradicate poverty.[110]

Whether because the Lomé philosophy had a positive impact or because charity is self-interested, the fact remains that Europe's response to global poverty (particularly in Africa) is comparatively generous.

> The [Lomé] Convention now links 15 Member States of the European Union and 70 ACP countries representing a total of some 500 million people. Of the global volume of [official international development] aid received by developing countries, half is provided by European citizens, of which 15% is administered by the European Commission. Fifty percent of this Community aid is distributed to the countries of the Africa[n], Caribbean and Pacific area[s]. If the United States and Japan contributed a

103. Lomé II, *supra* note 24, arts. 1-3.
104. *See id.* art. 2.
105. *See* 19 U.S.C. § 3701.
106. Holland, *supra* note 23, at 392, 394.
107. *See id.* at 392.
108. *Id.*
109. MAASTRICHT TREATY, *supra* note 27, art. 130u (now article 177).
110. Holland, *supra* note 23, at 392.

> similar share of their gross national product, the amount of public aid for international development would increase by 50%.[111]

The motivations of the world's two largest trading partners with regards to sub-Saharan Africa differ enough to create a strong benefit of the doubt for the European Union as a benevolent, albeit somewhat paternalistic, ally of sub-Saharan Africa. However, the European Union has not reached unanimity regarding the future of sub-Saharan Africa, and not all Member States support the target for development assistance of 0.7% GNP.[112] Development aid over protective trade preferences appears more compatible with the WTO objectives and the new order of trade agreements in the world; in fact, it may well be the only plausible approach in the future.[113]

One very important difference between possible European Union action towards the LDCs and possible United States action is that the EU's development activities are constitutionally governed under Title XVII of the Maastricht Treaty.[114] Although the United States can hedge its development commitments for a variety of reasons, ranging from political to economic, the European Union is bound both normatively and legally.[115] This carries indisputable advantages over bilateral cooperation that are particularly important within the system of Lomé conventions.[116] Most importantly, it enhances regional cooperation among developing countries, which is the most probable means of success for sub-Saharan Africa.[117] Other specific benefits of the Lomé conventions that are more in the interest of sub-Saharan Africa's real development than anything AGOA has to offer include:

- Aid distributed within the framework of the Lomé Convention, consisting mainly if not exclusively of donations, does not increase the debt burden of the beneficiary countries.
- The Lomé institutional system is a joint system, complex yet balanced, which has no equivalent in North-South relations.

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111. Europa, *Development: Did You Know That . . .* , Question 1, *at* http://europa.eu.int/comm/development/faq/en-faq01.htm (last visited Oct. 15, 2002) [hereinafter Europa, *Development*].

112. Ann-Louise Colgan, *Africa's Debt—Africa Action Position Paper*, § 5, *at* http://www.africaaction.org/action/debtpos.htm (July 2001).

113. *See* discussion *infra* Part II.

114. *See* Europa, *Development*, *supra* note 111, Question 6.

115. *See id.*

116. *See id.*

117. Barshefsky, *supra* note 71.

- Aid provided under the Lomé Conventions is pluriannual, constituting what amounts to both political insurance for the beneficiary ACP countries and a stable administrative framework for the Community which manages the aid.
- Despite changes in the system, it remains fundamentally contractual, and the ACP countries are not denied the opportunity to express their opinions or to assert their demands.
- The operations of this institutional instrument remain remarkably transparent.
- The Lomé Convention, exempt of any consideration of national interest, constitutes a guarantee of cohesion between the Community's development policies and those of the Member States of the Union.
- The Community has never financed armaments and carefully avoids any involvement with aid of a political nature.
- The Lomé system allocates substantial aid for regional cooperation, enabling the Community to provide de facto leadership in the area of structural adjustment.[118]

These aspects of the Lomé conventions gave the EU the moral high ground concerning economic aid and development policies to LDCs, and particularly to sub-Saharan African nations.[119] The European Union even claimed that the "rapid globalization of the economy as sanctioned by the recent GATT agreement is not very favourable to those least developed countries which the Maastricht Treaty cites as priority beneficiaries of EU development aid."[120] The Maastricht Treaty stipulates that the objectives of the EU development policy include "the smooth and gradual integration of the developing countries into the world economy."[121] But first,

> these countries must be able to offer products suited to markets, under conditions of competition compatible with these markets. This they cannot do without the infusion of additional capital into long-term productive investments and the modernisation of their processing facilities. . . . The goal of Community development policy is to contribute to the development of all economic sectors, including trade, but also to stress the cultural and

118. Europa, *Development*, *supra* note 111, Question 6.
119. *See* Holland, *supra* note 23, at 401
120. Europa, *Development*, *supra* note 111, Question 11.
121. MAASTRICHT TREATY, *supra* note 27, art. 130u (now article 177).

> political aspects that form the basis of a harmonious and balanced development of society.[122]

There is no such concern in the U.S. approach to Africa under AGOA.[123]

IV. ESTABLISHING FUTURE TRADE RELATIONS IN THE CONTEXT OF THE BANANAS DISPUTE

A. *The Bananas Dispute*

Another way of looking at the differences between the United States and the EU, especially as regards their development strategies, arises out of the context of the bananas dispute.

> The banana dispute was an old-style dispute about trade discrimination in favor of former colonial countries of EC member states. The dispute revealed a so far unresolved constitutional problem: How can EC law be adjusted to promote a lawful exercise of the vast EC trade policy powers in compliance with its self-imposed international obligations under the WTO Agreement and under the EC 'treaty constitution'?[124]

On both sides of the Atlantic, the banana policy-making process was held hostage by narrow, antagonistic, politically motivated producer and trading interests.[125] The EU trade interests split along ideological and economic lines between two groups: (1) the Hanseatic coalition and (2) the Mediterranean/British coalition led by the British firm, Geest, and the Irish firm, Fyffes.[126] This led to some atypical "interest-group" politics, diverging sharply from the typical EU policy-making process, generally characterized by "a strong orientation towards consensual policy solutions."[127] Although "package deal-making" is commonplace in EU agricultural policy-making, in this case the packages were unbalanced: the Hanseatic group, unlike the Mediterranean/British group, faced no pressure from any growers in their own states or in former colonies.[128] The subsequent bananas regulation promised

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122. Europa, *Development*, *supra* note 111, Question 15.

123. *See* African Growth and Opportunity Act, 19 U.S.C. § 3701 (West 2000).

124. Ernst-Ulrich Petersmann, *Dispute Prevention and Dispute Settlement in the EU-US Transatlantic Partnership*, *in* TRANSATLANTIC GOVERNANCE IN THE GLOBAL ECONOMY 73, 86 (Mark A. Pollack & Gregory C. Shaffer eds., Rowman & Littlefield Publishers, Inc. 2001).

125. Oliver Cadot & Douglas Webber, *Banana Splits and Slipping over Banana Skins: The European and Transatlantic Politics of Bananas*, EUI Working Paper RSC No. 2001/3, at 2 (European Univ. Inst. 2001).

126. *See id.* at 9-10.

127. *Id.* at 7.

128. *Id.* at 9. The most significant interest in banana trade among the Hanseatic coalition was a German company, but it had no direct influence on its national administration, and hence no intervention occurred on their behalf. *Id.* at 10.

> to distribute big benefits to a narrow range of affected interests (traders and growers of EU and ACP bananas) and threatened to impose heavy costs on a narrow range of other interests (traders and growers of dollar bananas) as well as penalizing consumers in some EU markets by raising banana prices.[129]

Instead, "[T]he adopted regulation amounted to a 'winner-take-all' outcome in favour of EU and ACP bananas traders and growers."[130]

Arguably, the bananas dispute had less to do with bananas than it did with European multinationals learning how to play political economics on a global scale.[131] In fact, the dollar bananas were cheaper, more available and of better quality; therefore, a free banana market in the EU would have benefited consumers greatly.[132] According to a French official, EU bananas were "outclassed all down the line: in terms of quality, product standardization, presentation, costs, operator resources, and integration."[133] However, a free market would have decimated ACP growers in former colonies that rely heavily on the EU banana market, such as Martinique, Guadeloupe, Windward Islands, Canary Islands, Ivory Coast, and Cameroon.[134]

> This dispute [bananas], which was decided by the WTO in favor of the US, involves the EU system of preferential treatment for certain banana importers. European consumer organizations were divided between the Germans, for whom cheap bananas took on symbolic value after the fall of the Berlin Wall, and the French, Italian, and Spanish, whose countries directly benefit from the EU system or have historical ties to the Caribbean nations that benefit from the system. Therefore the Consumer Dialogue settled for the more general statement that WTO obligations should not trump other international obligations, including the Lomé Convention under which the EU had granted certain banana importers preferential treatment.[135]

Nevertheless, the EU banana regulations were not solely about protecting former colonies. The European Union could have easily managed to accommodate their Lomé agreements (to protect preferential trade with former colonies) while at the same time abiding by their trade agreements with the United States.[136] "The preferential access to ACP

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129. *Id.* at 7.
130. *Id.*
131. *See id.* at 12-13.
132. *See id.* at 4.
133. *Id.*
134. *Id.* at 4-5.
135. Francesca Bignami & Steve Charnovitz, *Transatlantic Civil Society Dialogues*, *in* TRANSATLANTIC GOVERNANCE IN THE GLOBAL ECONOMY, *supra* note 124, at 255, 267-68.
136. *See* Cadot & Webber, *supra* note 125, at 5.

producers enshrined in the Lomé Convention could have been granted by exempting ACP bananas from tariffs altogether. Such a preferential system, being covered by the so-called 'Lomé Waiver', would have been GATT-compatible, as was repeatedly confirmed by the WTO's dispute-resolution body."[137]

Thus, "[t]he banana splits had very much to do with simple 'old-fashioned' trade politics, in which the stakes in the conflicts were market shares and revenues and the principal players were narrow organized economic interests."[138] Some EU Member States, such as Germany, had an idea of the true nature of the bananas regulation, but it occurred at a volatile time in the EU's development.[139] "[T]he pressure not to imperil major integration projects, such as the common currency, induced some member governments not to 'rock the boat' on bananas."[140]

Trade policy, especially on agricultural matters, has never been an easy task for the European Union.

> EC trade policy has traditionally been defensive in posture, reacting to foreign imports and domestic demands for protection, on the one hand, and to new trade liberalization proposals advanced by the United States, often to dismantle those EC barriers, on the other. During the Uruguay Round negotiations, EC negotiators often faced new US proposals to which they could not clearly or rapidly react because they awaited instructions from divided EC member states. Differences among member states, in particular between the more liberal-oriented states from northern Europe and the more protectionist-oriented members from the South, resulted in delay and caution, anathema to productive initiatives.[141]

American trade interests exploited the dissention inherent within the European Union, as well as the naïveté with which the European companies played this high-power chess match.[142] Those interests were consolidated in the multinational companies of Chiquita, Dole, and Del Monte.[143] This unified and cohesive front easily overpowered the EU coalition.[144]

The EU's banana regulations came out at about the same time as the establishment of the WTO with its new dispute resolution procedure; this

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137. *Id.* (citations omitted).

138. *Id.* at 13.

139. *See id.* at 14.

140. *Id.*

141. Gregory C. Shaffer, *The Blurring of the Intergovernmental: Public-Private Partnerships Behind US and EC Trade Claims*, *in* TRANSATLANTIC GOVERNANCE IN THE GLOBAL ECONOMY, *supra* note 124, at 106 (internal citations omitted).

142. *See* Cadot & Webber, *supra* note 125, at 14-15

143. *Id.* at 3.

144. *See id.* at 3-4.

was the test case that would serve as a powerful precedent for future trade relations, and as a testament to the virility of the WTO.[145]

> The complaint [filed by lawyers representing Chiquita] argued that the banana regime violated fair trading rules by unfairly discriminating against non-Lomé producers. This case is a perfect example of the difference between the GATT system and the WTO. A complaint previously had been filed under the old GATT regarding the same regime . . . . [However] the GATT's weaker dispute settlement procedures allowed the EU to block any remedial action.[146]

This was clearly not going to be the case under the new WTO regime.

> The ACP countries were covered by a waiver granted by the WTO in 1994 that allowed special conditions of trade with developing nations. The quota and licensing system developed under Lomé was aimed at helping their economies. That was not a problem. But the panel condemned the licensing procedure insofar as it established import quotas.[147]

Limiting market access through quotas is simply anathema to the ideal of liberalized trade.

As the banana dispute concerned "protectionist trade discrimination in favor of producers and traders in the EC and former EC colonies,"[148] and the United States was already looking to expand the role of the WTO in light of having negotiated other successful free trade agreements such as NAFTA, it was imperative that the United States win this battle.[149] In the United States, President William J. Clinton faced both a Congress growing wary of multilateral trade agreements and hard lobbying from Chiquita.[150] "The controlling shareholder of the Chiquita banana company, for example, was among the top contributors to the Democratic and Republican parties in 1998. With congressional and executive support, the USTR [United States Trade Representative] reciprocated by dedicating tens of thousands of personnel hours challenging EC barriers to Chiquita banana imports."[151]

This type of lobbying is standard operating procedure in the United States.[152] The USTR hesitates to pursue claims without broad industry

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145. *See* THOMAS C. FISCHER, THE UNITED STATES, THE EUROPEAN UNION, AND THE "GLOBALIZATION" OF WORLD TRADE: ALLIES OR ADVERSARIES? 203 (Quorum Books 2000).

146. *Id.*

147. *Id.* (citation omitted).

148. Petersmann, *supra* note 124, at 88.

149. *See* Cadot & Webber, *supra* note 125, at 14-15.

150. *See id.*

151. Shaffer, *supra* note 141, at 98-99 (citation omitted).

152. *See id.*

support.[153] As a result, larger commercial interests succeed more often in getting cases to the WTO.[154] Therefore, "unless one or two firms dominate an industry, such as Boeing for airplanes or Chiquita and Dole for bananas, firms enhance their chances of successfully challenging foreign trade restrictions when they coordinate their activities through a trade association."[155] It is out of this context that AGOA emerges and within this context that the European Union must respond.

B. Effects of the Bananas Dispute on EU-ACP Trade Relations

In 1992, Christopher Stevens predicted that

> [i]f 1992 really does result in a new surge of European growth and higher imports, these are likely to be predominantly manufactures rather than the primary commodity exports of Sub-Saharan Africa. Any gains that do accrue to Africa (north and south) [as a result of the European single market] will have to be offset against losses due to increased competition arising from the reduction of preference after the EC's internal barriers have been broken down.[156]

This prediction seems prophetic in the post-Uruguay, post-banana dispute, world. In fact, Stevens had an opportunity to report on his own prediction in his *Commonwealth Economic Paper Series* to the Commonwealth Secretariat.[157] That report concludes that

> [t]he WTO banana dispute has had a disproportionate impact by fracturing the shell of a relationship that had already been weakened by underlying change. The economic importance of the ACP to the EU is much less than it was in 1975. . . . In its judgment on the EU banana regime the WTO Dispute Settlement Panel brought into question the compatibility of the entire Lomé relationship with international trade rules. . . . It remains open, therefore, to WTO contracting parties to challenge parts of the Lomé relationship.[158]

The report specifically addresses the undermining effects the WTO has had on Lomé agreements and finds that the WTO, by further liberalizing products specifically affected by Lomé, contributes to the

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153. *Id.* at 98-101.

154. *Id.*

155. *Id.*

156. Christopher Stevens, *The Impact of Europe 1992 on the Maghreb and Sub-Saharan Africa*, *in* AFRICA AND THE EUROPEAN COMMUNITY AFTER 1992, at 55, 74 (World Bank Publ'n 1993).

157. *See* CHRISTOPHER STEVENS, MATTHEW MCQUEEN & JANE KENNAN, AFTER LOMÉ IV: A STRATEGY FOR ACP-EU RELATIONS IN THE 21ST CENTURY (Commonwealth Secretariat 1999)

158. *Id.* at 7.

"erosion of effective market access."[159] Furthermore, many ACP states have argued that the general system of preferences (GSP), as it currently stands, "represents an inadequate alternative to Lomé."[160] This merely foreshadows what lies ahead for sub-Saharan African nations that try to participate in the WTO.

> Whilst it did not result in a fundamental challenge to the Lomé Convention's multilateral legitimacy, the banana dispute had two major effects on EU thinking: [1] it established that the EU's trade agreements could no longer be passed 'on the nod', and would need to be justified in the multilateral fora; [2] it demonstrated that the WTO's new, more muscular dispute settlement procedures could throw unwanted light into murky corners of EU policy and bring into question arrangements and understandings not directly related to the point at issue.[161]

After the bananas dispute, the European Union faced the proposition of perpetuating an archaic system of preference, which was complicated, costly and which did not enhance the EU market with better and cheaper commodities, or abandoning their former (Lomé) commitments, thereby taking advantage of the more efficient U.S.-led market, which provided better and cheaper products.[162]

V. THE AFRICAN GROWTH AND OPPORTUNITY ACT

A. Underlying U.S. Trade Policy

AGOA is not a trade agreement per se, but rather a framework for determining all future trade agreements between the United States and sub-Saharan Africa.[163] The former USTR in the Clinton administration, Charlene Barshefsky, concludes that the United States' limited trade with Africa, "is unlike our trade with any other region of the world; and it contributes both to slow economic development and the vulnerability of many African economies to fluctuations in world commodity prices."[164] In the bill that would become AGOA, Congress stated:

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159. *Id.* at 8.

160. *Id.* at 9.

161. *Id.* at 29-30.

162. *See* Shaffer, *supra* note 35, at 646. However, "[t]he EU has so far chosen to retain its banana regime in lieu of providing positive adjustment assistance to banana regime beneficiaries. . . . The *de facto* banana tax is simply less transparent and its cost-effectiveness less subject to monitoring and criticism than positive trade adjustment assistance." *Id.*

163. *See generally* Barshefsky, *supra* note 71.

164. *Id.* The present trade imbalance between the United States and sub-Saharan Africa begs the question whether the United States is partly responsible for sub-Saharan Africa's vulnerability and whether liberalized trade will make any difference whatsoever. Eighty percent

> it is in the mutual economic interest of the United States and sub-Saharan Africa to promote stable and sustainable economic growth and development in sub-Saharan Africa. To that end, the United States seeks to facilitate the social and economic development of the countries of sub-Saharan Africa.[165]

In spite of the encouraging tone of these findings, there are certain realities surrounding trade relations with Africa that make it empty rhetoric, at least from Africa's perspective.[166] According to Marc Mealy, former member of the House International Relations Committee, prior to AGOA, U.S. imports from sub-Saharan Africa only totaled $14 billion a year.[167] Ninety percent of those imports came from only three African countries: Nigeria, South Africa, and Gabon.[168] Imports from Nigeria accounted for $11.3 billion of the $14 billion total, and $11.8 billion of the total imports were energy related (primarily oil from Nigeria and Gabon).[169] The remaining trade was almost exclusively in diamonds and other minerals from South Africa.[170] "After one year of AGOA, these numbers remain unchanged."[171]

Of the forty-eight sub-Saharan African nations, therefore, only three had any significant economic benefit from trade with the United States before AGOA.[172] Additionally, one of the three, South Africa, is not an LDC and does not fit the parameters of AGOA's intended beneficiaries.[173] Moreover, there is an agreement pending between the United States and South Africa to create a new free trade area.[174] This arrangement is likely to further isolate the rest of sub-Saharan Africa since those countries produce little in which the United States has an interest.[175] Notwithstanding South Africa and Nigeria, the remaining sub-Saharan countries lack the technical expertise and infrastructure to be competitive

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of U.S. imports from sub-Saharan Africa are in three commodities (oil, diamonds, and platinum). *Id.*

165. African Growth and Opportunity Act, H.R. 1432, 105th Cong. § 2 (1997).

166. *See* Barshefsky, *supra* note 71.

167. Marc Mealy presently serves as International Economic and Foreign Policy Advisor for Congressman Gregory Meeks (NY, Dist. 6). His statistics were taken from the International Relations Committee report on the AGOA. U.S. Economic Policy Towards Africa: One Year of the African Growth and Opportunity Act (AGOA), Address at the University of Wisconsin (Feb. 13, 2002) (on file with author).

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.*

in the global market.[176] More importantly, what trade there is between the United States and Africa is "buyer driven."[177] That means three things: (1) the commodities in question are in surplus, not demand, so buyers dictate the market price; (2) the real economic growth and development occurs for the middlemen and market coordinators, not for the producers; and (3) sellers are at the mercy of a whimsical market making economic sustainability tenuous at best.[178]

Furthermore, because AGOA is not a trade agreement, "the benefits for African exports are 'non-binding, unilateral' arrangements that can be dismantled at the whim of the U.S."[179] This does not afford African sellers any real economic opportunity to make capital investment in their own businesses, let alone in any other African businesses.[180] Thus, the necessary technical expertise and infrastructure are not likely to be developed in sub-Saharan nations any time soon, and "African industries will be blocked from ascending into any 'higher' economic relations."[181] In fact, section 8 of the bill that became AGOA illustrates this point by stating, "The lack of competitiveness of sub-Saharan Africa in the global market, especially in the manufacturing sector, make it a limited threat to market disruption and no threat to United States jobs."[182]

Given these factors, the congressional intent behind AGOA seems questionable. A genuine commitment to "Africa's economic growth and development" appears to be lacking, especially as concerns forty-five of the forty-eight sub-Saharan nations.[183] The market-led arrangement completely favors the United States.[184] Furthermore, the provisions that provide mutual benefits to the United States and sub-Saharan nations already exist between the United States and those specific nations favored, namely Nigeria, Gabon, and South Africa.[185] These unilateral arrangements of the buyer's market undermines the sustainability of their economic growth.[186] Moreover, the United States only allows sub-Saharan African nations to participate in global markets in which they

176. *Id.*
177. *Id.*
178. *Id.*
179. *Id.*
180. *Id.*
181. *Id.*
182. African Growth and Opportunity Act, H.R. 1432, 105th Cong. § 8(a)(1) (1997).
183. *See* discussion *infra* Part V.B.
184. *See id.*
185. *See id.*
186. *See id.*

are at such a competitive disadvantage that they pose virtually no threat whatsoever.[187]

The congressional findings also indicate that the United States seeks to assist sub-Saharan African countries and the private sector in those countries, to achieve economic self-reliance by:

(1) strengthening and expanding the private sector in sub-Saharan Africa, especially women-owned businesses;
(2) encouraging increased trade and investment between the United States and sub-Saharan Africa;
(3) reducing tariff and nontariff barriers and other trade obstacles;
(4) expanding United States assistance to sub-Saharan Africa's regional integration efforts;
(5) negotiating free trade areas;
(6) establishing a United States-Sub-Saharan Africa Trade and Investment Partnership;
(7) focusing on countries committed to accountable government, economic reform, and the eradication of poverty;
(8) establishing a United States-Sub-Saharan Africa Economic Cooperation Forum; and
(9) continuing to support development assistance for those countries in sub-Saharan Africa attempting to build civil societies.[188]

However, the United States passed this initiative during the same time it reduced its share of development aid.[189] The development philosophy underlying AGOA is clearly one of liberalized global trade as a means of improving society.[190] Yet, according to Charlene Barshefsky, neither of these objectives has been substantially furthered since the inception of AGOA, except for the impending free trade area between the United States and South Africa and the reduction of sub-Saharan African nations tariffs on U.S. imports.[191] Thus, sub-Saharan African nations will

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187. *See id.* The United States has openly encouraged sub-Saharan African nations to participate in the highly volatile textile industry as a means of wedging their way into the global market. *See id.* § 8(b)(1). This is bad advice at best, and invidious advice at worst. The United States has basically extended an offer for African nations to be late parties to the provisions of the Uruguay round of the last WTO meetings. *See id.* § 8(b).

188. *Id.* § 2.

189. *See* Shaffer, *supra* note 35, at 626-27. The United States currently only gives 0.015% of its gross domestic product in foreign aid—much of that to Israel and Egypt. *See id.* During the 1990s, U.S. foreign aid declined an average of eight percent a year. *Id.* at 627.

190. *See generally* H.R. 1432; Barshefsky, *supra* note 71.

191. While tariffs of most sub-Saharan African nations provide exemptions for medical supplies and equipment and educational materials, practically everything else incurs a high tariff. *See* Barshefsky, *supra* note 71. Sub-Saharan African nations traditionally have some of the highest tariffs in the world, usually averaging twenty-eight percent. *Id.* Unfortunately, because almost eighty percent of Sub-Saharan African exports are comprised of only three exports, the

be drawn into the global market as dictated by transatlantic governance mechanisms between the European Union and the United States, primarily through the WTO, and the nature of those mechanisms disfavors sub-Saharan Africa's positive growth as a trading partner.[192]

B. Interaction Between AGOA, the WTO, and Sub-Saharan Africa's International Debt

The WTO, and more specifically, the new dispute resolution mechanism arising out of the Uruguay Round, aims to facilitate trade agreements not only for the major trading blocks, but for developing countries as well.[193] In addition to some "special allowances," developing countries would, in theory, have an "effective" legal recourse against more powerful nations under the new WTO dispute resolution framework.[194] Furthermore, this new dispute resolution mechanism explicitly prohibits unilateral retaliation and attempts to create a greater degree of legal transparency.[195] For the developing nations that could hardly exercise unilateral retaliation because of their one-sided trade relations with industrialized nations, this sounds like good news.[196]

However, the new WTO dispute resolution system is proving cost-prohibitive in spite of the creation of a new law advisory office that provides free advice on WTO law and training for lawyers from developing countries.[197] The resources of this office are very limited and will undoubtedly prove insufficient for developing countries to fight the United States' and the European Union's latest protectionist tactic: countervailing duties that are applied on an item by item, firm by firm, basis.[198]

The new law advisory office of the WTO also allows developing countries to pool their resources by splitting legal fees and filing multicountry laws (with multicountry retaliation), yet, they still cannot keep up with the major trading principals who are able to hire private

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high tariffs are about the only way most of these nations can generate revenue to pay down their debt. *See id.*

192. *See* discussion *infra* Part II.

193. Karen J. Alter, *Resolving or Exacerbating Disputes? The WTO's New Dispute Resolution System* (European Union Center and Board of Regents of the Univ. of Wisconsin 2002), *at* http://wiscinfo.doit.wisc.edu/eucenter/Publications/Alter.htm (last updated July 24, 2002).

194. *Id.*

195. *Id.*

196. *See id.*

197. *Id.*

198. *Id.*

lawyers.[199] The powerful nations can continue to use strong-arm tactics to keep developing nations from exercising their legal rights.[200] This is particularly evident in the case of pharmaceutical patent rights, which developing nations often seek to obviate in the face of national emergencies like AIDS.[201]

Sub-Saharan African nations are also laboring under a tremendous international debt.[202] The forty-eight countries of sub-Saharan Africa spend $13.5 billion per year servicing their approximately $300 billion debt to foreign creditors.[203] At a summit in Cologne in 1999 the G-7 committed themselves to writing off approximately $100 billion of the world's most indebted countries debt.[204] The United States' current share of this cancellation program is approximately $920 million.[205] In October 2000, the United States Congress approved $435 million in appropriation in order to meet this commitment.[206] However, the poorest nations are struggling to service a total debt of approximately $350 *billion*.[207] In light of this, the debt reduction program represents a token "drop in the bucket."[208] In response, United Nation's Secretary Kofi Annan has concluded that the HIPC initiative is a failure because it does not provide an adequate response to the debt crisis.[209] As a first step to solving the problem, Secretary Annan has called for an immediate moratorium on debt repayment.[210]

In the meantime, the total share of Official Development Assistance (ODA) received by sub-Saharan Africa declined twenty-nine percent from 1990 to 2002.[211] In actuality, therefore, reduction in development assistance outpaced reduction in debt.

Yet, countries, such as the United States, who helped orchestrate the debt reduction program, believe they are treating Africa with compassionate conditionality. The United States takes the position that successful economic participation in the global economy through

199. *Id.*
200. *Id.*
201. *Id.* Sub-Saharan African nations, having the highest proportions of AIDS cases in the world, would be in a particularly troubling predicament. *See* THE ECONOMIST, POCKET WORLD IN FIGURES 79 (The Economist Newspaper Ltd. and Profile Books Ltd. 2001).
202. *See* Colgan, *supra* note 112.
203. *Id.*
204. *Id.*
205. *Id.*
206. *Id.*
207. *See id.*
208. *See id.*
209. Africa Action Statement, *supra* note 13.
210. *Id.*
211. *Id.*

liberalized trade agreements is premised on political change.[212] Without restructuring present political institutions, developing nations have no chance for successful participation in the global economy.[213]

Even AGOA acknowledges the significance of the debt problem.[214] The International Relations Committee Report on AGOA states:

> It is the sense of the Congress that relief provided to countries in sub-Saharan Africa which qualify for the Heavily Indebted Poor Countries debt initiative should primarily be made through grants rather than through extended-term debt, and that interim relief or interim financing should be provided for eligible countries that establish a strong record of macroeconomic reform.[215]

It would seem that, in light of the enacted AGOA, the United States, as the major shareholder in both the World Bank and the IMF, could exert enough pressure to eliminate the debt of some of the poorest nations altogether. Additionally, AGOA could be a tool for helping developing nations make serious progress toward integration into the global economy. The Act could work under the auspices of the WTO to coordinate with other international agencies such as the World Bank, the United Nations Development Programme, and regional development banks to provide financial assistance, loans, and training to help industries, firms, and workers in developing countries. However, domestic politics within the world's most industrialized countries makes such coordination difficult.[216]

VI. CONCLUSION

Adebayo Adedeji, Executive Secretary of the U.N. Commission for Africa, has said that "each time the European economies sneeze, the African economies catch pneumonia."[217] As the European Union and the United States continue to react to one another's economic maneuvers, Africa, because of its overwhelming concentration of LDCs, gets caught in the middle.[218]

Even though the European Union's integration might result in greater global trade, there is likely to be a disparate distribution of

212. *See* African Growth and Opportunity Act, 19 U.S.C. § 3701 (2000); discussion *infra* Part V.
213. *See* discussion *infra* Part V.
214. *See* 19 U.S.C. §§ 3701-3741.
215. H.R. REP. No. 105-423, pt 1, at 7-8 (1998).
216. *See* discussion *infra* Part IV.
217. KWARTENG, *supra* note 12, at 53.
218. *See* discussion *infra* Part II.

benefits because of the existing imbalance in the global economy.[219] Sub-Saharan Africa represents a large part of that existing imbalance. Trade, and general economic conditions, had been deteriorating in this region for many years before European integration.[220] While membership in the EC bilateral trade areas had increased steadily under the successive Lomé agreements, in spite of the preferential access to the EU market, the ACP's proportion of EU imports has fallen significantly since the 1980s.[221] This situation will likely worsen with further EU integration.[222] As the European "Single Market" develops, "Africa's economic conditions are worsening, even in comparison with other developing countries."[223]

Free trade means competition, but the increased competition generated by European unification will negatively impact the already weak economies of sub-Saharan Africa.[224] Dieter Frisch, the former EU Commissioner for Development, reiterated this point when he predicted, the effects of the Single Market will be to the advantage of those developing countries which have some industrial basis, such as Japan and South Korea, and to the disadvantage of countries such as Senegal and Burkina Faso.[225] Then Vice-President of the European Commission, Manuel Marin, also predicted this outcome in a speech given in December 1989.

> As for the advent of the single market in 1992, the Community underlines the new opportunities which are offered to its partners. But it is also aware of the risks which might be involved for certain non-member countries whose structure does not provide a sufficient degree of competitivity [sic].[226]

As a result, some commentators look to the past arrangements that gave sub-Saharan Africa substantial bargaining power.

> Lomé I was very progressive, characterized by a pronounced emphasis on equality between northern and southern partners . . . . [T]he Europeans made far-reaching concessions, granting ACP states an unprecedentedly [sic] strong position, including a contractual right to 'aid.' Lomé I was the

219. *See id.*

220. *See id.*

221. LYNDEN MOORE, BRITAIN'S TRADE AND ECONOMIC STRUCTURE: THE IMPACT OF THE EUROPEAN UNION 83-84 (Routledge 1999).

222. *See* KWARTENG, *supra* note 12, at 57.

223. *Id.* at 58.

224. *See id.* at 57.

225. Dieter Frisch, Director-General for External Relations, 1992 and the Developing Countries, Address Given in Bonn (Oct. 25, 1998), *reprinted in* KWARTENG, *supra* note 12, at 57.

226. KWARTENG, *supra* note 12, at 57 (citation omitted).

> best arrangement developing countries ever got from any group of donors . . . . Like an insurance scheme, it compensated export earnings shortfalls of selected commodities.[227]

This has led some to argue for retaining significant portions of Lomé, while others continue to push the liberalized trade agenda. The somewhat conclusory argument in favor of liberalized trade posits that liberation presents better long-term possibilities for Africa.

> In any part of the world, economic development must be rooted in sound economics. If the market economy is the best basis for growth in the rest of the world, this must be true in Africa too. There can be no other rational position, and, indeed, Africa itself offers dramatic evidence, in countries like Tanzania and Zambia, of the foolishness and irresponsibility of basing "development" on non-market policies.[228]

This assessment by no means represents a clear consensus. Given the weak infrastructure, lack of technical expertise, absence of industrial potential, levels of corruption and natural barriers to efficient market access of most sub-Saharan African nations, it is highly unlikely that they would ever rise to a level of successful integration and participation in the global economy.[229] These factors create "a lingering tendency to assume that Africa must be forever a [raw] commodity exporter."[230] An Africa of "modern, manufacturing industries, exporting to the world, is far from the minds of most people involved in 'development' in the region."[231] The resulting conclusion is obvious:

> If the building of a modern private-sector-led economy in [s]ub-Saharan Africa is simply an unrealistic goal, as some would argue, we are driven back to the despairing conclusion that the best that the rest of the world can do for Africa is to provide a kind of safety net, in practice continuous subsidy—and pauperisation.[232]

Although both the United States and the European Union acknowledged this potential reality, those entities proceeded with trade liberalization anyway because it represented their best interests.[233] The concern for Africa, and in particular sub-Saharan Africa, expressed by both the European Union and the United States therefore proved no more than disingenuous rhetoric.

227. Raffer, *supra* note 8, at 126.
228. RYRIE, *supra* note 9, at 208.
229. *See* discussion *infra* Part II.
230. RYRIE, *supra* note 9, at 208.
231. *Id.*
232. *Id.* at 209.
233. *See* discussion *infra* Part II.

> The EU did not try to protect the Lomé model during the WTO negotiations. Neither did it demand special rules governing North-South cooperation, nor apparently to get a waiver for Lomé V. Since the U.S. was granted a waiver for its Caribbean Basin Initiative until 2005 without major problems this should have been possible.[234]

However, the European Union was more concerned with maintaining its course toward complete economic integration, and that required being more competitive with the United States and its other trading partners.[235]

In large measure, much of the recent shift in EU thinking has been a reaction to the various U.S. initiatives; as demonstrated above, the European Union tends to respond in kind to U.S. trade initiatives.[236] "The new WTO regime shaped by the EU and the US will apparently serve to cleanse trade relations from disliked historical obligations. . . . With the WTO many specificities of Lomé can be undone."[237]

The parameters of the WTO, along with the outcome of the bananas dispute, shaped this agenda, which clearly allowed for the European Union to rid itself of cumbersome commitments to developing nations.[238] Moreover, there was a gradual move away from these commitments in each of the successive Lomé Conventions, so that by Lomé IV, the political and ideological orientation of the EC became part of the system.[239] By 1996, Lomé had "outlived its usefulness for Europeans."[240] As the EU continues to adjust its development policy, the "continuous dilution and undermining of Lomé is cleverly used against it."[241]

The impetus to move away from Lomé arises out of U.S.-EU relations in the post-Uruguay Round, post-bananas dispute, WTO-led world of global trade. With AGOA,

> the US might have induced Brussels to return to its old strategy of offering better terms, though on a much-reduced scale. This, too, could explain the preservation of present Lomé instruments on a limited scale. . . . But this might also result from preferring a policy of fading out to abruptly stopping traditional Lomé instruments.[242]

In fact, it now seems to be precisely the case that the remaining Lomé commitments will be phased out completely as the European Union

234. Raffer, *supra* note 8, at 133.
235. *See* discussion *infra* Part III.
236. *See id.*
237. Raffer, *supra* note 8, at 132-33.
238. *See id.* at 128-29.
239. *Id.* at 128.
240. *Id.*
241. *Id.* at 129.
242. *Id.* at 135.

responds to the U.S. initiative concerning economic policy and sub-Saharan Africa. Hence, sub-Saharan Africa finds itself between Scylla and Charybdis.

The key to sub-Saharan Africa's future as a significant participant in the global economy is its ability to develop as a single trading bloc, or at least as a set of autonomous, yet interdependent trading blocs. As former USTR Barshefsky notes, "[o]nly 10% of Africa's trade is with other African countries; this means a fragmented market with less ability to develop economies of scale and attract investment."[243] In order for sub-Saharan Africa to develop as a trade bloc through intra-Africa trade it will need considerable assistance from the United States and the European Union. Single development strategies are wholly inadequate. Complex problems, like those afflicting sub-Saharan Africa, deserve complex solutions.

Each of the forty-eight sub-Saharan African nations should be dealt with independently and according to its particular circumstances. This would amount to a system of differentiated reciprocity, which could mean setting aside the immediate goal of bringing everyone under the umbrella of the WTO. A system of differentiated reciprocity for sub-Saharan Africa should hold special regard for agricultural products, as did Lomé, because: (1) it is the most important sector for sub-Saharan Africa; (2) food is too often a political weapon and the political and economic stability of sub-Saharan Africa is contingent upon a consistent food supply; and (3) sub-Saharan Africa is nowhere near ready to participate in the global exchange of value-added products.[244]

The European Union and the United States should also avoid dumping strategies and trading for obsolete technology.[245] They should work collaboratively to eliminate the international debts, which would probably require the European Union to shift from development loans to development grants as the United States has done. Furthermore, they should strive to direct development aid into various entrepreneurial enterprises, local markets, and projects that build infrastructure. The United States and the European Union must recommit themselves to the promotion of education, health care, and human rights. Moreover, if the two powers continue to employ conditionality clauses in their trade

243. Barshefsky, *supra* note 71.

244. The General System of Preferences currently in use by the EU is simply inadequate. Stevens, *supra* note 157. The Lomé system was much more in line with what sub-Saharan Africa needed. *Id.*

245. For instance, the African Growth and Opportunity Act has a provision for the donation of air traffic control equipment no longer in use. 19 U.S.C. § 3736 (2000).

agreements, they should look for new and better methods of combating political corruption in sub-Saharan Africa.

Though it is too late to retain the Lomé agreements, it is not too late to reconsider employing some of Lomé's better components. The world faces a dire situation in sub-Saharan Africa. If the European Union and the United States do not come together on this matter, it will continue to be a serious distraction to a global economy that is dependent on peace for its continued success.