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University of Arkansas
System Division of Agriculture
NatAgLaw@uark.edu | (479) 575-7646

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The Incoherence of Agricultural, Trade, and Development Policy for Sub-Saharan Africa: Sowing the Seeds of False Hope for Sub-Saharan Africa's Cotton Farmers?

Part I

by

Kevin C. Kennedy

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The Incoherence of Agricultural, Trade, and Development Policy for Sub-Saharan Africa: Sowing the Seeds of False Hope for Sub-Saharan Africa's Cotton Farmers?

Kevin C. Kennedy*

Five developments in 2004 could be significant for sub-Saharan Africa, including cotton farmers in the region. In chronological order, first, on January 23, 2004, President Bush signed into law the Millennium Challenge Act of 2003,[1] providing development assistance to the world's poorest countries that rule justly, invest in their people, and encourage economic freedom.[2] Second, in July 2004, Congress enacted legislation reauthorizing the African Growth and Opportunity Act (known as the AGOA Acceleration Act of 2004 or "AGOA III"), and extending its benefits for certain textile and clothing imports from sub-Saharan Africa through 2007, with an overall extension of the Act until 2015.[3] Third, at the end of July 2004 the WTO members concluded a framework agreement on agricultural negotiations that is part of the Doha Development Agenda that includes a crop-specific commitment to reduce cotton subsidies and gives special consideration to cotton growers in developing countries.[4] Fourth, on September 8, 2004, a WTO panel in *United States – Subsidies on Upland Cotton*, found certain government subsidies provided to U.S. cotton growers to be in violation of the WTO Agreement on Agriculture and the WTO Agreement on Subsidies and Countervailing Measures.[5] Fifth, at the end of 2004 the WTO Agreement on Textiles and Clothing will be fully implemented, thus ending all GATT-inconsistent import quotas on textiles and clothing, and opening this sector to regular GATT disciplines for the first time in several decades.[6]

My paper considers the implications of these five developments for cotton farmers and the clothing industry in sub-Sahara Africa (SSA) and asks whether their collective impact will be positive, negative, or neutral. The overarching theme of my paper is what I consider to be the lack of overall coherence in U.S. agricultural, trade, and development policies when it comes to sub-Saharan Africa, as evidenced by trade and development programs aimed at improving the lives of people in sub-Saharan Africa, on the one hand, and U.S. subsidies to American cotton producers and the injurious impact those subsidies have had on cotton growers in sub-Saharan Africa, on the other. My paper also explores three interrelated sub-themes.

The first sub-theme considers the impact that the termination of the Agreement on Textiles and Clothing (ATC) at the end of 2004 will have on SSA suppliers of cotton to regional manufacturers of cotton textiles and clothing. The second sub-theme is the role, if any, that the African Growth and Opportunity Act (AGOA) and the

Millennium Challenge Act of 2003 (MCA) will play in softening the impact on sub-Saharan Africa of the termination of the ATC. To what extent are export markets for SSA manufactured clothing under threat from China and India, the two countries projected to dominate the global textile and clothing market following ATC termination? What will be the upstream impact of ATC termination on SSA cotton producers? Are AGOA and the MCA a case of too little, too late?

The third sub-theme is the impact that subsidies to cotton growers in China, the European Union, and the United States – especially in the United States, the world's largest exporter of cotton – will have on cotton growers in sub-Saharan Africa, in particular in West and Central Africa. Much attention recently has been devoted to the issue of agricultural subsidies, both in the on-going Doha Development Round negotiations[7] and in recent WTO dispute settlement proceedings.[8] In that connection, a joint proposal was submitted by the four West and Central African nations of Benin, Burkina Faso, Chad, and Mali at the 2003 WTO Ministerial Conference in Cancún, México, proposing that all subsidies on cotton be eliminated immediately because such subsidies injure developing countries that are dependent upon cotton for income and livelihoods.[9] That joint proposal and its aftermath are discussed below.

My paper is divided into four parts. In Part I, I discuss the critical role that agriculture, in particular cotton production, plays in the economies of certain least-developed countries, the majority of which are located in sub-Saharan Africa. I discuss the role that cotton plays in income generation and poverty reduction in the SSA region, its importance to the lives of the people living in West and Central Africa, and the future of the cotton sector in sub-Saharan Africa. Part I further analyzes the impact that agricultural subsidies in other parts of the world, especially in the United States, have had on cotton growers in sub-Saharan Africa. Part I concludes with an analysis of the joint proposal launched by Benin, Burkina Faso, Chad, and Mali in 2003 to eliminate such subsidies.

In Part II, I analyze the Agreement on Textiles and Clothing and the projected impact its termination at the end of 2004 will have on the global production of textiles and clothing, with a focus on the impact that the Agreement's termination will have on producers of upstream inputs such as cotton. Part III begins with a review of U.S. trade and development policy for sub-Saharan Africa, including AGOA and the MCA. It then turns to an examination of the interplay of AGOA and the termination of the ATC and their combined impact on SSA cotton producers. In Part IV, I focus on two issues: (1) whether U.S. trade and development policy for the SSA region has overemphasized promotion of textiles and clothing without taking adequate account of the impact on the region of the ATC's termination, and (2) whether subsidies to U.S. cotton producers and U.S. domestic agricultural policy is working at cross-purposes with its international trade and development policy for the SSA region. In Part IV, I

offer suggestions for correcting what I view to be a lack of coordination in U.S. agricultural, trade, and development policies for sub-Saharan Africa.

I. The Role of Agriculture in Sub-Saharan Africa's Economy

By way of a backdrop, the WTO divides its membership into three groups: developed countries, developing countries, and least-developed countries. The difference between a developed country and a developing country traditionally has been a matter of self-selection.[10] Regarding designation as a least-developed country (LDC), Article XI:2 of the Marrakesh Agreement Establishing the World Trade Organization accepts the United Nations' designation of a country as least developed for purposes of the WTO agreements.[11] As of 2004, the United Nations recognized the following 50 countries as being least developed:[12]

Afghanistan	Lesotho
Angola	Liberia Zambia
Bangladesh	Madagascar
Benin	Malawi
Bhutan Mauritania	Maldives
Burkina Faso	Mali
Burma Nepal	Mozambique
Burundi	Niger
Cambodia	Rwanda
Cape Verde	Samoa
Central African Rep.	Saõ Tomé & Principe
Chad	Senegal
Comoros	Sierra Leone
Djibouti	Solomon Islands
Equatorial Guinea	Somalia
Eritrea Sudan	Tanzania
Ethiopia	Timor Leste
Gambia	Togo
Guinea	Tuvalu
Guinea-Bissau	Uganda
Haiti	Vanuatu
Kiribati	Yemen
Laos	Zaire

Thirty-two of the 50 LDCs are WTO Members.[13] Of the 18 LDCs that have not yet joined the WTO, ten (Bhutan, Cape Verde, Equatorial Guinea, Ethiopia, Laos,

Samoa, Saõ Tomé & Principe, Sudan, Vanuatu, and Yemen) have observer status at the WTO, the first step toward WTO accession.[14] The remaining eight -- Afghanistan, Comoros, Eritrea, Kiribati, Liberia, Somalia, Timor Leste, and Tuvalu -- are not currently in the process of acceding to the WTO.[15] Thirty-five of the 50 LDCs are located in sub-Saharan Africa, meaning that only 13 of the 48 countries that make up sub-Saharan Africa are not classified as LDCs.[16] All but nine of the SSA LDCs are WTO members.[17]

Farming dominates the economies of virtually every LDC. As shown in Table 1, the role that farming plays in the work force and the overall economies of the LDCs in sub-Saharan Africa is significant:

TABLE 1. THE ROLE OF AGRICULTURE IN SSA ECONOMIES

Sub-Saharan LDCs	Percentage of Labor Force Employed in Agriculture in 2002	Percentage of GDP Attributable to Agriculture in 2002
Angola	71	8
Benin	52	35
Burkina Faso	92	38
Burundi	90	49
Cape Verde	22	11
Central African Republic	71	55
Chad	73	37
Comoros	73	35
Democratic Rep. of the Congo	62	56
Djibouti	78	4
Equatorial Guinea	69	8
Eritrea	77	21
Ethiopia	82	52
Gambia	78	40
Guinea	83	24
Guinea-Bissau	82	58
Lesotho	39	18
Liberia	67	(data unavailable)
Madagascar	73	27
Malawi	82	39
Mali	80	46
Mauritania	52	21

Mozambique	81	23
Niger	87	40
Rwanda	90	42
Senegal	73	18
Sierra Leone	61	52
Saõ Tomé & Principe	63	20
Somalia	70	(data unavailable)
Sudan	59	39
Togo	59	40
Uganda	79	31
United Republic of Tanzania	80	45
Zambia	68	22
All LDCs	69	33
All Developing Countries	54	12

Source: UNCTAD LDC REPORT 2004[18]

With the exceptions of Cape Verde and Lesotho, agriculture employs at a minimum more than 50 percent of the labor force in all SSA LDCs. In the case of seven SSA LDCs (the Democratic Republic of the Congo, Equatorial Guinea, Liberia, Sierra Leone, Saõ Tomé & Principe, Somalia, and Zambia), agriculture employs more than 60 percent of the labor force; in the case of 11 SSA LDCs (Angola, the Central African Republic, Chad, Comoros, Djibouti, Eritrea, Gambia, Mali, Senegal, Uganda, and the United Republic of Tanzania), more than 70 percent of the work force is employed in agriculture; in eight other SSA LDCs (Burundi, Ethiopia, Guinea, Guinea-Bissau, Malawi, Mozambique, Niger, Rwanda), the figure is more than 80 percent; and in Burkina Faso, more than 92 percent of the labor force works in agriculture. The economic dependency of these nations on agriculture is equally striking: Twenty-seven of them are ranked among the top 48 countries in terms of economic dependency on agriculture as a percentage of GDP.[19]

One of the most important crops grown in sub-Saharan Africa is cotton. The part that cotton plays in the farming activities of SSA LDCs is explored next.

A. The Importance of Cotton to SSA Farmers and the SSA Textile and Clothing Industry

As a percentage of total world merchandise trade, raw cotton's share is miniscule (approximately one-tenth of one percent[20]). Nevertheless, cotton is one of

the most important textile fibers in the world, accounting for over 40 percent of total world fiber production (down, however, from 68 percent in 1960),[21] but has lost market share from man-made fibers that account for almost 57 percent of total world fiber consumption.[22] While some 80 countries produce cotton, the world's four largest producing and consuming countries are China, the United States, India, and Pakistan, with the United States, China, and India together providing over half the world's cotton.[23] The United States, which ranks second to China in cotton production, is the world's leading cotton exporter, accounting for over one-third of global trade in raw cotton.[24]

Tables 2 and 4 below identify the world's ten largest producers of cotton and their respective volume of cotton imports and exports for the 2003/04 marketing year and the forecast for the 2004/05 marketing year, respectively, followed by Tables 3 and 5 that list the ten largest producers of cotton in sub-Saharan Africa, together with their respective volumes of cotton imports and exports for the 2003/04 marketing year and the forecast for the 2004/05 marketing year, respectively.

TABLE 2. COTTON PRODUCTION, IMPORTS, AND EXPORTS FOR 2003/04 MARKETING YEAR

World's Top 10 Producers (in rank order of production)

Country	Production (1,000 Metric Tons)	Imports	Exports
China	4,855	1,916	38
United States	3,975	11	3,005
India	2,874	196	120
Pakistan	1,687	381	33
Brazil	1,263	103	196
Uzbekistan	914	1	680
Turkey	893	479	87
Australia	327	0	468
Greece	333	4	255
Syria	283	0	152

Source: U.S. Dep't of Agriculture, Foreign Agricultural Service[25]

TABLE 3. COTTON PRODUCTION, IMPORTS, AND EXPORTS FOR 2003/04 MARKETING YEAR

Sub-Saharan Africa's Top Ten Producers (in rank order of Production)

Country	Production (1,000 Metric Tons)	Imports	Exports
Mali	261	0	256
Burkina Faso	210	0	207
Benin	149	0	158
Zimbabwe	100	0	71
Cameroon	109	0	103
Côte d'Ivoire	87	0	109
Sudan	76	0	82
Togo	71	0	67
Tanzania	51	0	44
Chad	49	0	54

Source: U.S. Dep't of Agriculture, Foreign Agricultural Service[26]

TABLE 4. COTTON PRODUCTION, IMPORTS, AND EXPORTS FOR 2004/05 MARKETING YEAR FORECAST

World's Top 10 Producers (in rank order of production)

Country	Production (1,000 Metric Tons)	Imports	Exports
China	6,532	1,252	44
United States	3,919	9	2,460
India	2,722	261	22
Pakistan	1,905	327	44
Brazil	1,415	109	435
Uzbekistan	1,002	0	675
Turkey	925	474	50
Australia	523	0	457
Greece	337	4	196

Syria	294	0	152

Source: U.S. Dep't of Agriculture, Foreign Agricultural Service[27]

TABLE 5. COTTON PRODUCTION, IMPORTS, AND EXPORTS FOR 2004/05 MARKETING YEAR FORECAST

Sub-Saharan Africa's Top Ten Producers (in rank order of production)

Country	Production (1,000 Metric Tons)	Imports	Exports
Mali	233	0	223
Burkina Faso	200	0	196
Benin	147	0	142
Côte d'Ivoire	114	0	109
Zimbabwe	109	0	76
Cameroon	105	0	93
Sudan	87	0	71
Togo	72	0	67
Tanzania	71	0	49
Chad	70	0	60

Source: U.S. Dep't of Agriculture, Foreign Agricultural Service[28]

In the West and Central African (WCA) countries of Benin, Burkina Faso, Chad, Mali, and Togo, cotton production accounts for 5 to 10 percent of gross domestic product.[29] These WCA countries' exports are dominated by cotton, which represents approximately 30 to 40 percent of total export earnings and over 60 percent of earnings from agricultural exports.[30] Since the early 1980s, cotton production in the WCA countries has increased fivefold, from 200,000 tons to almost one million tons, employing some 10 million people.[31] As a comparison of Tables 4 and 5 reveals, the WCA countries combined are the seventh largest global producer of cotton after China, the United States, India, Pakistan, Brazil, and Uzbekistan. With approximately a 15-percent share of global exports, the WCA countries collectively are the second largest exporter after the United States.[32] In addition, by international standards, the WCA countries produce high-quality cotton with production costs among the lowest in the world, clearly lower than those of the United States and the European Union (in fact, the two EU cotton producers, Spain and Greece, are the world's highest cost producers).[33]

Moreover, measured by total production over the ten-year period 1991-2000, the top five LDC growers of raw cotton – all located in sub-Saharan Africa – were Mali (also the largest cotton exporter in terms of value of exports among the least developed countries), Benin, Burkina Faso, Sudan, and Chad.[34] However, when measured as a share of cotton exports to total exports, Benin, Burkina Faso, and Chad are more dependent on cotton exports than either Sudan or Mali. As noted by UNCTAD, "[i]n 1999–2001, cotton exports of Benin, Burkina Faso, and Chad accounted for a larger share of their total merchandise exports (between 60.3 and 77.9 percent) and a large share of their GDP (between 5.0 and 9.4 per cent)."[35]

Unfortunately, SSA cotton growers have to contend with the artificially low prices fetched for cotton on world markets as a result of being forced to compete with subsidized cotton in those markets.[36] Cotton subsidies provided by both developed and developing countries[37] have had important negative effects that are transmitted through a decline in cotton prices on world markets.[38] Cotton subsidies, especially those bestowed by the United States upon its cotton farmers, have had at the least a price suppressing effect on world prices for cotton,[39] to the detriment of cotton farmers in sub-Saharan Africa. Some estimates put the amount of subsidies that U.S. cotton growers received in 2001-2002 at $3.9 billion in combined domestic and export subsidies[40] and $3.7 billion in 2002-2003.[41] The impact of those subsidies on world cotton prices has been palpable. The adjusted world price for cotton in mid-2004 was nearly $.56 per pound,[42] the highest it has been in seven seasons, but still down from its 1994-1995 high of over $.76 per pound.[43] Cotton growers in Benin, Burkina Faso, and Mali increased the quantity of their cotton exports between 1994-1995 and 2001-2002, but saw their export earnings from cotton decline even as the quantities of their cotton exports increased during the same seven-year period.[44] In fact, "[o]ver 90 percent of the cotton produced in the WCA countries is for export."[45] From 1999 to 2002, their production increased by 14 percent, but their export earnings fell by 31 percent.[46]

Although cotton plays only a minor role in the economic activities of industrialized countries, it is of vital importance in many WCA countries. Over 10 million people in the region depend directly on cotton production,[47] making it "possible to improve the physical and social infrastructure in cotton-producing regions," including roads, schools, and health centers.[48] As noted in the Joint Proposal, "[t]he expansion of cotton production is also responsible for the improvement of health in the cotton-growing regions."[49] Moreover, "surveys of households in Benin, Burkina Faso, and Mali show that poverty levels fell more quickly in areas where cotton production had developed" compared to other areas.[50] Cotton therefore occupies a strategic position in the development policies and poverty reduction programs of the WCA countries.

From the standpoint of comparative advantage, does either sub-Saharan Africa or the United States have any business growing cotton? According to a World Bank paper published in 2002,[51] cotton is "an economically viable crop" in West and Central Africa "that has had a significant and positive impact on exports, economic growth, and rural development."[52] The region produces high-quality cotton and high average crop yields by international standards,[53] and does so using farming techniques that are labor intensive (in contrast to mechanized cotton farming in the United States) and on small, one-to-three acre farms.[54] A survey of cotton producer costs conducted in 2001-2002 in 28 countries (including four WCA countries) reveals that WCA countries were among the world's lowest cost producers.[55] As noted in a World Bank research paper, "Few other countries can produce cotton profitably at this price level."[56] Not only can they produce cotton cheaply, but cotton is also more profitable than other crops in the WCA region. And while cotton growers in the United States, Australia, and Brazil can shift production from cotton to soybeans, WCA producers do not enjoy the same flexibility regarding crop substitution.[57]

To add market forces insult to SSA economic injury, the United States is not a low-cost producer of cotton. Statistics from the U.S. Department of Agriculture estimate that the average cost of producing a pound of raw cotton in the United States is $.73 per pound.[58] This figure compares to an average cost of production in Burkina Faso of $.21 per pound.[59] Yet, even though U.S. production costs are higher, with the help of domestic and export subsidies, U.S. cotton growers – the world's largest exporters of cotton – suppress and depress the price of cotton on world markets by increasing its supply through overproduction.[60] All of this is made possible, of course, through U.S. farm legislation, the current law being the Farm Security and Rural Investment Act of 2002.

The font of U.S. cotton subsidies is the Farm Security and Rural Investment Act of 2002 ("the 2002 Farm Act"). The 2002 Farm Act establishes an interrelated payment system to cotton farmers in the form of direct payments, countercyclical payments, and guaranteed commodity loan rates.[61] The payment rate for direct payments is fixed and not affected by current production or by current market prices. Direct payments to farmers are based on historical acreage and on historical yields. Under the direct payment program, eligible producers receive an annual payment that is equal to the product of the national payment rate of the applicable crop, the producer's payment acres (85 percent of base acres) for that crop, and the producer's payment yield for the crop.[62] In addition, producers must use the land for an agricultural or conservation use and not for a non-agricultural commercial or industrial use and abide by conservation compliance requirements.[63]

The United States maintains that direct payments are decoupled income support and thus fall into the "green box" category of subsidies established under the WTO

Agreement on Agriculture (green box subsidies are exempt from the subsidy reduction and ceiling commitments made under the Agreement on Agriculture). In 2004, the WTO panel, in *United States – Subsidies on Upland Cotton*, rejected this classification because receipt of direct payments is conditioned upon certain planting flexibility limitations and, thus, could not qualify as being "decoupled" from production, a prerequisite for being placed in the green box category of exempt subsidies.[64] By default, direct payments therefore fall into the "amber box" of agricultural subsidies that are subject to a cap of $19.1 billion in the case of the United States.[65]

The 2002 Farm Act also establishes a new program of countercyclical payments (CCP) that provide price-dependent benefits for covered commodities whenever the effective price for the commodity is less than its target price. Payments are based on historical areas and yields and are not tied to current production of the covered commodity (this feature is what makes the payments "countercyclical"). The 2002 Farm Act establishes a target (or minimum) price for each covered crop, which in the case of upland cotton is 72.4 cents per pound,[66] or $1.56 per kilogram (much higher than the average world price for cotton in 2001 and 2002 of $1.06 and $1.00 per kilogram, respectively[67]). When the higher of the loan rate or the season average price plus the direct payment rate is below the target price, a CCP is made at a rate equal to that difference. To illustrate with a simplified example, as noted the target price for upland cotton is 72.4 cents per pound, the direct payment rate is 6.67 cents per pound, and the loan rate is 52 cents per pound (the actual amount being paid in 2004[68]). Assuming that the season average price for cotton is 53 cents per pound (an amount greater than the 52 cent loan rate), then a CCP payment of 12.73 cents per pound would be made (the 72.4 cent target price less (1) 53 cents and (2) the 6.67 cent direct payment rate).[69]

A third feature of the 2002 Farm Act is the commodity loan program that allows producers of designated crops, including cotton, to receive a loan from the U.S. Government at a commodity-specific loan rate per unit of production by pledging crop production as loan collateral. After harvest, a farmer may obtain a loan for all or part of the new commodity production. Commodity loans may be settled in three ways: (1) repaying the loan at the loan rate plus interest costs, (2) repaying the loan at a lower loan repayment rate, if applicable, or (3) forfeiting the crop pledged as loan collateral at loan maturity. Thus, what amounts to a minimum guaranteed price of 52 cents per pound has been set for upland cotton. This 52-cent guaranteed price is independent of the world price.[70]

In addition to these three key domestic subsidies provided under the 2002 Farm Act, on the export subsidy side of the ledger the Act also establishes the Export Credit Guarantee Program and the so-called "Step 2" program. The "Step 2" program is a special marketing loan provision for upland cotton.[71] "Step 2" payments eliminate any

price difference for cotton between the U.S. internal price and the world price when U.S. exporters sell cotton abroad or when domestic mills purchase cotton.[72] The program provides cash payments to eligible domestic users and exporters of upland cotton when certain market conditions exist such that U.S. cotton pricing benchmarks are exceeded.[73] The Step 2 payment scheme in essence keeps the domestic price for cotton competitive with the international price, thereby eliminating price as a consideration when domestic users of cotton inputs (such as textile mills) are deciding whether to source cotton domestically or overseas, and thus keeping local firms that export U.S.-grown cotton price competitive on world markets.[74] The WTO panel in *Upland Cotton* found both features of the Step 2 program to be a prohibited import substitution subsidy and a prohibited export subsidy, respectively.[75]

Under the Export Credit Guarantee Program, the short-term credit program (credit extended for up to three years) and the intermediate-term credit program (credit extended for up to seven years) guarantee repayment of credit extended by U.S. financial institutions to eligible foreign banks that issue letters of credit in connection with sales of U.S. agricultural commodities, including cotton.[76] In essence, foreign importers of U.S. cotton exports can borrow dollars to purchase U.S. cotton exports, with repayment of the loan being guaranteed by the U.S. government. This program, which the WTO panel in *Upland Cotton* found to be a prohibited export subsidy, gives U.S. cotton exporters a clear advantage over exporters in developing countries where no comparable lending facility exists.[77]

Lest it be thought that Congress was in an uncommonly generous mood when it passed the 2002 Farm Act, the 2002 Farm Act did not usher in a whole new legal regime of government largesse for U.S. cotton growers. On the contrary, prior farm legislation in the United States was equally supportive. It is estimated that U.S. government assistance to cotton producers was $878 million in 1996-1997, $1.24 billion in 1997-1998, $1.87 billion in 1998-1999, $3.49 billion in 1999-2000, $2.22 billion in 2000-2001, and $3.6 billion in 2001-2002.[78] It is further estimated that U.S. cotton producers received $3.9 billion in subsidies in 2001-2002 to produce a cotton crop valued at $3 billion at world prices.[79] In other words, there was a net cost to the U.S. economy of at least $0.6 billion to grow cotton. As noted by one commentator, "If cotton prices remain at their 2001-2002 levels, then US support to its cotton sector is expected to be on the order of $3.5 to $4.0 billion for the next six years, implying the US cotton producers will be ıeceiving close to twice the world market price."[80] Subsidies that are tied to the price of a commodity (*e.g.*, countercyclical payments) encourage production, which in turn encourage overproduction even when market forces are signaling that production should be decreased. By encouraging overproduction, these subsidies prevent the price of cotton on world markets from naturally rising as they would in a market of steady demand and declining supplies.

Couple this situation with the fact that the United States is the world's leading cotton exporter, and the stage is set for price suppression in world cotton markets.

In 2001-2002, each acre of land under cotton cultivation in the United States received approximately $230 in subsidies compared with less than $50 per acre for soybeans, corn, and wheat.[81] In the United States, cotton is clearly king.[82] This $230 per acre in subsidies is especially striking when compared to the 2002 per capita GDP of SSA cotton producers such as Burkina Faso ($225), Chad ($232), and Mali ($251).[83] The costs of U.S. cotton subsidies to sub-Saharan Africa in terms of lost foreign-exchange earnings from the sale of cotton is substantial, exceeding the amount of foreign aid those countries received under programs administered by the U.S. Agency for International Development.[84]

The United States accounted for almost half of the direct domestic support received by cotton producers around the world ($2.3 billion in 2001-2002), with China accounting for approximately $1.2 billion in 2001-2002, and the European Union accounting for $700 million during that same period.[85] As noted in the 2003 Joint Proposal submitted by the WCA countries of Benin, Burkina Faso, Chad, and Mali to the WTO, the contrasts could not be more striking:

> The subsidies given to American cotton producers are 60 per cent more than the total GDP of Burkina Faso, where over 2 million people depend on cotton production. One half of cotton subsidies to American producers (around US$1 billion) goes to a few thousand farmers who cultivate around 1,000 acres of cotton and are thus well above the poverty threshold. In the WCA countries, on the other hand, these subsidies penalize one million farmers who only have five acres of cotton and live on less than US$1 per person per day.[86]

By one estimate, the removal of U.S. cotton subsidies would cause a decline in U.S. production that would in turn have led to an increase in the international price of cotton by as much as 12 cents per pound in 2000-2001.[87] That figure would have jumped to 22 cents per pound in 2001-2002.[88] If subsidies worldwide were eliminated, an even more positive effect would have resulted, with prices rising to 17 cents per pound for 2000/01 and 31 cents per pound for 2001-2002.[89] Even accounting for the depressing effect that price increases would have on supply and demand, cotton from WCA countries would be highly profitable in such a subsidies-free market.[90]

In sum, the negative effects of cotton subsidies are particularly significant for those least-developed countries that have the strongest specialization in cotton production. On the basis of the assumption that cotton prices per pound in 2001 would have been 12 cents higher if the United States had eliminated cotton subsidies, it has

been estimated that West and Central African countries lost foreign exchange earnings of $250 billion.[91] Trade potential exercises show that if full liberalization in the cotton sector were to take place, "including removal of both trade barriers and production support (along with liberalization in all other commodity sectors), cotton prices would rise above the price that would have prevailed in the absence of reforms."[92]

B. The Cotton Initiative

At the WTO's Fourth Ministerial Conference held at Doha, Qatar in 2001, the WTO members launched what has been styled the Doha Development "Agenda".[93] In connection with negotiations on trade in agriculture, paragraph 13 of the Doha Ministerial Declaration provides in part as follows:

> Building on the work carried out to date and without prejudging the outcome of the negotiations we commit ourselves to comprehensive negotiations aimed at: substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support.[94]

Despite the Ministerial Conference's charge to the membership, the WTO members made no progress during the two years leading up to the WTO's Fifth Ministerial Conference in 2003.[95] In the final months before the WTO's Fifth Ministerial Conference at Cancún, México in September 2003, the four West and Central African nations of Benin, Burkina Faso, Chad, and Mali submitted a joint proposal to the WTO Committee on Agriculture entitled, *Poverty Reduction: Sectoral Initiative in Favour of Cotton*.[96] Their proposal, commonly known as the Cotton Initiative, was presented on June 10, 2003 to the WTO Trade Negotiations Committee by the President of Burkina Faso, Blaise Compaoré.[97] The Cotton Initiative notes the internal market reforms that WCA countries have undertaken in order to make their respective cotton sectors more globally competitive, but that these reforms had been "virtually nullified" by the subsidies given by other WTO members to cotton farmers.[98] The Cotton Initiative proponents also assert that if these domestic and export subsidies were eliminated, "cotton production in WCA countries would be highly profitable and could act as an important catalyst for poverty reduction in the countries concerned."[99]

Against this backdrop -- and because the elimination of cotton subsidies is the only item of interest to these four WCA countries in the Doha Round[100] -- the joint proponents called for the following: (1) a "[r]ecognition of the strategic nature of cotton for development and poverty reduction in many LDCs," and (2) a "complete

phase-out of support measures for the production and export of cotton."[101] They added the following two specifics:

> Establishment at Cancún of a mechanism for phasing out support for cotton production with a view to its total elimination (early harvest): at the Ministerial Conference in Cancún, there should be a decision on immediate implementation, providing for substantial and accelerated reductions in each of the boxes of support for cotton production. This decision should set a specific date for the complete phase-out of cotton production support measures.
>
> Transitional measures for LDCs: until cotton production support measures have been completely eliminated, cotton producers in LDCs should be offered financial compensation to offset the income they are losing, as an integral part of the rights and obligations resulting from the Doha Round.[102]

In other words, countries that subsidize their cotton growers were expected to agree to a total elimination of domestic and export subsidies "immediately", i.e., at the 2003 Cancún Ministerial Conference, and independent of any other commitments from other WTO members on other agricultural issues, i.e., the notion of an "early harvest" of WTO commitments. Until such time that cotton subsidies are completely eliminated, the Joint Proposal requests cotton growers in LDCs receive compensation offseting income lost as a result of such subsidies. The proposal further identifies the form of such compensation as "contractual financial compensation,"[103] noting that traditional forms of WTO "compensation" (tariff concessions to LDCs on other items of export interest to them and increased tariffs by LDCs on imports from developed countries) are inappropriate under the circumstances.[104]

The Cotton Initiative was formally made a part of the Cancún Ministerial Conference agenda.[105] Not surprisingly, WTO members' views differed widely over whether the Cotton Initiative should be discussed independently or whether it should be integrated into the broader negotiations on agricultural subsidies generally.[106] They also differed over the question of compensation (how it should be paid and who should administer it).[107]

The Cotton Initiative was added to the draft Cancún Ministerial Declaration, but in a version that addressed both the trade and development dimensions of cotton production, making it more comprehensive than the version advocated by the Initiative's WCA proponents.[108] Significantly, the Cotton Initiative was presented separately from and independent of the overall framework for agricultural negotiations,

thus preserving the notion of an "early harvest" for international trade rules on cotton. With the collapse of the Cancún Ministerial Conference, however, no Ministerial Declaration was ever issued and, thus, no decision reached at Cancún on the Cotton Initiative.[109] The discussion did not end there, but instead was rolled over into 2004.

The Cotton Initiative was exhaustively discussed at a two-day, WTO-sponsored workshop held in Cotonou, Benin in March 2004.[110] While the trade aspects of the Initiative were a topic of the workshop, the development dimension was the major focus.[111] The participants examined ways in which to control for price volatility, including the establishment of a stabilization fund.[112] It was generally agreed that WCA countries needed to work within existing international financial and aid institutions, coupled with bilateral donor aid.[113] There was also support expressed for diversification and downstream, value-added production in textiles and clothing, as well as for the rehabilitation of derelict textile and clothing mills.[114]

With pressure building to reach a framework agreement on modalities for conducting negotiations on agricultural trade, representatives from the WTO members met in Geneva in late July 2004 to attempt to bridge their differences. In the absence of such an agreement, many observers considered the Doha Development Agenda in serious trouble.[115] In early July 2004 the four WCA countries that had launched the Cotton Initiative were still demanding that cotton be treated independently of the agriculture negotiations.[116] In mid-July 2004, a group of 90 developing countries (known as the G90) echoed this demand by insisting that cotton subsidies be dealt with as a stand-alone issue and outside the agriculture negotiations.[117] The G90's position was met with resistance from USTR Robert Zoellick, who insisted that cotton subsidies be negotiated within the broader context of the agriculture negotiations.[118] The European Union and the WTO Director General supported his position.[119] In the end, perhaps knowing that Brazil would keep pressure on the United States on the issue of cotton subsidies,[120] the G90 and the interested WCA countries receded from their demand that cotton be dealt with as a stand-alone item.

After weeks of intense negotiations, an eleventh-hour framework agreement on agricultural negotiations was concluded on July 29-30, 2004, that includes a compromise reached between USTR Zoellick and the four WCA countries.[121] The cotton provision of the WTO General Council's decision on the Doha work program provides:

> The General Council recognizes the importance of cotton for a certain number of countries and its vital importance for developing countries, especially LDCs. It will be addressed ambitiously, expeditiously, and specifically, within the agriculture negotiations. The provisions of this framework provide a basis for this approach, as does the sectoral

> initiative on cotton. The Special Session of the Committee on Agriculture shall ensure appropriate prioritization of the cotton issue independently from other sectoral initiatives. A subcommittee on cotton will meet periodically and report to the Special Session of the Committee on Agriculture to review progress. Work shall encompass all trade distorting policies affecting the sector in all three pillars of market access, domestic support, and export competition, as specified in the Doha text and this Framework text.[122]

In addition, the General Council decision directs the Director General "to consult with the relevant international organizations, including the Bretton Woods Institutions [i.e., the World Bank and the International Monetary Fund], the Food and Agriculture Organization and the International Trade Centre to direct effectively existing programmes and any additional resources towards development of the economies where cotton has vital importance."[123]

Thus, the July 30, 2004 framework agreement on cotton makes cotton a priority in three respects: (1) cotton will be addressed "ambitiously, expeditiously, and specifically" as part of the Doha Round agriculture negotiations; (2) a subcommittee on cotton will be created that will meet periodically with the WTO Committee on Agriculture ensuring "appropriate prioritization of the cotton issue independently from other sectoral initiatives;" and (3) the WTO Director General is to work with international organizations, including the World Bank and International Monetary Fund, to direct additional resources towards development of economies where cotton has vital importance. Predictably, the U.S.-based National Cotton Council and some members of Congress were opposed to any special agreements in the WTO that singled out cotton and cotton subsidies.[124]

Whether the WCA cotton producers actually will receive special consideration in the Doha Round agriculture negotiations remains to be seen.[125] There is now no question that the negotiations will not be completed by the original deadline of January 1, 2005: the General Council decision of August 1, 2004, expressly acknowledges that the January 1, 2005 deadline for completing the Doha Round will not be met.[126] By most estimates, the Doha Round negotiations will not be completed until sometime in 2006 or even later.[127]

While the high-wire act that is WTO agricultural negotiations, including special treatment for cotton, was being played out in Geneva in the summer of 2004, a less high-profile but equally dramatic development was quietly taking place at the same time: the full implementation of the WTO Agreement on Textiles and Clothing. It is to that subject that I turn next.

II. THE INTERNATIONAL LEGAL REGIME GOVERNING TRADE IN TEXTILES AND CLOTHING

As noted in the Introduction, on January 1, 2005, one of the greatest advantages that the SSA region enjoys under AGOA relative to developing countries and LDCs outside the region – namely, quota-free treatment of qualifying textile and clothing articles – will end. On that date, the WTO Agreement on Textiles and Clothing was terminated, making all trade in textiles and clothing subject to regular GATT disciplines (in particular GATT Article XIX on safeguards, the WTO Agreement on Safeguards, and GATT Article XI on quotas), although such trade will not become duty free on that date. This Part examines the impact that ATC termination will have on the SSA textile and clothing industry. Because cotton is, of course, a major input for textiles and clothing, Part IV will in turn examine the upstream impact on regional suppliers of cotton. A brief overview of the international trade regime for textiles and clothing for the past 40 years precedes a consideration of the impact of ATC termination.

If one were forced to choose the most protected sector over the nearly 60-year history of the GATT/WTO trade regime, steel, automobiles, agriculture, semiconductors, and footwear would all be contenders. Considering the length and the breadth of trade protection that the textile and clothing sector has received for over four decades, it would be hard to argue with one economist's conclusion that this sector was, and in the case of high tariffs will continue to be, "the most systematically and comprehensively protected sector in the world . . . ."[128]

The history of U.S. trade protection for the textile and clothing industry can be traced back to the inter-war period. Under the Tariff Act of 1922 and the Tariff Act of 1930 (the notorious Smoot-Hawley Tariff Act), the tariff wall erected for cotton goods was prohibitively high (46 percent ad valorem compared to 35 percent ad valorem for meat products and 31 percent ad valorem for chemicals).[129] Following the successful negotiation of the General Agreement on Tariffs and Trade in 1947, the GATT contracting parties still tended to keep in place their import restrictions on textiles and clothing from low-wage countries.[130]

In search of a more comprehensive solution to the problem of surging textile imports, in 1960 GATT negotiators adopted the concept of "market disruption" that permitted contracting parties to impose import restraints on fairly traded but low-priced textile imports without a showing of injury to the domestic textile industry when the price of such imports fell below a predetermined trigger price.[131] Using the "market disruption" test, importing countries were relieved of the GATT Article XIX requirement of finding injury to the domestic industry before imposing safeguards measures.[132] Market disruption became the cornerstone of the 1961 Short-Term

Arrangement Regarding International Trade in Textiles,[133] the 1962 Long-Term Arrangement Regarding International Trade in Cotton Textiles (with extensions through 1973),[134] and the successor Multifiber Arrangement that entered into force in 1974, covering cotton and non-cotton textile products.[135]

The 1974 Multifiber Arrangement (MFA) was a framework agreement modeled after the Long Term Arrangement. Intended to be temporary, the MFA existed for two decades, governing the majority of world trade in textiles and clothing.[136] MFA Article 4 provided for the negotiation of bilateral export restraint agreements between textile exporting and textile importing countries, and for unilateral safeguard actions following a finding of market disruption.[137] The MFA also provided for an annual quota growth rate of up to six percent.[138] Products covered under MFA I, II, and III included all manufactured products whose chief value and weight were in cotton, wool, man-made fibers, or blends thereof.[139] MFA IV expanded product coverage to include products made of vegetable fibers, such as linen and ramie, and of silk blends.[140] The MFA introduced some flexibility into an otherwise rigid system by permitting a specific quota to be exceeded by seven percent if there was a corresponding reduction in another quota (the so-called "swing provision").[141] The MFA also permitted five percent of a future year's quota to be carried forward and borrowed, and up to 10 percent of an unused quota to be carried over to the next year.

With every extension of the MFA, developing countries sought a commitment from developed countries to agree on a timetable for phasing out the MFA. That commitment was finally secured in the Uruguay Round Agreement on Textiles and Clothing.

During the Uruguay Round negotiations, developing countries insisted that import restrictions on textile exports to developed countries be eliminated over a six-year period.[142] Under intense pressure from the domestic textile industry, the United States took a more gradualist approach by advocating a ten-year phase-out of the MFA, the imposition of global (versus bilateral) quotas on textile trade, and a progressive increase in the size of quotas.[143]

The Agreement on Textiles and Clothing reflects a blend of the parties' negotiating positions.[144] Under the ATC, trade in textiles and clothing was gradually brought under WTO disciplines. MFA quotas in effect on December 31, 1994, were carried forward into the ATC which phased out MFA quotas over ten years ending January 1, 2005, through two mechanisms: product integration and quota acceleration.

First, the ATC integrated trade in the textile and clothing sector into the WTO multilateral trade system over a ten-year transition period, making such trade subject to the normal WTO rules on permissible trade restrictions, including tariffs, antidumping and countervailing duties, and GATT Article XIX safeguard measures.[145] With the entry into force of the ATC, each importing WTO member integrated into GATT 1994

at least 16 percent of the total 1990 volume of textile and clothing products imported by the member.[146] By January 1998 (37 months after entry into force of the ATC), members had integrated another 17 percent of the total 1990 volume of textile and clothing products imported by the member.[147] By January 2002 (85 months after entry into force of the ATC) members integrated another 18 percent of the total 1990 volume of textile and clothing products imported by the Member.[148] Finally, by January 2005 (121 months after entry into force of the ATC), the remaining 49 percent of textiles and clothing trade was integrated immediately.[149] The ATC and all restrictions thereunder stood terminated in January 2005, on which date the textiles and clothing sector became fully integrated into GATT 1994,[150] subject, of course, to existing customs duties. In that connection, tariffs on clothing remain among the highest of all duties assessed on goods imported into the United States.[151]

Second, the ATC provided for a ten-year phase-out of all quotas maintained on non-integrated products that were established under bilateral agreements entered into under the MFAs.[152] The ATC also required enhanced market access for textile-exporting countries. Article 2 provided for annual quota growth during each stage of the integration process. During Stage 1, which ended on December 31, 1997, the quota level under MFA bilateral agreements in force prior to the effective date of the ATC were increased annually by not less than the growth rate established under the bilateral agreement, plus an additional 16 percent.[153] The level of each remaining restriction had to be increased annually during Stage 2 (which ended December 31, 2001) by the growth rate established during Stage 1, increased by an additional 25 percent.[154] Similarly, during Stage 3 (which ended December 31, 2004) the growth rate could not be less than the growth rate established during Stage 2, increased by an additional 27 percent.[155]

As part of the integration process, Article 7 obligated members to improve market access for textile and clothing products through the following measures: (1) tariff reductions and bindings, (2) the reduction or elimination of non-tariff barriers, (3) the facilitation of customs procedures, and (4) the fair and equitable treatment of textiles and clothing under antidumping, countervailing duty, and intellectual property laws. Members further committed not to introduce changes in their tariff classification schemes that would adversely affect market access.[156]

Thus, on January 1, 2005, world trade in textiles and clothing became subject to the normal legal disciplines of GATT, in particular safeguards relief[157] and the prohibition on quantitative restrictions.[158] Surprisingly, several developing countries have expressed reservations about the termination of the ATC.[159] I say "surprisingly" because so many developing countries groused about the slow pace of integrating textiles and clothing into the multilateral trade system during the ATC's ten-year implementation period.[160] The source of their reservations is that China and India are

predicted to capture significant market share in the textile and clothing sector that had otherwise been guaranteed to other developing countries under ATC quota allocations (in the case of China, "significant market share" translates into a staggering 50% market share). With the end of ATC quotas in 2005 that guaranteed market share will vanish, or so they contend. Consequently, some developing countries, as well as U.S. textile industry representatives that source from countries other than China and India, called for an extension of the ATC.[161] Particularly vulnerable are the countries of sub-Saharan Africa.

In 2003, the U.S. International Trade Commission concluded a two-year investigation into the impact that termination of the ATC would have on world trade in clothing and textiles.[162] The Commission concluded that China is expected to become the "supplier of choice" for most U.S. importers (namely, the large clothing companies and retailers) because of its ability to make almost any type of textile and clothing product at any quality level at a competitive price.[163] However, the extent to which China continues to expand its shipments following quota elimination in 2005 will be tempered by the uncertainty over the use by the United States of the textile-specific safeguard provision contained in China's WTO protocol of accession.[164] To reduce the risk of sourcing from only one country, U.S. importers also plan to expand trade relationships with other low-cost countries as alternatives to China, particularly with India which also has a very large manufacturing base for textiles and clothing and a large supply of relatively low-cost, skilled labor.[165] One or two other low-cost exporting countries in South Asia -- Bangladesh or Pakistan -- are expected to emerge as major suppliers for a narrower but still significant range of goods.[166] Some U.S. importers have indicated they would also consider beneficiary countries under the Caribbean Basin Economic Recovery Act (CBERA),[167] particularly those located in Central America, as a major source of supply if a Central American or hemispheric free-trade agreement is negotiated that allows the use of third-country fabrics.[168]

In the ASEAN region, the only countries considered competitive as major alternate suppliers to China or India are Vietnam and Indonesia.[169] However, although both countries have an abundant supply of low-cost labor, Vietnam will not be eligible for quota elimination until it becomes a WTO member, while Indonesia is considered somewhat risky because of its political and social unrest.[170]

The anticipated effects of ATC quota elimination for five of the six major clothing producers in SSA and for the world's other major textile and clothing producers are summarized below in Tables 7 and 8, respectively:

TABLE 7. ANTICIPATED EFFECTS OF ATC QUOTA ELIMINATION FOR SUB-SAHARAN AFRICA

Anticipated effects of quota removal	Contributing factors
Sub-Saharan Africa Summary: Industry sources indicated that this region's overall share of U.S. clothing imports will fall, notwithstanding AGOA preferences. AGOA preferences may spur U.S. firms to source products from the region that are subject to high U.S. duty rates, such as manmade fiber and wool clothing, particularly if the provision allowing for the use of third-country fabrics is extended beyond 2004. Some sourcing of basic garments made in the region from local fabrics, such as pants and knit tops, may also continue.	Sub-Saharan Africa Summary: Products - Produces basic, rather than fashion clothing. Most manufacturers do not offer full-package services. Many firms have limited capacity to offer large volumes that may be required by U.S. firms looking to consolidate sourcing following quota removal. Infrastructure - Infrastructure and logistics inferior to those in other regions of the world. Shipping time longer than that from East Asia.
Kenya: Share of U.S. clothing imports is likely to decline.	Kenya: Business climate - Personal safety is an issue for sourcing from country.
Lesotho: Share of U.S. clothing imports is likely to decline.	Lesotho: Inputs - No domestic yarn or fabric supply. Planned investment in new yarn and knit fabric production capacity.
Madagascar: Share of U.S. clothing imports is likely to decline.	Madagascar: Business climate - Political unrest in 2001 and 2002 resulted in large disinvestment in the industry. Government is trying to restart the industry, but future prospects are uncertain.
Mauritius: Share of U.S. clothing imports is likely to decline.	Mauritius: Labor- High labor costs owing to shortage of labor. Competition for workers from high-tech sectors.

	Inputs - Shortage of cotton yarn production for knit clothing. Planned investment in new yarn spinning capacity.
South Africa: Share of U.S. clothing imports is likely to decline.	South Africa: Labor - Relatively high labor costs. Inputs - Domestic supply of yarns and fabrics. Only SSA country producing synthetic filament yarn.

Source: U.S. International Trade Commission, Textile & Clothing Report

TABLE 8. ANTICIPATED EFFECTS OF ATC QUOTA ELIMINATION FOR MAJOR TEXTILE & CLOTHING PRODUCERS

East Asia Summary: U.S. clothing companies and retailers are likely to expand sourcing from the region and continue close relationships with suppliers in the region, who are major sources of textile and clothing investment worldwide.	East Asia Summary: Labor - Sewing skills considered among the best in the world. Inputs - Substantial manufacturing base for raw materials. Transportation - Best shipping times to the U.S. west coast within Asia.
China: Likely to be supplier of choice for most large U.S. clothing companies and retailers; uncertainty regarding textile-specific safeguards may temper export growth. Over the long term, competitiveness may diminish as strong economic growth leads to greater domestic demand for textiles and clothing, and for the labor and capital to make these goods. Showed tremendous growth in export of goods for which it became eligible for quota-free entry in 2002.	China: Labor - Per-unit labor costs very low due to low wages and high productivity. Inputs - Produces fabrics, trim, packaging, and most other components used to make clothing and made-up textile articles. Products - Considered by industry among the best in making most garments and made-up textile articles at any quality or price level. World's largest producer and exporter of textiles and clothing, notwithstanding tight quotas in major world import markets.
Taiwan: Likely to continue as major suppliers of	Taiwan: Labor - High per-unit labor costs; high

fabrics to global industry, including to China. However, U.S. firms are likely to move sourcing of clothing to lower-cost countries, particularly China; may continue to source certain garments from these suppliers (e.g., men's dress shirts, dresses, and other fashion clothing).	labor productivity. Products - Small, flexible sewing lines advantageous for fashion clothing; highly automated sewing lines for dress shirts; offer full-package services.
South Asia Summary: U.S. firms will likely expand sourcing from South Asia with the removal of quotas in 2005.	South Asia Summary: Inputs - Huge manufacturing base for yarns and fabrics. Competitive position - Most competitive alternative to China as a supplier, but competitiveness of each country varies widely.
India: Likely to remain a competitive supplier to the United States when quotas are removed in 2005. Considered by many U.S. firms the primary alternative to China. Over the long term, competitiveness may diminish as strong economic growth leads to greater domestic demand for textiles and clothing, and for the labor and capital to make these goods.	India: Labor - Huge, relatively inexpensive, skilled workforce; has design expertise. Inputs - Among the world's largest producers of yarns and fabrics. Products - Wide range of clothing; considered a competitive source for home textiles (e.g., bed linens and towels). Business climate - Personal safety, security of shipments between factories and ports and bureaucratic red tape and infrastructure are issues, with many U.S. firms using agents in lieu of dealing directly with producers.
Pakistan: Likely to continue as a supplier to the U.S. market. Considered by many U.S. firms as a competitive alternative to China, particularly for men's clothing. May continue to be a global supplier of	Pakistan: Labor - Large, relatively inexpensive labor supply. Inputs - Access to local supplies of raw cotton.

cotton yarns and fabrics.	Business climate - The Government is taking steps to ensure the global competitiveness of the textile and clothing sector; personal safety and security of shipments between factories and ports are issues.
ASEAN Summary Overall share of U.S. textile and clothing imports is likely to decline as U.S. firms reduce sourcing in all but a few countries.	ASEAN Summary Labor - Costs relatively high in all ASEAN countries except Indonesia and non-WTO member Vietnam which is ineligible for quota liberalization. Transportation - Shipping times to the U.S. west coast average 45 days, compared with 12 to 18 days from China.
Indonesia: Future status as a supplier to the U.S. market uncertain. Many U.S. firms consider Indonesia to be a competitive supplier, but indicated its political and social unrest may discourage future sourcing.	Indonesia: Labor - Abundant supply of low-cost, skilled labor. Inputs - Huge manufacturing base for raw materials, especially synthetic fibers, yarns, and fabrics. Business Climate - Frequent political and social unrest likely to deter growth in sourcing in the short term.
Thailand: Share of U.S. imports is likely to decline, as has already occurred in goods for which quotas were eliminated (e.g., babies' clothing and luggage); may become a niche supplier of garments having complex construction or detailed sewing requirements.	Thailand: Labor - Highly-skilled workforce; high wages, partly because of a labor shortage. Inputs - Domestic supply of yarns and fabrics. Products - Strong needlework skills and small-scale factories enable intricately designed garments and flexibility in sourcing fashion clothing.

Source: U.S. International Trade Commission, Textile & Clothing Report

Although many countries may see their share of the U.S. textile and clothing market decline, the ITC reports that many countries likely will become second-tier suppliers to U.S. clothing companies and retailers as U.S. firms strive to balance cost, flexibility, speed, and risk in their sourcing strategies by looking to the second-tier suppliers to meet needs not met by the first-tier suppliers.[171] The production of certain goods likely will remain in Mexico and the CBERA region to service U.S. buyers' quick turnaround or mid-season order requirements.[172]

Again, none of this is particularly welcome news for SSA clothing manufacturers. As far as the ATC termination's impact on cotton production is concerned, the International Cotton Advisory Committee[173] predicts that the termination of ATC quotas will have no positive impact on cotton's market share because polyester remains cheaper than cotton.[174] Other studies predict that the price of cotton will increase by 4 percent with the full implementation of the ATC because the demand for cotton clothing will increase as its price drops after ATC quota elimination.[175] What requires closer analysis at this juncture is U.S. trade and development policy for sub-Saharan Africa, in particular the textile and clothing provisions of the African Growth and Opportunity Act, and whether AGOA will mitigate the impact of ATC termination for the SSA region, including its cotton growers.

III. U.S. TRADE AND DEVELOPMENT POLICY FOR SUB-SAHARAN AFRICA

A. Overview

Core U.S. trade and development policy for sub-Saharan Africa is codified in the African Growth and Opportunity Act (AGOA), enacted by Congress in May 2000,[176] amended in 2002,[177] and amended again in 2004.[178] An ancillary piece of legislation that is also designed to promote development in the region (although it does not specifically target sub-Saharan Africa) is the Millennium Challenge Act of 2003 (discussed in further detail in Part III.D below).

As originally enacted, AGOA had three broad objectives: (1) to increase trade and investment between the United States and sub-Saharan Africa, (2) to strengthen the private sector in SSA nations, and (3) to encourage political and economic reform in the region.[179] Briefly, AGOA modifies the U.S. Generalized System of Preferences (GSP) program[180] by authorizing the President to provide duty-free and quota-free treatment for certain African products until September 30, 2008. AGOA also provides for graduation of countries from the program when they become high-income countries and for the removal of eligibility of articles under certain conditions.[181] AGOA further authorizes the President to provide duty-free treatment under the GSP for any article if

the ITC has determined that the article is not import sensitive in the context of imports from SSA countries.[182]

Under AGOA I President Clinton designated 1,835 tariff line items as AGOA-eligible only,[183] in addition to the 4,600 items that are already GSP-eligible.[184] Added to the AGOA-eligible list are certain agricultural and steel products, footwear, luggage, handbags, watches, and flatware.[185] AGOA also eliminates the competitive need limitation that exists under GSP that caps duty-free benefits to beneficiary countries.[186] On December 31, 2003, President Bush designated 37 of the 48 sub-Saharan African countries as eligible for tariff preferences under AGOA.[187]

On August 2, 2002, President Bush signed the Trade Act of 2002, modifying certain provisions of AGOA and expanding preferential access for imports from SSA beneficiary countries. The modifications were collectively referred to as AGOA II.[188] In July 2004, Congress approved a seven-year extension of AGOA II until September 30, 2015 (AGOA II was set to expire in 2008).[189] Congress also authorized a three-year extension until 2007 of the so-called "third-country fabric" provision for lesser-developed SSA countries (explained below).[190] These 2004 extensions are known as AGOA III.

It probably comes as no surprise that trade volumes between the United States and sub-Saharan Africa are small: Sub-Saharan Africa accounts for less than 2 percent of U.S. merchandise imports.[191] The United States purchased almost 21 percent of SSA exports in 2002, less than half of the European Union's 43.3 percent.[192] In 2003, 71 percent of the $25.6 billion in U.S. imports from sub-Saharan Africa were petroleum products.[193] Once those exports are excluded, U.S. imports from SSA were slightly less than $7.4 billion.[194] AGOA-specific imports accounted for 55 percent of total imports from the region in 2003. Eighty percent of U.S. imports under AGOA were petroleum products.[195] Excluding oil imports (in essence synonymous with "excluding imports from Angola and Nigeria which account for 57 percent of total SSA exports to the United States, most of which is in the form of oil"[196]), AGOA imports were less than $3 billion, with textile and clothing imports accounting for $1.5 billion, or about 6 percent of total U.S. imports from the region.[197] U.S. clothing imports from sub-Saharan Africa account for just slightly more than 2 percent of total U.S. imports of such products.[198] In other words, the region's share of total U.S. clothing imports is quite small.

B. AGOA Textile and Clothing Benefits

AGOA's rules of origin are essentially bifurcated: there is one rule of origin for non-textile and clothing products and special rules of origin for textiles and clothing.[199] As is true for non-textile and clothing articles, AGOA provides duty-free and quota-free treatment for eligible clothing articles made in qualifying sub-Saharan African

countries.[200] However, not only are the rules of origin for textiles and clothing more stringent, but the rules on eligibility for the textile and clothing benefits are also more onerous. Thus, although 37 of the 48 eligible sub-Saharan African nations have qualified for AGOA benefits generally, as of April 2004, only 24 of those 37 SSA countries were eligible to receive AGOA's specific clothing benefits.[201] Qualifying clothing articles include the following:[202]

- Clothing made of U.S. yarns and fabrics;[203]
- Clothing made of sub-Saharan African (regional) yarns and fabrics, subject to a cap;
- Clothing made in a designated SSA lesser-developed country of third-country yarns and fabrics, subject to a cap;
- Clothing made of yarns and fabrics not produced in commercial quantities in the United States;
- Certain cashmere and merino wool sweaters; and
- Eligible handloomed, handmade, or folklore articles.

Under AGOA I, clothing imports made from sub-Saharan African fabric and yarn were subject to an initial cap of 1.5 percent of overall U.S. clothing imports, increasing to 3.5 percent of overall imports over an 8-year period. The 2002 AGOA amendments doubled the applicable percentages of the cap to 7 percent. The regional fabric quantities are recalculated for each subsequent year and the percentage figure increases incrementally in equal annual increases to a level of 7 percent beginning October 1, 2007. Clothing articles entered in excess of these quantities are subject to otherwise applicable tariffs, although the odds of quantities in excess of the cap actually being exported to the United States appear low. The quota-fill rate for 2001 was 16.95 percent; for 2002, 59.93 percent; for 2003, 34.94 percent; and for the first six months of 2004, 18.02 percent.[204] The duty-free cap is not allocated among countries, but is filled on a "first-come, first-served" basis.[205]

AGOA limits imports of clothing made with regional or third-country fabric to a fixed percentage of the aggregate square meter equivalents (SME) of all clothing articles imported into the United States during the preceding year. The Trade Act of 2002 increased the quantitative limitation for clothing made with regional fabric. AGOA III extended the regional fabric provision until September 2015, but provided that the increase would not apply to clothing imported under the special provision for lesser-developed countries that allows textile and clothing imports to be made of third-country fabrics, i.e., fabrics other than of U.S. or SSA origin, through September 2007 (explained more fully below). Thus, for the year beginning October 1, 2003, the aggregate quantity of imports eligible for preferential treatment under these provisions

was an amount not to exceed 4.7931 percent of all clothing articles imported into the United States in the preceding 12-month period for which data was available, which equaled 956,568,715 SME.[206] The percentage increases annually until it reaches 7 percent of total U.S. imports, at which point it is capped.[207]

Extending the special textile and clothing benefits accorded lesser-developed SSA countries through September 30, 2007 that were set to expire September 30, 2004, AGOA III permits lesser-developed beneficiary countries[208] to obtain preferential treatment for clothing assembled in beneficiary countries regardless of the origin of the fabric.[209] Under this Special Rule (also referred to as the third-country fabric provision), clothing imports are subject to a sub-cap within the overall 7-percent cap. Under AGOA I, Special Rule imports and regional fabric imports were capped together at 1.5 percent that could increase to no more than 3.5 percent of total U.S. clothing imports. The AGOA II amendments doubled the overall cap to 7 percent, but maintained a sub-cap for clothing imported into the United States under the Special Rule. For FY 2003 the Special Rule cap was 2.0714 percent and rose to 2.3571 percent in FY 2004.[210] The AGOA II amendments also granted lesser-developing country beneficiary status to Botswana and Namibia, qualifying both countries for the Special Rule.[211]

While AGOA III extends the Special Rule for three years through September 2007, and while it increases the Special Rule quota cap annually through FY 2006, it drastically reduces the Special Rule cap in the third year (FY 2007) of the three-year extension to 68 percent of the FY 2004 cap, i.e., from 2.3571 percent to 1.6071 percent.[212] Although the quota-fill rate under the Special Rule was only14.39 percent in 2001, it increased to 50.71 percent in 2002, to 61.99 percent in 2003, and to 32.21 percent for the first six months of 2004 (64.42 percent on an annualized basis).[213] Most AGOA clothing imports in 2002 entered under the Special Rule.[214] This reduction in the quota cap could have a negative impact on the SSA lesser-developed beneficiary countries. Imports of such clothing totaled about $600 million in 2002, of which more than half ($318 million) came from Lesotho, whose AGOA shipments of $321 million consisted almost entirely of such goods made from third-country fabric.[215] Other major SSA suppliers of clothing under the Special Rule were Kenya ($121 million), Swaziland ($74 million), and Madagascar ($69 million). All but two (Mauritius and South Africa) of the 20 SSA countries that have met the additional requirements to qualify for AGOA clothing preferences are also eligible for the lesser-developed country benefits.[216]

AGOA also provides duty- and quota-free benefits for handloomed, handmade, or folklore articles made in beneficiary sub-Saharan African countries. This provision is known as "Category 9".[217] In Executive Order 13191, the President authorized CITA, after consultation with the Commissioner of Customs, to consult with beneficiary sub-Saharan African countries and to determine which, if any, particular

textile and clothing goods are to be treated as being handloomed, handmade, or folklore articles. As of March 2004, Botswana, Ghana, Kenya, Lesotho, Malawi, Namibia, Swaziland, and Zambia had been approved for the handloomed and the "handmade of handloomed" provisions.[218] Ghana is the only SSA country to have benefits for folklore articles.[219]

C. Other Trade and Development Assistance to Sub-Saharan Africa Under AGOA

In addition to AGOA's trade benefits, development assistance is a key part of U.S. policy for the region. The following programs and activities have been put in place to aid sub-Saharan Africa:

· *U.S.-Sub-Saharan Africa Trade and Economic Forum.* AGOA directs the President to organize a U.S.-Sub-Saharan Africa Trade and Economic Forum (known as the AGOA Forum), to be hosted by the U.S. Secretaries of State, Commerce, Treasury, and the U.S. Trade Representative.[220] The AGOA Forum meets annually and serves as the vehicle for a regular dialogue between the United States and SSA countries on issues of economics, trade, and investment.[221]

· *Expansion of the Foreign Commercial Service in Sub-Saharan Africa.* The U.S. Secretary of Commerce is directed to ensure that at least twenty full-time Commercial Service employees are assigned in at least ten different SSA countries, subject to the availability of appropriations.[222] In addition, the International Trade Administration is to identify and work to eliminate barriers to U.S. export trade to the region.[223]

· *Department of Agriculture Technical Assistance.* AGOA I called on the Secretary of Agriculture, in consultation with U.S. land grant colleges and universities and not-for-profit international organizations, to conduct a 2-year study on ways to improve the flow of American farming techniques and practices to African farmers.[224]

· *Technical Assistance from U.S. Agency for International Development.* The Development Fund for Africa that was created in 1988 is to be tapped to support programs and activities that promote the long term economic development of sub-Saharan Africa, such as programs and activities relating to the following:

> (A) Strengthening primary and vocational education systems, especially the acquisition of middle-level technical skills for operating modern private businesses and the introduction of college level business education, including the study of international business, finance, and stock exchanges.
>
> (B) Strengthening health care systems.

(C) Supporting democratization, good governance and civil society and conflict resolution efforts.

(D) Increasing food security by promoting the expansion of agricultural and agriculture-based industrial production and productivity and increasing real incomes for poor individuals.

(E) Promoting an enabling environment for private sector-led growth through sustained economic reform, privatization programs, and market-led economic activities.

(F) Promoting decentralization and local participation in the development process, especially linking the rural production sectors and the industrial and market centers throughout Africa.

(G) Increasing the technical and managerial capacity of sub-Saharan African individuals to manage the economy of sub-Saharan Africa.

(H) Ensuring sustainable economic growth through environmental protection.[225]

The African Development Foundation (a U.S. corporation) supports the foregoing activities, including the provision of capital to micro- and small-enterprises in the region.[226]

· *Free Trade Agreements with Sub-Saharan Africa.* In AGOA I Congress declared that free trade agreements should be negotiated, where feasible, with interested countries in sub-Saharan Africa, in order to serve as the catalyst for increasing trade between the United States and sub-Saharan Africa and increasing private sector investment in sub-Saharan Africa.[227] In November 2002, U.S. Trade Representative Zoellick notified Congress of the decision to negotiate a free trade agreement with the Southern African Customs Union, whose membership is comprised of Botswana, Lesotho, Namibia, South Africa, and Swaziland.[228]

· *Assistant U.S. Trade Representative for African Affairs.* In AGOA I, Congress created the post of Assistant U.S. Trade Representative for African Affairs who is to be (1) a primary point of contact in the executive branch for those persons engaged in trade between the United States and sub-Saharan Africa, and (2) the chief advisor to the United States Trade Representative on issues of trade and investment with Africa.[229]

· *Debt Relief.* In 1997, the Group of Seven, the World Bank, and the International Monetary Fund adopted the Heavily Indebted Poor Countries (HIPC) Initiative, a commitment by the international community that all multilateral and bilateral creditors, acting in a coordinated and concerted fashion, would reduce poor country debt to a sustainable level. In AGOA I Congress directed that it and the President should work together to make comprehensive debt relief available to the world's poorest countries in a manner that promotes economic growth and poverty

alleviation.[230] In July 2003 the World Bank classified 26 LDCs as severely indebted (this represents over half of the total number of severely indebted countries).[231] Thirty-two of the LDCs are also classified as highly indebted poor countries (HIPCs).[232] HIPC debt is projected to fall from an estimated $77 billion to $32 billion after the full delivery of traditional debt relief and assistance under the HIPC Initiative, and to $26 billion after the delivery of additional bilateral relief committed by several creditors.[233] However, it has been observed that official development assistance to sub-Saharan Africa from all sources declined 29 percent from 1990 to 2002.[234]

· *Technical Assistance To Promote Economic Reforms and Development.* In AGOA I Congress directed the President to target development assistance toward the following areas:

> (1) developing relationships between United States firms and firms in sub-Saharan Africa through a variety of business associations and networks;
> (2) providing assistance to the governments of sub-Saharan African countries to-
> (A) liberalize trade and promote exports;
> (B) bring their legal regimes into compliance with the standards of the World Trade Organization in conjunction with membership in that Organization;
> (C) make financial and fiscal reforms; and
> (D) promote greater agribusiness linkages;
> (3) addressing such critical agricultural policy issues as market liberalization, agricultural export development, and agribusiness investment in processing and transporting agricultural commodities;
> (4) increasing the number of reverse trade missions to growth-oriented countries in sub-Saharan Africa;
> (5) increasing trade in services; and
> (6) encouraging greater sub-Saharan African participation in future negotiations in the World Trade Organization on services and making further commitments in their schedules to the General Agreement on Trade in Services in order to encourage the removal of tariff and nontariff barriers.[235]

· *OPIC Initiatives.* The Overseas Private Investment Corporation is to create one or more funds, with combined assets of up to $500,000,000, to be used in support of infrastructure projects in sub-Saharan Africa. The funds are to be used to provide support in particular to women entrepreneurs and to innovative investments that

expand opportunities for women and maximize employment opportunities for poor individuals.[236]

· *Export-Import Bank Initiatives.* The Board of Directors of the Export-Import Bank is to continue to take comprehensive measures, consistent with the credit standards otherwise required by law, to promote the expansion of the Bank's financial commitments in sub-Saharan Africa under the loan, guarantee, and insurance programs of the Bank.[237]

· *HIV/AIDS, Tuberculosis, and Malaria Initiative and Assistance.* The HIV/AIDS statistics for sub-Saharan Africa are both chilling and sobering:[238]

> - Approximately 71 percent of the world's HIV positive population lives in sub-Saharan Africa.
> - HIV/AIDS has decreased average life expectancy in sub-Saharan Africa from 50 years in 1990 to 46 years in 2001.
> - While AIDS killed approximately 2.3 million sub-Saharan Africans in 2003, 3.2 million people in the region became infected that same year.
> - The HIV/AIDS pandemic has cost the region a 1.7 percent annual decline in income from 1990 to 2000.

Congress directed that the private sector should be encouraged to assist sub-Saharan Africa in fighting HIV/AIDS,[239] and that addressing the HIV/AIDS crisis in sub-Saharan Africa should be a central component of U.S. foreign policy with respect to sub-Saharan Africa.[240] It is disconcerting to observe, however, that to date Canada is the only WTO member to enact legislation authorizing the compulsory licensing of drugs that combat HIV/AIDS,[241] pursuant to the 2001 Doha Ministerial Conference Declaration on the TRIPS Agreement and Public Health[242] and the 2003 General Council Decision implementing the Doha Ministerial Conference Declaration.[243]

· *Combating Desertification in Africa.* Congress directed that the United States should expeditiously work with the international community, particularly Africa and other countries affected by desertification to achieve the following:

> (1) strengthen international cooperation to combat desertification;
> (2) promote the development of national and regional strategies to address desertification and increase public awareness of this serious problem and its effects;
> (3) develop and implement national action programs that identify the causes of desertification and measures to address it; and
> (4) recognize the essential role of local governments and

nongovernmental organizations in developing and implementing measures to address desertification.[244]

· *Infrastructure Assistance.* A number of U.S. agencies, primarily the Department of Transportation, the Federal Aviation Administration, and the Department of Energy, have been working to improve transportation, communications, and energy infrastructure in sub-Saharan Africa.[245]

D. The Millennium Challenge Act of 2003

The Millennium Challenge Act of 2003 (MCA or Act) is a foreign aid program that had its genesis with President George W. Bush's announcement of American support for the U.N. Millennium Declaration.[246] Consistently with the development and poverty eradication goals of the U.N. Millennium Declaration,[247] the purpose of the MCA is to provide U.S. assistance for global development in a manner that promotes economic growth, eliminates extreme poverty, strengthens good governance, fosters economic freedom, and encourages investment in people.[248]

Enacted in 2004, the MCA was initially funded with $1 billion for FY2004.[249] Section 606(a) of the Act provides that low to low middle income developing countries are able to compete for funding from the Millennium Challenge Account if they meet three broad criteria: (1) they are eligible for assistance from the International Development Association; (2) they have a per capita income equal to or less than the historic ceiling of the International Development Association ($1415 for FY 2004); and (3) they are not subject to legal provisions that prohibit them from receiving United States economic assistance under the Foreign Assistance Act of 1961, as amended.[250]

The Act requires the Millennium Challenge Corporation ("MCC") to take a number of steps to determine the countries that will be eligible to receive Millennium Challenge Account assistance during a fiscal year, based on their demonstrated commitment to just and democratic governance, economic freedom and investing in their people. These steps include identifying (1) the "candidate countries" for MCA assistance;[251] (2) the eligibility criteria and methodology that the MCC Board of Directors will use to select "eligible countries" from among the "candidate countries";[252] and (3) (a) the countries determined by the Board to be "eligible countries" for a fiscal year, (b) the countries on the list of eligible countries with which the Board will seek to enter into MCA "Compacts", and (c) a justification for such decisions.[253] The purpose of a Compact is to create a multi-year plan for the eligible country to achieve specific development objectives.[254] Key areas of focus for MCA funding include poverty reduction, health, education, agricultural development,

enterprise and private sector development, governance, trade and investment capacity, and environmentally sustainable development.[255] Assistance under the Act may be provided in the form of grants, cooperative agreements, or contracts to or with the national government of the eligible country, regional or local governmental units of the country, or a nongovernmental organization or a private entity.[256]

In February 2004, the Millennium Challenge Corporation identified 63 countries as candidates for MCA assistance in FY2004. Nearly half of them (31) are located in sub-Saharan Africa, and included the cotton-producing nations of Benin, Burkina Faso, Chad, and Mali.[257] These candidate countries were later evaluated by the MCC Board to determine whether they should be eligible to submit proposals for MCC funding, based on an assessment of their commitment to development.[258] The MCC Board assessed the degree to which the political and economic conditions in these candidate countries serve to promote poverty reduction and broad-based sustainable economic growth and, thus, provide a sound environment for the use of MCC funds.[259] On May 6, 2004, the MCC Board winnowed the field of 63 candidate countries to 16 (half of which are in sub-Saharan Africa) when it announced the selection of countries that are eligible to apply for funding under the Millennium Challenge Account:[260] Armenia, Benin, Bolivia, Cape Verde, Georgia, Ghana, Honduras, Lesotho, Madagascar, Mali, Mongolia, Mozambique, Nicaragua, Senegal, Sri Lanka, and Vanuatu.[261] Burkina Faso and Chad did not make the final cut.

At this very early stage of the MCA, it is not possible to assess its impact on the SSA region. What seems reasonably clear at the moment, however, is that only a handful of countries in the region will ever be eligible at any given time for receipt of MCA funding.[262] Moreover, of the $1 billion appropriated in FY2004, the Congressional Budget Office estimates that the amount actually spent will be as low as $130 million.[263]

Thus, against the foregoing backdrop of ATC termination and U.S. trade and development policy for sub-Saharan Africa reflected in AGOA, what is the interplay of the two? The next section examines that question.

E. The Interplay of AGOA III and ATC Termination

Before examining the interplay of AGOA III and termination of the ATC, some facts about textile and clothing imports from sub-Saharan Africa will provide some essential background. As reported by the International Trade Commission, sub-Saharan Africa is a relatively small supplier of textiles and clothing to the global market, accounting for less than 1 percent of world exports in 2001.[264] Nevertheless, SSA textile and clothing exports have been growing in recent years, particularly to the United States, largely as a result of duty-free and quota-free access to the U.S. market

under AGOA.[265] SSA textile and clothing production and exports tend to be concentrated in a few countries: Mauritius, Madagascar, South Africa, Lesotho, and Kenya,[266] although Swaziland has recently increased production and exports.[267]

The majority of SSA textile and clothing sector production and exports consists of clothing, with U.S. textile and clothing imports from sub-Saharan Africa consisting almost entirely of clothing.[268] South Africa and Mauritius are the only SSA countries with an established textile sector, with South Africa being the largest SSA exporter of textiles.[269] Notwithstanding its small share of world exports, the SSA region is an important source of clothing for a number of U.S. clothing companies.[270]

SSA clothing exports are concentrated in garments characterized by long production runs, low labor content, and few styling changes, such as basic trousers, T-shirts, sweaters, and woven shirts.[271] U.S. imports of these basic products from major suppliers outside the SSA region have been highly constrained by quotas[272] that were eliminated with the termination of the ATC. Cotton pants, knit tops, and cotton trousers accounted for 73 percent of the total value of U.S. clothing imports from sub-Saharan Africa in 2002.[273] During 1997-2002, U.S. imports of these garments from sub-Saharan Africa grew by 196 percent, compared to 86-percent growth in U.S. imports of other SSA clothing.[274] Other clothing articles of which imports from SSA have been increasing include manmade-fiber shirts and pants, which accounted for 13 percent of the total value of U.S. clothing imports from sub-Saharan Africa in 2002 and which increased by 550 percent during 1997-2002.

Clothing producers in South Africa, Mauritius, and Lesotho have stated that most clothing factories in these and other SSA countries were set up to benefit from quota-free access to the U.S. and EU markets.[275] These companies indicated that U.S. and EU quotas on cotton trousers and T-shirts from other supplying countries, especially those in Asia, have encouraged foreign investors to produce clothing in SSA.[276] Another expanding area of exports, particularly for South Africa, Lesotho, and Kenya, is manmade-fiber sportswear, for which major world suppliers are also subject to U.S. and EU quotas.[277] In addition, South Africa and, until 2002, Madagascar have been expanding exports of wool suits, another quota-constrained product.[278] In short, SSA clothing exports of quota products – which enter quota-free and duty-free under AGOA -- are significant,[279] meaning that when quotas are terminated in 2005 producers outside the region will stand to benefit relative to the region.[280]

Besides AGOA benefits, SSA countries receive preferential trade benefits from the European Union under the Cotonou Agreement. The Cotonou Agreement provides duty-free and quota-free access for textiles and clothing from Africa, Caribbean, and Pacific (ACP) countries originating in the region.[281] An exception is South Africa, which does not receive trade benefits under the Cotonou Agreement but has a free trade agreement with the European Union.[282]

In 2002, U.S. imports of clothing entered under AGOA amounted to 71 percent by value of total U.S. imports of textiles and clothing from SSA.[283] Imports under AGOA using foreign fabrics amounted to 75 percent of AGOA clothing imports, while imports using regional fabric from U.S. or regional yarn accounted for a much smaller 22 percent.[284] Less than 0.5 percent of the AGOA clothing shipments was made from U.S.-cut fabric and yarn.[285] The largest AGOA suppliers included Lesotho (40 percent of AGOA clothing imports), Kenya (15 percent), Mauritius (13 percent), and Swaziland (9 percent). Mauritius and South Africa supplied 98 percent of AGOA clothing imports using regional fabrics.[286]

As pointed out by the ITC in its 2003 report on the post-ATC clothing and textile sector, "the availability of local or regional raw material greatly improves a country's ability to respond to orders with shorter lead times."[287] In the Commission's view, "[a]s purchasers consolidate and rationalize their sources, the degree of vertical integration in countries or firms becomes an important competitiveness factor."[288] It has been suggested that ATC quotas and tariffs reduce the demand for fiber crops.[289] Consequently, "phasing out the MFA may be expected to have a favorable impact on fiber production by increasing the long-term demand for, and hence the price of, textile fibers."[290] It has been estimated that "the full liberalization of world trade in textile and clothing will boost cotton exports by 9 percent in sub-Saharan Africa (about US$132 million)",[291] but "full liberalization" means the elimination of all tariffs and domestic and export subsidies for cotton. ATC implementation standing alone is likely to have two distinct effects, however: "an output effect arising from increases in the volume of textile and clothing output and, hence, fiber input, and a substitution effect flowing from elimination of the distortions between fibers created by the ATC."[292] According to the ITC, "[f]or cotton producers, the substitution effect may be relatively large, since it has been reported that the ATC has imposed an implicit tax of about 20 percent on cotton products relative to manmade-fiber products."[293]

Given the labor costs, low productivity, long lead times, and high cost of other inputs compared with those in Asia, sub-Saharan Africa is not a particularly low-cost area for production of textiles and clothing, according to industry sources.[294] Most companies located their production in sub-Saharan Africa because of quotas on other suppliers outside the region.[295] These quotas on suppliers outside the SSA region, combined with duty-free, quota-free access to the European Union and, since October 2000, to the U.S. market under AGOA, have led to increased exports of mainly clothing items from sub-Saharan Africa.[296] Because of the importance of quotas for firms investing in the SSA region, it has been predicted that it will be difficult for sub-Saharan Africa to compete in a quota-free world.[297] EU and AGOA preferences may not be enough to keep the industry competitive except in the area of manmade-fiber and wool clothing, where sub-Saharan Africa is competitive and U.S. duties high on articles from outside the region that are made from those fibers.[298] A number of SSA

companies have reported that they have lost sales in the EU market to countries such as Bangladesh, even with EU quotas in place.[299] Most SSA firms view vertical integration as the means of survival in a quota-free world.[300]

Companies in sub-Saharan Africa have indicated that both U.S. incentives under AGOA and the restrictiveness of U.S. quotas on imports of textiles and clothing from non-SSA suppliers have provided a significant impetus for expanded exports to the United States.[301] However, most companies pointed out that quotas on non-SSA suppliers was the most important factor that made it economical to locate textile and clothing production in SSA and to export from the region.[302] Many companies stated that retailers were increasing their purchases of clothing from sub-Saharan Africa under AGOA because they do not have to pay duties.[303] However, without quotas on non-SSA suppliers, the absence of duties likely would not retain SSA's competitiveness, except in cases where U.S. duties are relatively high, such as on products made from manmade fibers.[304]

The importance of the U.S. market to sub-Saharan Africa has been stressed by a number of companies.[305] Industry representatives noted that growth in EU imports of textiles and clothing from non-SSA suppliers, particularly Bangladesh, under the "Everything But Arms" initiative has made it difficult to compete in the EU market.[306] The companies have noted that the implementation of AGOA served to provide a new outlet for SSA clothing exports at about the same time that export sales to the European Union were starting to slump.[307]

Sub-Saharan Africa has a number of disadvantages in terms of logistics and infrastructure. For example, buyers and companies in Mauritius have cited the long shipping time to the U.S. market as a significant disadvantage.[308] Long shipping times affect not only transportation to the final market, but also the time required to complete an order, because many inputs, including fabrics and yarns, have to be imported.[309] Longer lead times mean that SSA products will be largely confined to "basics" that do not depend on quick changes in fashion.[310] Unfortunately for SSA clothing manufacturers, these are also the types of products that can be produced in China, India, Bangladesh and other Asian countries very competitively.[311] SSA exports that are in basic products will be vulnerable to lower cost Asian production now that ATC quotas have been eliminated.[312]

SSA companies interviewed by the ITC also noted that the competitiveness of the region's clothing industry is undermined by the limited availability and high cost of regional inputs, compared with those in countries such as China and India. Although sub-Saharan Africa has an important textile fiber base (mainly in cotton and wool) for the development of textile and clothing industries, many of the SSA countries that produce fibers have lacked the manufacturing investment required to use these fibers locally.[313] In other words, the SSA clothing industry is not vertically integrated, with less value being added than would otherwise be the case if the industry were vertically

integrated. This makes rapid response to orders extremely difficult. To improve utilization of SSA cotton within the region, a number of SSA countries are participating in the Cotton Pipeline Project, whose purpose is to assist cotton production, increase the number of ginning mills, and improve the distribution of SSA cotton so as to expand textile and clothing industries within the region.[314]

The ITC further reports that sub-Saharan Africa is a higher cost producer of cotton yarn and fabrics than China and India.[315] U.S. imports of clothing made from third-country fabrics amounted to 75 percent of AGOA clothing imports in 2002.[316] This reflects the high cost of U.S. fabrics in sub-Saharan Africa, as well as the limited availability and relatively high cost of regional yarns and fabrics.[317] In addition to cost differentials, concerns have been expressed about the small variety of fabrics that can be produced in sub-Saharan Africa compared with Asia.[318] This lack of both diversification and vertical integration is considered an important disadvantage for the region, as buyers and fashion dictate the type of fabrics used.[319] AGOA preferences have enabled sub-Saharan Africa to become more competitive in manmade-fiber clothing due to the relatively high duties on such clothing.[320] However, because this industry is highly capital intensive, South Africa is the only country in the region producing synthetic filament yarn.[321] Another important disadvantage is the lack of capacity within SSA countries to produce the volume of clothing that can be produced in China and India.[322] Many SSA companies expressed concern that as buyers reduce the number of countries from which they source following the termination of ATC quotas, sub-Saharan Africa will be a loser as buyers eliminate sourcing costs by purchasing from larger, vertically-integrated suppliers.[323]

Companies operating in sub-Saharan Africa recognize that to be competitive they need to become vertically integrated and to offer full-service packages.[324] In that connection, some companies in Mauritius and South Africa produce high-value added products, such as fully-fashioned sweaters in cotton, cashmere, lambs wool, and various blends, and clothing from wool and manmade fibers.[325] The ITC forecasts that it is highly likely that these countries will be competitive in these high-value products in the future.[326] Nevertheless, a number of investments are underway in SSA countries to increase the number of vertically integrated companies and to upgrade service packages, but these types of investments take time, as noted by the ITC.[327] Most companies interviewed by the ITC cited vertical integration as a way to compete in a quota-free world because it will cut lead times, assure fabric availability, and give a company more control and flexibility over its output.[328]

In short, on balance it appears that ATC termination will put the SSA clothing industry in a very difficult position. The potential impact that ATC termination will have on upstream suppliers of clothing inputs, mainly SSA cotton growers, is addressed next.

IV. MAKING U.S. AGRICULTURAL, TRADE, AND DEVELOPMENT POLICY FOR SUB-SAHARAN AFRICA MORE COHERENT

Table 9 lists the top six SSA textile and clothing exporters to the United States and the volume of their exports to the United States in 2002/03 and 2003/04:[329]

TABLE 9. TOP SSA TEXTILE & CLOTHING EXPORTERS TO U.S.

Total Textile & Clothing Exports (million square meter quivalents)	Kenya	Lesotho	Madagascar	Mauritius	South Africa	Swaziland
Total Textile & Clothing Exports to U.S. for Year Ending 5/2004	58.799	107.618	57.852	40.748	73.930	54.979
Cotton Textile & Clothing Exports Year Ending 5/2004	45.584	78.686	45.467	39.368	45.220	27.850
Man-Made Fiber Textile & Clothing Exports Year Ending 5/2004	13.195	28.882	10.923	0.775	25.505	27.129
Wool Textile & Clothing Exports Year Ending 5/2004	13.195	0.027	1.446	0.438	3.055	0.000
Total Textile & Clothing Exports to U.S. for Year Ending 5/2003	49.562	89.785	19.088	48.193	80.242	35.157
Cotton Textile & Clothing Exports Year Ending 5/2003	34.571	63.954	15.824	46.893	46.710	21.330
Man-Made Fiber Textile & Clothing Exports Year Ending 5/2003	14.890	25.831	2.882	0.952	30.501	13.807
Wool Textile & Clothing Exports Year Ending 5/2003	0.003	0.000	0.289	0.297	2.965	0.000

Percentage Change in Total U.S. Exports Between Year Ending 5/2003 and Year Ending 5/2004	18.64	19.86	203.09	-15.45	-7.87	56.38
Percentage Share of U.S. Textile & Clothing Imports for Year Ending 5/2004	.13	.25	.13	.09	.17	.13

Source: U.S. Dep't of Commerce, Office of Textiles and Clothing

With the exception of Swaziland (whose exports to the United States were evenly divided between roughly 50 percent of cotton and 50 percent of man-made fibers in 2003), the largest percentage of exports to the United States from these major SSA textiles and clothing producers are made of cotton. Couple this fact with ATC termination and the ITC's and WTO's assessments that China and India are poised to dominate international trade in textiles and clothing, and one must wonder whether SSA cotton producers should be anything but deeply concerned about ATC termination. Does AGOA dangle any prospect for hope?

One of AGOA's explicit goals was to encourage investment in the textile and clothing industry with its quota-free and duty-free rules on textile and clothing imports. AGOA preferences may spur U.S. firms to source products from the region that are subject to high U.S. duty rates, such as manmade fiber and wool clothing, particularly since the provision allowing for the use of third-country fabrics has been extended beyond 2004 to 2007. Some sourcing of basic garments made in the region from local fabrics, such as pants and knit tops, may also continue.[330] But there is little in this forecast for optimism about the future of SSA cotton growers. For upstream producers of clothing inputs – mainly SSA cotton producers – the termination of the ATC may make their economic life even more marginal as markets for their crops within the SSA region shrink. If the heart of the U.S. government was in the right place when it renewed and extended AGOA and enacted the Millennium Challenge Act, was its head? Are AGOA and the MCA in the end nothing more than "empty rhetoric"?[331] Or is such criticism a case of hindsight always being 20/20?

With the projected decline in U.S. clothing imports from sub-Saharan Africa resulting from ATC quota elimination, will the impact on SSA cotton growers be positive, negative, or neutral? Raw cotton is either a major agricultural product or a major export, or both, for 15 SSA countries: Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Côte d'Ivoire, Guinea-Bissau, Mali, Mozambique, Sudan,

Tanzania, Togo, Uganda, Zambia, and Zimbabwe.[332] Table 10 identifies the primary export markets for these 15 SSA cotton producers in 2002:

TABLE 10. MAJOR EXPORT MARKETS FOR SSA COTTON*

Country	Cotton Exports** (US$million)	Rank Order of Cotton Exports Among All Exports	Major Cotton Export Markets
Benin	$118.2 (2001)	1	India 38%, Brazil 9%
Burkina Faso	$72.1	1	Italy 26%, Colombia 14%,
Cameroon	$85.3	6	Thailand 23%, Germany 11%
Central African Rep.	$6.9 (2001)	3	Belgium 70%, Taiwan 20%
Chad	$48.4	1	Portugal 37%, Germany 21%
Côte d'Ivoire	$79	11	Indonesia 31%, Thailand 16%
Guinea-Bissau	$2.7	5	Portugal 91%, France 9%
Mali	$125.2	1	Thailand 25%, India 15%
Mozambique	$16	10	Portugal 48%, India 30%
Sudan	$55.2	6	Egypt 33%
Tanzania	$24.4	9	India 39%, Indonesia 10%
Togo	$26.4	3	Taiwan 38%, Thailand 12%
Uganda	$3.6	13	UK 23%, South Africa 20%
Zambia	$16.4	9	South Africa 90%
Zimbabwe	$116.4	6	South Africa 32%, Taiwan 12%

Source: International Trade Centre UNCTAD/WTO database, *available at* http://www.intracen.org/menus/countries.htm.
*Unless otherwise noted, all data is for 2002.
**"Cotton" as classified under HS 5201, "cotton, not carded or combed."

With the exceptions of Cameroon, Côte d'Ivoire, Tanzania, and Zimbabwe, the remaining 11 nations are LDCs that, by definition, lack a diversified economy. If the major SSA textile and clothing producers experience a slump in global demand for their products as a result of ATC quota elimination – as the ITC and the WTO both predict – are the export markets of the SSA cotton-producing nations adequately diversified to weather a sharp decline in regional demand for cotton? Interestingly, as Table 10 illustrates, with the exceptions of Uganda, Zambia, and Zimbabwe for which

South Africa is a significant export market, the major export markets for the other SSA cotton producers are primarily outside the region, chiefly markets in Europe and Asia, with only Benin, Mali, and Tanzania having large export markets in India. It would therefore seem that if the SSA clothing industry experiences a slump or collapse because of ATC quota elimination, the indirect impact on most SSA cotton growers will be minimal. For regional cotton growers who export to markets other than Africa, China, and India, the picture is less clear. There is a "good news, bad news" dimension to this analysis. The good news is that ATC termination probably will not have a serious impact on SSA cotton producers. The bad news is that intra-regional trade in cotton is not very high.

Nevertheless, notwithstanding the ITC's gloomy forecast for the clothing industry in countries other than China, India, and Pakistan, the USTR has reported that a number of Asian textile and clothing firms have recently made additional investments in sub-Saharan Africa in the clothing and textile sector.[333] For example, in Namibia a subsidiary of a Malaysian textile producer invested over $200 million since April 2001, created 5,000 new jobs, and exported over $22 million in clothing products to the United States since initiating operations in June 2002.[334] Two more clothing companies are in the process of beginning production. These firms will add another $115 million in investment and over 6,000 additional jobs.[335] In Lesotho a Taiwanese investor is building a $100 million denim rolling mill to supply local manufacturers.[336] That plant will employ 5,000 new workers when operational in 2004.[337] The same investor has plans to invest an additional $50 million in a new yarn spinning plant.[338] Other Taiwanese investors will contribute an additional $10 million to build a separate weaving and dying factory.[339] These facilities will be able to supply most of the denim and knit fabric needed by Lesotho's garment industry.[340] In Mali a $12.5 million cotton-thread factory opened in February 2004.[341] The facility is one of the few sub-Saharan Africa plants outside South Africa capable of producing quality thread for use in manufacturing clothing for export under AGOA.[342] The factory, the first of its kind in Mali, created a modest 200 new jobs.[343] Finally, in Madagascar four international investors established a $10 million clothing manufacturer in 2003.[344]

In its 2003 annual report on U.S. trade and investment in sub-Saharan Africa, the ITC likewise reported that in 2001 and 2002 foreign investment continued to flow into the region in the clothing and textile sector, including in Kenya, Lesotho, Madagascar, Mauritius, Mozambique, Namibia, South Africa, Swaziland, and Uganda.[345] It would seem that those investors who are continuing to pour money into the SSA textile and clothing sector have taken a clearly contrarian position to that of the ITC regarding the future dominance of China, India, and Pakistan in the textile and clothing industry. Unless there is some serious market failure at work here, these

investors obviously believe that sub-Saharan Africa still has a future in the clothing and textile sector even after January 1, 2005, when the ATC was fully implemented.[346]

Against this backdrop, are U.S. agricultural policy, on the one hand, and U.S. trade and development policy for sub-Saharan Africa, on the other, working at cross-purposes? Do they lack coherence? As noted above, cotton plays a critical role in the economies of several SSA countries, particularly in the West and Central African nations of Benin, Burkina Faso, Chad, and Mali. Yet, U.S. cotton subsidies are undermining efforts to improve the lives of people living in these WCA countries. Thus, U.S. domestic agricultural policy is undercutting U.S. trade and development policy for sub-Saharan Africa because domestic and export subsidies to U.S. cotton producers are harming a group of intended beneficiaries under AGOA and the MCA, namely, SSA cotton producers.

Not only is U.S. agricultural policy undercutting U.S. trade and development policy for sub-Saharan Africa, but the full implementation of the ATC at the end of 2004 would appear to be unwelcome news for textile and clothing suppliers in countries other than China and India as well. As the ITC has reported, with the termination of the ATC the SSA region's overall share of U.S. clothing imports will fall, notwithstanding AGOA preferences.

Yet, having made this criticism, let me state a time-worn maxim that is frequently used in the international context: "Don't let the best be the enemy of the good." In other words, if a perfect result is the standard, then nothing will ever be accomplished because such an impossibly high standard is unattainable. Nothing in human affairs, including the most well-intentioned efforts of governments, is ever perfect. It is easy to "Monday morning quarterback" the efforts of countries that seek to make the world a better place by assisting the most disadvantaged. Should it turn out in the end that AGOA's textile and clothing provisions are a case of too little, too late, one must remember that no trade and development program will be without its flaws, whether by design or accident. So, rather than bash AGOA and the MCA, let me instead focus on what I view as a significant programmatic flaw: the arguably unintended consequences of agricultural subsidies and their impact on cotton farmers in sub-Saharan Africa. Before turning to a consideration of these two exogenous factors that may impede development in sub-Saharan Africa, I would like to first examine endogenous factors in the region that may be hampering economic progress and thus require reform.

As has been noted previously in this paper, many studies have fingered cotton subsidies to cotton producers in the United States, China, and the European Union as the villain responsible for the plight of SSA cotton farmers. However, it also has been suggested that what is really needed are internal reforms within the cotton producing nations of sub-Saharan Africa, coupled with external reforms in the provision of subsidies to cotton growers in other parts of the world.[347] Regarding internal reform

initiatives in sub-Saharan Africa where cotton is an important crop, during the 1990s several African countries undertook internal market reforms. For example, Uganda carried out successful cotton reforms. Cotton production tripled during the eight-year period beginning in 1995/96, with farmers' share in the sale of cotton on world markets also increasing by 25 percent.[348] Zimbabwe, on the other hand, initiated cotton reforms in the 1990s, but political and macroeconomic instability in the country, as well as insecurity over land tenure – factors beyond the sector's control – have hurt cotton production and the economy as a whole.[349]

In West and Central Africa, the story is more mixed. Cotton production has increased fourfold over the past 25 years, making the region the world's second largest cotton exporter with an almost 15-percent share of world exports.[350] West and Central Africa produces high yields and consistently high-quality cotton, but the prices that WCA producers receive tend to be low. Explanations for the low prices include several internal factors. First, government taxes on cotton producers are used to subsidize domestic textile firms through low prices for cotton inputs.[351] Second, cotton is bought and sold by parastatal companies that operate without competition.[352] Third, cotton is priced uniformly throughout the region without regard to the location of farmers relative to ginning or distribution centers, thus in effect transferring resources from one group of farmers to another.[353]

To correct these internal market inefficiencies, the World Bank has proposed, *inter alia*, that the WCA countries permit free entry into the cotton market at all levels, thus linking domestic prices to world prices.[354] In addition, national cotton companies should be privatized.[355] Benin, Côte d'Ivoire, and Togo have opened their cotton sector to private ginners.[356] Benin and Côte d'Ivoire have also eliminated the monopoly power of national companies and have transferred some of the former's responsibilities to the private sector.[357] Similar reforms are underway, but not yet completed, in Burkina Faso[358] and Mali.[359]

But despite these reform efforts, with the exception of South Africa, no SSA country has a diversified economy. The region has been and continues to be heavily dependent upon primary products for their export earnings.[360] As UNCTAD notes,

> More than for any other developing region, Africa's heavy dependence on primary commodities as a source of export earnings has meant that the continent remains vulnerable to market vagaries and weather conditions. Price volatility, arising mainly from supply shocks and the secular decline in real commodity prices, and the attendant terms-of-trade losses have exacted heavy costs in terms of incomes, indebtedness, investment, poverty and development.[361]

While the structure of most developing countries' exports has shifted to manufacturing (about 70 percent), in the case of Africa that number is closer to 30 percent, a mere 10-percentage point increase over the two decades from 1980 to 2000.[362] As noted above, farming dominates the economies of sub-Saharan Africa. Lack of export diversification is clearly a problem for the region. Still, when it comes to cotton, UNCTAD is quick to point out that the chief difficulty that SSA cotton producers face in world markets is an exogenous one:

> The loss of market shares for cotton and sugar is largely the result of high subsidies and domestic support for less competitive producers in the United States and Europe. The United States is the world's largest exporter of cotton thanks to huge cotton subsidies, which in 2001–2002 amounted to $3.9 billion, double the level in 1992 and $1 billion more than the value of total United States cotton production during the season at world market prices.[363]

Sub-Saharan Africa faces many complex problems, and complex problems generally call for complex solutions. However, in the case of cotton, the plight of the region's cotton producers seems to beg for an economically simple solution, but unfortunately one that is politically complex: the elimination of government subsidies to cotton producers in other parts of the world and the creation of an interim mechanism to compensate SSA cotton producers for lost income until all government subsidies to cotton producers are phased out.[364] UNCTAD concludes that "the proposal submitted by African producers to the WTO for compensation for income losses suffered by their cotton producers appears to be the only means by which poor producers could have some relief in the short to medium term."[365]

What are the prospects for subsidies reform by the world's major cotton producers? Multilateral negotiations on the elimination of agricultural subsidies requires excellent problem-solving skills, invoking the art of the possible. The complete elimination of both domestic and export subsidies seems unlikely, although in August 2004 WTO members pledged to eliminate export subsidies on all agricultural products "by a credible end date".[366] Because export subsidies are deemed to be per se trade distorting, they have been prohibited for all developing countries since 1995 and for developing countries since 2003 on all non-agricultural trade under Article 3 of the Agreement on Subsidies and Countervailing Measures.[367] Extending this prohibition to agricultural trade is the logical, although admittedly politically difficult, next step.

With regard to domestic subsidies, perhaps the best near-term solution for WCA cotton producers is for subsidizing nations to move to a system of truly decoupled support (that is, support that is not tied to production in any respect) rather

than price support. As the WTO panel in the *United States – Subsidies on Upland Cotton* ruled, in order to qualify as an exempt green box subsidy, decoupled support can have absolutely no ties to production.[368] In other words, all decoupled domestic support must comply with the criteria for exempt green box subsidies set out in Annex 2, paragraph 6, of the Agreement on Agriculture.[369] However, in order for decoupled support to work in a less market distorting way than it currently does, such support schemes must have the following features. First, in order to ensure that production is not encouraged because of government subsidies, decoupled support has to be the only form of farm support. Likewise, the condition that land stay in agriculture as a condition for receipt of decoupled support should be eliminated because it only serves to encourage production.[370] In other words, the amber box and blue box categories of farm support that are tied either to price or production, as well as de minimis subsidies, must be eliminated. Second, just as quotas on textile and clothing imports were gradually phased out over a ten-year period under the ATC, so too all domestic subsidies in the form of decoupled support must be progressively phased out over a reasonable period of time. However, the August 1, 2004 decision by the WTO General Council neither identifies a timeframe for implementing agricultural subsidy reduction commitments nor calls for the elimination of domestic subsidies.

It has been proposed that an approach to the phasing-out of subsidies would be to eliminate subsidies on the goods shipped to specific groups of countries. Thus, France has suggested eliminating export subsidies on all goods that are destined for Africa.[371] The French proposal has at least one serious flaw in that it is likely to introduce a perverse dual price structure, with a low price for non-African countries and a relatively high price for African countries.[372] In the case of food, it is questionable whether this two-tiered system could be maintained in reality because African countries would be encouraged to import European agricultural products through third countries rather than from the European Union directly.[373] In the case of cotton exports, moreover, WCA cotton producers would still be competing with low-priced cotton on world markets. In order to encourage agricultural production in developing countries, it appears much more reasonable to promote a phasing-out of support that concentrates on a gradual reduction of support to all countries at the same time, as is contemplated in the framework agreement on agriculture negotiations concluded at the WTO in July 2004.[374] Nevertheless, the process might start by focusing on strategic agricultural goods that are of particular importance to the poorest developing countries, such as cotton in sub-Saharan Africa.[375]

Another suggestion would be for the European Union and the United States to agree to a coordinated, collaborative trade and development program for sub-Saharan Africa. As the region's first and second trading partners, together accounting for more than half of all trade with the region, and as the world's top economic powers, the European Union and the United States are perfectly placed to influence the course of

sub-Saharan Africa through a coordinated trade, aid, and development program for the region. It is time to end the rivalry and instead to join forces for the good of the world's poorest nations.

Besides a coordinated external effort by the European Union and the United States, a parallel internal effort at coordination should be undertaken by the region. Only 10 percent of African trade is with other African nations, leaving a fragmented market that cannot achieve economies of scale and thus making the region less attractive as a destination for foreign investment.[376] Underscoring this point, UNCTAD observes that "the full potential of intra-African trade has yet to be fully exploited through greater coordination of efforts aimed at harmonizing customs procedures and reducing tariffs and non-tariff barriers, and at improving transport and communications links through greater investment in developing regional infrastructure."[377] For this reason it has been further suggested that the key to sub-Saharan Africa becoming a significant player in the global economy is for SSA countries to form a regional trading bloc.[378] Within the region there currently exist nine major free trade areas and customs unions: the Economic Community of West African States (ECOWAS); the West African Economic and Monetary Union (WAEMU); the Common Market for Eastern and Southern Africa (COMESA); the Southern African Development Community (SADC); the Southern African Customs Union (SACU); the East African Community (EAC); the Inter-Governmental Authority on Development (IGAD); the Indian Ocean Commission (IOC); and the Communauté Economique et Monétaire de l'Afrique Centrale (CEMAC).[379] The 52-member African Union, the successor to the Organization of African Unity, was launched in July 2002, together with the African Economic Community, with lofty ambitions to become an African-version of the European Union, i.e., EU-like institutions (a parliament, court of justice, and central bank) and a common currency.[380] However, the record of existing SSA free trade areas and customs unions in integrating the economies of their member states is at best mixed.[381] Based on the region's choppy experience with free trade areas and customs unions, the suggestion to create a pan-SSA trading bloc, whether in the form of a free trade area or a customs union, is extremely problematic. Consequently, whether bigger is better in the case of regional economic integration in sub-Saharan Africa is debatable.

Finally, UNCTAD has suggested that the phasing out of agricultural support should coincide with increased international financial and technical assistance to agriculture in the LDCs to promote agricultural productivity growth and commercialization.[382] UNCTAD observes that in 2001 government payments to farmers in OECD countries was actually seven times the level of total official development assistance (ODA) to the LDCs.[383] In 2001 net flows of ODA to LDCs would have doubled if just 14 percent of the 2001 value of government payments to OECD agricultural producers had been redirected in aid to the LDCs.[384] There is thus

an opportunity for major poverty reduction benefits through not only phasing out of agricultural support but also increasing international assistance to promote agricultural development in the LDCs.

Of course, none of these suggestions addresses the impact of ATC termination on demand for SSA cotton by SSA clothing manufacturers. For cotton growers in West and Central Africa and other parts of the region whose primary export market for their product is Asia, ATC termination may be a blessing for them if the termination in fact results in increased cotton textile and clothing production in their export markets. Even in those SSA countries that sell their cotton to regional textile and clothing firms (e.g., Zambia's sales of cotton to South Africa), it may be the case that with the recent foreign direct investment activity in the region in the textile and clothing industry, that the ITC's and WTO's predicted demise of the SSA clothing industry may be greatly exaggerated. On the other hand, if the ITC's and WTO's predictions prove accurate, and should demand for SSA cotton decline as a result of ATC termination, then SSA cotton growers who currently sell primarily to SSA ginning and textile mills will have to adjust to the new market realities by finding alternative markets in Asia.

What does seem clear is that any future amendments to the textile and clothing provisions of AGOA will do little, if anything, to mitigate the impact of ATC termination on the region. Even now the quota-fill rate for SSA clothing exports under the regional fabric and third-country fabric provisions of AGOA (the latter being the most liberal textile and clothing rule of origin that exists under U.S. law) has consistently been less than100 percent.[385]

Before concluding, let me add to my list of five developments in 2004 a sixth that could deal a mortal blow to AGOA and that could in turn have a further negative impact on sub-Saharan Africa: Appellate Body's decision in April, 2004 in *European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries*.[386] The significance of this Appellate Body report for AGOA beneficiary countries is not yet clear, but AGOA itself may very well be unlawful under the Enabling Clause,[387] as interpreted by the Appellate Body.

V. CONCLUSION

Considering the heavy economic dependency of sub-Saharan Africa on agriculture, AGOA's explicit goal of moving the SSA workforce into the textile and clothing sector is laudable. Economic diversification is an important step toward poverty reduction. Unfortunately, AGOA may be diversifying the SSA economy and moving its workforce into a sunset industry. At the same time, U.S. agricultural policy is unintentionally punishing SSA cotton growers. SSA cotton producers, who are internationally competitive, are hobbled when it comes to effectively competing in international markets largely due to a single but formidable exogenous factor: a

subsidies-distorted international market for cotton. The WCA countries' chief competitors in international markets – China and the United States – subsidize their cotton growers up to 20 percent and 50 percent of world prices, respectively.[388] Elimination of cotton subsidies in China, the European Union, and the United States – especially in China and the United States, the world's two largest producers and, in the case of the United States, the world's top exporter -- would lead to a reallocation of production to lower cost producers, including those in West and Central Africa. The latter in turn would experience increased income and a resulting reduction in poverty in what is the poorest region of the world.[389]

With the Doha Round negotiations on agricultural subsidies and market access having been resuscitated, and with reform pressure building as a result of the WTO dispute settlement reports on U.S. cotton and EU sugar subsidies, the hurdle of eliminating cotton subsidies is not insurmountable. In fact, assuming the Appellate Body affirms both panel reports in the U.S. cotton and EU sugar subsidies cases (which I do not assume to be a foregone conclusion), and further assuming that both the United States and the European Union take the full 12-15 months to bring their nonconforming laws into WTO compliance, it will be sometime in 2006 at the earliest before the WTO dispute settlement process has run its full course in these cases. Fortuitously, this happens to coincide with the projected timeframe for completing the Doha Round negotiations, and the 2002 Farm Act also will be nearing its 2007 expiration date. In short, the stars may be aligned in 2006 for an agreement on meaningful reforms of agricultural subsidies. The timing could not be better for sub-Saharan Africa and for U.S. taxpayers. In the meantime, Article 7.8 of the Agreement on Subsidies and Countervailing Measures directs that "the Members granting or maintaining such subsidy [i.e., domestic subsidies that cause adverse effects to the interests of other WTO members in third-country markets] shall take appropriate steps to remove the adverse effects [e.g., pay compensation] or shall withdraw the subsidy."[390] Therefore, until such time as U.S. cotton subsidies that have been found to be in violation of the SCM Agreement are removed, SSA cotton growers who are injured as a result of those subsidies should receive compensation measured by lost income and lost profits on sales to their export markets.

Notes

* Professor of Law, Michigan State University College of Law.

1. *See* The Millenium Challenge Act of 2003, Pub. L. No. 108-199, 118 Stat. 211 (codified as amended at 22 U.S.C. §§ 7701-18 (2004)).
2. *See* 22 U.S.C. § 7706(b) (2004).

3. *See* The African Growth and Opportunity Act, Pub. L. No. 108-274, 118 Stat. 823 (*codified as amended at* 19 U.S.C. §§ 3701 et seq. (2004)). *See* 19 U.S.C. §§ 2466b, 3721(b)(3)(A)(i) and 3721(b)(3)(B)(i).
4. *See* WTO, Decision Adopted by the General Council on 1 August 2004, Doha Work Programme, WT/L/579 (Aug. 2, 2004).
5. *See* WTO, Report of the Panel, United States – Subsidies on Upland Cotton, WT/DS267/R (Sept. 8, 2004). The United States has appealed the panel's decision to the WTO Appellate Body. *See* WTO, United States – Subsidies on Upland Cotton, *Notification of an Appeal by the United States under paragraph 4 of Article 16 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU")*, WT/DS267/17 (Oct. 20, 2004).
6. *See* World Trade Organization, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, Agreement on Textiles and Clothing, Art. 9, LT/UR/A-1A/11 (April 15, 1994), *available at* http://www.wto.org/english/docs_e/legal_e/16-tex_e.htm (last visited Sept. 10, 2004). A sixth development in 2004, but one whose significance for AGOA beneficiary countries is not yet clear, is the Appellate Body's decision in WTO, Report of the Appellate Body, *European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries*, WT/DS246/AB/R (April 7, 2004). *See infra* note 386 and accompanying text.
7. *See* Decision Adopted by the General Council on 1 August 2004, *supra* note 4, Annex A.
8. *See* United States – Subsidies on Upland Cotton, *supra* note 5; WTO, Report of the Panel, European Communities, Export Subsidies on Sugar, Complaint by Australia, WT/DS265/R (Oct. 15, 2004); WTO, Report of the Panel, European Communities, Export Subsidies on Sugar, Complaint by Brazil, WT/DS266/R (Oct. 15, 2004; WTO, Report of the Panel, European Communities, Export Subsidies on Sugar, Complaint by Thailand, WT/DS283/R (Oct. 15, 2004).
9. *See* WTO, Committee on Agriculture, Special Session, WTO Negotiations on Agriculture, Poverty Reduction: Sectoral Initiative in Favour of Cotton, *Joint Proposal by Benin, Burkina Faso, Chad and Mali*, TN/AG/GEN/4 (May 16, 2003) [hereinafter Joint Proposal].
10. A challenge to such self-selection arose in the WTO accession negotiations with China, which insisted on accession as a developing country in the services and agricultural sectors. Some WTO Members, especially the United States and the EU, resisted China's accession on such terms. In the end, China acceded to the WTO as a hybrid, with treatment in some contexts the same as a developed-country Member, in other instances on terms the same as a developing-country Member, and still in other cases on terms worse than either a developed- or developing-country Member. For example, in connection with safeguards relief, during a twelve-year period starting from the date of accession there will be a special Transitional Safeguard Mechanism in cases where imports of products of Chinese origin cause or threaten to cause "market disruption" to the domestic producers of other WTO Members. The "market disruption" test is an easier one for an importing country to satisfy than is the standard "serious injury" test contained in Article 2 of the Safeguards Agreement. In the agricultural sector, China agreed to limit its subsidies for agricultural production to 8.5 percent of the value of farm output (the comparable figures for developed and developing countries are 5 percent and 10 percent, respectively). *See* WTO, Accession of the People's Republic of China, *Decision of 10 November 2001*, WT/L/432 (Nov. 23, 2001).
11. *See* WTO, Marrakesh Agreement Establishing the World Trade Organization, Original