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# Unleashing the U.S. Investor in Africa: A Critique of U.S. Policy Toward the Continent

*Peter C. Hansen*

**Abstract**
*African investment expert Peter C. Hansen spoke on the future of U.S. investment policy in Africa at The Heritage Foundation on November 2, 2011. Hansen explained that U.S. investors generally avoid Africa because the financial risks are simply too high. Basic legal tools for protecting investors are bilateral investment treaties (BITs) and double tax treaties (DTTs). The U.S. has six BITs and one DTT with sub-Saharan Africa—far fewer than its major economic competitors, including China. The U.S.'s lack of effort to secure such protections reveals that too many U.S. officials are unconcerned with U.S. investor needs in possibly the world's toughest investment environment. They also do not seem to consider U.S. private investment a critical component of U.S. strategic interests in Africa—a critical strategic error that must be corrected.*

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**The Heritage Foundation**
214 Massachusetts Avenue, NE
Washington, DC 20002
(202) 546-4400 | heritage.org

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At a May 2011 conference on the African Growth and Opportunity Act (AGOA) held at the Center for Strategic and International Studies (CSIS), Assistant Secretary of State Johnnie Carson spoke about ways to increase trade between the U.S. and Africa. His take on AGOA was characteristically interesting and thoughtful. One point he made, however, exposed a fundamental problem with U.S. government thinking about African development.

Ambassador Carson stated that it was important to raise the incentives under AGOA (and only under AGOA) for overly "cautious" U.S. companies to invest in Africa. The mistaken assumption underlying this remark was that mainstream U.S. companies will be motivated more by the prospect of higher rewards than by the diminishment of risks. In the Administration's view as represented by Ambassador Carson, Africa doesn't yet inspire enough hope and confidence to overcome fear.

This view is not just wrong, it is counterproductive. The problem with Africa is not a lack of attractive prospects, but rather Africa's risk profile. With few exceptions, sensible U.S. direct investors (that is, those who run projects, not just take portfolio positions) have steered clear

## Key Points

- There is a fundamental problem with U.S. government thinking about African development: a mistaken assumption that mainstream U.S. companies are motivated more by higher rewards than by the diminishment of risks in African investments.
- The reality is that U.S. investors generally avoid Africa because the risks are simply too high.
- Basic legal tools for protecting investors are bilateral investment treaties (BITs) and double tax treaties (DTTs). The U.S. has six BITs and one DTT with sub-Saharan Africa—far fewer than major competitors, including China.
- The U.S. should unleash its greatest economic force—U.S. investors—in Africa. Tens of thousands of entrepreneurs, small businesses, and Fortune 500 companies could bring immense know-how and growth to Africa.
- With basic legal protections, U.S. investors could unleash a flood of development and prosperity in Africa, and send vast revenues to the U.S. that would be just a small part of the wealth created for Africa.

of Africa for the simple reason that Africa's risks often exceed their risk tolerance. The African market has been left largely to non-Americans, to the unsophisticated seekers of El Dorado, and to a legion of "chancers" who seek sweetheart deals with no money down. The resulting tales of woe coming out of Africa, due largely to poor investment planning or thwarted get-rich-quick schemes, serve wrongly to tarnish Africa's reputation.

By exclusively raising incentives and failing to reduce risks, Ambassador Carson's approach simply encourages those already prone to failure, without inspiring broad-spectrum investment by serious U.S. companies. Such bedrock U.S. firms do not need higher incentives. Africa already presents high-return opportunities. What serious U.S. firms need instead is for Africa's risks to be reduced. Rewards that cannot be obtained are, after all, just mirages. The easiest way for the U.S. government to reduce risks for U.S. investors in Africa is to provide them with legal protection.

The basic legal tools for protecting U.S. investors are double tax treaties (DTTs), often called double tax agreements (DTAs) and bilateral investment treaties (BITs). The former make taxes more predictable, and improve margins by preventing the same revenue from being taxed twice. The latter invariably provide access to international arbitration for disputes between investors and host states. This forum is often the only one available that an investor can trust to be impartial.

When these protections are in place, investors can cost out many of their risks. When they are absent, the investor can either try at significant expense to replicate them in private agreements with the host state, or simply take the plunge in the hope that the local U.S. embassy will put in a good word if things go wrong. As might be guessed, most prudent investors avoid this dilemma altogether by simply going elsewhere.

## Few Treaties Support U.S. Private Investment in Sub-Saharan Africa

Despite its rhetoric that sub-Saharan Africa is "open for business," the U.S. government has actually made next to no effort to give American investors legal protection there. The U.S. has just six BITs with sub-Saharan African countries, and only one DTT, this being with South Africa. By contrast, three of the five North African countries have both BITs and DTTs (i.e., Egypt, Morocco, and Tunisia) with the United States. If the North African treaty-coverage percentage transferred to the 49 countries of sub-Saharan Africa (including South Sudan), there would be at least 29 U.S. BITs and at least 29 DTTs.

The extreme paucity of U.S. DTTs in sub-Saharan Africa means that any investment revenue made in Ghana, Ethiopia, Kenya, or Nigeria can be taxed twice. Moreover, local tax breaks given by cash-strapped host states to attract investment can be consumed instead by the U.S. Treasury. These circumstances significantly reduce the high margins allegedly available in Africa. Moreover, they let the U.S. eat the lunch of poor African states or, more often, simply turn U.S. investors away from sub-Saharan Africa.

As for protecting a U.S. investment in sub-Saharan Africa, the situation is hardly better. The U.S. has concluded various trade and investment framework agreements (TIFAs) there, but these are merely agreements to set up talk shops, and provide no real protection to investors. With only six BITs in place, it is clear that the U.S. government does not consider most of sub-Saharan Africa a place where U.S. investors deserve international legal protection by virtue of their U.S. nationality. The U.S. government's lack of systematic effort to secure such protections for its investors reveals a glaring disparity between rhetoric and action. Worse, it indicates that too many officials and diplomats are unaware of, or unconcerned about, U.S. investor needs in arguably the world's toughest environment for investment. Moreover, these officials do not seem to consider U.S. private investment a critical component of U.S. strategic interests in Africa.

The sub-Saharan African treaty partners to U.S. BITs do not include the powerhouses of South Africa and Nigeria, or even obvious up-and-comers like Botswana, Ethiopia, Ghana, Ivory Coast, Mauritius, and Namibia. Instead, they form a small and seemingly random group consisting of Cameroon, the two Congos, Mozambique, Rwanda, and Senegal. With the partial exception of Cameroon, and to some extent Rwanda, none of these countries is even English-speaking. Unless a U.S. investor is ready to handle the challenges of *la francophonie* or Lusophone Mozambique on top of all its other business concerns, the investor will have no hope of treaty protection, unless it can work through a branch or subsidiary in a treaty-rich country like the U.K. Such an option is often available to U.S. multinationals, but seldom if ever to small or medium-sized enterprises (SMEs), which are a rich source of potential U.S. investors for Africa. Likely due in no small part to language difficulties, none of the U.S. BIT partners has significant

OECD-recorded U.S. private investment other than "confidential" flows to the Congos, likely in connection with mining interests.

European investors have far fewer legal concerns when they head down to sub-Saharan Africa. France has 11 BITs with sub-Saharan Africa, and 26 DTTs (*conventions fiscales*). The U.K. has 15 BITs and 17 DTTs (not including air-transport tax agreements). Germany has a whopping 36 BITs. The Netherlands has 20, and even little Belgium has nine. Meanwhile, China, the heavyweight challenger to U.S. interests in Africa, gives its investors the protection of 11 BITs. This is nearly double the U.S. count. In short, U.S. investors face serious legal disadvantages in sub-Saharan Africa when compared to their foreign competitors. The strategic and economic costs of this absence to the U.S. mount by the day, particularly as China continues to make inroads on the continent.

## Lack of Investment Treaties Bad for Private U.S. Investors

Let us consider briefly the plight of a typical U.S. investor who looks at Africa. Our hypothetical investor runs an SME and wants to install a licensed waste-to-energy plant. Our hypothetical investor is not sure in which African country to place his project.

Our U.S. investor is naturally concerned about the safety of his investment, as his capital is limited. He soon finds that no sub-Saharan African country has both a BIT and a DTT with the U.S. Our investor decides, however, not to establish a holding-company subsidiary or branch in a country that is better endowed with investment treaties. He simply doesn't have the savvy or wherewithal to do so. It would require skilled legal counsel, a tax specialist, and most likely local business agents in the subsidiary's host state, all of whom would charge healthy fees. Our investor's decision to avoid these fees and difficulties means that he must settle for his U.S. government-provided options, and thus must choose between security and a reasonable (and reasonably predictable) tax burden. Let us say that he chooses security, and decides to handle tax surprises down the road. This means that our investor has already incurred risks and costs (from weighing his options) before he has even found a country in which to invest. Compared to a European investor whose home country has BITs and DTTs across Africa, our U.S. investor is even at this first step distracted and financially set back. Some U.S. investors would go no further. Let us say, however, that our perplexed investor proceeds.

Our investor now considers the U.S. BIT partners in sub-Saharan Africa. None of these countries is entirely Anglophone. In fact, five out of the six do not have any English-speaking regions. The investor does not speak French or Portuguese, and does not wish to engage others to handle his business in a foreign language. The investor's cultural worries bubble to the fore. He focuses on the only Anglophone area in sub-Saharan Africa covered by a U.S. BIT, this being a region in Cameroon. (He is told that Rwanda is becoming more English-speaking, but it is relatively hard to access, and he is skeptical that his project could work without his having to know French.) The investor finds his extremely limited BIT-party options less than appealing. Many U.S. investors would turn back at this point. Let us assume, however, that our plucky investor keeps going.

Our investor sees burgeoning markets in Ghana, Kenya, and Nigeria. All speak English, all are democracies, and all have common law systems similar to that of the U.S. The U.S. government has not concluded BITs with any of them, however. The investor is naturally concerned about the reliability and usefulness of the local legal systems to protect his investment, given that he is a foreigner and may face prejudice. He also doesn't want to rely on the good graces of the U.S. embassy to protect his limited capital, especially since the embassy may give priority to its own diplomatic interests if his problem turns out to be politically sticky. The investor must therefore try privately to secure BIT-like protections for the investment through a contract or sovereign proclamation or undertaking.

The investor will either have to convince the national government to agree to an international investment arbitration in case there is a dispute, or secure such an agreement from a sub-national authority permitted to bind the national state. This can be hard to do, particularly since the investor is almost certainly unfamiliar with the local political structure and with local officials. He might rely on a local partner if he can find one, but then there are major worries about corruption. He knows that he will violate the U.S. Foreign Corrupt Practices Act (FCPA) if he or his partner gives anything of value to an official to gain acceptance of his proposal. He knows that the U.S. government has been getting ever more eager to prosecute U.S. investors who run afoul of the FCPA's broad provisions. If the investor so much as holds a party in an African country to introduce the project proposal and to give a demonstration, and provides the guests (including some

officials) with hors d'oeuvres, drinks, and souvenir paperweights, he is a federal criminal under U.S. law. This makes the investor queasy. He is unsure how he can market his project to the officials who must approve or even purchase his product.

Our U.S. investor wakes up one day and realizes that he hasn't moved a step ahead with his business. He hasn't found a city for his product, run studies or tests, developed a business plan for the location, or found a single customer. He has, however, spent a huge amount of his time trying simply to figure out how to protect his investment from expropriation and high taxes. When he picks up a newspaper, he reads that his European competitor has found a pilot-project site, and has already broken ground on the outskirts of an African city. Our investor decides that Africa is a waste of his time, and he turns instead to a country that has both a BIT and a DTT with the United States—Kyrgyzstan.

## Depriving Sub-Saharan Africa of Much-Needed U.S. SME Investment

It is argued in some quarters that a lack of BITs is not a real impediment to U.S. investment in Africa. After all, U.S. multinationals can simply shift ownership of an Africa project to a subsidiary holding company in a country with a BIT (and hopefully also a DTT). Meanwhile, for smaller companies, political-risk insurance (PRI) can provide sufficient protection.

It is true that large multinationals are not particularly hampered by U.S. government failures to conclude BITs and DTTs. One advantage of size and geographical spread is an ability to work from different centers. Thus, if a multinational gets no help from the U.S., it can simply run the same business out of its branch in, say, Germany or the United Kingdom. Of course, this may deprive the U.S. of tax revenue and potentially of job opportunities as well. Nevertheless, it is a workable solution for large U.S. companies. Unfortunately, Africa is seldom a destination for private investment by U.S. multinationals, at least outside the resource-extraction sector.

Meanwhile, SMEs are for the most part unable to establish holding companies in treaty-rich third states, so that they are reliant on U.S. investment treaties and particularly harmed by their absence.

As for insurance, if PRI were indeed a panacea, BITs and DTTs would hardly be needed by anyone. In reality, however, BITs and DTTs define and reduce risks, making PRI both more affordable and more targeted, as well as sometimes less necessary. Where such treaties are lacking, PRI becomes a critical, if incomplete, form of security. At the same time, the lack of treaty protection makes private provision of PRI more expensive and harder to come by. Thus, unless a public body like the Overseas Private Investment Corporation (OPIC) or the World Bank provides PRI or otherwise guarantees payment, most U.S. companies, especially SMEs, will tend to avoid sub-Saharan Africa (with the occasional exception of South Africa) to avoid the risk of capital loss.

## U.S. Prefers Non-African Countries as Investment Treaty Partners

One of the seldom-aired assumptions of U.S.–African economic relations is that sub-Saharan Africa must "earn" or "deserve" an economic partnership. This "reward model" withholds access to U.S. bilateral investment treaties until an African state reaches a certain low level of corruption, or a certain degree or type of applied democracy. There is, however, no specific set of criteria for eligibility to receive such U.S. favor. More than one African ambassador has complained to me that the U.S. keeps moving the goalposts. This being said, a favored few sub-Saharan African countries have been exempted from such stringent criteria, including the Democratic Republic of the Congo and, most recently, Rwanda. These countries have attracted U.S. interest, whether extractive, geopolitical, or simply sympathetic in nature, and this interest has overcome normal U.S. government concerns about governance or worrisome trends in politics or respect for human rights.

The U.S. appears to apply a uniquely strict set of standards to sub-Saharan African countries. This is illustrated by various non-African developing countries with which the U.S. has chosen to conclude BITs or DTTs. Let us consider two countries that have been granted both types of treaty: Kyrgyzstan and Sri Lanka.

In 1993, the U.S. freely chose to recognize Kyrgyzstan as one of only five Soviet successor-state BIT partners at that time. (Kyrgyzstan was separately accepted by the U.S. as a successor to the 1973 U.S.–Soviet DTT.) Kyrgyzstan's special status was hardly merited by its political profile. In 2011, Kyrgyzstan ranked 164 of 182 countries in Transparency International's Corruption Perceptions Index (with rank 182 being the most corrupt). That was 10 rankings worse than Zimbabwe's. Kyrgyzstan's politics are reputed to have been infiltrated by organized crime since independence, and ethnic tensions have led to clashes threatening civil war. There can be no doubt that the U.S. accepted Kyrgyzstan for geopolitical reasons

following the end of the Cold War, and that governance was clearly not an issue. Why then, it might reasonably be asked, has Kenya not received a similar nod? Kenya has, after all, laid its ethnic strife largely to rest through a new constitution, and ranks somewhat better on the corruption scale. It can also hardly be doubted that Kenya, the home of East Africa's financial capital and a major ally in the struggle against Somali pirates and al-Shabaab, is a strategically important country for the U.S.

Sri Lanka, with which the U.S. signed a BIT in 1991 and a DTT protocol in 2002 amending the DTT of 1985, was during the whole of this long period embroiled in a vicious civil war pitting the majority Sinhalese against the minority Tamils. Sri Lanka is of middling rank in terms of corruption, being tied in 2011 at 86th place with Serbia. Sri Lanka's respect for human rights has been questioned by international NGOs. Its politics have been plagued by corruption and inter-party violence. Even today, as Sri Lanka's developing economy booms, childhood malnutrition remains a problem. Given that Sri Lanka seems to have merited both a BIT and a DTT despite this disorderly and even disturbing profile, it might properly be wondered why the U.S. did not conclude a BIT or DTT with Nigeria after its return to civilian rule in 1999. Having ended the largely inter-ethnic Biafran War decades before, and while yet admittedly still struggling with corruption (being now well above Kyrgyzstan at 143rd place), Nigeria's transition to democracy and a diversified economy would have been greatly aided by U.S. investment treaties ushering in a wave of U.S. investors across many sectors.

The list of U.S. BIT partners (without accompanying DTTs) presents even more surprising entries when one has sub-Saharan Africa's broad exclusion in mind. For example, there is Albania, which in 2011 was tied with India at 95th place in Transparency International's corruption index. When Albania became a U.S. BIT partner in 1995, Albania was heading for an economic crisis because its financial system was dominated by collapsing Ponzi schemes. This led to the 1997 Lottery Uprising, which toppled the government and saw an Italian-led intervention quell the country's anarchy less than a year before the BIT entered into force. Given such circumstances, it is difficult to see how Albania could have been a better candidate for a BIT than Ghana, which regained democracy at roughly the same time as Albania, and which has had both a much more stable post-socialist economy (three times the size of Albania's), and a better corruption ranking at 69th place.

Let us finally consider a U.S. BIT partner with an economic and political profile somewhat resembling an African country, this being Jamaica. The U.S. signed a BIT with Jamaica in 1994. In 2011, Jamaica had a Transparency International perceived corruption rank of 86, where it is tied with Sri Lanka. Jamaica has an extremely high murder rate, and a GDP of nearly $15 billion, which is somewhat smaller than Uganda's (at over $16 billion) and much lower than that of Côte d'Ivoire (at nearly $23 billion). While both of these latter countries have much worse corruption profiles than Jamaica, it might fairly be asked whether their corruption ratings would improve if U.S. investors were able to enter those larger markets *en masse* with treaty protections. In all events, there is no proper reason for Jamaica to merit a BIT while similarly democratic Ghana is ignored despite its over $37 billion economy and far better corruption ranking of 69.

In short, there is no principled basis for sub-Saharan Africa to be de facto largely excluded from U.S. BIT and DTT partnerships. Many U.S. treaty partners have profiles that compare quite unfavorably to those of important sub-Saharan African countries. Moreover, geostrategic interests can hardly apply to countries like Jamaica and Sri Lanka. The reasons for U.S. government disinterest in sub-Saharan Africa must therefore lie not in relatively unattractive profiles or a relative lack of strategic value, but in some other motivation.

## U.S. Inaction on Investment Treaties Has Led to Vicious Cycle of Inactivity

The U.S. strategy for BITs is hard to discern except insofar as BITs appear to be used by the U.S. as a sweetener, reward, or boost for certain less-than-investment-grade countries with some strategic or other perceived value. Meanwhile, the roster of American DTTs is rather broader than that of American BITs, largely because the U.S. has included among its DTT partners Western European countries as well as other major markets and offshore banking centers (for example, Barbados, China, India) for which BITs are apparently deemed either unnecessary or not feasible. The geostrategic purposes of U.S. DTTs cannot readily be discerned from their diverse set of counterparties, apart from an obvious interest in tracking international banking flows and handling tax efficiently as between advanced economies.

From the dearth of U.S. BITs and DTTs with sub-Saharan Africa, it may reasonably be deduced that the U.S. views sub-Saharan Africa as of

relatively low value as either an economic or geostrategic partner. The prevailing attitude was expressed to me by an unnamed Treasury official who, when asked why the U.S. wasn't trying to conclude more DTTs with Africa, replied that apart from problems such as a lack of capacity on the part of African officials to handle tax treaties, there was no U.S. business demand for sub-Saharan Africa to justify such efforts.

The skeptical Treasury official did not seem to understand that the lack of taxable U.S. investment in sub-Saharan Africa was a direct result of the lack of treaty protections like DTTs. In other words, the official did not consider that instruments like BITs and DTTs drive U.S. investment into Africa, and thus foster development and further U.S. business interest. The official likewise failed to grasp that the U.S. government was using the results of its own inaction as a reason not to act.

This vicious cycle is not only maddening for those seeking to turn the U.S. toward Africa. It also exposes how empty the "Africa is open for business" talking points of U.S. officials can appear. The lack of treaty protections for U.S. investment in sub-Saharan Africa may be likened to the invisible but deadly effects of carbon monoxide. The damage is seen in official statistics showing low levels of investment and low development indicators, but there is usually no sign of how this outcome was reached. Decade after decade, U.S. officials have seen these statistics, but have never considered one simple course of action: Doing everything possible to flood sub-Saharan Africa with U.S. private investment. If political stability and the rule of law in sub-Saharan Africa have been considered weak, the obvious solution has been for the U.S. government to provide U.S. nationals with treaties that provide a legal framework and critical protections for their investments. Apart from the offer of insurance against political risk, however, the U.S. has done little to secure such protections.

## U.S. Has Ingrained Reasons Not to Promote Private U.S. Investment in Africa

After roughly 30 years of engagement with China, where the U.S. has pursued economic partnership as a political and development tool despite severe concerns and moral quandaries, one might imagine that the U.S. government would take a similar approach to sub-Saharan Africa. The fact that the U.S. government has not done so indicates that a different political or bureaucratic calculus has been applied by U.S. officials to sub-Saharan Africa.

There is a qualitative difference between China and sub-Saharan Africa. China is a single political unit with a single official language, a massive population, and an extremely long history. China poses a serious strategic challenge to U.S. interests in Asia, and in the 1970s and 1980s was useful to U.S. strategy to counter the USSR. China is also a convenient partner, since the U.S. need speak with only one government. U.S. political and economic engagement with China is consequently a rather straightforward affair despite readily discoverable and studied cultural differences. A U.S. official who is assigned to China gets a plum assignment. The official can work with an ancient regional hegemon, on the grand stage of modern power politics.

By contrast, a U.S. official assigned to sub-Saharan Africa is sent to a region deemed largely off the world power grid. Sub-Saharan Africa is an utter tangle in comparison to China, with dozens of countries and relatively small populations spread across a vast continent with severe transport problems. Several European languages are spoken, as well as thousands of tribal ones. The cultures of these populations are old, but immensely diverse and rapidly changing. Moreover, there is little history or cultural information accessible to the West outside of ethnological studies. If one Googles "African business customs," for example, the first 10 pages will return some information about white South African customs, and a snippet about Nigeria. If one wishes to do business in, say, Benin's capital Cotonou, one must learn on the ground. (One SME investor of my acquaintance spent six months in Ghana to learn the ropes, and another spent eight months in Guinea, but neither felt that he had understood his surroundings completely when he left.)

A U.S. official may spend a decade learning the ways of a given sub-Saharan African country or region, with little chance to use this knowledge elsewhere. The official is not likely to remain anywhere near that long, however. Apart from the regular rotations of the U.S. Foreign Service, an ambitious official will often seek assignments elsewhere. A U.S. official is therefore likely to find a stage in sub-Saharan Africa (or dealing stateside with such matters) to be something of a detour or a paying of dues. It takes a dedicated and talented official (and there indeed are some) to see sub-Saharan Africa's potential and to push for a true economic partnership between the U.S. and sub-Saharan African countries.

Building such a partnership can be an uphill climb even for interested U.S. civil servants. U.S. officials are

usually either short-term political appointees at the senior levels with limited staying power, or long-term career officials less connected with how the world works outside government. U.S. bureaucrats are salaried, and face little to no risk of financial loss or unemployment. Few U.S. civil servants have ever conceived of, let alone faced, the risk assessments, cost calculations, and hard decisions described above for U.S. investors considering sub-Saharan Africa. In many cases, U.S. businessmen are as alien to a U.S. official as are Africans themselves.

A further obstacle is the fact that the metrics of public-sector success are often wholly unrelated to private business success. For example, I was once politely brushed off when I offered to help set up a private-sector group to advise a U.S. official who dealt with U.S. investment into Africa. The official was quite content that he had helped set up one probable business deal in the course of two large, government-funded conferences on which hundreds of thousands of dollars had likely been spent. To put the utter insignificance of this "success" in context, one must simply look to China, which is plowing billions of its dollars into African commercial empires that are expanding rapidly across the continent.

What has hobbled the U.S. government more than anything else is the "groupthink" notion that Africa will not be a serious business location for the foreseeable future. This tacit official view is revealed most obviously in the constant official invocations of the Millennium Challenge Corporation (MCC) and OPIC as founts of U.S. investment for Africa. The underlying assumption is that U.S. companies can be coaxed into Africa only if they have a U.S. government "investor" behind them.

Meanwhile, the failures and inactivity caused by the poor legal conditions for private investment set by the U.S. government are used to justify the continuation of existing government practices and attitudes. A vicious cycle thus revolves around U.S. government inertia, to the detriment of both the U.S. and Africa.

There are powerful bureaucratic incentives for the U.S. government not to improve legal conditions for purely private U.S. investment in Africa. Long government careers have been spent developing policies and programs for sending aid to long-term recipients. Turf and budget wars have calcified the official Africa agenda. Client relationships with African officials have been carefully developed. Aid and "capacity building" programs won't be needed in a middle-class Africa, and hard-won budget lines and job postings would have to be reconsidered. Indeed, entire dependency-based Africa agendas might need replacing. In addition to the bureaucracy's desire to keep its "rice bowl" filled, there is also officialdom's innate terror of having private actors take over what has long been a government playground. In the face of such threats to the status quo, it is much easier for U.S. officials simply to ignore Africa's rise and its policy implications. It also unfortunately makes things easier for China, and diminishes U.S. options on the continent.

To be sure, negotiating DTTs and BITs, and particularly the ever-controversial and complex U.S. model BIT, can be difficult work. This is particularly so when the other country has far less legal capacity on hand. Ultimately, however, getting the job done is a matter of setting priorities and allocating resources based on a long-term strategic vision. If the U.S. can conclude BITs with Albania, Grenada, and Mongolia, it can surely do so with far more significant countries like Ghana, Kenya, Nigeria, and South Africa. Put another way, if Germany and even the Netherlands can conclude BITs with numerous sub-Saharan African countries, why can't the U.S.?

## U.S. Should Not Constrain Private Investment in Sub-Saharan Africa

Sub-Saharan Africa can no longer feasibly be ignored as a vital emerging market for purely private U.S. investment. This key fact has, however, been ignored to date by the U.S. government, which continues to see U.S. investment in sub-Saharan Africa in strictly paternalistic terms. The U.S. government must take serious steps to make sure that U.S. investors can enter this vast market securely and, most important, without the direct intervention of the U.S. government. After all, the U.S. government lacks the capacity to help each individual U.S. investor who could potentially enter Africa. To fill the continent's vast demand, U.S. investors must be free to act, not tied up by their government's apron strings.

The recognition that massively increased U.S. private investment in sub-Saharan Africa is both a strategic good and a strategic necessity brings us to one other deeply problematic aspect of Ambassador Carson's statement, and one that is easily overlooked. This is the explicit tying of U.S. investment assistance to an export-driven development model under AGOA. Ambassador Carson was quick to emphasize that only AGOA-focused investments would get incentives. Why should this be so, however? Why is one U.S. investment any better or worse than another, if they can both succeed?

The basic conceptual error in Ambassador Carson's statement is the notion that Africa needs to adopt an Asian-style export model for development. To be sure, trade can boost economic opportunities and lead to an ever more complex and sophisticated division of labor. It is also good to diversify exports for the same reasons that workers select diversified retirement portfolios. There is, however, no reason to expect that exports can or should be the starting-point of a development boom, particularly when the infrastructure to produce those exports is severely underdeveloped.

The fundamental mistake in an AGOA model for Africa is to assume exporters who do not actually exist, and who are unlikely to appear in the face of a temporary U.S. trade opening. Africa was not waiting for AGOA with factories at the ready. Instead, Africa has been properly focused inward. With generator-dependent factories closing in Nigeria because of cheap Chinese imports into Nigeria, it should be obvious that Africa needs and wants to get its house in order so that it can compete seriously on the international plane.

Strange as it might be to hear, Africa does not need trade alone. It needs investment *that will make trade possible*. Even AGOA's supporters bemoan the hindrances to African exports caused by a dire lack of roads and other infrastructure. The reason for these impediments is obvious. Rather than send in U.S. investors to build the bridges and mend the roads, the U.S. has asked an unprepared Africa to start exporting like an Asian tiger. The U.S. placed the cart squarely before the horse, and, predictably, the cart did not budge.

For this reason, the raging Beltway debate over AGOA's renewal is in reality a storm in a teacup. What the U.S. should be spending its time and energy on is unleashing the greatest economic force in the U.S. arsenal—U.S. investors. There are tens of thousands of U.S. entrepreneurs, SMEs, regional companies, and Fortune 500 powerhouses who could bring immense know-how and capacities to bear in Africa. Given basic legal protections, they could let loose a flood of development and prosperity on the continent, and send home vast revenues that would be only a small part of the immense new wealth that they would create for Africa.

While the present hope under AGOA is that Africans will send clothes to the port along Chinese-built roads, it should be U.S. contractors building the roads, and the port, and the factory. After this initial infrastructural phase closes, and as Africa comes online as a truly world-class economic power, it should be U.S. companies setting up shop there, looking to produce for the African consumer. As an enormous new market, Africa would absorb most of its own production, and would also present U.S. manufacturers with a vast new demand for high-end U.S. goods.

Massively increased U.S. private investment in Africa would also work powerfully in favor of U.S. strategic alliances across Africa. U.S. investors would serve as commercial ambassadors, forging economic and social ties that would undergird political cooperation. In addition, the humanitarian aims of the U.S. aid agenda, from eliminating child labor to establishing women's property rights to fostering transparency and the rule of law, would be powerfully advanced by thousands of U.S. companies that would bring their practices from home and help mold Africa's economic rise along modern social lines.

## Conclusion

The gap between Africa's present poverty and its prosperous future is much smaller than commonly thought. It takes only the right choice of path to get there. U.S. investors could blaze this path with enormous success, and without contentious trade distortions or threats to U.S. jobs. Getting them to do so requires only that the U.S. government make Africa legally safer for U.S. private investment initiatives.

So, the next time you hear a U.S. official talking about Africa, ask what he or she is doing to legally protect the U.S. investor there. You may get a strange look the first time, but soon enough there will be policies, talking points, action plans—and progress.

*—**Peter C. Hansen** is Principal Counsel at the Law Offices of Peter C. Hansen, LLC, a Washington firm that specializes in African investment law. Mr. Hansen served formerly with the World Bank and the United Nations, and participates in The Heritage Foundation's Working Group on Africa.*