



Testimony of Beth Baltzan
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The Caribbean Basin Trade Partnership Act: Considerations for Renewal
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For decades, the United States has endeavored to use trade policy to promote development in foreign countries. When preference programs come up for renewal, policymakers take advantage of the opportunity to engage with beneficiary countries, evaluate the ways in which these programs have fostered development, and discuss opportunities for improvement. These programs are an important component of American economic policy in developing countries.

Our preference programs began with the Generalized System of Preferences in 1975. Over time, we also found value in creating programs to serve regional goals. Thus, we have had programs for the Caribbean, including special preferences for Haiti, as well as sub-Saharan Africa and the Andes. While the GSP criteria apply to all beneficiary countries, there are varying criteria governing each of the programs.

With the expiry of some of these programs on the horizon, Congress has the opportunity to take a holistic view of the ways the programs might be improved to further the longstanding U.S. commitment to development. As we reflect on our experience with these programs, one important area that has not received enough attention over the years is the degree to which these programs support the creation and expansion of a robust middle class in beneficiary countries. A study sponsored by the Economic Commission for Latin America and the Caribbean explains the importance of the middle class in this context:

a higher share of income for the middle class (and lower ethnic polarization) {is} empirically associated with higher income, higher growth, more education and other favorable development outcomes.¹

Our programs, however, do not directly promote the development of the middle class. When the seeds of what would become the Generalized System of Preferences were planted in the late 1960s and early 1970s, the prevailing view was that the interests of business and development would be mutually reinforcing, and by facilitating investment in developing countries, development would follow. The Joint Economic Committee Subcommittee on Foreign Economic Policy held a series of hearings from 1969 to 1970, with a four-day session dedicated to U.S. policy toward developing countries.² The session was to be kicked off not by

¹ Andrés Solimano, [The Middle Class and the Development Process](https://repositorio.cepal.org/bitstream/handle/11362/5432/1/S0800297_en.pdf), April 2008, at 8 (https://repositorio.cepal.org/bitstream/handle/11362/5432/1/S0800297_en.pdf)

² [A Foreign Economic Policy for the 1970s](https://www.jec.senate.gov/reports/91st%20Congress/A%20Foreign%20Economic%20Policy%20for%20the%201970s%20Part%20III%20(477).pdf), Joint Economic Committee Subcommittee on Foreign Economic Policy, Part 3 (https://www.jec.senate.gov/reports/91st%20Congress/A%20Foreign%20Economic%20Policy%20for%20the%201970s%20Part%20III%20(477).pdf)



development experts, but by the former Chairman of Bank of America, followed by the Chairman of United Fruit.

The U.S. business community wanted to invest in these countries – and the U.S. business community wanted its investments in those countries to produce returns. Providing preferential access to the U.S. market was one way of ensuring those returns.³ Thus, the principal goal was to promote U.S. investment in developing countries, and the corollary was to make the U.S. market available for those exports.

However, U.S. business and the U.S. government have differing time horizons. While businesses tend to be focused on short-term returns, the U.S. government, *particularly* in the area of development, is more concerned with long-term goals. Therefore, the operative theory underpinning these programs – that the consequences of investment will improve development – should be reexamined.

Even the Financial Times editorial board recognizes that it is time to reconsider the economic policies that have guided us for the past forty years.⁴ In that context, it is appropriate for us to take a fresh look at the extent to which these programs are investment promotion vehicles and the extent which they are development programs. Where investment goals and development goals do not align, development goals should prevail.

THE ELIGIBILITY CRITERIA: DO THEY PROMOTE DEVELOPMENT – OR RETURNS TO CAPITAL?

The criteria for these programs reflect Congress' priorities. Reviewing them from a contemporary lens, however, it is clear that many of the criteria promote the goal of the U.S. business community to secure its investments, consistent with the view from the 1970s that investment and exports would realize development. Thus, there are criteria relating to arbitral awards,⁵ intellectual property protection,⁶ market access,⁷ “distorting” investment policies,⁸ and barriers to services in trade.⁹

³ In *Pivotal Decade: How the United States Traded Factories for Finance in the Seventies*, Judith Stein asserts the Generalized System of Preferences was conceived as a program designed to guarantee returns for banks that had made investments in developing countries such as a Brazil. “Western banks financed steel mills in Brazil, shipyards in South Korea, and petrochemical plants in Mexico. The new producers looked to the U.S. market to sell their wares. Many of these goods competed with America’s pressed industries. Nevertheless, banks lobbied for Third World access to American markets because that was the only way to get repayment of their loans.” Stein, at 95.

⁴ “Virus lays bare the rraility of the social contract: Radical reforms are required to forge a society that works for all,” *Financial Times*, April 3, 2020 (<https://www.ft.com/content/7eff769a-74dd-11ea-95fe-fcd274e920ca>)

⁵ 19 U.S.C. Sec. 2462(b)(2)(E)

⁶ 19 U.S.C. Sec. 2462(c)(5)

⁷ 19 U.S.C. Sec. 2462(c)(4)

⁸ 19 U.S.C. Sec. 2462(c)(6)(A)

⁹ 19 U.S.C. Sec. 2462(c)(6)(B)



Certainly a sound business climate is helpful to developing countries. Criteria around uncompensated expropriation and nationalization, for example, are appropriate.¹⁰ The rules in AGOA involving market-based economic requirements and rule of law might be appropriately applicable to all beneficiaries, perhaps in lieu of the criteria involving specific sectors, such as investment, intellectual property, and services.

But the sector-specific criteria in GSP seem less focused on promoting a sound business climate than on guaranteeing returns to American businesses involved in those sectors. The provision on arbitral awards may even contribute to moral hazard. How many times must a country default on its debt before investors take better care before reinvesting there?¹¹ Yet investors avail themselves of this criterion to flog beneficiaries,¹² jeopardizing preferential access to the U.S. market that may be necessary to help the country dig out of its financial predicament.

Similarly, the intellectual property prong is invoked to criticize countries that do not provide what the United States deems to be “adequate” intellectual property. Too often, “adequate” is interpreted solely as being identical to the protection provided in U.S. law. For example, industry is pushing to remove South Africa’s GSP status because the South African government is considering copyright legislation that has a “fair use” exception broader than that set out in U.S. law.¹³ GSP generally does not impose developed-country standards on developing countries. Intellectual property should be no different.

The market access criterion also seems reasonable enough at first glance. However, our experience with preference program renewal illustrates that this provision, too, is subject to overuse. U.S. exporters – including some that do not bother to work within the developing country’s system to vindicate their rights -- then hold preference renewal hostage as they air their list of grievances to Congress.¹⁴

The business community is rightly concerned that other governments are obtaining preferential market access by seeking to negotiate “partnership” agreements with developing countries.¹⁵ It is unfortunate that other governments are moving away from a development model, toward a model that seems more focused on remuneration for the developed country itself. But that is not reason enough for the U.S. government to abandon its own development focus as a result.

¹⁰ 19 U.S.C. Sec. 2462(b)(2)(D)

¹¹ Ben Bartenstein, Sydney Maki, and Marisa Gertz, “One Country, Nine Defaults: Argentina is Caught in a Vicious Cycle,” Bloomberg, September 11, 2019 (<https://www.bloomberg.com/markets/fixed-income>)

¹² See Wikipedia Entry for Azurix (<https://en.wikipedia.org/wiki/Azurix>).

¹³ “Fight Over South African Copyright Bill Takes Center Stage in GSP Review,” Inside U.S. Trade, September 3, 2020 (<https://insidetrade.com/daily-news/fight-over-south-african-copyright-bill-takes-center-stage-gsp-review>)

¹⁴ Kevin Lovell, “South Africa: The War of the Chickens,” October 16, 2016 (<https://agoa.info/news/article/6296-south-africa-the-war-of-the-chickens-opinion-piece.html>)

¹⁵ European Commission: Economic Partnerships (<https://ec.europa.eu/trade/policy/countries-and-regions/development/economic-partnerships/>)



In our discussions of trade priorities, we often overestimate the importance of exports to the overall U.S. economy. According to the International Trade Commission, all of our regional and bilateral trade agreements *collectively* contributed .2% to our GDP in 2012.¹⁶ While the loss of any market access is regrettable, it should not warrant abandoning our longstanding commitment to unilateral preferences as a development tool. As Mr. Lewis commented in 2015, “What does it profit a great nation to gain trade and lose its soul?”

At the AGOA forum in 2014, a bipartisan panel of Members talked about the importance of development in Africa. A Member of the African delegation turned to me and said “you Americans don’t just want our raw materials. You want Africa to develop.” Yes, we do. Viewing developing countries as export markets, or sources of scarce raw materials, is not a development policy.

Indeed, if we move away from the focus on short-term returns, and instead focus on long-term results, then it becomes clear that the best way to ensure markets for U.S. exports in developing countries is to ensure that these countries develop a robust middle class. The Chamber of Commerce’s argument that 95% of consumers are outside the United States¹⁷ fails to take into account the poverty of many of those consumers. If we support the broad-based development of a middle class in beneficiary countries, they will then have the purchasing power to consume U.S. exports. In that way, promoting development brings with it the bonus of being good for the United States – but it is a bonus, not the purpose.

CRITERIA TO PROMOTE DEVELOPMENT

Congress can use the opportunity of preference program reform to consider what kind of criteria would promote a healthy middle class, as a core pathway to true development. The criteria found in AGOA reflect deeper consideration of development issues.

Congress might consider the following principles as the discussion moves forward.

- Labor rights are part of the solution. Discussion around labor rights and developing countries sometimes suggests these requirements are merely a form of protectionism. To the contrary, ensuring that countries provide core labor rights ensures that workers in those countries reap the rewards of their own labor. Adam Smith himself pointed out that businesses – “masters” – have an inherent tendency to suppress wages:¹⁸

¹⁶ U.S. International Trade Commission, Economic Impact of Trade Agreements Implemented Under Trade Authorities Procedures, 2016 Report, Pub No. 4614, June 2016, at 21 (<https://www.usitc.gov/publications/332/pub4614.pdf>)

¹⁷ U.S. Chamber of Commerce, 95% of the World’s Consumers Live Outside the United States, May 15, 2012 (<https://www.uschamber.com/ad/95-worlds-consumers-live-outside-united-states>)

¹⁸ Revisiting Adam Smith: Monopolists, Tariffs, and the Working Class, August 5, 2020 (<http://americanphoenixpllc.com/revisiting-adam-smith-monopolists-tariffs-and-the-working-class>)



Masters are always and every where in a sort of tacit, but constant and uniform combination, not to raise the wages of labour above the actual rate Masters too sometimes enter into particular combinations to sink the wages of labour even below this rate.¹⁹

He also felt that rewarding labor was a sign of health, whereas stiffing workers was a sign of a failing regime:

The liberal reward of labour, therefore, as it is the necessary effect, so it is the natural symptom of increasing national wealth. The scanty maintenance of the labouring poor, on the other hand, is the natural symptom that things are at a stand, and their starving condition that they are going fast backwards.²⁰

Thus, the father of free trade believed that labor exploitation was inimical to national welfare. Smith did not believe owners of capital would invest it outside the country and therefore did not anticipate the kind of labor arbitrage prevalent today, which incentivizes a race to the bottom. Senator Bill Cassidy recently noted that labor arbitrage is not an appropriate basis for trade.²¹

Countries should respect core labor rights. The Administration is rightly holding Thailand accountable for its labor practices, including tolerance of human exploitation in the seafood industry.²² Special market access rules for the Haiti program include factory-specific inspections, which allow both the Haitian and U.S. governments to focus on ensuring that workers enjoy basic rights.

The labor rules in our programs are not designed to suppress development in beneficiary countries. Indeed, they are designed to do just the opposite.

- But we need to do more to address inequality. The model under which businesses invest in developing countries may indeed contribute to rising *per capita* gross national income. However, to date, we have not spent much time discussing the *distribution* of the additional income within the developing country. Are the benefits inuring to oligarchs, with trickle-down effects for those producing the goods that are then exported back to the United States?

¹⁹ Adam Smith, Wealth of Nations (Modern Library), at 76.

²⁰ *Id.*, at 84.

²¹ Senate Finance Committee, Censorship as a Non-Tariff Barrier, June 30, 2020 (<https://www.finance.senate.gov/hearings/censorship-as-a-non-tariff-barrier-to-trade>)

²² USTR Announces GSP Enforcement Actions, October 25, 2019 (<https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/october/ustr-announces-gsp-enforcement>)



Labor rights are an important component of redressing inequality. But we can do more. Nobel laureate Amartya Sen has contended Bangladesh has a better record on income equality than India, despite the fact that India has a higher per capita GDP.²³ Sen's assessment focuses on such issues as life expectancy among the poor and immunization rates. As Financial Times editor David Pilling characterized Sen's views, "Bangladesh had achieved more development with less GDP."²⁴ Other metrics for economic inequality include the Gini index.

The importance of squarely addressing inequality is not new, even if we have failed over the years to adequately reflect it in the program. Testifying in 1970, Ford Foundation Executive Vice President David Bell recognized the importance of rising per capita income, but also explained that "the people of those countries, like those in advanced countries, are interested in a distribution of income which meets standards of equity."²⁵

Finally, the program to date does not adequately take into account the role women play in enhancing development. The World Bank has calculated that gender inequality costs countries \$160 trillion in lost earnings. In developing countries in particular, women are often forced to work in the "informal" sector, with a consequential deprivation of earnings over their lifetimes.²⁶ As President of the National Council of Textile Owners Kim Glas recently testified before this Subcommittee, the textile and apparel sector is the largest employer in the world, and a significant employer of women in developing countries. Senators Bob Casey and Cortez-Masto have introduced a bill that creates a GSP criterion to require equal rights and protection under the law, regardless of gender.²⁷

- Competition is also relevant to economic equality and democracy. Along the lines of asking who benefits from U.S. trade preferences, we should consider whether these programs are *fostering* oligarchy. The founders of the multilateral trading system, based on their experiences with the 1929 crash as well as the relationship between industry and fascist governments in Europe, mistrusted concentrated economic power and considered it a threat to democracy.²⁸ If we want equitable development that fosters

²³ David Pilling, The Growth Delusion (2018) at 130.

²⁴ *Id.*

²⁵ Testimony of David E. Bell, A Foreign Economic Policy for the 1970s, Joint Economic Committee Subcommittee on Foreign Economic Policy, Part 3, at 630 ([https://www.jec.senate.gov/reports/91st%20Congress/A%20Foreign%20Economic%20Policy%20for%20the%201970s%20Part%20III%20\(477\).pdf](https://www.jec.senate.gov/reports/91st%20Congress/A%20Foreign%20Economic%20Policy%20for%20the%201970s%20Part%20III%20(477).pdf))

²⁶ World Bank, Unrealized Potential: the High Cost of Gender Inequality in Earnings, at 116, (<https://openknowledge.worldbank.org/bitstream/handle/10986/29865/126579-Public-on-5-30-18-WorldBank-GenderInequality-Brief-v13.pdf?sequence=1&isAllowed=y>)

²⁷ Casey, Cortez-Masto Introduce Legislation to Push for Women's Rights in International Trade, June 18, 200 (<https://www.casey.senate.gov/newsroom/releases/casey-cortez-masto-introduce-legislation-to-push-for-womens-rights-in-international-trade>)

²⁸ Testimony of Beth Baltzan, Senate Finance Subcommittee on Trade, June 30, 2020 (<https://www.finance.senate.gov/hearings/censorship-as-a-non-tariff-barrier-to-trade>).



democracy, then we must consider whether these programs promote true competition within these countries, or whether they promote vertical and horizontal consolidation. In such circumstances, the benefits of trade are concentrated in the hands of the few.

- Competition *among* beneficiaries is important. The current GSP statute provides that if a country is sufficiently efficient at producing a good that it does not *need* the tariff preference in order to be competitive, then imports of that good are no longer eligible for tariff preferences from that country.²⁹ This is an important rule, particularly in an era in which we are concerned about supply chain concentration.

This is also an area where there is tension between development goals, and business goals; businesses that have invested in certain developing countries want to retain preferred tariff treatment, even when they do not need it for exports to be competitive. We tend to assume these tariff benefits are passed on to consumers, but it is as likely – given the sizeable share buyback policies of importing companies over the past few years -- that these benefits are instead passed on to shareholders, or executives, in the form of outsized compensation. In either case, the true purpose of the programs is to advance development; benefits to consumers or shareholders are secondary concerns, and where they clash with development goals, development goals should prevail.

One example of the priorities of business overtaking the priorities of development is travel goods. In the Trade Preferences Extension Act of 2015, Congress made travel goods eligible for preferences, and the Obama Administration extended those preferences to least developed countries – including Haiti – and AGOA beneficiaries. The business community objected, complaining that countries such as the Philippines were left out,³⁰ and pushed for those preferences to be extended to all beneficiary developing countries. This Administration agreed to do so.³¹ The business community hailed the change, touting the benefits allegedly inuring to American workers, consumers, and investment – but not about the benefits to development itself.

- Product expansion may be good for business, but not development. Because of the presumed relationship between investment, exports, and development that has prevailed over decades, renewal of preference programs invariably triggers a discussion of product expansion. Some beneficiary countries argue that if only they had duty-free access on this product, or that product, their development trajectory would be radically altered. In my experience, developing countries are fed these requests by businesses interested in tariff engineering. Again, that is a valid goal for business, but it is not necessarily a goal that promotes development.

²⁹ 19 USC 2463(c)(2).

³⁰ Outdoor Industry Association, USTR Announces Limited GSP Travel Goods Program, July 1, 2016 (<https://outdoorindustry.org/article/ustr-announces-limited-gsp-travel-goods-program/>)

³¹ American Apparel and Footwear Association, “AAFA Applauds GSP Travel Goods Decision,” June 29, 2017 (https://www.aafaglobal.org/AAFA/AAFA_News/2017_Press_Releases/AAFA_Applauds_GSP_Travel_Goods_Decision.aspx)



- Be cautious with respect to rules of origin. Whenever preference program renewal comes up, Congress is inevitably subject to requests to relax the rules of origin. Indeed, in 2015 USTR participated in an effort to use the WTO ministerial in Nairobi to tie Congress' hands on rules of origin. There was strong bipartisan opposition. The preference program rules of origin are generally designed to promote more advanced manufacturing in these countries, and to prevent the kind of simple manufacturing that effectively functions as a pass through for manufacturing performed in non-beneficiary countries.

In addition to preserving rules that promote manufacturing in these countries, we should explore ways to promote further regional integration of supply chains among beneficiary developing countries.

- Our policy should not be to export polluting industries to beneficiaries. In the JEC hearings in 1970, Mr. Bell of the Ford Foundation flagged growing concerns over the environment. Yet even as we have added criteria to the program over the years, we have not added an environmental criterion. Mr. Doggett introduced a bill in 2015 that would require GSP beneficiaries to enforce their own environmental laws and fulfill their international environmental commitments.³²

An environmental criterion is often characterized as an imposition by the United States on developing countries. First, a bill such as Mr. Doggett's is modest, merely holding beneficiaries accountable for the commitment they themselves have chosen to undertake. But beyond that, we must adjust our thinking. Researchers have shown that multinational "firms headquartered in countries with strict environmental policies perform their polluting activities abroad in countries with relatively weaker policies."³³ Are we really taking the position that we should be able to export our polluting industries to developing countries? Are the lives, and health, of developing country citizens not as valuable as our own? *Failure* to impose an environmental criterion is the essence of a neocolonial trade policy, where the lives of those outside the metropole are treated as though they are less valuable than the lives of those within.

- Consider a corporate code of conduct as a condition of import rights. During the JEC hearings, Eldridge Haynes, founder a business information company eventually acquired by the Economist, testified in support of liberalizing trade for multinational

³² Earth Act, (<https://www.govtrack.us/congress/bills/114/hr3627/text>)

³³ Exporting Pollution: "Where do Multinational Firms Emit CO2?" Charles A. Dice Center for Research in Financial Economics, August 2020

(<https://poseidon01.ssrn.com/delivery.php?ID=043105127121024120088075001094091121009036000082061091106022007025111001023083065011120058100122042024053115070126009066106076020090034037034102066123097090077087116058002086073127110093118095092000086007087001117127101030115003121117119094115097006091&EXT=pdf>)



corporations, believing that doing so would make an “enormous contribution to the solution of many of the problems of the world.”³⁴

But even Haynes, who believed in the power of these corporations to do good, nevertheless also believed that they should be subject to a global code of conduct.

I would hope that there would be at least the start of a look at the possibilities of an international agreement that would . . . provide some kind of assurance of good behavior . . . to assure that the multinational corporation is truly a good corporate citizen of the world.³⁵

While the Organization for Economic Cooperation and Development eventually came up with a set of guidelines,³⁶ they are voluntary. Even our trade agreements seem to try to prevent these types of rules from becoming mandatory, stressing the parties’ ability to promote *voluntary* compliance.³⁷

In liberalizing capital flows, the trade system has facilitated the ability of multinational companies to profit from exploitative behavior, be it Rana Plaza in Bangladesh, Bhopal in India, or Xinjiang in China. Voluntary guidelines have not stopped the behavior. While companies invoke corporate social responsibility and tout it in disclosures to the Securities and Exchange Commission, practices on the ground diverge from the image that is being projected. One study suggests that the companies most eloquent on the subject of social responsibility have poorer records – but higher executive compensation and lobbying expenditures.³⁸

Many multinational corporations have adopted the practice of outsourcing compliance, shifting responsibility to subcontractors. Similarly, anecdotal evidence suggests that companies are declining to identify as the “importer of record,” thereby avoiding legal liability for imports made with forced labor. These developments may explain why so many prominent companies were reputed to have supply chains tainted by goods made with forced labor.

Adherence to a code of conduct could be an appropriate prerequisite for the privilege of importing duty-free under preference programs.

³⁴ Testimony of Eldridge Haynes, Chairman and President, Business International Corp., New York, Subcommittee on Foreign Economic Policy of the Joint Economic Committee, A Foreign Economic Policy for the 1970s, Forgotten Books, at 38.

³⁵ *Id.*, at 39, 47.

³⁶ Organization for Economic Cooperation and Development, Guidelines for Multinational Enterprises, (<http://www.oecd.org/daf/inv/mne/48004323.pdf>)

³⁷ See, e.g., Article 14.17 of the new NAFTA. (<https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/14-Investment.pdf>)

³⁸ Aneesh Raghunandan and Shiva Rajgopal, “Do the Socially Responsible Walk the Talk?” May 24, 2020, (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3609056)



TRADE, DEVELOPMENT, AND COVID-19

As Congress considers renewal of these programs, it is also important to take into account plans to diversify supply chains as a result of lessons learned from COVID-19. The United States has rightly realized that decades of policies designed to offshore manufacturing have left us vulnerable, and there is an important conversation about how to restore core competencies and supply chain resiliency.

But it is also worth exploring how developing countries can participate in those efforts, and whether U.S. policy can promote it. While it was understandable that countries with medical equipment production capacity adopted export bans due to shortages of supply, the principal victims of these policies were poorer countries, which did not have similar access either to production or stockpiles.

CONCLUSION

The reevaluation of trade policy currently underway affords us an opportunity to consider our trade preference programs, and whether they are serving their intended purpose.

Trade programs as a development tool were conceived in an era in which the United States had great faith that the business community would provide an important contribution to an increase in the standard of living of poorer countries. That means that our programs have been fundamentally oriented around increasing returns to capital, with the expectation that those returns would be distributed in a way that contributed to development goals. Thus, many of the existing criteria serve the interests of the business community on the assumption that doing so will also promote positive results within the beneficiary country.

Today, evidence suggests that a focus on promoting the creation of a robust middle class is the better path toward development. This is the time to consider whether our programs' criteria are achieving the results we would like to see in beneficiary countries, and whether they should be reconceived to more directly address development goals. Focusing on how to use these programs to promote the development of a middle class will benefit the countries, and provide the longer-term benefit to American exporters of having customers with the purchasing power to buy our goods.

Supporting the development of a healthy middle class involves promoting core labor rights, redressing income inequality, and discouraging the offshoring of pollution. We can recognize the profit-maximizing goals of the business community but create incentives that require them to abide by the sustainability principles that, in an era of stakeholder capitalism, they claim to espouse.



Fostering prosperous, democratic countries has long been a goal of U.S. foreign policy generally, and U.S. foreign economic policy specifically. We should make sure our preference programs serve that goal.