

South-South Trade and Investment: The Good, The Bad and The Ugly—African Perspectives

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I. INTRODUCTION

The last decade witnessed two unprecedented and significant developments in the global economic landscape—the emergence of new major global players among developing countries¹ and the development of sound, robust, deepening and widening economic activity between developing countries.² The South's share in global trade is growing steadily and the South now accounts for an increasing share of global demand.³

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1. See generally Dominic Wilson & Roopa Purushothaman, *Dreaming with BRICs: The Path to 2050*, GLOBAL ECON. PAPER NO: 99 (Goldman Sachs, New York, N.Y.), Oct. 1, 2003 [hereinafter Goldman Sachs No: 99].

2. United Nations Conference on Trade and Development, Accra, Ghana, Apr. 20–25, 2008, *Accra Accord*, para. 7, available at http://www.unctad.org/en/docs/tdxii_accra_accord_en.pdf [hereinafter *Accra Accord*].

3. In this paper the term “North-South” refers to the socioeconomic

Developing countries are now trading with one another more than at any other time in history. On the investment front, developing countries are reshaping the world's investment architecture with the phenomenal increase in the depth of outward foreign direct investment (FDI) by these countries into other developing countries. Increasingly, developing countries see South-South economic cooperation as "[a] key element in the strategy of collective self-reliance" and "an essential process of global economic development."⁴ Experts attribute Asia's resilience in the face of the global financial crisis, in part, to the growing significance of south-south trade for the region.⁵ Today, more than 40% of South Korea's exports reportedly go to the BRIC economies of Brazil, Russia, India, and China.⁶ Hanjin Shipping of South Korea, one of Asia's biggest shipping companies, is reportedly threatening the dominant position of Maersk Line of Denmark and CMA CGM of France in West Africa and is also poised to conquer South America, a region presently dominated by European container lines.⁷ The company's chief executive, Kim Young Min, is reported as saying that a terminal the company opened in Algeciras on the Gibraltar Strait in southern Spain in July 2010 will be a "beachhead" for an assault on markets in West Africa and South America.

The concept of a new geography of trade and investment is generating much discussion today.⁸ By some accounts the centre-periphery relationship between the North and the

division between advanced and wealthy developed countries collectively referred to as "the North" and the less developed, poorer countries collectively referred to as "the South."

4. Ministerial Declaration on the Global System of Trade Preference among Developing Countries, in letter dated Oct. 11, 1982 from the Permanent Representative of Algeria to the United Nations addressed to the Secretary-General, U.N. Doc. A/37/544, Annex II (Oct. 14, 1982).

5. David Pilling, *Asia: More Self Contained*, FIN. TIMES, Aug. 10, 2010, <http://www.ft.com/cms/s/0/172359aa-a4b4-11df-8c9f-00144feabdc0.html>.

6. *Id.* The term BRIC was coined by Goldman Sachs' economist Jim O'Neill around 2001 and is used to refer to the four rapidly rising economies of the world: Brazil, Russia, India, and China.

7. *Hanjin Prepares Container Shipping Assault*, FIN. TIMES, July 18, 2010, <http://www.ft.com/cms/s/0/1b1eb180-9285-11df-9142-00144feab49a.html>.

8. On the geography of trade literature, including the Core-Periphery model, see generally ECONOMIC GEOGRAPHY AND PUBLIC POLICY (Richard Baldwin et al. eds, 2003); MASAHISA FUJITA ET AL., THE SPATIAL ECONOMY: CITIES, REGIONS AND INTERNATIONAL TRADE (1999); PAUL KRUGMAN, GEOGRAPHY AND TRADE (1991); DAVID LANDES, THE WEALTH AND POVERTY OF NATIONS (1998).

South, a hallmark of the old geography of trade, is nearing an end if not already completely over. The eleventh United Nations Conference on Trade and Development (UNCTAD XI) opened in June 2004 with an inaugural ceremony and a special session on “The New Trade Geography: The Role of South-South Trade and Cooperation” at which the President of Brazil, Luiz Inácio Lula da Silva, and former Secretary General of the United Nations (UN), Kofi Annan, both talked about a “new trade geography” in which South-South trade would play a growing role.⁹ Increasingly, South-South economic cooperation is no longer seen as friendship of the marginalized but as an inevitable consequence of a steady but gradual shift in power away from the United States and Europe. It is also a shift away from a trade geography that was largely shaped by colonialism¹⁰ and defined by asymmetric patterns. Although South-South economic cooperation remains primarily intra-regional, inter-regional trade and investment is on the rise as well.

South-South cooperation has received the blessing of the UN and the support of the most dominant developing economies.¹¹ December 19th is now recognized as the UN Day for South-South Cooperation.¹² Within the framework of the Group of 77 (G-77), China, Brazil and India, as well as countries in Africa have all endorsed and embraced South-South economic cooperation as a necessary and inevitable development strategy. Proponents believe that South-South cooperation “can contribute substantially to supporting national development agendas and fostering economic growth and efficiency, including providing new trading opportunities

9. United Nations Conference on Trade and Development, June 13–18, 2004, *New Geography of International Trade: South-South Cooperation in an Increasingly Interdependent World*, U.N. Doc. TD/404, (June 4, 2004) [hereinafter *New Geography of International Trade*].

10. Jonathan Lynn, *Developing Countries Turn to South-South Trade*, REUTERS, Feb. 8, 2009, <http://uk.reuters.com/article/idUKTRE5170BC20090208>.

11. See *Position Paper of the People's Republic of China At the 65th Session of the United Nations General Assembly*, Sept. 13, 2010, <http://www.fmprc.gov.cn/eng/wjlb/zjzg/gjs/gjsxw/t751986.htm>.

12. By resolution 58/220 of December 23, 2003, the General Assembly decided to declare December 19th United Nations Day for South-South Cooperation. On that same day, the General Assembly endorsed the Buenos Aires Plan of Action for Promoting and Implementing Technical Cooperation Among Developing Countries. G.A. Res. 58/220, U.N. Doc. A/RES/58/220 (Dec. 23, 2003).

and generating benefits of economies of scale for participating countries, and is particularly important for countries of small economic size.”¹³ Asha-Rose Migiro, deputy secretary-general of the UN, forecasts that “[f]uture historians may well see the rise of South-South co-operation as one of the key developments of the early 21st century. Given its vast potential to support the rise of billions of people from poverty and achieve the [millennium development goals], it is a change that offers us great hope.”¹⁴ According to the Accra Accord, the main document guiding UNCTAD’s work that was adopted in 2004 at the UNCTAD XII quadrennial conference, “the new geography of the global economy has the potential to broaden the spectrum of multilateral cooperation and to promote the integration of all developing countries in the long term.”¹⁵

Africa has not been left out of the South-South train. Turkey’s “Opening up to Africa Policy” was adopted in 1998 and is designed to enhance cooperation between Turkey and Africa.¹⁶ Turkey declared 2005 the “Year of Africa” and the first Turkey-Africa Cooperation Summit convened in Istanbul in August 2008.¹⁷ Launched in 2000, the Forum on China-Africa Cooperation (FOCAC) provides the platform for Sino-Africa cooperation on a broad range of areas.¹⁸ In 2005, president Rho Moo-hyun of South Korea launched the “Korea’s Initiative for African development.” The first Korea-Africa Forum was convened in November 2006. The India-Africa Forum Summit, the official platform for the African-Indian relations, convened in New Delhi on April 8–9, 2008.¹⁹ The IBSA Trilateral

13. *Accra Accord*, *supra* note 2, para. 13.

14. Asha-Rose Migiro, *A New Spirit of Solidarity Rises in the South*, FIN. TIMES, Dec. 9, 2009, <http://www.ft.com/cms/s/0/0d59ea7c-e463-11de-a0ea-00144feab49a.html>.

15. *Accra Accord*, *supra* note 2, para. 7.

16. See generally Serif Bahcecik, *Turkey's "Opening up to Africa": A Passing Fad or A Long-Term Strategy?* (Apr. 2, 2009) (unpublished manuscript), http://www.allacademic.com/meta/p360842_index.html. See also, Mehmet Özkan, *Turkey Discovers Africa: Implications and Prospects*, <http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=mehmetozkan>.

17. Turkey-Africa Cooperation Summit, Istanbul, Turkey, Aug. 18–21, 2008, <http://africa.mfa.gov.tr/the-summit.en.mfa>.

18. See FORUM ON CHINA-AFRICA COOPERATION, www.focac.org/eng/ (last visited Feb. 23, 2011).

19. The Summit brought together the heads of state and governments of India and fourteen African countries chosen by the African Union. Participants discussed future cooperation in a broad range of areas, including trade, science and technology, and the environment.

Cooperation²⁰ as well as the recently concluded cooperation framework agreement between the South African Development Community (SADC) and the Government of the Federative Republic of Brazil²¹ also speaks to the growing linkage between Africa and other developing countries. There are speculations now whether South Africa will join the BRIC countries to create a new truly global grouping that may be called BRICSA or SABRIC.²² Altogether, the years of 2000-10 saw the laying of the foundation-stones of what promises to be strategic relationships between Africa and a host of developing countries. While it may be too early to assess the long term development implications of these new relationships, an examination of their emerging foundations is important and warranted. Although Africa is on board the South-South train, one might wonder just how close to the center of the emerging trade and investment geography the continent really is. The development and the legal and institutional implications of this new geography for countries in the continent, particularly the least developed countries (LDCs), is not yet fully known or explored.²³ This paper seeks to fill this gap in the literature. To the extent that trade and FDI together with sound governance, development aid, and effective global and national policies can be transformative, growing Africa-South economic cooperation has development implications for many countries in Africa and must be constantly scrutinized.

This paper examines, from an African viewpoint, the benefits as well as challenges of South-South cooperation. Answers will be sought to several questions including:

1. Is South-South economic cooperation good for Africa and should African governments scale up efforts to seize the opportunity presented by this revival of South-South cooperation?
2. Does South-South cooperation offer real opportunities for

20. IBSA TRILATERAL OFFICIAL WEBSITE, www.ibsa-trilateral.org/ (last visited Feb. 23, 2011).

21. Press Release, Southern African Development Community, Press Release on the Signing of Agreements in Brazil, <http://www.sadc.int/index/browse/page/729> (last visited March 5, 2011).

22. *South Africa Wants to Join BRICs Club*, THE MARKET ORACLE (Aug 28, 2010), <http://www.marketoracle.co.uk/Article22265.html>.

23. *Least Developed Countries: Country Profiles*, UN OFF. HIGH REP. FOR LEAST DEVELOPED COUNTRIES, LANDLOCKED DEVELOPING COUNTRIES & SMALL ISLAND DEVELOPING STATES, <http://www.unohrrls.org/en/ldc/related/62/> (last visited March 5, 2011).

countries in Africa to reduce poverty, grow their economies, and integrate into the global economy?

3. Does South-South trade and investment provide opportunity for Africa's structural transformation? Is Africa-South trade replicating the unhealthy pattern of trade between Africa and the North, which has Africa locked in as exporter of commodities and importer of manufactured goods?
4. How might African governments proactively exploit and maximize the benefits of South-South trade and investment while minimizing the attendant risks, dangers, and challenges?
5. Will South-South trade contribute to a more balanced and equitable process of global economic governance and development?

The paper focuses on South-South trade and investment cooperation and does not delve too deeply into cooperation on a host of other areas. The paper focuses primarily on bilateral cooperation arrangements between Africa and other developing countries. The reason is obvious. Of the three main types of cooperation arrangements between Africa and other Southern partners—bilateral, trilateral and regional level cooperation—the bilateral arrangements are the most developed.²⁴ This paper will focus particularly on China-Africa trade and investment relations. The reason for focusing on Sino-African relations is also obvious. Compared to other Africa-South arrangements, China-Africa relations are the most advanced in terms of the volume of trade and investment involved, the level and quality of cooperation on a broad range of subjects, and the quality of the implementing mechanisms.²⁵ As of 2008, two-way trade between China and Africa exceeded US\$100 billion. The past decade has also seen Beijing substantially increase development assistance to Africa, deliver on debt cancellation

24. Bilateral partnerships describe relationships between Africa and a single developing country, such as the Forum on China-Africa Cooperation or the Turkey-Africa Cooperation. A trilateral arrangement stems from cooperation involving a country in Africa and two other developing country partners, e.g., the India-Brazil-South Africa (IBSA). Interregional arrangements describe arrangement between Africa as a block and other regions, such as the Afro-Arab Cooperation or the Africa-South America Strategic Partnership.

25. Uche Ewelukwa, *Trade, Empires and Subjects: China-Africa Trade: A New Fair Trade Arrangement or The Third Scramble For Africa?*, 41(2) VAND. J. TRANSNAT'L L. 505 (2008).

commitments, and open the Chinese market further to products from Africa.

The paper is divided into seven sections. Section 2 provides an overview of the history, evolution and trends in South-South economic cooperation generally. Section 3 examines the participation of Africa in South-South trade and attempts to explain trends in Africa-South economic relations in the past three decades. Section 4 focuses particularly on Sino-Africa trade and identifies past and present trends in the unfolding arrangement. The good, the bad and the ugly aspects of Africa-South arrangements are evaluated in Section 5. Section 6 offers suggestions and ideas on how to move the Africa-South dialogue forward taking into account Africa's long term strategic interests. The paper concludes in Section 7.

II. ORIGIN, EVOLUTION, AND TRENDS IN SOUTH-SOUTH TRADE AND INVESTMENT

A new geography of trade is clearly emerging. Under the old trade geography, countries in the global South served primarily as sources for natural resources and markets for finished goods manufactured in the North. The Center/Periphery trade pattern was reinforced and sharpened by decades of colonial rule and informed the structuring of the global economic apparatus. However, the last two decades have witnessed changes in the landscape of global trade, finance, and investment that point to a restructuring of the old patterns of trade. In the last two decades, the South's share of the world trade has grown (30% in 2004 up from 20% in the mid-1980s), the share of manufactures in the export of developing countries has grown (from 20% in 1980 to almost 70% in 2000), and the frequency of transnational cooperation from emerging developing countries has increased as well. Some developing countries are becoming active players in certain dynamic sectors of global trade hitherto reserved for the North. Developing countries are buying more than ever before from each other, and the income gap between developed countries and some developing countries has narrowed considerably. Furthermore, South-South trade is growing at a much faster rate than North-South trade or global trade and has potential to grow further. It is speculated that an additional US\$15.5 billion in trade would be generated if developing countries agree to reduce the average tariff applied to each other by

50%.²⁶

Although the North remains the main architect of the global economic landscape and the main driver of international economic relations, judged by factors such as income levels, share in world trade, pattern of specialization, institutional considerations, and the size of economic operators, a slow and quiet transformation is arguably underway.²⁷ South-South economic cooperation is not a new phenomenon. What is new is:

- a move beyond regional and sub-regional boundaries to inter-regional cooperation;
- greater visibility given to South-South issues in the programming of global institutions;
- greater rationalization of actions such as better coordination and harmonization of positions and effort to establish formal mechanisms for cooperation and interaction;
- a new emphasis on cooperation within a broader range of areas including trade, investment, finance, energy, and health;²⁸
- a new emphasis on strengthening and widening existing bridges connecting countries;
- greater recognition of South-South cooperation as a viable tool for economic growth and development;
- a new focus on South-South triangular cooperation;
- a shift away from efforts to fundamentally restructure international economic relations and create a New International Economic Order towards efforts aimed at successful integration into the global economic system; and

26. *Statement by His Excellency Sheik Mohamed bin Ahmad bin Jassim Al-Thandi, Minister of Economy and Commerce of the State of Qatar*, HIGH-LEVEL FORUM ON TRADE & INVESTMENT (Dec. 4, 2004) http://www.g77.org/doha/qatar_minister.htm.

27. *New Geography of International Trade*, *supra* note 9, para. 10 (“The primacy of the North in international economic relations, however, will remain. It will continue to decisively influence developments in the world economy and trade. The asymmetries between the economies of developing and developed countries are just too stark, and a meaningful convergence between the two will need a very long period of time.”).

28. *See* Marrakech Declaration on South-South Cooperation, para. 2, Marrakech, Morocco, Dec. 16–19, 2003, <http://www.g77.org/marrakech/Marrakech-Declaration.htm> [hereinafter Marrakech Declaration].

- a shift away from an overtly anti-Western rhetoric towards an emphasis on collective self-reliance.²⁹

This section offers an overview of the history, evolution, and trends in South-South trade and investment cooperation.

A. THE ORIGIN AND EVOLUTION OF SOUTH-SOUTH TRADE

South-South economic cooperation can be traced to the Asian-Africa Conference (Bandung Conference) held in Indonesia in 1955, the Cairo Conference on the Problems of Economic Development in 1962, the first session of the United Nations Conference on Trade and Development in 1964, and the Final Act adopted in 1964 following the conference. The three conferences eventually culminated in the creation of the Group of Seventy Seven (G-77)³⁰ and UNCTAD in 1964. The first ministerial meeting of the Group of 77 in October 1967 concluded with the adoption of the Charter of Algiers, which laid out the challenges confronting developing countries in global trade and noted that expansion of economic cooperation among developing countries was “an important element of a global strategy for development.”³¹ Since 1964, successive declarations of the Group of 77 have emphasized South-South cooperation, including the Caracas Declaration of 1989, the Cairo Declaration of 1986, and the San Jose Declaration of 1997. By 2003, developing countries saw South-South cooperation no longer as merely a desirable goal to pursue but as “an imperative to complement North-South cooperation in order to contribute to the achievement of the internationally agreed development goals including the millennium development goals.”³² South-South cooperation gained new momentum following the Asian-African Sub-regional

29. See generally G.A. Res. 3201 (S-VI), U.N. Doc. A/RES/3201 (May 1, 1974) (proclaiming the establishment of the New International Economic Order (NIEO)); G.A. Res. 3202 (S-VI), U.N. Doc. A/RES/S-6/3202 (May 1, 1974) (discussing the Programme of Action on the NIEO); G.A. Res. 3281, U.N. Doc. A/RES/3281 (Dec. 12, 1974) (discussing the Charter of Economic Rights and Duties of States); G.A. Res. 3362, U.N. Doc. A/RES/3362 (Sept. 16, 1975) (discussing Development and International Economic Order).

30. The Group of 77 (G-77) was established on June 15, 1964 with the adoption of the “Joint Declaration of the Seventy-Seven Countries” by seventy-seven developing countries at the end of the first session of the United Nations Conference on Trade and Development (UNCTAD) in Geneva. See THE GROUP OF 77 AT THE UNITED NATIONS, <http://www.g77.org/doc/>.

31. First Ministerial Meeting of the Group of 77, Algiers, Alg., Oct. 10–25, 1967, *Charter of Algiers*, available at <http://www.g77.org/doc/algier%7E1.htm>.

32. Marrakech Declaration, *supra* note 28, para. 1.

Organization Conference (AASROC) in Bandung, Indonesia, from 29-30 July 2003, UNCTAD XI in Sao Paulo in 2004,³³ UNCTAD XII in Ghana in 2008,³⁴ and the UN Conference on South-South cooperation in Nairobi, Kenya, in December 2009. During a High-level segment on "New Geography of International Trade" at UNCTAD XI, several heads of state and government concluded that: (a) the centuries-old trade geography is changing with the South moving steadily away from the periphery of world economy and trade; (b) developing countries could provide a steady boost to the growth of international trade and expansion of the world economy; (c) given the primacy of the North in international economic relations, South-South trade cannot and must not be seen as a substitute for North-South trade; and (d) South-South trade offers opportunities to developing countries to increase their profile in international trade.

In conclusion, since 1964, developing countries, within the framework of the G-77, have adopted programs directed at implementing the vision of South-South economic cooperation.³⁵ They have also implemented several initiatives directed at broadening and intensifying cooperation including: (i) the establishment of UNCTAD;³⁶ (ii) the launch of the Global System of Trade Preferences Among Developing Countries (GSTP);³⁷ (iii) the establishment of the Perez-Guerrero Trust

33. See Eleventh Session of the United Nations Conference on Trade and Development, São Paulo, Braz., June 13-18, 2004, *available at* <http://www.unctad.org/Templates/Meeting.asp?intItemID=4301&lang=1>.

34. See Twelfth Session United Nations Conference on Trade and Development, Accra, Ghana, April 20-25, 2008, *available at* <http://www.unctad.org/Templates/meeting.asp?intItemID=4287&lang=1&m=13044&info=highlights>.

35. These programs include: (i) Program of Work of the Mexico City Conference on ECDC of May 1976; (ii) the Manila Plan of Action of February 1976; (iii) the Buenos Aires Plan of Action of 1978 (BAPOA); (iv) the Arusha Programme for Collective Self-Reliance and Framework for Negotiations of February 1979; (v) the Caracas Programme of Action on Economic Co-operation among Developing countries (1981); (vi) the Bali Plan of Action (1998); (vii) the San Plan of Action (1997); (viii) the Marrakech Framework of Implementation of South-South Cooperation (2003); and (ix) the Doha Plan of Action (2005).

36. See Joint Declaration of the Seventy-Seven Developing Countries Made at the Conclusion of the United Nations Conference on Trade and Development, Geneva, Switzerland, June 15, 1964, *available at* <http://www.g77.org/doc/Joint%20Declaration.html>.

37. See, e.g., Ministerial Declaration on the Global System of Trade Preferences among Developing Countries, *supra* note 4; Ministerial Meeting on Global Systems of Trade Preferences, New Delhi, India, July 1985,

Fund for Economic and Technical Cooperation among Developing Countries (PGTF),³⁸ and the launch of a Consortium on Science, Technology and Innovation for the South.³⁹

B. TRENDS IN SOUTH-SOUTH ECONOMIC COOPERATION

The growing importance of the South in the global market as well as the new dynamism and momentum in South-South trade underscore developments in the last two decades that have fueled speculations about the emergence of a new geography of trade and investment. Two decades ago South-South trade was considered the “weakest segment of world trade.”⁴⁰ Today, as producers, traders, and consumers, the South is becoming important players in the global market prompting the conclusion, in some quarters, that “the South represents a future engine of growth and dynamism for the global economy.” According to UNCTAD:

- The South’s enjoys a 30% share in global trade (up from 20% in mid-1980s;
- Growing interdependence between the South and North is at a level never seen before;⁴¹
- Over the past 15 years, annual FDI outflow from developing countries have grown faster than FDI

Declaration on the Global System of Trade Preferences, http://www.unctadxi.org/Secured/GSTP/Declarations/1985NewDelhi_E.pdf; Brasilia Declaration on the Launching of the First Round of Negotiations Within the Global System of Trade Preferences Among Developing Countries (1986); Tehran Declaration on the Launching of the Second Round of Negotiations Within the GSTP (1992); São Paulo Declaration on the Launching of the Third Round of Negotiations Within the Global System of Trade Preferences Among Developing Countries (2004).

38. See *About the Perez-Guerrero Trust Fund (PGTF)*, THE GROUP OF 77 AT THE UNITED NATIONS, <http://www.g77.org/pgtf/>.

39. The Foreign Ministers of the Group of 77 and China endorsed the creation of a Consortium on Science, Technology and Innovation for the South (COSTIS) at the minister's annual meeting in New York City on Sept. 22, 2006.

40. See VIVIANNE VENTURA-DIAS, *SOUTH-SOUTH TRADE: TRENDS TRADES AND OBSTACLES TO ITS GROWTH* (1989); see also David Greenaway & Chris Milner, *South-South Trade: Theory, Evidence and Policy*, 5(1) THE WORLD BANK RES. OBSERVER 47 (1990), <http://ideas.repec.org/s/oup/wbrobs.html>.

41. UNCTAD Secretariat, Doha High-Level Forum on Trade and Investment, Doha, Qatar, Dec. 5–6, 2004, *The New Geography of International Economic Relations*, Background Paper No. 1, available at http://www.g77.org/doha/Doha-BP01-New_Geography_of_International_Economic_Relations.pdf [hereinafter UNCTAD Background Paper 2004].

outflow from developed countries.

- Developing countries are becoming important and significant sources of foreign capital in other developing countries.
- In 2003, developing countries accounted for 6% of the world's FDI flows and 10% of the world stock.
- The value of total export of developing economies in merchandise trade rose from US\$4,212.4 in 2000 to US\$6,292.3 in 2005 and US\$8,096.9 in 2007.
- Rise in the percentage share of South-South trade in export of developing countries in merchandise trade rose from 17.2% in 2005 to 24.0% in 2005 and 27.5% in 2007.

The growing dynamism in South-South trade in commodities, manufactures, and services is also a remarkable development of the last two decades. According to available data:

- More than 40% of export from developing countries go to other developing countries;
- South-South trade is becoming important in the trade and development strategies of developing countries;
- Increasing at an annual rate of 11%, South-South trade is growing faster than North-South trade or global trade;
- South-South service trade, FDI, and technology transfer is also on the rise;
- The number of South-South international investment agreements, including bilateral investment treaties and double taxation treaties, has significantly increased; in 2003, 28% of all BITs were those concluded between developing countries (up from 10% in 1989);
- The value of the exports of developing countries in merchandise trade to other developing countries stood at US\$724.0 billion in 2000, US\$1,511.0 billion in 2005, and US\$2,230.3 billion in 2007; and
- The percentage share of South-South trade in total world export of merchandise rose from 11.5% in 2000 to 14.8% in 2005 and 16.4% in 2007.

In conclusion, the last two decades has witnessed a deepening, widening, and intensification of cooperation among developing countries in the economic sphere. Developing

countries are not only trading more with which each other, but are also investing in each others' markets. Pointing to growth in South-South cooperation is a substantial increase in the number of international investment agreements—bilateral investment treaties, double taxation treaties, and preferential trade agreements with investment components—among developing countries. Since 1964, when the first South-South BIT was signed, the number of such agreements has grown. According to UNCTAD, South-South BITs account for 25% of all the BITs and BITs involving developing countries and transition economies account for an additional 10% of all BITs.⁴² In other words, emerging and developing economies are not only attracting more investment, but are also becoming big investors and are investing in other developing countries.

C. IMPETUS FOR SOUTH-SOUTH ECONOMIC COOPERATION

Several factors explain the growth and renewed interest in South-South trade in the last two decades.⁴³ These include: (i) market access barriers and other market entry problems (e.g. costs) in developed countries;⁴⁴ (ii) the global recession and attendant contraction in demand in developed countries; (iii) the perceived need to explore new complementarities now arising in South-South trade;⁴⁵ (iv) developing countries' desire to reduce their exposure to movements in demands in developed countries; (v) the desire of a growing number of developing countries to collaborate in meeting the challenges of globalization, trade liberalization, and multilateralism; (vi) the emergence of new multinationals from emerging economies;

42. U.N. CONF. ON TRADE & DEV., SOUTH-SOUTH COOPERATION IN INTERNATIONAL INVESTMENT ARRANGEMENTS, 5, U.N. Doc. UNCTAD/ITE/IIT/2005/3, U.N. Sales No. E.05.II.D.26 (2005).

43. Several push and pull factors account for the changes in the South-South trade. Among the push factors are: increased competition in domestic markets, need for raw materials, increased market access opportunities, and labor costs. Ethnic and cultural ties, as well as geographic ties, are also cited as examples of push factors. See UNCTAD Background Paper 2004, *supra* note 41.

44. United Nations Conference on Trade and Development, São Paulo, Braz., June 13–18, 2004, *Regionalism and South-South Cooperation: The case of Mercosur and India*, at 13, U.N. Doc. TD(XI)/BP/11 (June 3, 2004) [hereinafter *Case of Mercosur and India*].

45. See Chairman of the Group of 77, Letter dated June 5, 1981 from the Representative of Venezuela for Economic Affairs to the United Nations addressed to the Secretary-General, A/36/333 (June 26, 1981) [hereinafter *Caracas Programme of Action 1981*].

(vii) saturation of demand in developed countries and the need to search out new markets. The growth in South-South trade is also tied to purposeful and strategic policies and actions by emerging developing country economies and their firms, income growth in some developing countries, heightened mobility of factors of production and business, changes in demand patterns, and demographic changes in the North as well as the South.⁴⁶

To proponents, South-South trade offers developing countries immense opportunity for growth and sustainable development. First, South-South trade offers much opportunity for efficiency gains and specialization.⁴⁷ Second, experts believe that “the potential benefit from freer South-South trade may . . . be at least as large as the gains that developing countries can obtain from better access to rich countries’ markets.”⁴⁸ Third, given the room for even greater expansion in the future, South-South trade could yield significant gains for some countries; presently, exports from one developing country to another account for a mere 6% of the total world merchandise trade and South-South trade in services account for a mere 10% of the world merchandise trade.⁴⁹ Fourth, LDCs neglected in the globalization process arguably stand a better chance in South-South arrangements. Fifth, saturation and shift in demand in Northern market makes it imperative for many developing countries to search for new markets. Sixth, South-South trade provides opportunity for countries to break their dependence on Northern markets and/or cushion themselves from the changes in those markets. Seventh, it is also believed that South-South trade provides opportunities for spillovers in knowledge and technology and opportunities for developing countries to share experiences and strategies.⁵⁰ Eighth, at the height of the global financial crisis, South-South trade provided the only bright spot in terms of growth. In the aftermath of the crisis, many developing countries now see the wisdom in turning to their neighbors to bolster trade and compensate for slumping demand in rich countries and falling

46. *New Geography of International Trade*, *supra* note 9, para. 8.

47. *See Case of Mercoser and India*, *supra* note 44.

48. Organisation for Economic Co-operation and Development (OECD), *South-South Trade: Vital for Development*, POLICY BRIEF, August 2006, at 1, available at <http://www.oecd.org/dataoecd/30/50/37400725.pdf>.

49. *Id.*

50. *See Case of Mercoser and India*, *supra* note 44.

commodity prices.⁵¹ Overall, developing countries increasingly see South-South economic cooperation as “a dynamic element in their development,”⁵² and “an important contribution to collective action aimed at equitable restructuring of international economic relation.”⁵³

D. ENDORSEMENT OF SOUTH-SOUTH TRADE

South-South cooperation has received the support of the most dominant developing economies including China,⁵⁴ Brazil, and India. South-South cooperation has long received the blessing of the UN as reflected in numerous instruments, including the Buenos Aires Plan of Action for Promoting and Implementing Technical Co-operation among Developing Countries, General Assembly resolution A/RES/50/119 of December 20, 1995,⁵⁵ Resolution 33/134 of December 19, 1978, Resolution 49/96 of December 19, 1994, and ECOSOC Resolution 1992/41 of June 30, 1992. Encouragement has also come from the International Conference on Financing for Development, held in Monterrey in March 2002,⁵⁶ and the World Summit on Sustainable Development, held in Johannesburg in August 2002.⁵⁷ UN support is also seen in the establishment of the UNDP Special Unit for South-South Cooperation⁵⁸ and the UN General Assembly’s High-Level Committee on South-South Cooperation.

51. Lynn, *supra* note 10.

52. See Ministerial Meeting on Global System of Trade Preferences, *supra* note 37.

53. See Belgrade Declaration on the Global System of Trade Preferences among Developing Countries (1988), pmb., para 2, http://www.unctadxi.org/Secured/GSTP/Declarations/1988Belgrade_E.pdf.

54. See *Position Paper of the People's Republic of China At the 65th Session of the United Nations General Assembly*, *supra* note 11.

55. G.A. Res. 50/119, U.N. Doc. A/Res/50/119 (December 20, 1995), available at <http://www.un.org/documents/ga/res/50/a50r119.htm>.

56. Updated information on the follow-up to the International Conference on Financing for Development can be found at <http://www.un.org/esa/ffd> (encouraging South-South cooperation and urging the strengthening of South-South cooperation in the delivery of assistance).

57. The text of the report of the World Summit on Sustainable Development and information about follow-up action can be found at <http://www.un.org/esa/sustdev/index.html>.

58. *Who We Are*, SPECIAL UNIT FOR SOUTH-SOUTH COOPERATION, <http://ssc.undp.org/?id=177>.

E. THE PROMISE OF WIN-WIN, MUTUALLY-BENEFICIAL OUTCOMES

Embedded in the South-South cooperation discourse is the promise that unfolding arrangements will be based on mutuality of interest and yield beneficial results for all. According to the Caracas Programme of Action of 1981, “[a]ll developing countries should be in a position to benefit equitably from a practical evidence of solidarity.” According to the Ministerial Declaration on the Global System of Trade Preferences Among Developing Countries, the GSTP “should be based on the principles of mutuality of advantages in such a way as to benefit equitably all participants, taking into account their respective levels of economic and industrial development, the patterns of their external trade policies and systems.”⁵⁹ In the Ministerial Declaration of 2009, G-77 Member States stressed that South-South “is a development agenda . . . based on a strong, genuine, broad-based partnership and solidarity . . . complete equality, mutual respect and mutual benefit . . . [and] respects national sovereignty in the context of shared responsibility.”⁶⁰

Also embedded in the South’s critique of the dominant global economic system is a promise that the South-South arrangement will be different from the North-South arrangement and will yield more development-dividends. Over the years, G77 members have expressed concern about:

- the imbalance and asymmetry of the multilateral trading system;⁶¹
- worsening terms of trade for developing countries;⁶²
- the rising tide of protectionism in the developed countries;⁶³
- stalemate in the North-South negotiations;⁶⁴
- the problem of trade gap in developing countries;

59. Ministerial Declaration on the Global System of Trade Preferences among Developing Countries, *supra* note 4, at 3.

60. Ministerial Declaration adopted by the 33rd Annual Meeting of Ministers for Foreign Affairs of the Group of 77, New York, U.S., Sept. 25, 2009, <http://www.g77.org/doc/Declaration2009.htm> [hereinafter 33rd Annual Meeting of Ministers].

61. See Ministerial Meeting on Global System of Trade Preferences, *supra* note 37, para. 2.

62. *Id.*

63. *Id.*

64. *Id.*

- the possibility of compensatory financing to meet long-term deterioration in the terms of trade;
- the volatility of commodity markets;⁶⁵ and
- the dismantling of protectionist barriers to the markets of developed countries.⁶⁶

In conclusion, the twenty-first century is witnessing increasing cooperation among developing countries and renewed efforts to encourage, stimulate, and support South-South cooperation. Although still focused on addressing old issues, over the years new issues such as sustainable development, social development and equity and inclusion, the increased frequency of financial crises, trade subsidies, and the role of information and communication technologies have appeared on the South-South agenda.

III. AFRICA-SOUTH TRADE AND INVESTMENT: TRENDS, MODALITIES, AND MECHANISMS

Africa shares the broad goals of South-South cooperation including the goals of fuller integration into the world economy,⁶⁷ influencing the structure, agenda, and architecture of international economic relations.⁶⁸ Joint negotiating positions on major issues of the multilateral trade negotiations⁶⁹ are also shared by countries in Africa. Africa's economic indicators sheds light on why South-South trade holds much attraction for policy-makers in the continent:

- the continent's share of global merchandise trade is low and stands at around 3%;
- the continent's share of global FDI flow is also extremely low and stands at about 5%;
- the composition of Africa's export is troubling, exhibiting unhealthy reliance on primary products and showing very little manufacturing of value-added products;

65. Ministerial Declaration on the Occasion of the Fortieth Anniversary of the Group of 77, São Paulo, Braz., June 13–18, 2004, U.N. Doc. TD/405 (June 12, 2004).

66. *Id.*

67. Marrakech Declaration, *supra* note 28, at para. 13.

68. 33rd Annual Meeting of Ministers, *supra* note 60, para. 70 (“South-South cooperation seeks to enable developing countries to play a more active role in international policy and decision-making processes, in support of their efforts to achieve sustainable development.”).

69. See Marrakech Framework of Implementation of South-South Cooperation (2003), art. 3, <http://www.g77.org/marrakech/Marrakech-Framework.htm> [hereinafter Marrakech Framework].

- According to the Food and Agricultural Organization, Africa “is the only region of the developing world where the regional average of food production per person has been declining over the last 40 years”;
- Africa is the only continent not on track to meeting the Millennium Development Goals; and
- Africa’s infrastructure deficiency is legendary and the worst when compared to other regions in the world.

African economies need new markets for their traditional export and need new arrangements that will advance their individual and collective goal for export diversification, industrialization, and structural transformation. South-South trade and investment also holds the key to the continent’s goal of expanding trade in commodities, services and investment, “leapfrogging,” building productive capacities, enhancing competitiveness, and developing new complementarities. South-South trade is also a good launching pad for greater involvement and participation in the global market and offers immense opportunities for countries in the region to develop and test new trade-able goods.⁷⁰

A. AFRICA-SOUTH TRADE: TRENDS AND PATTERNS

Evidence suggests that developing countries are playing an increasing role in Africa’s trade and investment (Fig. 1). While not replacing the continent’s traditional partners, key developing countries, particularly China and India, are becoming more dominant; China is now considered “the biggest player in Angola’s post-war reconstruction process,” and has made inroads in countries such as Sierra Leone, Liberia, and Tanzania.⁷¹ In 2006, India’s imports from Africa stood at US\$12.6 billion, up from about US\$6 billion in 1999.⁷² Also as of 2006, Brazil’s import from Africa stood at US\$8.1 billion, up from about US\$2 billion in 1998. Overall, the period from 2000-2010 saw:

- “a marked shift in the geography of [Africa’s] trade, with non-African developing countries now accounting for a

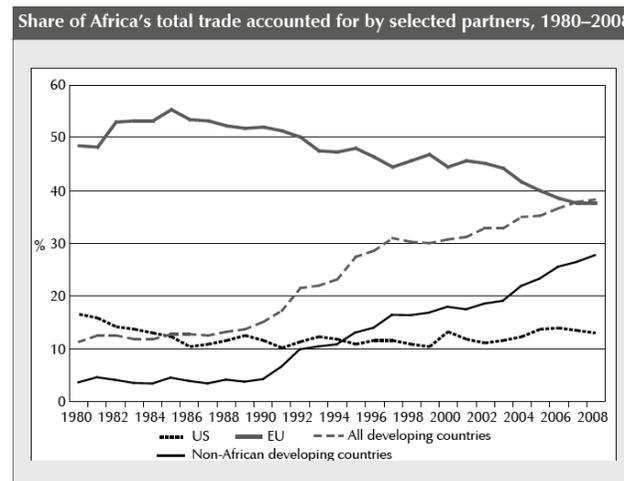
70. See UNCTAD Background Paper 2004, *supra* note 41.

71. See generally, *China’s Interest and Activity in Africa’s Construction and Infrastructure Sectors*, CENTRE FOR CHINESE STUDIES (2006), <http://www.ccs.org.za/wp-content/uploads/2009/04/dfid-3rd-edition.pdf>.

72. *The African Trading Relationship with India*, TRADE LAW CENTRE FOR SOUTHERN AFRICA (TRALAC), http://www.tralac.org/cause_data/images/1694/AfricanTradingRelationshipIndia.doc (last visited Feb. 17, 2011).

- much larger share than in previous decades;⁷³
- an increase in the importance of developing countries in Africa's merchandise trade;
 - non-African developing countries trading with Africa almost as much as developed countries;
 - a reduction in the share of African trade going to the continent's traditional partners in Europe and North America;
 - a decline in United States' share of African trade compared to the early 1980s;
 - a decline in European Union share of African export compared to the mid-1980s.

Figure 1



Source: Computed using IMF Direction of Trade data. Economic Development in Africa Report 2010.

Developing countries that import from Africa appear to be primarily interested in commodities. Over the last decade, and for most major developing country export markets, the share of total imports from Africa that is made up of manufactured

73. U.N. CONF. ON TRADE & DEV., ECONOMIC DEVELOPMENT IN AFRICA REPORT 2010: SOUTH-SOUTH COOPERATION: AFRICA AND THE NEW FORMS OF DEVELOPMENT PARTNERSHIP, at 29, U.N. Doc. UNCTAD/ALOC/AFRICA/2010, U.N. Sales No. E.10.11.d.13 (2010) [hereinafter ECONOMIC DEVELOPMENT IN AFRICA REPORT 2010].

goods has declined steadily. Primary products account for 80% of Africa's export to Turkey, even though the period from 2000 and 2008 saw a slight increase in the share of manufactured goods in the continent's export. What is evident then is that Africa-South trade exhibits strong similarity with Africa-North trade: the dominance of primary products in the continent's export and the dominance of manufactured goods in the continent's import.⁷⁴ Primary products account for 14% of Africa's import from the developed world and 22% from developing countries in 2008, while low, medium, and high technology accounted for 69% of the continent's import from developed countries, and 56% of the continent's import from developing countries in 2008.

B. AFRICA-SOUTH INVESTMENT: TRENDS AND PATTERNS

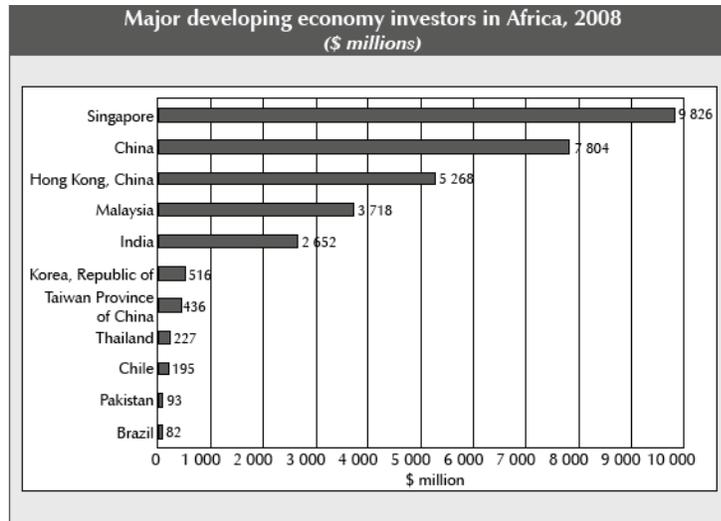
Africa is also benefiting from the boom in South-South investment. Unlike FDI in other regions, which is frequently dominated by the private sector, "a particular feature of FDI from the South to Africa is the frequent involvement of governments or state owned enterprises."⁷⁵ Asia is becoming a principal player in terms of FDI flow to Africa (Figure 2). In 2008, the top five developing country investor in Africa were: Singapore (US\$9,826 million), China (US\$7,804 million), Hong Kong China (US\$5,268 million), Malaysia (US\$3,718 million), and India (US\$2,652 million). Indian investment is expanding beyond Mauritius, its traditional base in the continent, and is now extending to countries such as Senegal and Sudan. Although FDI from Latin American countries is low compared to that from Asia, the influence of countries like Brazil is felt in many countries in the continent.⁷⁶

74. Like her import from developed countries, Africa's import from other developing countries is dominated by manufactures.

75. ECONOMIC DEVELOPMENT IN AFRICA REPORT 2010, *supra* note 73, at 81.

76. *Id.* at 88 (nothing that the Brazil's energy giant Petrobras has operations in about six countries in Africa and that Brazil's mining company has a presence in seven countries in the continent).

Figure 2



Source: UNCTAD, FDI/TNC database. Economic Development in Africa Report 2010.

Perhaps indicating an increase in South-South FDI in Africa is the increase in BITs and DTTs concluded between countries in Africa and other developing countries. In 1998, only 133 BITs were concluded between countries in Africa and other developing countries, but by the end of 2008, the number had jumped to 335.

C. AFRICA'S RESPONSE TO SOUTH-SOUTH ECONOMIC COOPERATION AGENDA

Countries in Africa appear to fully embrace the South-South agenda and are exploring ways to maximize the opportunity that South-South cooperation presents. In a 2005 Decision, the Executive Council of the Africa Union “[w]elcome[d] the third round of the Global System of Trade Preferences . . .” and “encourage[d] African countries to engage actively in those negotiations.”⁷⁷ In a 2005 speech to the African Union Commission, the President of Tanzania, Benjamin Mkapa, argued that Africa must strive to change the direction of the continent’s trade by ensuring that the continent

77. African Union, Exec. Council, Decision on Trade and Investment in Africa, Ex.CL/Dec.205 (VII) (2005).

trades more with Asia and Latin America as a deliberate continental strategy to diversify exports markets and sources of investment. According to him:

The time has come for a strategic new geography of trade taking advantage of enormous natural resources in Africa and Asia, as well as the rapid development that has made East and South Asia major markets for manufacturers as well as primary commodities in which Africa has a competitive advantage. Under these circumstances there is no reason why, with political will on both sides, countries such as China and India cannot be major markets for African producers, and Africa emerge as an important market for basic Asian manufactured goods, while, at the same time, African manufacturing capacity is being built with Asian investment I am glad to note that already China and India are major sources of investment in Africa.⁷⁸

The first Africa-South America Summit took place from November 26–30, 2006. In a resolution adopted at the conference, the Heads of State and Government of Africa and South America resolved to establish an Africa-South America Cooperative Forum of State and Government, and also resolved to “[a]dopt strategies and measures that will translate the vision of the Africa-South America Cooperative Forum into concrete economic, political and social benefits for our peoples . . . [i]mmediately activate and implement all bilateral agreements between countries in the two regions,” and to “[i]ntensify cooperation and consultation at all levels to exploit the immense opportunities which abound in our two continents.”⁷⁹ In a 2005 Decision, the Executive Council of the African Union “reiterate[d] its commitment for a new and mutually advantageous partnership with Asia Countries”⁸⁰ and stressed the need “to continually engage in active dialogue that will consolidate and strengthen the partnership between Africa and Asia.”

78. Benjamin Mkapa, President of the United Republic of Tanzania, Speech to the African Union Commission, <http://www.africa-union.org/VISITS/Tanzania%20Pdt%2031aug05/SPEECH%20BY%20THE%20PRESIDENT%20OF%20THE%20UNITED%20REPUBLIC%20OF%20TANZANIA.htm> (Aug. 31, 2005).

79. Africa-South America Summit, Abuja, Nigeria, Nov. 26–30, 2006, *Abuja Resolution on Africa-South America Cooperative Forum* (Nov. 30, 2006), <http://chede.org/chede/wp-content/uploads/2010/06/30-12-09-Resolution-of-first-Africa-South-America-summit-in-Abuja.pdf>.

80. African Union, Exec. Council, Decision on the Report on the New Africa-Asia Strategic Partnership, DOC.EX.CL/198 (VII) (2005).

IV. SINO-AFRICA TRADE: EVOLUTION, TRENDS, AND PERSPECTIVES

The year 2010 marked the tenth anniversary of the Forum on China-Africa Trade, the platform for cooperation that has guided and promoted the development of China-Africa relations over the past decade. The past decade saw a deepening and strengthening of China-Africa cooperation on a broad range of areas. As of 2008, China-Africa trade exceeded US\$100 billion, some 53 African countries were trading with China, and China had begun the construction of six economic and trade cooperation zones in Africa. An estimated 1,600 Chinese enterprises have started business in African countries with a direct investment stock of US\$7.8 billion.⁸¹ Also in the past decade, China's assistance to Africa doubled, China delivered on earlier commitments to cancel the debt of the heavily indebted poor countries and LDCs in the continent, and has provided concessional loans and preferential export buyer's credit for infrastructure and other projects in Africa.⁸² In November 2009, foreign ministers from the two sides met in Sharm El Sheik, Egypt for the 4th Ministerial Conference of FOCAC under the theme "deepening the new type of China-Africa strategic partnership for sustainable development." Speaking at the 4th Ministerial Conference, H.E. Wen Jiabao stated that China's plan to cancel US\$168 million debts owed by 33 African countries was near completion, that the US\$5 billion of concessional loans will be fully in place soon, and that the China-Africa Development Fund, whose first tranche reached US\$1 billion, became operational as scheduled. He also declared that "China [was] ready to deepen practical cooperation with African countries in diverse areas and push forward in an all-round way the new type of China-Africa strategic partnership."⁸³

A. TRENDS IN SINO-AFRICAN TRADE AND INVESTMENT

Today, China is Africa's largest developing country trade

81. Wen Jiabao, Premier St. Council China, Speech at the Opening Ceremony of the 4th Ministerial Conference of the Forum on China-Africa Cooperation (Nov. 8, 2009), <http://www.focac.org/eng/dsjbzjhy/zyjh/t627391.htm>.

82. Yang Jiechi, Minister Foreign Aff. China, Report at the 4th Ministerial Conference of the Forum on China-Africa Cooperation (Nov. 8, 2009), <http://www.focac.org/eng/dsjbzjhy/zyjh/t627658.htm>.

83. *Id.*

partner, accounting for about 11% of the continent's external trade, and is Africa's largest source of imports. UNCTAD suggests that the expansion of trade between China and Africa is the main driver of the increasing share of developing countries in Africa's trade. Trade between China and countries in Africa has grown since 2000. Trade volume between China and Africa stood at US\$10 billion in 2000, US\$39.7 billion in 2005, and topped US\$106.8 billion in 2008—hitting and exceeding the target of US\$100 billion. Annual trade between Africa and China is now in the region of US\$37.7 billion. Between 1995 and 2009, the China-Africa trade grew by 25%. The figures are even more dramatic when China's trade with individual countries is examined:

- between 2002 and 2005, China-Angola trade increased by nearly 41.6% from US\$1.148 billion in 2002 to US\$6.95 billion in 2005;⁸⁴
- between 2003 and 2004 Sierra Leone's export to China increased from zero to US\$1.61 million; and
- trade between China and Tanzania increased by 524% between 2000 and 2005 to reach over US\$475 million.

China's investment in Africa is also growing and expanding to involve more sectors. Chinese companies represent a new and significant source of development capital for countries in Africa. Between 1991 and 2008, 33% of cross border mergers and acquisition (M&A) concluded by developing country TNC's involved Chinese companies. Since 2000, China has encouraged Chinese companies to invest and explore business opportunities in Africa. China has also fulfilled a promise, made in 2006, to set up a China-Africa development fund (Cadfund), with funds that will eventually reach US\$5 billion.⁸⁵ Chinese FDI in the first quarter of 2010 increased by 81% to US\$552 million. To advance China-Africa cooperation, four programs of action have been adopted since 2000: (i) the Programme for China-Africa Cooperation in Economic and Social Development, adopted in October 2000; (ii) the Addis Ababa Action Plan 2004-2006, adopted in 2003; (iii) the Beijing

84. CENTRE FOR CHINESE STUDIES, CHINA'S INTEREST AND ACTIVITY IN AFRICA'S CONSTRUCTION AND INFRASTRUCTURE SECTORS (2006).

85. See CHINA-AFRICA DEVELOPMENT FUND (CADFUND), <http://www.cadfund.com/en/index.asp> (last visited Feb. 19, 2011) (noting that the China-Africa Development Fund (CADFUND) was officially opened on June 26th, 2007, with first-phase funding, USD 1 billion, provided by China Development Bank).

Action Plan 2007-2009, adopted in November 2007; and (iv) the Sharm El Sheik Action Plan 2010-2010, adopted in 2009. The China-Africa Cooperation Forum is the platform for dialogue between the two sides.

B. PRINCIPLES GUIDING CHINA-AFRICA COOPERATION

China has repeatedly rejected any notion that there is a fundamental clash of interests. In 2000, Foreign Minister Tang Jiaxuan stated: “We have no conflict of fundamental interests. Rather, we share extensive common interests in safeguarding peace and promoting development.” In all the exchanges and documents emanating from the FOCAC, certain core principles have been repeatedly stressed: political equality, mutual trust, economic win-win cooperation,⁸⁶ and balanced two-way trade.⁸⁷ The FOCAC has also repeatedly endorsed the Five Principles of Peaceful Coexistence.⁸⁸

C. IMPLEMENTATION OF CHINA-AFRICA ECONOMIC ARRANGEMENT

A follow-up mechanism was addressed in the Programme for China-Africa Cooperation in Economic and Social Development, adopted in October 2000 at the first Ministerial Conference. In the 2000 document, the two sides agreed to establish corresponding committees for follow-up actions of the Forum on China-Africa Co-operation at the ministerial level and to set up joint follow-up mechanisms at various levels. FOCAC is now in its tenth year. FOCAC is described as a platform “for collective consultation and dialogue and a cooperation mechanism” with the characteristic of “pragmatic cooperation” and “equality and mutual benefit.” In the past ten

86. *See Declaration of the Beijing Summit of the Forum on China-Africa Cooperation*, FORUM ON CHINA-AFRICA COOPERATION (Nov. 5, 2006), <http://www.focac.org/eng/ltada/dscbzjhy/DOC32009/t606841.htm> (“We hereby solemnly proclaim the establishment of a new type of strategic partnership between China and Africa featuring political equality and mutual trust, economic win-win cooperation and cultural exchanges.”).

87. *Forum on China-Africa Cooperation—Addis Ababa Plan of Action*, MINISTRY OF FOREIGN AFFAIRS OF THE PEOPLE’S REPUBLIC OF CHINA, at para. 4.3.2 (Dec. 26, 2003), <http://www.fmprc.gov.cn/eng/topics/Second/t57032.htm>.

88. *Forum on China-Africa Cooperation Beijing Action Plan*, EMBASSY OF THE PEOPLE’S REPUBLIC OF CHINA IN THE REPUBLIC OF SOUTH AFRICA, at para. 4.2 (Nov. 16, 2006), <http://www.chinese-embassy.org.za/eng/zfgx/zfhzlt/t281763.htm>.

years, the FOCAC has concluded four ministerial meetings⁸⁹ and one summit meeting.⁹⁰ Monitoring and implementation is carried out through a multi-level dialogue mechanism as envisaged in the 2000 Document: (1) the ministerial meeting every three years, (2) meeting of senior officials every two years, (3) foreign ministries' political consultations and strategic dialogue (now with 28 African countries), and (4) dialogue between the Secretariat of Chinese FOCAC Follow-up Committee and African diplomatic corps in China. The Chinese government established the Follow-up Committee of FOCAC soon after the first Ministerial conference in 2000. The Committee is presently made up of 27 members drawn from all the relevant ministries including the ministry of Commerce, Finance, Health, Education, Land and Resource, and Education. It is not clear how many African countries have established similar follow-up committees.

D. AFRICAN PERSPECTIVES ON SINO-AFRICA TRADE

Africans leaders have enthusiastically embraced China's Africa agenda. In a speech at the Second Political Consultation between Chinese and African Foreign Ministers, the Chairperson of the Commission of the Africa Union, H.E. Dr. Jean Ping, called China "one of Africa's longest and most faithful partners" noting that "[t]his partnership has brought many dividends to both China and Africa, and seems poised to be even more beneficial in the future."⁹¹ While labor unions and human rights organizations express skepticism regarding China's engagement in Africa, the reaction of policy makers in Africa has been different. "I can confirm that China has remained faithful to the commitment it made on issues of international importance," Dr. Ping told his audience noting particularly China's commitment to complete the new Africa

89. The first ministerial conference of FOCAC was held in Beijing from October 10–12, 2000. The Second Ministerial Conference of FOCAC was convened in Addis Ababa, Ethiopia, from December 15–16, 2003. The third ministerial conference of FOCAC was held in Beijing from November 4–5, 2006. The fourth Ministerial Conference was held in Sharm El Sheik from November 8–10, 2009.

90. The Beijing Summit of The Forum on China-Africa Cooperation was held from November 4–5, 2006.

91. H.E. Dr. Jean Ping, Chairperson Comm'n Afr. Union, Speech at the Second Political Consultation between Chinese and African Foreign Ministers, 2, <http://www.africa-union.org/root/ar/index/Speech%20by%20the%20CP-New%20York-23%20Sept%20%20VERSION%20ANGLAISE%20Discours%20avec%20les%20Chinois.pdf> (Sep. 23, 2010).

Union Commission office and Conference Center complex.⁹² In a remark at the fourth Ministerial conference, the President of the Republic of Liberia, H.E. Ellen Johnson Sirleaf, remarked that “Liberia considers FOCAC an important mechanism for the development of Africa.”⁹³ She noted several accomplishments in Liberia thanks to the help from China, including: contributions to Liberia’s debt relief program under the HIPC arrangement; the establishment of an Anti-Malaria Center and medical teams at Liberia’s largest hospital; the construction of new facilities at the University of Liberia Campus; a modern hospital in one of Liberia’s rural counties; an Agricultural Technology Demonstration Center; the construction of three modern primary schools in high population communities in Liberia and military barracks; scholarships to over 100 Liberian students to attend universities in China; and over 400 commodities identified to penetrate China markets. Speaking at the same conference, the Vice-President of Ghana, John Dramani Mahama, commented that “China’s post FOCAC intervention in Ghana’s socio-economic development has been remarkable and visible.”⁹⁴ According to him, “[m]any more Ghanaian entrepreneurs, business people and students have made China their preferred destination.”⁹⁵

V. AFRICA-SOUTH TRADE AND INVESTMENT COOPERATION: A CRITIQUE

UNCTAD sees the growing relationship between Africa and Southern partners as “a welcome development.”⁹⁶ To UNCTAD, the new arrangements have “great potential to support the development of productive capacity and contribute to the achievements of sustained growth and poverty reduction in the region.”⁹⁷ A thorough examination of the evolving

92. *Id.* at 4–5.

93. H.E. Ellen Johnson Sirleaf, President Liber., Remarks at the Opening Ceremony of 4th Ministerial Conference of the Forum of China-Africa Cooperation, <http://www.focac.org/eng/dsjbjzjhy/zyjh/t632439.htm> (Nov. 8, 2009).

94. H.E. Mr. John Dramani Mahama, Vice President of Ghana, Statement at the Opening Session of the 4th Ministerial Conference of FOCAC, <http://www.focac.org/eng/dsjbjzjhy/zyjh/t632435.htm> (Nov. 8, 2009).

95. *Id.*

96. ECONOMIC DEVELOPMENT IN AFRICA REPORT 2010, *supra* note 73, at 26.

97. *Id.*

relationship between Africa and Southern partners suggests that there are good aspects to these arrangements and troubling aspects as well. Moreover, any positive dividend is not automatically delivered but may depend on the extent to which African economies proactively exploit and maximize the potential benefits.⁹⁸ Evaluating the benefit to Africa of Africa-South trade and investment is made difficult by the complexity of evolving cooperation arrangements; most are multi-sectoral and involve many countries at vastly different levels of development and implicate multiple sectors of the economy. In general, China-Africa relation has evolved into a multi-dimensional cooperation system covering political, economic, social and cultural aspects. Consequently, a focus on trade and investment may not adequately capture developments in other respects.

A. THE GOOD: POSITIVE ASPECTS OF AFRICA-SOUTH TRADE AND INVESTMENT COOPERATION

1. New Sources of International Capital and New Markets for Export.

South-South trade represents a new and welcomed source of finance for most countries in Africa. The fact that some emerging economies are projected to become the main engine of new demand growth and spending power in the near future means that Africa ignores South-South cooperation at its peril. Projections about the BRIC countries suggest that South-South trade and investment must become part of Africa's development strategy. According to Goldman Sachs, in less than 40 years, the BRIC economies together "could be larger than the G6 in US dollar terms and could account for over half of the size of the G6 by 2025."⁹⁹ The paper projects that China "could overtake Germany in the next four years, Japan by 2015 and the US by 2039."¹⁰⁰ In terms of economic growth, Goldman Sachs also projects that about two-thirds of the increase in the GDP from the BRICS would come from higher real growth. In terms of global demand pattern, Goldman Sachs further

98. *Id.* at 26 (noting that the potential benefits of Africa-South arrangements "can only be realized to the extent that African countries are more proactive in the process and use the leverage they have with Southern partners to persuade them to strike a balance between their commercial or strategic interests and the region's development needs.").

99. Goldman Sachs No: 99, *supra* note 1.

100. *Id.*

projects that by 2025, “the annual increase in . . . spending power from the BRICs could be twice that of the G6, and four times higher by 2050.”¹⁰¹ Given declining aid to Africa from traditional sources, projections of accelerated outward investment from countries like China will be welcomed news.¹⁰² The top 12 EMNCs from China reportedly control over US\$30 billion in foreign assets and US\$33 billion in foreign sales;¹⁰³ among developing countries, China is now one of the top FDI exporters—making it an attractive partner to most African governments.¹⁰⁴ Developing countries are also potential markets for Africa’s export. Given tariff and non-tariff barriers in some Northern countries, access to markets in other developing countries is important to countries in Africa. Available data suggests that South-South cooperation is boosting Africa’s trade to developing countries. In 1995, trade with Africa represented only 1% of China’s total world trade; the number slowly increased between 1995 and 2006 to between 3% and 4%. By and large, South-South trade and investment presents much-needed opportunity for Africa to diversify its economic partners. Whether this means Africa abandoning its traditional partners is a more contested issue. “For Africa’s development and integration we have depended on the Western world—we cannot continue to proceed like this,” AU’s economic chief, Maxwell Mkwezalamba, is reported as saying.¹⁰⁵ According to Mkwezalamba, speaking at the AU Summit in Uganda, “[W]e need to diversify our partners that we work with and hence for us, working with China is something that we have welcomed.”¹⁰⁶

2. Multidimensional and Multi-Sectoral Partnerships

Unfolding Africa-South arrangements are multidimensional and implicate multiple sectors of the economy. South-South cooperation thus offers advantages to

101. *Id.*

102. See John Wong & Sarah Chan, *China’s Outward Direct Investment: Expanding World Wide*, 1 CHINA: INT’L J. 273 (2003) (noting that China’s economy can sustain significant capital outflow for investment purposes).

103. *Id.* at 276.

104. *Id.* at 277 (noting that China’s share of OFDI rose from 0.2% in 1980 to 3.6% in 2001).

105. Ahmed M. Kamara, *China Gets Massive Endorsement from the African Union*, NEWSTIME AFRICA (July 25, 2010, 10:50 AM), <http://www.newstimeafrica.com/archives/13409>.

106. *Id.*

Africa beyond the trade and investment arena. In areas such as science and technology, rural development, energy and solid minerals, water resources, and infrastructure development, there is much that Africa could gain from South-South cooperation. Within the context of Africa-South America relations, cooperation and partnership in energy is currently under discussion. In the Abuja Plan of Action adopted at the conclusion of the first Africa-South America Summit, the two sides agreed to “exchange information on how to achieve skills and technology transfer in the extractive industries,” “explore the possibility of developing a common energy strategy,” “share experiences and develop capacity for the exploration of energy resources and efficient energy marketing systems,” and “cooperate in the development of alternative sources of energy and promote the use of renewable energy sources and hybrid energy technologies.”¹⁰⁷ The first Africa-South America (ASA) Joint Conference of Ministers in Charge of Energy convened in July 2009 with the goal of moving the agenda forward.¹⁰⁸ Reflecting the multi-sectoral, multi-faceted nature of the unfolding relationship, at the fourth FOCAC Ministerial Conference, Chinese Premier H.E. Wen Jiabao, announced that in the next three years, the Chinese government will: establish a China-Africa partnership in addressing climate change; enhance cooperation with Africa in science and technology; deepen cooperation in medical care and health; and enhance cooperation in human resources development and education.

3. Collaborative Learning and Technology Transfer

Africa-South trade and investment also provides an opportunity for African countries to address the growing technology gap through effective and cost-effective technology transfer arrangements.¹⁰⁹ South-South technology transfer has

107. First Africa-South America (ASA) Summit, Abuja, Nig., Nov. 26–30, 2006, *Abuja Plan of Action* (2006).

108. See ASA Joint Conference of Ministers in Charge of Energy, Addis Ababa, Eth., July 13–17, 2009, *Cooperation & Partnership in Energy Under the Africa-South America Cooperation Forum (ASACOF): Concept and Strategy* (2009) (“Due to the growing aspirations for close cooperation between Africa and South America for the sake of sustainable socioeconomic development of their countries and peoples, the leaders of the two continents convened in a Summit Meeting in Abuja, Nigeria, on 26–30 November 2006 and agreed to promote such objectives in an organized and rapid manner.”).

109. In October 2002, the Group of 77 convened its first high-level conference on South-South cooperation in science and technology in Dubai, with the participation of the Member States and more than 150 scientists from

become more possible as emerging developing countries make strides in the fields of science and technology. In 2007, China, for the first time, became the second highest investor in R&D after the United States. Africa can learn from other developing countries and “leapfrog” some of the development challenges the continent is currently facing or will face in the future. Technical cooperation features strongly in China-Africa cooperation. In the last decade, China has sent hundreds of senior experts on agricultural technology to Africa, set up demonstration centers of agricultural technology in some countries, and increased Chinese investment in African agriculture.¹¹⁰ In the Beijing Action Plan of 2006, the two sides also agreed to “promote cooperation in the development, application and transfer of technologies.”¹¹¹ Specifically, China promised to “continue to provide training courses of practical technologies and carry out demonstration projects of technical assistance for extending China’s scientific and technological achievements and applicable technologies in Africa.”¹¹² In 2009, China pledged to increase the number of Chinese government scholarships to Africa to 5,500 by 2012, to train a total of 20,000 professionals of various fields for Africa over the next three years, and to launch a China-Africa joint research and exchange program.

4. Preferential Market Access

A new and interesting development in South-South economic relations is the use of preferential market access schemes as a foreign policy instrument. Developing countries such as China are now providing preferential market access to

developing countries. They discussed how to intensify cooperation. The meeting adopted the Declaration on the Promotion of Science and Technology in the South. See Group of 77 South-South High-Level Conference on Science and Technology, Dubai, U.A.E., Oct. 27–30, 2002, *Dubai Declaration for the Promotion of Science and Technology in the South* (Oct. 30, 2002), <http://www.g77.org/sshlcst/Dubai-Declaration.htm>.

110. See *Forum on China-Africa Cooperation Beijing Action Plan*, *supra* note 88, at para. 3.1.3 (stating that China agrees to: send 100 senior experts on agricultural technologies to Africa, set up in Africa 10 demonstration centers of agricultural technology, “give encouragement and support to Chinese enterprises in expanding their investment in agriculture in Africa and get more involved in agricultural infrastructure development, production of agricultural machinery and processing of agricultural produce in Africa” and “[s]tep up cooperation with Africa in extending applicable technologies and human resources training in agriculture.”).

111. Beijing Action Plan, *supra* note 88.

112. *Id.* at para. 3.7.1.

products originating from LDCs. Considering that 33 of the 48 LDC's on the UN list are in Africa, such schemes present an opportunity for these countries to develop and diversify their exports. Preferential market access schemes can stimulate sustained export-led growth in recipient nations. In the Delhi Declaration adopted at the conclusion of the India-Africa Summit in 2008, the two sides reaffirmed their commitment to "providing meaningful market access to the Least Developed Countries."¹¹³ China started to grant zero-tariff treatment to some commodities of African LDCs destined for China in 2005. Following the 2006 Beijing Summit, China expanded the tariff exemption list to 478 kinds of products from African LDCs. In 2009, Beijing pledged to "phase in zero-tariff treatment to 95 percent of the products from the least developed African countries having diplomatic relations with China, starting with 60% of the products within 2010."¹¹⁴ It is expected that by 2013, the tariff exemption list will expand to cover some 4,700 products (up from 478 products in 2006).¹¹⁵

The effectiveness of China's preference scheme has not been seriously evaluated. A comparison of China's market access offers with similar offers from developed countries such as the United Kingdom (Everything But Arms initiative implemented in 2001) and United States (African Growth Opportunity Act implemented in 2000) is outside the scope of this paper. China claims that its market access offers has generated considerable benefits including advancing more than US\$1 billion worth of African exports to China.¹¹⁶ It is not clear how factors such as non-tariff barriers, cost of documentation, rules of origin, and China's preferential scheme to LDCs in Asia affect the economic potential of China's Africa preference scheme. In a 2007 paper, Philip Alves, an economist at the South African Institute for International Affairs, concluded, regarding the earlier preference, that:

Chinese authorities have designed a preference scheme well-fitted to the export capacity of the benefiting African economies, yet it will likely have only a small economic impact. With an implicit transfer of

113. India-Africa Forum Summit 2008, New Delhi, India, Apr. 8-9, 2008, *Dehli Declaration*, para. 11 (Apr. 8, 2008).

114. *Id.*

115. China Ministry of Commerce, *An Interpretation of New Measures on Economic and Trade Cooperation from the 4th Ministerial Conference*, F. ON CHINA-AFRICA COOPERATION (May 24, 2010), <http://www.focac.org/eng/zfgx/dfz c/t696509.htm>.

116. *Id.*

about US\$ 10 [sic] million per year spread across 30 countries, the estimated economic value is only about 1.2% of these countries' non-oil exports to China. As Table 2 shows, about half of the beneficiaries may see an implicit transfer of less than US\$ 100,000 [sic] per year. Barring an incredible supply response in Africa, the preferences will not much alter the trade flows to China, and certainly will not close the bilateral trade deficits run by Africa's non-oil economies.¹¹⁷

The jury is still out on the overall effectiveness of China's preference scheme for African LDCs. On the one hand, the scheme appears to be permanent, is carefully tailored to the export capacity of African LDCs (some 88% of covered products are current exports of the LDCs), and the average margin of preference for products of interest to the LDCs are sizeable (about 10.4%). On the other hand, some products vital to export of some African LDCs are excluded (for example, cotton is excluded), China's rules of origin are very strict, and African LDCs still face competition from Asian LDCs for the Chinese market.¹¹⁸

5. Commercial Infrastructure Development

Africa's infrastructure deficiency is notorious, long-standing, and implicates almost all forms of infrastructure. Poor and/or inadequate infrastructure is a major impediment to Africa's development, particularly the continent's goal of industrialization, diversification, and regional integration. African leaders now recognize this to be a problem.¹¹⁹ As much as US\$22 billion per year in investment and US\$17 billion for maintenance is needed to address Africa's infrastructure

117. Philip Alves, *China's Preferential Trade Policy as a Foreign Policy Tool*, in *NEW IMPULSES FROM THE SOUTH: CHINA'S ENGAGEMENT OF AFRICA* 28, 36 (Hannah Edinger, Hayley Herman & Johanna Jansson, eds., 2008), available at http://www.ccs.org.za/downloads/CCS_-_New_Impulses_from_the_South_-_May_08.pdf.

118. *Global Trade Liberalization and the Developing Countries*, INT'L MONETARY FUND (Nov. 2001), <http://www.imf.org/external/np/exr/ib/2001/110801.htm> (noting that preferential access schemes for poor countries have frequently proven not to be very effective at increasing market access for the intended beneficiaries because the schemes frequently exclude the highly protected products of most interest to exporters in the poorest countries and "are often complex, nontransparent, and subject to various exemptions and conditions . . . that limit benefits.").

119. See generally COMM'N FOR AFR., *OUR COMMON INTEREST: REPORT OF THE COMMISSION FOR AFRICA* (2005), available at <http://allafrica.com/sustainable/resources/view/00010595.pdf> (concluding that substantial and sustained levels of finance, as much as 5% of the continent's GDP, is needed to close Africa's infrastructure deficit).

deficits.¹²⁰ South-South partnership is offering new sources of infrastructure finance for Africa on a scale now comparable to traditional official development assistance (ODA) from the Organization for Economic Co-operation and Development (OECD) or to capital from private investors.¹²¹ A recent study found that at least 35 countries in Africa have infrastructure finance deals with China, Chinese finance “is on a scale large enough to make a material contribution towards meeting Africa’s vast infrastructure needs,” and other Southern partners, including India and the Gulf states, are playing an increasing role as infrastructure financiers.¹²² According to this study, as of 2006, China’s financial commitments to the African infrastructure project stood at US\$7 billion, up from around US\$0.5 billion per year in 2001–03 and US\$1.5 billion per year in 2004–05. The two largest beneficiary sectors of Chinese finance are power and transport—sectors where the need is acute and potential benefit could be quite significant. Together, power and transport account for 66.6% of Chinese infrastructure commitment in sub-Saharan Africa between 2001 and 2007. Infrastructure development, particularly the need to develop direct air routes and to rationalize sea routes between the two regions, is one of the areas of cooperation identified in the 2006 Declaration of the First Africa-South America Summit.¹²³ Pursuant to the declaration, the two sides agreed to “form a basis for mutual exchange and support in the area of infrastructure development.”¹²⁴

6. Agricultural Technology

The field of agriculture is one area where Africa needs urgent help. Africa’s agriculture is in crisis.¹²⁵ According to the

120. VIVIEN FOSTER, WILLIAM BUTTERFIELD, CHUAN CHEN & NATALIYA PUSHAK, BUILDING BRIDGES: CHINA’S GROWING ROLE AS INFRASTRUCTURE FINANCIER FOR SUB-SAHARAN AFRICA 33 (The World Bank, Trends & Policy Options No. 5, 2009) [hereinafter BUILDING BRIDGES].

121. *Id.* at xi.

122. *Id.* at xi–xii, xviii.

123. Africa-South America Summit, Abuja, Niger., Nov. 26–30, 2006, *Abuja Declaration*, ¶ 29, ASA/Summit/doc.01(I).

124. First Africa-South America (ASA) Summit, Abuja, Nig., Nov. 26–30, 2006, *Abuja Declaration* (2006), <http://www.iss.co.za/uploads/AFRISOUTDEC L.PDF>.

125. The problem is not new, however, and has long been recognized by African leaders in documents such as the Lagos Plan of Action of 1963, the Abuja Treaty of 1991, NEPADs, Comprehensive African Agricultural Development Programme (CAADP), and the Abuja Food Security Summit

Food and Agricultural Organization (FAO), Africa “is the only region of the developing world where the regional average of food production per person has been declining over the last 40 years.”¹²⁶ Despite the recognized importance of agriculture to the economies of most countries in the continent, agricultural productivity remains low and in decline in some countries. According to one report:

- Since the 1970s, agricultural imports into Africa have been rising faster than exports;
- Since 1980, the continent as a whole has been a net agricultural importing region;
- Africa’s agricultural export feature a small number of traditional commodities;
- Africa’s agricultural export patterns indicate a strong dependence on preferential access to a few developed-country markets.
- In the 1970s, Africa spent less than US\$5 billion on agricultural imports; by 2005, the continent was spending well above US\$25 billion on agricultural imports.

Cooperation in the agricultural sector is another area that promises immense dividends to Africa. Since 2000, Beijing has pledged support for agricultural development in Africa. Cooperation has come in various forms. At the 4th Ministerial Conference, Beijing pledged to enhance cooperation by increasing the number of agricultural technology demonstration centers built by China in Africa to twenty, sending fifty agricultural technology teams to Africa, and training 2,000 agricultural technology personnel for Africa.¹²⁷ Technical assistance in this sector can help Africa address supply side constraints, boost agricultural productivity, and attain food security.

Cooperation with China in the field of agriculture targets some of the pillars identified in the Comprehensive African Agricultural Development Programme such as Pillar 4 (“development of agricultural research, technology

Declaration of December 2008.

126. Florence Chenoweth, *The Role of Agricultural Development in the Achievement of the MDGs*, MDG GLOBAL WATCH, http://www.mdg-globalwatch.org/florence_chenoweth.html (last visited Feb. 19, 2011).

127. Fourth Ministerial Conference of the Forum on China-Africa Cooperation, Sharm El Sheikh, Egypt, Nov. 8–9, 2009, *Sharm El Sheikh Action Plan*, ¶ 4.1.4 (Nov. 12, 2009).

dissemination and adoption”) and Pillar 5 (“sustainable development of livestock, fisheries and forestry resources.”).¹²⁸ The launch in June 2010 of the Africa-Brazil Agricultural Innovation Marketplace (Marketplace) offers another example of promising South-South cooperation in the field of agriculture.¹²⁹ The Marketplace is described as a “south-south partnership to foster agricultural research and innovation for development by supporting policy dialogue and collaborative projects.”¹³⁰

7. Strategic Coalitions and Trade Negotiations

South-South economic cooperation provides an opportunity for countries in Africa to enhance their participation in the multilateral trade system through strategic coalitions. In the last decade, issue-based coalitions have emerged as a feature of multilateral trade negotiations. African countries have sought to advance their agenda and defend their interest through different coalitions including the Africa Group, the LDC Group, the African, Caribbean and Pacific (ACP) Group, the Group of 33, the Group of 20, the NAMA-11, and the Group of 90. UNCTAD attributes this developing-country activism for the incorporation of development issues in the Doha Work Programme. UNCTAD is also of the view that Africa’s cooperation with developing countries in multilateral trade negotiations has helped the continent to influence the agenda and pace of the Doha Round negotiations and increase their level of participation in the negotiation process more generally. Although African countries have increased their participation in trade negotiations and although it has been increasingly difficult for developed countries to set the tone, agenda, and outcome of negotiations, the benefit to Africa of South-South cooperation in trade negotiations must not be exaggerated. On

128. *Initiative in Support to NEPAD-CAADP Implementation*, FOOD & AGRIC. ORG. UNITED NATIONS, http://www.fao.org/tc/tca/nepad/caadp_en.asp (last visited Feb. 19, 2011).

129. The Africa-Brazil Agricultural Innovation Marketplace is described as a multiparty international initiative involving the Forum for Agricultural Research in Africa (FARA), the Brazilian Agricultural Research Corporation (Embrapa), the United Kingdom Department for International Development (DFID), the International Fund for Agricultural Development (IFAD), the World Bank (WB) and the Brazilian Cooperation Agency (ABC). See *General Information*, AFR.-BRAZ. AGRIC. INNOVATION MARKETPLACE, <http://www.africa-brazil.org/home/about> (last visited Feb. 18, 2011).

130. *FAQ*, AFR.-BRAZ. AGRIC. INNOVATION MARKETPLACE, <http://www.africa-brazil.org/home/faq> (last visited Apr. 18, 2011).

the positive side, gains such as the launch of the development round, the gradual death of the Singapore issues, and the Doha Declaration on Health and Human Rights would probably not have come about without strong solidarity by developing countries. However, on close examination, it could be argued that the voices of African countries have not been heard on the most important issues on the Doha agenda; African proposals on a host of issues have been virtually ignored. Furthermore, although African ministers have facilitated or co-facilitated some past WTO ministerial conferences,¹³¹ that in and of itself should not be taken as evidence that the continent is taken seriously in trade negotiations or that the continent can influence critical decisions.¹³²

The marked differences in the size and fate of the economies that make up the developing country group makes suspect claims that the interests of African countries are adequately represented in South-South trade coalitions; the areas of common interest are few and insignificant while the areas of divergent interests are many and hugely significant. Issues such as agricultural market access, NAMA, and preference erosion have in the past divided developing countries. The argument is not that coalitions in trade negotiations are not useful or that African countries should not cultivate links with other developing countries on the many issues that are on the Doha Development Agenda. However, Africa must pay attention to areas of divergent interests and must not hesitate to call out other developing countries when their position in trade negotiations is likely to harm the continent's interests.

B. THE BAD: NEGATIVE ASPECTS OF AFRICA-SOUTH ECONOMIC RELATIONS

1. Underutilization/Barriers to Trade

Despite the benefits of South-South economic cooperation, the potential for interregional trade remains underutilized by countries in Africa. It is estimated that only 27% of intra-South

131. Cancun Ministerial (Kenyan Minister of Trade served as facilitator); Hong Kong Ministerial (Zambian Minister of Trade and Nigerian Minister of Commerce were co-facilitators.).

132. ECONOMIC DEVELOPMENT IN AFRICA REPORT 2010, *supra* note 73, at 46 (suggesting that choosing African trade ministers to facilitate the Ministerial conference represents "important changes in the WTO negotiation process in response to the increasing bargaining power of African countries.").

trade in agriculture and a mere 12% of intra-South trade in manufacturing are conducted on an interregional basis.¹³³ Africa's trade as a share of trade of many developing countries is still very low: China (10.6%), India (3.5), Brazil (2.6%), Saudi Arabia (2.4%), Turkey (1.9%), United Arab Emirates (1.4%), Republic of Korea (1.2%) and Russian Federation (1.2%). Asymmetries in the economic relations between Africa and key Southern partners are a major concern and undermine claims that South-South can lead to win-win outcomes. Non-traditional barriers to trade impede Africa's export and erode any benefit the continent might have gained from available preferential access schemes. One 2004 report found that:

- Average applied tariff of developing countries are above developed country rates, despite liberalization attempts in the past decade;¹³⁴
- Approximately 70% of tariffs that developing country exporters face are applied by other developing countries;
- Developing country service trade barriers are also significantly higher than those of developed countries;
- Compared to developed countries, developing countries have more incidence of "tariff peaks," with over one-quarter of developing countries having more that 40% of tariffs at 15% or higher;
- Developing countries' tariffs in manufacture and agriculture are particularly harmful to developing countries' economies and much welfare gains will be realized through their elimination.

South African fruit exporters complain of non-tariff barriers to Chinese markets in the form of sanitary and phytosanitary measures, costly logistics, a lack of distribution channels within China, high import tariffs on fruits, cold chain sterilization requirements and registration of the orchards, and associated documentation.¹³⁵ Barriers in developing countries'

133. *New Geography of International Trade*, *supra* note 9, para. 19.

134. ECON. ANALYTICAL UNIT, AUSTL. GOV'T, SOUTH-SOUTH TRADE: WINNING FROM LIBERALISATION, at ix, 3 (2004), *available at* http://www.dfat.gov.au/publications/south_south/south_south_trade.pdf [hereinafter WINNING FROM LIBERALISATION].

135. Ron Sandrey et al., *Non-tariff Measures Inhibiting South African Exports to China and India*, in SOUTH AFRICA'S WAY AHEAD: LOOKING EAST 209, 237-38 (2008), *available at* http://www.tralac.org/cause_data/images/1694/ChinaIndiaBook2008_20090218.pdf.

markets, especially tariff peaks and escalation in agriculture and manufacturing, are particularly damaging to Africa and undermine the continent's plan to boost agricultural export and improve value-added manufacturing. Obstacles to developing countries' markets in the form of tariffs and non-tariff barriers, such as sanitary and phytosanitary measures and technical barriers to trade, are major problems that must be addressed if Africa is to benefit from new Africa-South cooperation frameworks. Countries in Africa are currently not part of the more robust regional trade arrangements. The IBSA forum involves only one country in Africa and its long-term development impact is yet to be seen.¹³⁶ Whether the GSTP will achieve its full potential and become a viable instrument for increasing market access opportunities in developing countries also remains to be seen.¹³⁷

2. More Trade But Few Countries Benefitting

Lack of diversity in terms of the countries in Africa that are actively participating in Africa-South trade is a cause for concern. Many countries are spectators in the unfolding Africa-South cooperation framework. In 2008, for example, Egypt alone accounted for 51% of Africa's export to Saudi Arabia, Angola alone accounted for 48% of Africa's export to China, while South Africa alone accounted for 42% of the continent's export to the Republic of Korea. Also in 2008, "the five largest African exporters to developing countries accounted for 67.5% [sic] of the region's total exports while the top 10 accounted for 89.2% [sic] [of the continent's export]."¹³⁸ Thus, in 2008:

- **Five countries** (Angola, Sudan, South Africa, Congo, and Equatorial Guinea) accounted for 84% of the continent's export to China.
- **Five countries** (Nigeria, South Africa, Egypt, Angola, and Morocco) accounted for 84% of the continent's export to India.
- **Five countries** (Nigeria, Algeria, Angola, Morocco, and

136. See generally LAKSHMI PURI, *IBSA: AN EMERGING TRINITY IN THE NEW GEOGRAPHY OF INTERNATIONAL TRADE* (UNCTAD, Policy Issues in Int'l Trade & Commodities, Study Series No. 35, 2007) (discussing IBSA and its impact on trade).

137. *New Geography of International Trade*, *supra* note 9, para. 20 (noting that "[w]ays need to be found to reinvigorate the GSTP.").

138. ECONOMIC DEVELOPMENT IN AFRICA REPORT 2010, *supra* note 73, at 33.

South Africa) accounted for 93% of the continent's export to Brazil.

- **Five countries** (Egypt, South Africa, Morocco, Ethiopia, and Sudan) accounted for 85% of the continent's trade export to Saudi Arabia.

In short, only a few countries in Africa are actively participating in Africa-South trade as exporters. Many countries in Africa are not enjoying a robust trade relationship with those developing country trade partners that are considered important export destinations for Africa. Unless this trend is corrected, many countries in the continent risk being marginalized within the South-South economic framework. The countries at most risk are resource-poor LDCs in the continent.

3. Increased Investment Cooperation Benefitting Few Countries

African LDCs are also on the margins of the emerging investment geography. Africa-South FDI is concentrated by destination. Only a few countries attract the significant share of FDI inflow into Africa: Nigeria, Angola, Mauritius, Zambia, South Africa, Egypt, Tunisia, Morocco, and Libya. According to UNCTAD:

- Although between 1991 and 2008 Africa saw an increase in mergers and acquisitions concluded by developing country TNCs, two countries (Egypt and South Africa) were most involved in Africa-South cross border M&A and accounted for 58% of M&A concluded by developing country TNCs.
- Five countries (Egypt, South Africa, Nigeria, Tunisia, and Sudan) together accounted for 81% of cross-border M&A concluded by TNCs from developing countries from 1991 to 2008.
- In 2005, approximately three quarters of Malaysia's FDI went to just three countries – South Africa, Mauritius, and Sudan.¹³⁹
- FDI from Arab countries go principally to North African countries.

In the area of infrastructure development, many countries in Africa are also losing out. An estimated 70% of Chinese infrastructure finance is going to only four countries: Nigeria,

139. *Id.* at 86.

Angola, Ethiopia, and Sudan.¹⁴⁰ Because Chinese infrastructure loans are frequently tied to natural resource development, countries that are naturally endowed are better positioned to attract the loans. Angola is the biggest recipient of Chinese infrastructure loans because of the presence of oil in the country; about half of Chinese oil import from Africa comes from Angola.

4. Structural Development/Commodity Dependence

The composition of Africa's export to other developing countries is also a concern. Manufactured value-added products do not feature strongly in the composition of Africa's export to developing countries. Rather, Africa's export to developing countries is dominated by primary products (particularly fuel) and the trend appears to be worsening (Figures 3, 4, and 5).¹⁴¹ In 1995, primary products accounted for a significant 55% of African export to other developing countries outside Africa. By 2008, 75% of the continent's export was composed of primary products.¹⁴² In 1995, 27% of Africa's export consisted of resource-based manufactures, but the number fell to 15% in 2008. A similar decline is recorded for the continent's export in low, medium, and high technology manufactures which fell from 18% in 1995 to 10% in 2008.¹⁴³ The same gloomy trend persists when the compositing of trade with the continent's main developing country trade partners (e.g., China and India) is analyzed. Low, medium, and high technology manufactures account for a meager 3.1% and 3.9% of the continent's export to China and India respectively. Simply put, "those developing countries to which Africa exports the most are those for whom low, medium and high technology manufactures represent the lowest shares."¹⁴⁴ These figures are troubling and dim any hope that South-South trade could be the key to Africa's structural development. According to UNCTAD:

140. BUILDING BRIDGES, *supra* note 120, at xiv.

141. Fuel (particularly oil) accounted for 67% of the continent's export in 2008, with oil accounting for 89% of the continent's fuel export to non-African developing countries.

142. ECONOMIC DEVELOPMENT IN AFRICA REPORT 2010, *supra* note 73, at 36.

143. In terms of sheer value, Africa has recorded an increase in the value of its low, medium and high technology manufacturing exports to other developing countries from \$2.3 billion in 1995 to \$12 billion in 2008.

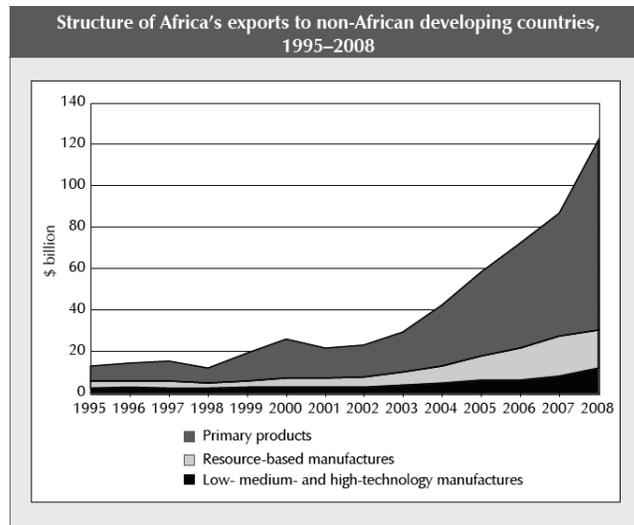
144. ECONOMIC DEVELOPMENT IN AFRICA REPORT 2010, *supra* note 73, at 38.

As a result of the changing composition of Africa's exports to non-African developing countries in the past decade however, there is now very little difference between the composition of Africa's exports to developing and developed countries. . . . In both cases, primary products account for nearly three quarters of total exports while resource-based manufactures account for 12–15 per cent. Low, medium and high technology (other) manufactures make up a small part of exports to both groups, accounting for about 10 per cent of exports to developing countries and 14 per cent of exports to developed countries.¹⁴⁵

Commodity features strongly in Africa's export to China. In 2009, five products—mineral products, base metal, precious stones and metals, wood products, and textile and clothing—accounted for 91% of total African export to China. Furthermore, Africa exported mainly primary products with little or no value-added to China while China's main export to Africa consisted of value-added manufacturing products including, machinery (6%), transport equipment (5%), textiles and clothing (3%), footwear (2%), and plastic products (2%). The problem is also evident in the foreign investment arena. An examination of the distribution of cross-border M&A in Africa concluded by TNCs from developing countries shows an overwhelming concentration in finance and natural resources: finance (33%), mining, quarrying, and petroleum (25%), transport, storage, and communications (25%), chemical and chemical products (6%), trade (4%), electricity, water, and gas (4%), and other secondary (8%).

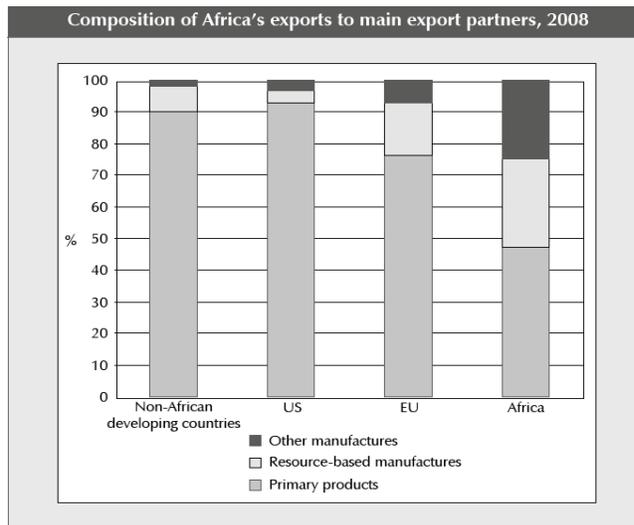
145. ECONOMIC DEVELOPMENT IN AFRICA REPORT 2010, *supra* note 73, at 37–38.

Figure 3

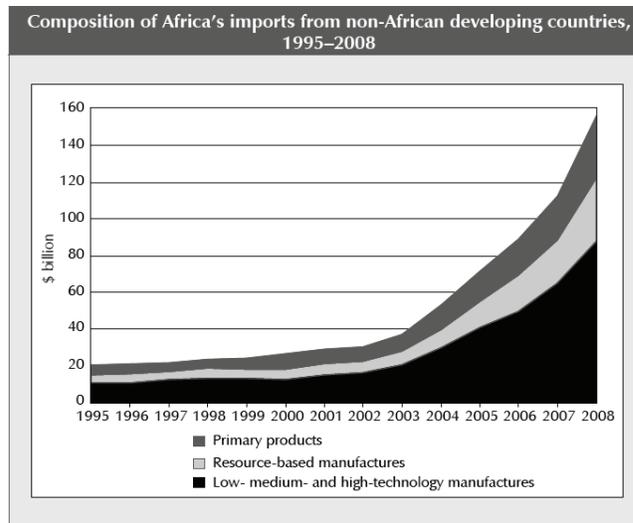


Source: Economic Development in Africa Report 2010, p. 37.

Figure 4



Source: Economic Development in Africa Report 2010, p. 38.

Figure 5

Source: Economic Development in Africa Report 2010, p. 39.

The dominance of primary products in the continent's export raises concerns about commodity dependence and attendant price volatility, suggests that efforts at addressing supply-side constraints to Africa's export have not been effective, and points to the need for Southern partners to address barriers to African exports in their countries. The dominance of manufactures (particularly of consumer goods) in Africa's import raises concerns about the interests of domestic industries given the influx of cheap products from other developing countries.

5. Questioning Technology Development/Technology Transfer

South-South economic cooperation provides opportunity for Africa to acquire needed technology from other developing countries on better terms than has been the case in the context of North-South Trade. However, it is difficult to determine if effective and appropriate technology transfer is occurring and on what terms. In the context of Africa-China trade and investment, research reveals that technology transfer is not occurring as much as is claimed in official documents of FOCAC. Few Chinese firms operating in Africa have the capability to innovate and themselves face frequent charges of

intellectual property theft from companies in the West.¹⁴⁶ The focus of Chinese firms investing in Africa is not in the sectors where rapid technology transfer is common.¹⁴⁷ The distribution of cross-border M&A in Africa by developing countries shows concentration in Mining, Quarrying, and Petroleum (27%), Finance (28%), Transport, Storage, and Communication (22%), Chemicals and Chemical Products (6%), Electricity, Gas, and Water (4%), and Trade (4%).

6. Sustainability of Domestic Industry

With 56% of Africa's import coming from other developing countries in 2008 and consisting primarily of low, medium, and high manufactures, concerns about infant industries in the continent necessarily arise.¹⁴⁸ Even more worrying is the fact that this trend is worsening. In 2000, manufactures made up only 47% of Africa's import from other developing countries compared to 58% in 2008. In the context of China-Africa trade, the influx of cheap textiles is threatening domestic industries in Africa and undermining the continent's export potential. The influx of cheap Chinese textiles has reportedly resulted in the shutdown of prominent Ghanaian textile firms like Ghana Textile Print (GTP) and Printex. In Nigeria, the number of Textile Manufacturing Association employees reportedly dropped from 250,000 in 1996, to less than 30,000 in 2004 due to influx of cheaper Chinese textiles. Popular textile companies like Kaduna Textile Mill have shut down as a result.

7. Africa, Emerging Economies, and Global Governance Architecture

It is increasingly accepted that large emerging countries like China and India will reshape the current quasi-unilateral world. However, it is not clear that the new multipolar world will be less hostile to poor countries and countries on the margin. It is also not clear that emerging economies will be willing to fundamentally transform the global economic system in ways that will benefit Africa. As countries like the US seek to integrate emerging powers into international institutions,

146. Wong & Chan, *supra* note 102, at 296.

147. *Id.* at 285. See also Mark Wang, *The Motivations Behind China's Government-Initiated Industrial Investments Overseas*, 75 PACIFIC AFFAIRS 187 (2002).

148. ECONOMIC DEVELOPMENT IN AFRICA REPORT 2010, *supra* note 73, at 39.

will these countries be willing and able to challenge and transform the inherited geopolitical and economic landscape of the post-World War II liberal order?

In the BIT sphere, there is at present no evidence that emerging economies are seeking or attempting to transform the post-World War II international regime for the governance of foreign investment. What is emerging is not a new system of global investment rules and norms that balance the interests of investors against those of host nations. As the new exporters of capital, countries such as China and India are concluding BITs with other developing countries on the same terms and conditions as those concluded by Western countries. This author's textual examination of China-Africa BITs yielded very little difference between China-Africa BITs and BITs between Africa and other Western countries (see Annex 1). Berger concludes that in its BITs, "China has agreed to international standards of the legal protection of FDI and thus to the current liberal global governance regime for FDI."¹⁴⁹ According to Berger, the Chinese government has adopted "a complimentary rather than a competitive approach in the field of global FDI governance" and "is not overthrowing the existing order of FDI governance but has rather become part of it."¹⁵⁰

In sum, faced with Western powers intent on socializing them into existing international institutions and safeguarding the Western liberal order, rivalries and competition among themselves, and their own domestic problems, emerging powers may not have the willingness or the capacity to champion the causes of poorer nations, may become selective in their South-South cooperation agenda, and may seek to first advance their respective national interests. The April 2010 Memorandum of Understanding (MOU)¹⁵¹ between the United States and the Government of Brazil establishing a fund for technical assistance and capacity building related to the cotton sector in Brazil is a case in point. Accepting compensation from the US as a solution to the "cotton dispute" may be in Brazil's national

149. AXEL BERGER, CHINA AND THE GLOBAL GOVERNANCE OF FOREIGN DIRECT INVESTMENT: THE EMERGING LIBERAL BILATERAL INVESTMENT TREATY APPROACH 22 (German Development Institute ed., 2008).

150. *Id.* at 26.

151. Press Release, Office of the U.S. Trade Representative, U.S., Brazil Agree on Memorandum of Understanding As Part of Path Forward Towards Resolution of Cotton Dispute (Apr. 2010), <http://www.ustr.gov/about-us/press-office/press-releases/2010/april/us-brazil-agree-memorandum-understanding-part-path-f>.

interest but is not in the interest of African farmers whose livelihood are damaged by US subsidies.

8. Obstacles and Barriers to South-South Trade

Obstacles to developing countries' markets in the form of tariffs and non-tariff barriers such as sanitary and phytosanitary measures and technical barriers to trade are a major problem that must be addressed if Africa is to benefit from Africa-South cooperation. One report found that:

- Average applied tariff of developing countries are above developed country rates, despite liberalization attempts in the past decade;
- Approximately 70% of tariffs that developing country exporters face are applied by other developing countries;
- Developing country service trade barriers are also significantly higher than those of developed countries;
- Compared to developed countries, developing countries have more incidence of tariff peaks, with over one-quarter of developing countries having more than 40% of tariffs at 15 % or higher;
- Developing countries' tariffs in manufacture and agriculture are particularly harmful to developing countries' economies and much welfare gains will be realized through their elimination.¹⁵²

Barriers in developing countries' markets, particularly tariff peaks and escalation in agriculture and manufacturing, are particularly damaging to Africa and undermine the continent's plans to boost agricultural export and improve manufacturing value-added. Clearly, asymmetries in the economic relations between Africa and key Southern partners are a major concern. Non-traditional barriers to trade impede Africa's export and erode any benefit the continent might have gained from available preferential access schemes.

9. Weak Institutional Framework

At present Africa-South arrangements lack strong institutional frameworks. Much is promised and little delivered in part because of the absence of an effective monitoring mechanism. Urgently needed are necessary institutional frameworks that can: (i) facilitate broad-based strategic

152. WINNING FROM LIBERALISATION, *supra* note 134, at ix.

dialogues involving governments and the private sector; (ii) monitor the implementation of commitments; (iii) identify and raise awareness about trade and investment opportunities in Africa and developing partner countries; and (iv) identify problems when they arise. At present, only a few bilateral arrangements involving Africa have formal dialogue platforms: China-Africa (2000), India-Africa (2008), Korea-Africa (2006), and Turkey-Africa (2008). Most other bilateral arrangements lack any formal dialogue platform raising questions about their long term survivability (See Table 1, pp. 35).¹⁵³ In the context of China-Africa relations, FOCAC provides the necessary institutional framework. Monitoring of commitment is carried out through multi-level FOCAC meetings. However, while FOCAC has its office in China, it has no presence in Africa. Moreover, there are no annual or progress reports from FOCAC, no mechanism for filing complaints or resolving conflicts, and no meaningful process for stakeholder engagement. In recent years, China has made efforts to involve the private sector in FOCAC processes.

Africa-South America Cooperative Forum of State and Government (ASACOF) was established in 2006 pursuant to the Abuja Resolution on Africa-South America Cooperative Forum. As envisaged, ASACOF shall meet every two years, alternating between the two regions. In the 2006 resolution, the two sides also resolved to “[c]ontinuously monitor the effective implementation of the Plan of Action for maximum benefit” and “[s]et up appropriate institutions and mechanisms to give practical expression to the Cooperative Forum.”¹⁵⁴ The First Senior Officials Meeting (SOM) of the ASA was held at the Itamaraty Palace, Ministry of External Relations, Brasilia, Brazil, on June 10–11 2008. One of the objectives of the meeting was to refine the structure and follow-up mechanisms of ASA/ASACOF. In the same vein, the institutional framework of the India-Africa Forum is still being worked out. In Paragraph 20 of the Delhi Declaration adopted in 2008 following the India-Africa Forum Summit, the two sides agreed that in addition to high level political exchanges between them in the bilateral, regional, and multilateral contexts, Africa and

153. For example, arrangements between Africa and the following countries have no formal platform for dialogue: Brazil, Cuba, U.A.E., Venezuela, Malaysia, Kuwait, Singapore, Thailand, and Bolivia.

154. *Abuja Resolution on Africa-South America Cooperative Forum*, *supra* note 79, paras. 8–9.

India must meet every three years.¹⁵⁵ The next summit is planned for 2011 in Africa.¹⁵⁶

The long-term prospects and credibility of Africa-South engagements may depend on the establishment of credible institutions and the ability of the institutions, once created, to command the respect of respective governments and stakeholders.

10. Dispute Settlement

Related to institutional building is the absence of established mechanisms for the settlement of disputes that may arise now or in the future. It is not clear how grievances and disputes are or will be resolved under the new arrangements. Will South-South partners favor a power-based system of dispute settlement over a rule-based system? In the context of China-Africa arrangements, friendly consultation is presently favored. Exactly what “friendly consultation” means or encompasses is not clear. In the Declaration of the Beijing Summit 2006, for example, both sides agreed to “[p]roperly handle issues and challenges that may arise in the course of cooperation through friendly consultation in keeping with China-Africa friendship and the long-term interests of the two sides.”¹⁵⁷ Also in the Beijing Platform for Action, the two sides agreed to “[p]roperly address, in a spirit of mutual understanding and accommodation, trade disputes and frictions through bilateral or multilateral friendly consultations.”¹⁵⁸ Finally, in the Sharm El Sheikh Action Plan, the two sides agreed “to properly handle trade differences and frictions through friendly consultation under the principle of mutual understanding and mutual accommodation.”¹⁵⁹ Disputes will necessarily arise and designing appropriate and effective dispute settlement procedures is an issue that must be addressed in the context of South-South economic cooperation. In this regard, developing countries will one day have to address some of the thorny issues that presently plague the WTO dispute settlement mechanism.

155. *Delhi Declaration*, *supra* note 113.

156. *Id.* para. 20.

157. *Declaration of the Beijing Summit*, *supra* note 86.

158. *Beijing Action Plan*, *supra* note 88, para. 3.3.

159. *Sharm El Sheikh Action Plan*, *supra* note 127, para. 4.4.7. “The two sides agreed to encourage the usage of national and regional arbitration organs in resolving contractual conflicts between Chinese and African enterprises.” *Id.* at para. 4.4.8.

11. The Cost of Overlapping South-South Negotiations and Partnerships

For poor countries in Africa, the emergence of new initiatives and structures for cooperation comes at a significant cost. African LDCs must worry about the financial and human cost of participating in multiple fora including the WTO, regional and sub-regional institutions, as well as growing bilateral processes. The bilateral processes may prove much more burdensome because each partner has its own framework for cooperation. Concurrent participation in the Doha Round negotiations and the GSTP negotiations may be too expensive and overwhelming for many countries in Africa (see Table 1).

Table 1

Bilateral Cooperation	Organizational Structure	Frequency of Meetings
Forum on China-Africa Cooperation	Follow-up Committee of FOCAC/Ministerial conferences	Every three years: 2000, 2003, 2006, and 2009
India-Africa Forum Summit	No organizational structure/ Heads of State Summit	Every three years: 2008
Korea-Africa Economic Cooperation	KOAFEC Secretariat/ KOAFEC Consultative Group/ KOAFEC Ministerial Conference	Every two years: 2006, 2008, and 2010
Turkey-Africa Co-operation Summit	No organizational structure/ Heads of State Summit	Every five years: 2008

UNCTAD has suggested that Southern partners “consider streamlining and aligning their initiatives to reduce the transactions costs to Africa and maximize their benefits.” However, it is doubtful that the suggestion to streamline initiatives will be considered in the foreseeable future.¹⁶⁰

160. ECONOMIC DEVELOPMENT IN AFRICA REPORT 2010, *supra* note 73, at 27.

C. THE UGLY: THE DANGEROUS ASPECTS OF SOUTH-SOUTH ECONOMIC COOPERATION

1. Resource for Infrastructure Deals: Another Debt Trap?

In 2006, China pledged US\$3 billion in preferential loans and US\$2 billion of preferential buyer's credits to Africa. In 2009, following the 4th FOCAC Ministerial Conference, Beijing pledged to provide US\$10 billion in concessional loans to African countries and to support Chinese financial institutions by setting up a US\$1 billion special loan for small and medium-sized African businesses. China-Export-Import (Ex-Im) Bank provides the bulk (about 92%) of the resources for Chinese infrastructure development in Africa.¹⁶¹ "Resources for infrastructure" or "Angola mode" is China Ex-Im Bank's preferred mode for doing business with countries in Africa with abundant resources and limited creditworthiness. Under this deal structure, African governments use natural resources to repay loans received for infrastructure development. The Angola mode allows the Chinese government to "gain physical security over oil resources" and allows beneficiary governments to obtain needed finance. To date, about eight deals totaling more than US\$3 billion have been reported, including a 2007 deal with Ghana worth US\$562 million involving cocoa, a 2005 deal with Nigeria worth US\$298 million involving oil, and a US\$1 billion deal with Guinea and involving Bauxite. Although natural resource-based transactions in the oil industry are not unique or novel, they raise new concerns today for several reasons including the lack of transparency surrounding the loan negotiations,¹⁶² the lack of conditionality attached to the loans, and the danger of unsustainable loans.

Is Beijing's offer of cheap loans to African governments reversing gains in the effort to address unsustainable debts in the continent? "If countries are borrowing to the extent that their debt becomes unsustainable then that undermines all the work that has been done in trying to tackle unsustainable debt," Hilary Benn, then Britain's International Development

161. Additional funds comes from Chinese government (3%), State owned enterprises (5%) and the China-Africa Development Fund (0.3%). See BUILDING BRIDGES, *supra* note 120, at 53.

162. *Id.* at 55 (noting that "[r]elatively little is known about the terms of the China Ex-Im Bank's concessional loans."). Being a state policy bank, details of the activities of China's Ex-Im Bank are not available and cannot be scrutinized by stakeholders in Africa.

Secretary, told reporters.¹⁶³ Guinea, for example, has contracted Chinese debts in excess of the value of debt relief by the OECD, receiving about US\$870 million in debt relief and accepting concessional loans from China to the tune of US\$1 billion.¹⁶⁴ Also, Nigeria has received about US\$10.022 billion in debt relief and has accepted Chinese infrastructure finance to the tune of US\$5.398 billion. However, Foster, Butterfield, Chen, and Pushak conclude that “some of the largest beneficiaries of Chinese finance . . . have not been beneficiaries of recent debt relief initiatives,” and that “[t]here are only a handful of countries where the value of recent loans contracted to China represents a high share of the value of recent OECD debt relief.”¹⁶⁵

2. Human Rights/Labor Rights Concerns.

Human rights as a concept do not feature strongly in South-South discourse and framework documents. Beijing’s emphasis on respect for the sovereignty of African countries is commendable but can be and is being used as a pretext for ignoring serious human rights abuses in the continent and dealing with Africa’s most brutal and corrupt leaders. Whether China is safeguarding the legitimate rights and interests of African peoples or just the interest of corrupt leaders in the continent is a question that increasingly must be asked. Admittedly China is gradually moving away from its non-interference stance.¹⁶⁶ In his speech at the 4th Ministerial Conference, the Chinese Premier expressed China’s willingness to “increase involvement in the settlement of issues concerning peace and security in Africa” but also reaffirmed China’s non-interference stance:

163. JOHN HUMPHREY, RESEARCH IN EUROPE AND AFRICA-CHINA RELATIONSHIPS: A REPORT FOR THE ROCKEFELLER FOUNDATION 2 (2007), available at http://asiandrivers.open.ac.uk/documents/china_africa_research.pdf.

164. BUILDING BRIDGES, *supra* note 120, at 64.

165. *Id.* at 65.

166. The Chinese government has appointed a special representative for African affairs. Since 2006, China has sent a total of 6,281 peacekeeping personnel and policemen to Africa, including 1,629 who are serving in six UN peacekeeping missions. China has also dispatched four naval fleets to the waters off the Somali coast and the Gulf of Aden for escorting missions. *Implementation of the Follow-up Actions of the Beijing Summit of the Forum on China-Africa Cooperation*, FOCAC (Nov. 10, 2009), <http://www.focac.org/eng/dsjbjzjhy/hywj/t627504.htm>.

The Chinese government and people respect the right of African countries to independently choose their social systems and support the African people in exploring development paths that suit their national conditions. We firmly believe that Africa is fully capable of solving its own problems in an African way. The economic cooperation and trade between China and Africa are based on mutual benefit, win-win progress, openness and transparency. China has never attached any political strings to its support and assistance to Africa, and nor will it do so in the future.¹⁶⁷

Ignoring the human rights record of African leaders arguably contradicts the development objectives of South-South partnership and makes it harder for regulatory institutions and civil society organizations in Africa to question the human rights record of the increasing number of emerging multinational corporations operating in the continent. In the future, alliances between civil society organizations based in the South will be needed to complement growing South-South trade and investment. Although international human rights and development organizations such as Human Rights Watch and Oxfam will remain relevant in Africa for the foreseeable future, partnerships between African-based human rights organizations and similar organizations based in countries such as India, China, Brazil, and South Korea will be needed to ensure that human rights is more fully integrated into South-South cooperation discourse and that the activities of emerging multinationals and other private actors are constantly on the radar.

3. Environmental Concerns

Africa-South economic cooperation is orchestrating new activities in the extractive industry, spurring never before seen infrastructure development, and may also spur industrialization in the continent in the near future. China has become a major player in the development of hydropower in Africa and its investments are generally concentrated in environmentally sensitive sectors. These developments raise serious questions about the environmental consequences of Africa-South cooperation. Environmental concerns in the context of Africa-South cooperation are heightened by the fact that many of the activities in the extractive industry and the construction sector involve hitherto unknown corporations – companies that are typically not on the radar of international environmental groups and have yet to develop credible

167. Jiabao, *supra* note 81.

environmental policies. In the case of China, activities carried out by state-owned enterprises raise additional questions about transparency, liability, and sovereign immunity in the event of lawsuits. Troubling projects of the past decade include:

- the Belinga mine project in Gabon, a US\$3.5 billion dam construction project involving a Chinese company which threatened the destruction of the Kongou Fall in the Inwindo National Park;
- the Merowe Dam in Sudan, a US\$519 million project approved by the China Ex-IM Bank and credited for displacing more than 50,000 Sudanese from the Nile Valley into desert locations;
- the Gibe 3 Dam in Ethiopia, a US\$1.75 billion project by Italian hydropower developer Salini Costruttori backed by Industrial and Commercial Bank of China (ICBC) and mainland power equipment supplier Dongfang Electric Corporation. The dam threatens the livelihood of 500,000 indigenous, according to environmental groups; and
- the Bui Dam project in Ghana involving Sinohydro and financed by China Ex-Im Bank (the dam threatens the Bui National Park in Ghana).

What are the duties and responsibilities of construction companies, energy companies, and infrastructure financiers from other developing countries operating in Africa? In the event of massive human rights and environmental damage what might be the legal liability of these actors?

In the future, it will be important to monitor the environmental policies of Southern partners and Southern corporations operating in Africa. In the last decade China created a Ministry of Environmental Protection, strengthened environmental regulations, and adopted a green credit policy. China is also a leading promoter of renewable energy possibilities. Whether these changes translate into good environmental practices abroad, particularly in Africa, is hard to tell. It will be up to African civil society groups in partnership with civil society groups in other developing countries and international NGOs to pressure new actors in Africa to adopt credible and effective environmental policies. In 2004, under pressure from international environmental groups, China Ex-Im Bank adopted an environmental policy, and in 2008, adopted more detailed guidelines. In 2008, the Industrial and Commercial Bank of China (ICBC) adopted the

international environmental principle known as the Equator Principles. China Ex-Im Bank has reportedly signed a memorandum of understanding with the World Bank to share information on project evaluation procedures.¹⁶⁸ On January 4, 2008, the State-owned Assets Supervision and Administration Commission of the State Council (SASAC) publicly issued CSR Guideline for State-Owned Enterprises.¹⁶⁹ Again, whether these reforms meet with international standards is a question that must be asked, and whether they will be implemented remains to be seen.

4. African LDCs and South-South Arrangements

Although declarations and resolutions of the G-77 acknowledge the situation of LDCs and call for sensitivity towards the LDCs, there is yet to emerge a concrete program or consensus on how to address the structural, economic, and social constraints these countries face, which make it difficult for them to take advantage of opportunities in South-South trade. The Caracas Programme of Action called for “special attention should be paid to countries in greater need, particularly the Least Developed Countries, so that they can effectively participate and benefit from programmes of economic cooperation among developing countries in all fields of such cooperation.”¹⁷⁰ According to the GSTP Declaration, “[t]he special needs of the least developed countries should be clearly recognized and concrete preferential measures in favour of these countries should be agreed upon; the least developed countries will not be required to make concessions on a reciprocal basis.”¹⁷¹ In the São Paulo Declaration, G-77 members pledged to “work towards developing concrete preferential measures to be accorded in favour of least-developed country participants.”¹⁷² Despite the declarations

168. *Ethiopia Dam Blot on China's Aid Record*, E. AFR. FORUM: NEWS FROM THE HORN OF AFR. (June 8, 2010), <http://www.eastafricaforum.net/2010/06/08/ethiopia-dam-blot-on-chinas-aid-record/>.

169. See generally Peter Bosshard, *China's Environmental Footprint in Africa*, SAAIA CHINA IN AFR. POLICY BRIEFING, at 6 (Apr. 2008), <http://www.internationalrivers.org/files/SAAIA%20policy%20briefing%20508.pdf>.

170. Caracas Programme of Action 1981, *supra* note 45,

171. Global System of Trade Preferences Among Developing Countries [GSTP], Agreement on the Global System of Trade Preferences Among Developing Countries, at 4 (Apr. 12, 1988), http://www.unctadxi.org/Secured/GSTP/LegalInstruments/gstp_en.pdf.

172. GSTP, *São Paulo Declaration on the Launching of the Third Round of*

and affirmations, many questions are yet to be resolved in the context of South-South economic cooperation. Will special and differential treatment (SDT) and aid for trade (AfT) feature in South-South trade and to what degree? What kind of market access concessions will Southern partners offer LDCs? Will preference schemes become a strong component of South-South trade discourse?

5. Secrecy/Lack of Transparency

There is still a lot that ordinary citizens do not know about Africa-South trade. Contracts involving millions of dollars and vast amounts of natural resources are concluded without public debate or discussion. Contracts are awarded through secret bidding processing that many believe to be rigged. The result is that many in Africa do not understand the scope and potential implication of growing Africa-South trade and do not embrace the unfolding arrangements. China's trade and investment agenda in Africa is still not fully known or understood by ordinary Africans.¹⁷³ In part because of China's state-centric approach to African diplomacy, much secrecy surrounds China's day to day activities in the region from negotiations for important contracts to their eventual execution. Secrecy is especially damaging in the South-South context because presently most of the activities implicate natural resources where human rights and environmental pollution are rife and where long-term development goals could be compromised with a stroke of the pen. Negotiations regarding Gabon's Belinga mine project, a US\$3.5 billion project that was designed to include a mine, a dam, railroads, and a port facility, were carried out in complete secrecy. Although the dam potentially affected whole communities and threatened the lives of thousands, those who would be affected were largely unaware of the negotiations and were neither consulted nor informed about the project. Gabonese activists that raised concerns about the proposed project were harassed and jailed. Moreover, under

Negotiations Within the Global System of Trade Preferences Among Developing Countries, ¶ 4, GSTP/C.P./SSB/5 (July 23, 2004), http://www.unctadxi.org/Secured/GSTP/Declarations/spd_en.pdf.

173. See generally *Frequently Asked Questions about Corruption*, TRANSPARENCY INT'L: GLOBAL COALITION AGAINST CORRUPTION, http://www.transparency.org/news_room/faq/corruption_faq (last visited Feb. 18, 2011) (defining "transparency" as "a principle that allows those affected by administrative decisions, business transactions or charitable work to know not only the basic facts and figures but also the mechanisms and processes.").

the terms of a leaked copy of the Belinga mine project agreement, Gabon was to receive only 10% of the mining profit while the Chinese company involved in the project was granted a 25-year tax break. Not only are the African populace and civil society groups not informed of on-going negotiations, information regarding Chinese operations in Africa is also generally very difficult to access—an issue clearly complicated by the involvement of state owned enterprises.

6. Asymmetries of the New Geography of Trade and Investment

Asymmetries in Africa-South trade raise serious concerns as well and suggest that, for many countries, South-South trade may not be any different from Africa-North trade. In this regard, both the content and terms of Africa-South trade are a concern. Although Africa's trade with developing countries has increased and the continent's trade with developed countries is decreasing, the continent "has a trade surplus with developing countries but a surplus with developed countries."¹⁷⁴ Simply put, Africa is importing more from other developing countries than the continent is exporting to them. Thus, while countries such as Syrian Arab Republic, Lebanon, and Turkey are increasingly depending on Africa as a market for their export, Africa is not depending on these countries as a market for its export to the same extent. In 2008, 12% of Syria's export went to Africa while only 6.8% of its import came from Africa. The same is true for Lebanon and Turkey; 15.36% of Lebanon's export went to Africa and only 4.34% of the country's import came from Africa. In 2008, 6.87% of Turkey's export went to Africa, while only 3.85% of Africa's export goes to Turkey. Africa's trade deficit with other developing countries is therefore a major concern. Also worrying is the fact that Southern partners are primarily interested in Africa's natural resources. In 2008, 84% of Africa's export to China was comprised of primary products while only 16% was comprised of manufactures; of the manufactures, only 3.1% are low, medium, and high technology manufactures. On the other hand, during the same period, the share of low, medium and high technology manufactures in Africa's import from China stood at 86% (up from 76% in 2000).¹⁷⁵

Thus, although China typically views evolving relations

174. ECONOMIC DEVELOPMENT IN AFRICA REPORT 2010, *supra* note 73, at 30.

175. *Id.* at 39.

with Africa through a North-South, post-colonial prism, African nations should not be seduced into believing that the China-Africa arrangement will be automatically beneficial and produce win-win outcomes for all. In a speech at the 4th Ministerial Conference in 2009, the Chinese Premier stated:

Our relationship is based on mutual support . . . It is guided by the core principle of mutual respect and equality. It is driven by our joint endeavor to pursue mutually-beneficial cooperation and common development . . . We are all developing countries and face both rare historic opportunities for faster development and complex global challenges. We should enhance mutually beneficial cooperation . . . Cooperation between us will catalyze South-South cooperation and enhance the collective standing of developing countries in the international political and economic architecture. Cooperation between us will promote democracy in international relations and justice in the international order . . .¹⁷⁶

7. The Absence of Ground Rules on Some Fundamental Issues: New Rules for a New Trade and Investment Geography

The new geography of trade and investment forces a rethinking on the role of law in economic relations and the legal gaps in existing South-South arrangements. For example, what is the role and responsibility of EMNCs operating in Africa? Is there room for special and differential treatment in South-South arrangement? What will be the mechanism for dispute settlement in the South-South context? Will trade-related technical assistance feature in South-South trade arrangements?¹⁷⁷ Overall, will developing countries simply adapt existing norms and practices or will they create new ones better suited to their economic situations and development aspirations?

On the investment front, developing countries appear to have simply embraced existing norms and modalities relating to the governance and protection of foreign investments. There are few discernible differences between the content of South-

176. Jiabao, *supra* note 81.

177. See ECONOMIC DEVELOPMENT IN AFRICA REPORT 2010, *supra* note 73, at 42. UNCTAD suggests that Southern partners “could . . . play a direct role in boosting Africa’s capacity to export manufactures by contributing to the Aid for Trade Initiative as well as by making technology transfer an important component of their technology assistance to the region.” *Id.* UNCTAD suggests that Southern partners “could . . . play a direct role in boosting Africa’s capacity to export manufactures by contributing to the Aid for Trade Initiative as well as by making technology transfer an important component of their technology assistance to the region.” *Id.*

South BITs and those of North-South BITs. For example, features of China-Africa BITs include: broad asset-based definition of investment, absolute standards of treatment (e.g., fair and equitable treatment), relative standards of treatment (e.g., national treatment and most-favored nations), protection against expropriation, protection against wars, riots, and related civil disturbances, transfer of funds provision, and most importantly, extensive investor-State dispute settlement provision.

8. Labor Rights Concerns

Labor rights issues arise on two fronts. First, will South-South economic cooperation boost employment opportunities in Africa, and to what degree? Second, what are the labor rights implications of the activities of corporations from other developing countries in sectors such as the extractive industry or the construction industry? Regarding the later, new foreign employers are appearing on the scene in Africa. Unfortunately, many countries in the continent lack the capacity to effectively assess the employment and labor law implications of Africa-South arrangements. Anecdotal evidence suggests that labor rights violations are occurring. A baseline study by the International Labor Organization (ILO) of labor practices on construction sites in the United Republic of Tanzania, involving eleven large construction projects, found that three of the four projects that were found to have exceptionally low labor standards, with long working hours, low pay, low standard of occupational safety and health (OSH), and a poor record on workers' rights, were operated by Chinese contractors.¹⁷⁸ The study, according to the authors, suggests that the success Chinese contractors are having in winning an increasing number of tenders in Tanzania "may . . . be at the expense of the labour force."¹⁷⁹

Labor practices of Southern partners must be continually probed. The issue is important and complicated in Africa

178. See International Labour Organization National Construction Council, Baseline Study of Labour Practices on large construction sites in the United Republic of Tanzania, at 84–85, Sectoral Activities Program, Working Paper 225 (2005) (noting the nationalities of the main contractors that were part of the study as Chinese (4), Japanese (2), South African (1), Kuwaiti (1), Danish (1) and Indian (1)). The study found that three projects—two with South Africa contractors and one with Norwegian contractor—had consistently high standards. *Id.*

179. See *id.*

because sectors such as construction, mining, and oil and gas that are found to be the most corruption-prone are also the sectors that have attracted EMNCs the most. Transparency International's 2008 Bribe Payer's Index (BPI) ranked the BRIC countries and Mexico at the bottom on a list of 22 leading international and regional exporting countries measured by the tendency of their firms to bribe abroad.¹⁸⁰ At the very bottom was Russia with a score of 5.9, followed by China (6.5), Mexico (6.6), India (6.8) and Brazil (7.4). Brazil has ratified the OECD Anti-Bribery Convention, but Russia, India, and China have not.

9. State-Centered Development Model/Lack of Broad Stakeholder Involvement

South-South discussions and dialogue occur primarily at the ministerial level and frequently ignore important constituencies in the private sector and civil society. China's bilateral, state-centric approach to diplomacy in Africa privileges the political elite in the continent at the same time that it sidelines important non-state actors as well as sub-regional and regional organizations in Africa. At present, unfolding bilateral arrangements are driven primarily by the respective governments and not by the private sector. This creates two problems. First, it appears to encourage, in Africa, a development path that ignores private domestic constituencies and interest groups. Second, it makes it difficult to assess the extent to which Chinese involvement in the region addresses the needs of ordinary Africans. Thus far, Beijing has been creative in meeting "elite-defined needs" in the continent.

The private sector must be involved for South-South economic cooperation to work. In response to criticism, Beijing is now making more of an effort to involve the private sector in FOCAC activities. The last decade witnessed the establishment of the China-Africa Chamber of Industry and Commerce in 2006, the convening of the High-level Dialogue between Chinese and African Leaders and Business Representatives in 2006, the establishment of a China-Africa Development Fund (Cadfund) in 2007, and the first, second, and third Conference of Chinese and African Entrepreneurs.¹⁸¹ At the 2006 meeting

180. *Bribe Players Index 2008*, TRANSPARENCY INT'L: THE GLOBAL COALITION AGAINST CORRUPTION (Dec. 8, 2008), http://www.transparency.org/news_room/in_focus/2008/bpi_2008.

181. The first conference was held in 2003; the second conference was in

of the Chinese and African business communities, Premier Wen Jiabao pledged that the Chinese Government “will continue to facilitate the exchanges and cooperation between the Chinese and African business communities.”¹⁸² Following the 3rd Conference in 2009, China pledged, in the next three years, to support Chinese enterprises to set up three to five full-service logistic centers in Africa. Jointly founded in 2004 by the China Society for Promotion of the Guangcai Program, the United Nations Development Programme, and the Ministry of Commerce/China International Center for Economic & Technical Exchanges, the China-Africa Business Council now provides practical business tools to facilitate the strengthening of business ties between China and Africa.¹⁸³

In conclusion, judged by available information, Africa-South trade will not necessarily and automatically produce benefits to Africa. Among nations and within nations in Africa, there will be winners and losers. Presently, trade and investment from China is concentrated in a few countries and in a few sectors. On the winning side are resource-rich and politically strategic countries in the region such as Nigeria, Angola and even Sudan. On the losing side will be resource-poor, marginal countries in the continent. Is UNCTAD correct in its assertion that Southern partners “have a responsibility to ensure that the relationship with Africa yields maximum benefits to both sides?”¹⁸⁴ Asserting such a responsibility is easy; more difficult and complicated is devising how to

2006 in Beijing; the third conference was in November 2009 in Egypt. See *Chinese, African Entrepreneurs Gather in Egypt to Push Economic Co-op*, PEOPLE'S DAILY ONLINE (Nov. 8, 2009), <http://english.peopledaily.com.cn/90001/90776/90883/6806802.html>. Following the second conference, 16 cooperative agreements were reportedly signed between 12 Chinese enterprises and African governments and firms, worth of nearly \$1.9 billion in total. *Id.* About 500 Chinese and African entrepreneurs reportedly attended the third conference. *Id.* At the conclusion of the conference, contracts of 16 cooperation projects were signed, and letters of intention for cooperation in 15 projects were also inked, to the tune of \$500 million. *Id.*

182. Wen Jiabao, Premier St. Council China, Address at the Opening Ceremony of the High-level Dialogue Between Chinese and African Leaders and Business Representatives And the Second Conference of Chinese and African Entrepreneurs: Strengthen China Africa Cooperation for Mutual Benefit (Nov. 4, 2006), <http://www.focac.org/eng/ltada/dscbzjhy/SP32009/t607552.htm>.

183. See *Brief Introduction to China-Africa Business Council*, CHINA-AFR. BUS. COUNCIL, <http://www.cabc.org.cn/english/introduce.asp>.

184. ECONOMIC DEVELOPMENT IN AFRICA REPORT 2010, *supra* note 73, at 26–27.

encourage and or compel Southern partners, particularly the advanced developing countries, to operate fairly and responsibly given the new trade and investment geography. The long-term dividend to Africa of Africa-South engagement is yet to be assessed. Thus, while Chinese firms are getting into Africa, it is not clear on what terms and to whose benefits they operate. According to Wong and Chan, Chinese firms that venture overseas “are typically small” and “are usually unable to share capital, technology, market information, or production resources.”¹⁸⁵ They also note that “[o]nly one-third of oversea investments are profitable, with only one-third barely servicing and the rest in the red or even being wound up.”¹⁸⁶ This is bad news in a continent looking to FDI to spur its manufacturing sector.

VI. AFRICA-SOUTH TRADE AND INVESTMENT COOPERATION: THE NEXT STEPS

Even if the idea of a new trade geography is accepted, countries in Africa will not automatically benefit under the new geography and are presently not moving any closer to the centre of international or regional economic relations. Undoubtedly, there are immense opportunities in Africa-South trade for countries in Africa to boost export, access development finance, and gain better integration into the multilateral economic system. However, Africa risks marginalization in the South-South framework unless asymmetries between Africa and key Southern partners are immediately addressed. Factors that have furthered Africa’s marginalization in the globalization process such as weak policy framework and institutions, protection at home and abroad, dependence on few primary products, deep-seated structural problems, and imbalances must also be addressed as a matter of urgency. Unless attention is paid to the foundations of emerging Africa-South arrangements, the continent may find itself further marginalized even in the new trade and investment geography.¹⁸⁷

185. Wong & Chang, *supra* note 102, at 278.

186. *See id.* at 278. *See also* Goh Sui Noi, *China Firms Spread Wings but Many Fail to Take Off*, STRAITS TIMES, Dec. 20, 2002.

187. *See New Geography of International Trade*, *supra* note 9, para. 1 (noting that the share of the South in global trade and financial flows has grown dramatically but that “[n]ot all countries in South have been able to take part in this journey.”).

Whether the journey on the South-South train will be smooth, rapid, and beneficial for peoples and countries in Africa will depend on African countries themselves, other Southern partners, and the international community. African countries have the primary responsibility for promoting and implementing South-South trade and investment cooperation. It is, however, important that the international community support the continent's effort to expand South-South cooperation. In Resolution 58/220, the UN General Assembly recognized "the urgent need to help to strengthen the capacities of the developing countries, especially the least developed countries, to participate in and benefit from globalization and liberalization processes."¹⁸⁸ In the Accra Accord of UNCTAD XII, Heads of State and Government noted that "[t]he new opportunities for trade, investment and economic cooperation among developing countries need to be fully exploited, and this tendency should be encouraged and benefits extended to all regions."¹⁸⁹

A. AFRICA

African countries must urgently seek ways to strategically integrate South-South trade, investment, and economic cooperation into their respective development plans and must proactively respond to the opportunities emerging in South-South trade. Not only must the continent expand the direction of its trade, but it must also expand the content of its export. African leaders, with active participation from the private sector, must find solutions to the continent's minimal share of global trade, weak technology base that prevent manufacturing value-added in the continent, and unhealthy dependence on commodities. As the President of Tanzania rightly noted:

Africa is not only the greatest loser in a globalising world~ it is also structurally and institutionally positioned to continue being the greatest loser unless African leaders and their citizens think again of the realities of our world, and how to break away from the systemic injustice and procedural unfairness that characterizes our engagement with the outside world.¹⁹⁰

188. G.A. Res. 58/220, *supra* note 12, ¶ 6.

189. *Accra Accord*, *supra* note 2, para. 52.

190. Benjamin Mkapa, President of Tanz., Speech by the President of the United Republic of Tanzania to the African Union Commission (Aug. 31, 2005), *available at* <http://www.africa-union.org/VISITS/Tanzania%20Pdt%2031aug05/SPEECH%20BY%20THE%20PRESIDENT%20OF%20THE%20UNITED%20REPUBLIC%20OF%20TANZANIA.htm>.

Unfortunately, while there is much talk in Africa about improving the continent's economic indicators, there is less action in terms of creating the enabling environment needed for sustainable development and growth. The Tanzanian President notes that he "[has] not seen [Africa] seriously and sufficiently strategizing on this matter. Very little time in our agenda is devoted to such matters, which ultimately will determine Africa's place in the globalization process"¹⁹¹ Clearly, Africa has to do a better job of effectively managing external relationships in a way that furthers the continent's long-term and strategic interests such as the goals of diversification, value-addition, human security, and sustainable development. Finally, countries in Africa must individually and collectively determine how to manage openness in a post-crisis global environment given new questions now being raised about the wisdom and merits of trade liberalization and openness to foreign investment.

1. Coordinated, Strategic Policy Response Based on Targeted Priorities

A coordinated and reasoned response to Africa-South cooperation is necessary if Africa is to reap any benefit from South-South engagement. Even more important is a China strategy given China's present dominance in the region. It is not clear that individual countries in Africa or the different regional economic communities in the continent have articulated their China/South strategy. The African Union (AU) is only now struggling to identify a role for the organization in the new Africa-South arrangements. It is important that countries in Africa identify their individual and collective strengths including the areas where the continent enjoys comparative advantage, identify the continent's long-term strategic interests, and engage Southern partners from a position of unity. It must be accepted that international relations, including South-South relations, are based on power and interests despite the rhetoric of "win-win" and "mutually beneficial" outcomes that dominate present South-South dialogues.

A coordinated and united voice in Africa's engagement with Southern partners will go a long way in making up for the continent's structural weaknesses, including political

191. *Id.*

fragmentation, poverty, donor-dependence, weak institutions, and weak markets. In this respect, regional integration in Africa is increasingly an important and indispensable tool that Africa needs in order to effectively manage external relations from a position of strength. Compared to other regions, Africa has the lowest level of intra-regional trade and investment standing at only 10% according to the World Bank. Regional integration will address the problem of weak national and regional markets, reduce the continent's dependence on non-African markets for economic growth, and generally improve global competitiveness. Although African leaders identify regional integration as imperative, they presently lack the political will to take the steps needed to move the agenda forward.

African leaders must also get Southern partners to include and involve pan-African organizations and regional economic communities such as the Economic Community of West African States in future dialogues. Such a coordinated and unified response will make for more focused and organized engagement with potential partners and will ensure that some countries are not marginalized in emerging arrangements and that broad continental goals and visions are not easily forgotten. In the China-Africa context, some changes are underway. China is currently sponsoring the construction of the AU conference center scheduled to be completed in 2012. Since 2008, China and the AU have held an annual dialogue; from October 31 to November 3, 2010, the Chairperson of the Africa Union Commission (AUC), Dr. Jean Ping, visited China at the invitation of the Chinese governments. Whether these initiatives reflect a trend towards greater involvement of Pan-African and African regional economic communities in Africa-South dialogue is hard to say at this point.¹⁹²

2. Actively Explore Opportunities in Other Less Advanced Developing Countries

Africa must explore opportunities for trade and investment

192. During his visit, Dr. Ping "reiterated the commitment and availability of the African Union to work with the Chinese Government to ensure the coordination and development of our common ideals," but did not appear to push China on emerging concerns surrounding Sino-Africa relations. See Press Release, AfriBiz: Making Business Happen in Africa, AU Chairman Ping Concludes Visit to China (Nov. 3, 2010), available at <http://www.afribiz.info/content/au-chairman-ping-concludes-visit-to-china-press-release>.

beyond the BRIC economies. Africa appears to export more value-added products to places other than the BRIC countries. The 2009 report by UNCTAD found that the share of low, medium, and high technology manufactures in Africa's export to developing countries such as Republic of Korea and Saudi Arabia was higher than 10% in 2008. Conversely, the continent's export to the advanced developing countries of similar manufactures during the same period was no more than 4%. Africa's share in the trade of many developing countries is still minimal and could be significantly improved. Africa's trade represents only 10.6% of China's total trade, 3.5% of India's, 2.6% of Brazil's, and a mere 1.2% of Russia's external trade. Africa has to move beyond resolutions and declarations at high-level meetings towards identifying specific ways to exploit the opportunities in South-South trade. Both the direction and the content of Africa's trade must change. Consequently, Africa must pressure Southern partners to address barriers to African manufactures in their markets. Conversely, countries in Africa must also address internal constraints to industrialization. As the President of Tanzania rightly noted, "Without value addition [Africa is] doomed."¹⁹³ Regarding Africa-Asia trade, the Tanzanian President suggests that the relationship must "move increasingly beyond trade, to include trade-related investments."¹⁹⁴ Three types of investment are especially needed: investments directed at producing in Africa consumer goods for Asian markets, investments directed at producing in Africa consumer goods for Western markets, and investments targeted at producing locally produced goods for African domestic markets. Although countries in Africa routinely make demands of developed countries, they appear more hesitant to make demands on other developing countries, including advanced developing countries.¹⁹⁵

Exploring opportunities in developing countries' markets also means developing the capacity to identify tariff and non-tariff barriers to Africa's exports in these markets and providing support to African enterprises attempting to

193. The President of the United Republic of Tanzania, Speech to the AU Comm'n, Addis Ababa, Eth. (Aug. 31, 2005).

194. *Id.*

195. See Africa Union, Exec. Council, Decision on Trade Facilitation, Ex.CL/Dec.204 (VII) (2005) (requesting developed countries to "introduce measures that will encourage trans-national corporations to increase investment in Africa to ensure that the market access opportunities granted to the continent result in attracting a steady flow of FDI.").

penetrate these new markets. Most countries in the continent lack the capacity to promptly identify damaging trade barriers in major export markets and frequently rely on reports from NGOs or reports to the WTO for relevant information. With respect to China, foreign exporters generally complain about inconsistent application of custom classifications, tariff rates, and import controls by local Chinese officials.¹⁹⁶

3. Conditions for Growth

Many accepted conditions for solid and sustained economic growth are lacking in Africa. These include sound macroeconomic policies, stable macroeconomic background, strong and stable political institutions, peace and security, openness, and high levels of education. Available data suggests that most countries in Africa fall short on many levels.

Figure 6

Rank	Drivers	Driver score	
		10=High	1=Low
1	Talent - driven innovation	9.22	
2	Cost of labor and materials	7.67	
3	Energy cost and policies	7.31	
4	Economic, trade, financial and tax systems	7.26	
5	Quality of physical infrastructure	7.15	
6	Government investments in manufacturing and innovation	6.62	
7	Legal and regulatory system	6.48	
8	Supplier network	5.91	
9	Local business dynamics	4.01	
10	Quality and availability of healthcare	1.81	

Source: Deloitte and US Council on Competitiveness - 2010 Global Manufacturing Competitiveness Index; ©Deloitte Touche Tohmatsu, 2010.

Although African leaders routinely express concerns about the continent's poor performance in attracting FDI,¹⁹⁷ the political will to take the necessary steps needed to create an enabling competitive environment is absent. In a 2005

196. *Tariffs and Non-Tariff Barriers*, AUSTL. GOV'T (Mar. 4, 2009), <http://www.austrade.gov.au/Tariffs-and-non-tariff-barriers/default.aspx>.

197. Decision on Trade Facilitation, *supra* note 195, para. 2.

Decision, the Executive Council of the African Union requested Member States and the AU Commission to “review the investment promotion strategies pursued by African countries in order to eliminate existing constraints to FDI inflows,” and called on international organizations to “support African countries to review their investment policies and identify more focused and targeted investment promotion activities.”¹⁹⁸ Considering that most of the constraints to FDI inflow to Africa are well known and documented in numerous reports, new studies are not necessary. What is needed is principled and committed action on a number of fronts.

4. Private Sector Development/SMEs.

Most countries in Africa have yet to recognize the critical role of the private sector in development and poverty development and most are yet to adopt appropriate private sector development strategy. To maximize the opportunities in South-South trade, Africa needs a vibrant private sector that boasts strong small and medium sized enterprises that compete globally.¹⁹⁹ To date, most countries in the region lack coherent and concrete policy directed at strengthening enterprise competitiveness. UNCTAD Commission on Enterprise, Business Facilitation and Development defines Competitiveness as “a nation’s ability to produce goods and services that meet the test of international markets while simultaneously maintaining and expanding real incomes of its people over the long term.”²⁰⁰ In addition to the basic prerequisites necessary for private sector development (e.g., investment in physical infrastructure and human development, and a sound legal and regulatory system), there are concrete steps that each country can take to strengthen enterprise competitiveness. Specific policies are needed to address the market failures that prevent SMEs from building competitiveness. Problems such as a lack of stability and

198. *Id.* para. 4.

199. See generally World Bank Group: International Finance Corporation, *Where Innovation Meets Impact: IFC Annual Report 2010* (2010) (according to the International Finance Corporation, the private sector provides more than 90% of jobs, drives innovation, and is also the main source of tax revenue in most countries).

200. Secretariat of the United Nations Conference on Trade and Development (UNCTAD), *Policy Options for Strengthening SME competitiveness*, U.N. Docs. TD/399, TD/B/COM.3/58, TD/B/COM.3/58/Corr. 1 (Apr. 29, 2004).

transparency in the legal and regulatory environments, difficulty accessing information about developing country markets, the absence of an effective, broad-based, formal, structured, inclusive, and participatory public-private sector dialogue, heavy, complex, and costly regulatory burden, and poor access to finance, information, markets, and technology must be addressed. Finally, governments need to be proactive in terms of providing business development services for SMEs²⁰¹ and must consider appropriate financial and fiscal incentives to support SMEs, particularly enterprises in distressed priority sectors and in the rural areas.²⁰²

5. Priority Areas and Industrial Clusters

Governments should also consider identifying and supporting sectors that have high growth potential and strengthening selected clusters. In order to increase Tanzania's share in the world trade, the Confederation of Tanzanian Industries have identified six priority sectors which can receive preferential treatment from the Tanzanian government and donor community: agro-processing, horticulture, leather and leather products, furniture, tourism, and mining. These are sectors that could benefit from appropriate cluster development programs. Support in the form of research centers, export promotion boards, and quality certification institutions could yield huge dividends in the future. The African Export-Import Bank (Afrexim) could play a greater role in this regard.²⁰³

6. Redirected Civil Society Groups: Greater South-South Interaction and Coordination

Thus far, civil society groups in Africa appear not to be engaged in the unfolding relations. Preoccupied with basic human rights, survival, and governance issues, civil society

201. *See generally id.* (noting that business support services such as training, consulting, technical and managerial assistance, marketing, physical infrastructure and policy advocacy can go a long way in helping businesses compete).

202. There are many options as regards fiscal and financial incentives. Financial incentives such as grants, subsidized credits and insurance at preferential rate have worked in many emerging economies. Fiscal incentives such as reduction or exemption from taxes on profits, imports, and exports have also proved effective in some countries.

203. *See About Us*, AFRICAN EXPORT-IMPORT BANK, <http://afreximbank.com/afrexim/en/AboutUs.aspx> (last visited Feb. 22, 2011) (discussing general objectives and goals of the Afrexim bank).

groups in Africa are marginally interested in global economic issues and probably lack the time and resources needed to effectively address the trade and investment issues affecting the continent. Furthermore, there is presently little South-South interaction between civil society groups in Asia, Africa, and South America. Civil society groups in Africa are more connected to similar organizations in Europe and North America than they are with organizations in other developing countries. This is a problem that needs to be addressed.

In conclusion, Africa must proactively engage Southern partners and seek to maximize the opportunities that South-South trade and investment presents bearing in mind potential dangers and risks in such arrangements. In addition to the issues discussed above, a host of other issues will need to be addressed on a national, regional, and continental basis. Other issues to be addressed include: (i) improving the continent's SPS infrastructure by prioritizing SPS investments; (ii) developing the capacities needed to negotiate new trade and investment agreements or renegotiate old ones and the capacity to implement and take advantage of these agreements once they are concluded; (iii) developing coherent and sophisticated energy policies taking into account the long-term sustainable development goals of the different countries in the region.

B. ROLE OF AFRICA'S SOUTHERN PARTNERS

Although South-South trade is on the rise, cooperation at the interregional level is recognized to be "the weaker link in South-South trade."²⁰⁴ Legitimacy and integrity of the South-South framework will depend on how widely and across regions the success stories emerging from countries in Asia and Latin America are replicated. The fact that South-South trade is subject to higher barriers and higher distance and communication-related costs is a major problem that must be addressed. The state-centric focus of Africa-South dialogues raises numerous concerns. Southern partners must involve the private sector and relevant stakeholders in unfolding dialogues; they must also encourage the development of decentralized Africa-South cooperation, that is, cooperation that takes place outside the purview of central governments and involves local governments, private sectors, and NGOs.

There is need for collective effort in addressing old and new

204. *New Geography of International Trade*, *supra* note 9, para. 16.

barriers to South-South trade. These barriers include: (a) poor or non-existent transport and communication facilities;²⁰⁵ (b) high transport and communication costs;²⁰⁶ (c) bias against trade among developing countries in financial networks and currency clearing arrangements;²⁰⁷ (d) the lack of marketing channels such as specialized importers and wholesalers, in many developing countries;²⁰⁸ and (e) high levels of protection in South-South trade.²⁰⁹ Regarding market access barriers, issues such as high average tariffs, tariff peaks, tariff escalations, non-tariff barriers, and service trade barriers must be addressed within the context of the GSTP negotiations and in bilateral negotiations. Additionally, Southern Governments must:

- Pay attention to the need to incorporate appropriate and effective monitoring, evaluation, and follow-up mechanisms;
- Address process-related issues in the GSTP negotiations and in broader South-South institutional and regulatory frameworks to ensure that they are transparent and inclusive;
- Ensure necessary interface between South-South arrangements, intra-regional integration agenda, and the multilateral trading system;
- Ensure coherence between aid and trade by ensuring that market access barriers to African products are eliminated and do not neutralize the effectiveness of the aid and assistance they deliver to Africa.
- Address biases against African goods in their respective markets including tariff peaks and escalations and

205. See Thomas Straubhaar, *South-South Trade: Some Recent Trends*, INTERECONOMICS, Sept.–Oct. 1986, at 244 (“Often transport and communication facilities are worse between different LDCs than between an LDC and a DC.”).

206. See *id.* at 244 (remarking on the oligopolistic trade policies of internationally operating transport companies in favor of South-North trade flows).

207. See *id.* (commenting on the bias against trade among LDCs in financial networks and currency clearing arrangements).

208. See *id.* (noting that the missing marketing channels bias distribution cost against South-South trade because these institutions are much better developed in the case of North-South trade).

209. See *id.* The protectionism is understandable given similarity in the production patterns of developing countries and consequently similar export goods. This problem may abate as new complementarities are identified and exploited.

hidden non-tariff barriers.

As South-South economic cooperation deepens, many questions and issues will need to be resolved such as:

- What are the core objectives of the South-South agenda and how do these differ from the objectives of the multilateral trading system?
- What will be the role of law and institutions in the South-South framework?
- Will SDT be a fundamental principle of South-South trade? Should it be?
- Will the South-South framework address issues such as capacity building, aid for trade, implementation, and sustainability?
- Will the South-South framework allow any regime of assessment? What evaluative framework will be needed or allowed?

C. ROLE OF THE INTERNATIONAL COMMUNITY

There is a need to mobilize additional resources to enhance South-South cooperation. In this respect, multilateral institutions and donor agencies must find ways to effectively mainstream the use of South-South cooperation in the design, formulation, and implementation of their regular programs.²¹⁰ Developed countries have a role to play as well.²¹¹ Given the primacy of the North in international economic relations, South-South trade cannot and must not be seen as a substitute for North-South trade. At the very least, developed countries still have a responsibility to address the barriers to African products in their own markets; barriers such as subsidies, tariff peaks, and tariff escalations in developed markets have been found to be dangerous and very destructive of economies and peoples in Africa.

VII. CONCLUSION

Affirming the idea of a new geography of trade and investment, the changing landscape of international economic relations and the growing significance of South-South trade, in October 2010, the G-20 reached a historical agreement to

210. See G.A. Res. 58/220, *supra* note 12, ¶ 9 (suggesting that multilateral institutions consider increasing allocations of human, technical, and financial resources for supporting South-South cooperation initiatives).

211. See *New Geography of International Trade*, *supra* note 9, para. 14.

radically reform the IMF's quota and governance. Acknowledging the increasing role of emerging developing countries (EMDCs) in global governance, the G-20 proposal calls for shifts in quota shares to dynamic EMDCs, a comprehensive review of the voting formula by January 2013 to better reflect the economic weights, and greater representation for EMDCs on the IMF's Executive Board.²¹² South-South trade offers viable opportunities for countries in Africa to eradicate poverty and achieve rapid and sustainable economic growth and development.²¹³ Indeed, South-South cooperation "can have a positive impact on global, regional and national policies and actions in the economic, social and development fields in the developing countries."²¹⁴ Increasingly, Southern partners, particularly China, present themselves and are increasingly viewed as viable alternatives to Western primacy in Africa.

Although South-South trade and investment is on the upward trend, the success is not widely replicated and Africa is not yet part of that success story. And, although studies suggest that South-South trade provides opportunity for developing countries, particularly LDCs, to diversify their export and export high skill content manufactures, the benefits of South-South trade are not automatic.²¹⁵ Most of the growth and expansion has been limited to a few countries in Asia and Latin America. Only 27% of South-South trade in agriculture and 12% of South-South trade in manufacturing is conducted on an interregional basis. According to Ambassador Munir Akram of Pakistan, one-time chair of the Group of 77, despite accounts of success, "[a] great number of developing countries, in particular the least developed, the landlocked and the small island developing states, are still confronted with poverty." Whether South-South trade can be the engine for sustained economic growth, diversification, poverty reduction, and employment in Africa still remains to be seen. African leaders must immediately address rowing asymmetries in Africa-South

212. Group of Twenty Finance Ministers and Central Bank Governors (G-20), Gyeongju, S. Kor., Oct. 23, 2010, *Communiqué*, ¶ 5.

213. See generally G.A. Res. 58/220, *supra* note 12 (noting the economic opportunities afforded by South-South trade cooperation).

214. *Id.* ¶ 4.

215. See Bailey Klinger, *Is South-South Trade a Testing Ground for Structural Transformation?* 17 (U.N. Conf. on Trad & Dev., Pol'y Issues in Int'l Trade & Commodities Study Series No. 40, 2009) (concluding that South-South trade could be a testing ground for structural transformation in some countries but not in others).

relations. In this regard, the continued dominance of commodities in Africa's export is a major concern because, "Africa's heavy commodity-dependence has accounted largely for the continued marginalization of the continent in the global economy and trade and for its limited gains from the process of globalization."²¹⁶ Although Africa's export to non-African developing countries has grown, these exports are not growth-enhancing and do not offer the type of learning opportunities that can fuel structural transformation. Given the present composition of Africa's export, South-South trade may not provide the needed opportunity for countries in Africa to diversify their export, access new markets, and export more value-added manufacture.

This paper focused on trade and investment cooperation between Africa and other Southern partners. However, South-South cooperation encompasses much more than trade and investment. Ultimately, South-South learning and cooperation "is about developing countries working together to find solutions to common development challenges."²¹⁷ Seen in this broader context, there is a lot that Africa can benefit from South-South arrangements. South-South cooperation provides opportunity for countries in the continent to diversify and expand their development options, build new partnerships in a broad range of issues, and gain greater voice in global governance. The paper identifies promising avenues for further investigation and empirical work: the main barriers to African export in key developing countries, the cost of barriers to African export in key developing country markets, the potential benefit to Africa of preference schemes by developing countries, the level of technology transfer occurring in the context of Africa-South cooperation, etc.

In conclusion, whether the journey on the South-South train will be smooth, rapid, and beneficial for peoples and countries in Africa will depend on African countries, other Southern partners, and the international community at large. As the foreign policy toolkit of countries like China and India become more sophisticated, Africa's response must also become more coordinated, sophisticated, and directed at addressing the

216. Elizabeth Tankeu, Comm'r for Trade & Indus., Statement at the Opening Session of the Seminar on African Commodities: Problems and Strategic Options (Nov. 16–18, 2005).

217. Ajay Tejasvi, *South-South Capacity Development: The Way to Grow?*, WORLD BANK INST., Feb. 2007, at 1.

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continent's long term development objectives. Although emerging trends are discouraging, there is ample opportunity for change. As policy makers in the South acknowledge, "[T]he responsibility for enhancing South-South trade and economic cooperation lies with developing countries themselves."²¹⁸

218. *New Geography of International Trade*, *supra* note 9, para. 13.