MISSING AFRICA: SHOULD U.S. INTERNATIONAL TAX RULES ACCOMMODATE INVESTMENT IN DEVELOPING COUNTRIES?

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"We're the... United States. Do we need Africa?"1

1. INTRODUCTION

The nations of the sub-Saharan portion of the African continent have recently attracted the attention of U.S. policymakers. The U.S. House of Representatives and Senate held a series of hearings on

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1 Barton Gellman, World Shunned Signs of the Coming Plague, WASH. POST, July 5, 2000, at A1 (quoting Dr. Jonathan Mann, Project SIDA Director, before his resignation from the World Health Organization in 1990 because of a perceived lack of commitment to control AIDS in Africa).
trade relations with Africa in 1995, 1996, 1997, and 1999. In 1997, President Clinton announced a number of initiatives—in education, agriculture, security, environment, labor, finance, human rights, trade, and development—to support economic growth and opportunity in Africa. These initiatives were launched in 1998 when the President made a much-publicized journey to a number of sub-Saharan nations. This action signaled an agenda designed to heighten awareness of a void in U.S.–Africa relations. In the fall of 1999, Congress approved a portion of debt relief for Africa as part of an agreement reached by the G-7 industrialized nations (Canada, France, Germany, Italy, Japan, United Kingdom, and the United States) and Russia (the aggregate known as the G-8 nations) during the previous summer. This action also accorded with the World Bank's advocacy of broad debt relief to the poorest countries, many of which are located in Africa. In February 2000, the Clinton administration participated in a National Summit on Africa convened in Washington, D.C., under the auspices of the Ford Foundation. The summit aimed to highlight mutual benefits offered by expanded association between constituents of the United

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4 See Martha M. Hamilton & Lynne Duke, Africa’s Potential as Trade Partner Attracts Corporate Interest, WASH. POST, Mar. 23, 1998, at A14 (writing about President Clinton’s eleven-day trip to Africa to encourage Africa’s emergence in the global economy); Ann Scales, Clinton’s Africa Tour is Called a Success, BOSTON GLOBE, Apr. 5, 1998, at D8 (observing the opinion of some that President Clinton’s African visit helped to elevate the continent of Africa).


7 Steven Mufson, President Says U.S. Has Stake in Africa’s Success, WASH. POST, Feb. 18, 2000, at A17.
States and sub-Saharan nations of Africa. Increased trade opportunities are chief among the expected advantages.8

In May 2000, President Clinton signed the Trade and Development Act of 2000.9 The Act established the United States–sub-Saharan Africa Trade and Economic Cooperation Forum, liberalized import restrictions, and relaxed tariffs on textiles imported into the United States. Enactment of that measure culminated years of efforts by Congressman Charles Rangel and others to highlight the need for development of enhanced commercial ties with sub-Saharan Africa. In previous years, Congressman Rangel had introduced a bill to improve trade relations with Africa.10 In August 2000, President Clinton journeyed again to sub-Saharan Africa on a peace-keeping mission.11

The January 2001 change in administration in Washington, D.C. may not signal the end of engagement with Africa. There are indications that the administration of President George W. Bush holds some humanitarian interest in the fate of Africa.12 In May 2001, Secretary of State Colin Powell made a high-profile visit to sub-Saharan African nations on a mission to explore economic, social, political, and security issues.13 In addition, participation in the U.S.–sub-Saharan Africa trade summit in October 2001, in Washington, D.C., signaled the Bush administration’s interest in economic development in sub-Saharan Africa.14

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8 Id.
11 See Ellen Nakashima, Clinton Encourages Nigerian Democracy: Former Pariah Called 'Pivot Point' for Africa, WASH. POST, Aug. 27, 2000, at A22 (monitoring President Clinton’s visit to Nigeria in order to encourage its transition to democracy).
12 See Mary McGrory, Suddenly, Sudan, WASH. POST, Mar. 11, 2001, at B1 (noting that President George W. Bush “virtually wrote off Africa” during a campaign debate, but that he expressed concern about people in the Sudan during an aircraft carrier dedication, and also noting the concerns of Secretary of State Colin Powell and a number of conservative Republican congressmen about human rights abuses and religious persecution in the Sudan).
13 See Marc Lacey, At End of Africa Trip, Powell Urges Sudan to Halt Civil War, N.Y. TIMES, May 28, 2001, at A2 (concluding that Secretary of State Colin Powell’s four-country visit to Africa brought him in contact with Africa’s numerous problems and promises).
14 See Paul H. O’Neill, The Best Investment in Helping Poor Nations, N.Y. TIMES, July 17, 2001, at A19 (reporting suggestion by the Secretary of the Treasury that productivity in the poorest developing countries may be alleviated by investment in human capital in that region—education, health, nutrition, sanitation—and capital investments to foster productivity in viable and competitive markets);
In the aftermath of the events of September 11, 2001, in which criminals linked to Osama bin Laden and the Al Qaeda terrorist network launched an attack on the United States, the United States' interest in a stable sub-Saharan Africa heightened.15 Awareness of potential gains from broader ties to sub-Saharan Africa affords impetus to consider the impact of U.S. tax policy on investment in these countries. Given the differing views expressed by policymakers engaged in the current debate about the future of the international taxation system, it is opportune to interject a dialectic demonstrating that long-term interests of the United States, the leader of the new economy, are served if sub-Saharan Africa becomes an acknowledged player. Without radical reconsideration of some of the premises supporting the current U.S. tax regime, Africa's role as a treaty partner will remain negligible and it will continue to be a site of last resort for investment by U.S. businesses. This Article proposes that the United States reverse a historic bias and adopt a network of treaties with sub-Saharan Africa that provide an exemption from U.S. tax for specified income from African sources. The proposal does not call for wholesale implementation of an exemption system, but rather calls for a limited plan for African-source income only, which is designed to provide a platform for increased investment in sub-Saharan Africa by U.S. firms.

2. THE CASE FOR AND AGAINST USE OF AN EXEMPTION SYSTEM TO INCREASE INVESTMENT IN AFRICA

Just as the case for invigorating trade and other relations with Africa may not be readily apparent to some, the case for revising those features of the U.S. tax system that disfavor investment in the sub-Saharan world is not intuitive. Although European countries, Mexico, Canada, Japan, and some developing nations, such as

President Announces October Summit to Develop African Trade, JET, June 4, 2001, at 6 (reporting on the meeting of representatives from thirty-five sub-Saharan African nations in Washington to discuss ways in which the United States can stimulate trade in the area). See generally NATIONAL SUMMIT ON AFRICA, THE NATIONAL POLICY PLAN OF ACTION FOR U.S.-AFRICA RELATIONS IN THE 21ST CENTURY (2000) (detailing recommendations adopted at the summit to help guide the relationship between the United States and Africa).

15 William Jefferson Clinton, Shaping the Future; America's Role in a Challenging World, CHI. TRIB., Jan. 13, 2002, at C1 (noting that approximately fifty million children in sub-Saharan Africa never go to school and stating that the United States should help fund education as a means of reducing the pool of potential terrorists).
China, India, and Venezuela, have commanded partnerships with the United States, African nations have not. A continent of vast natural resources and a considerable labor force, Africa is nonetheless "one of the last regions . . . to enter the global economy."16

The African continent contains a total population of about 778 million. Sub-Saharan Africa includes two-thirds of that total, or 642.8 million, among forty-four countries.17 To date, the situation of much of Africa in the new economy has been that of aid recipient, region of civil and inter-nation strife, location of catastrophic natural disasters, scene of devastating illness, and situs of relentless poverty and shortened life expectancy. Implicit in President Clinton's campaign to eliminate debt of some of the poorest African nations was an acknowledgment of the critical needs of a population for which annual per capita gross national product ("GNP") ranges from $110 to $4,120.18 Although the debt relief initiative seems well-intentioned, it may have minimal positive impact on the lives of residents of sub-Saharan Africa. Actual provision of relief has been tied to enumerated improvements in infrastructure, including education, health care, transportation, and economic reforms, which fewer than a handful of nations may achieve in the foreseeable future. For instance, only five nations have qualified for the debt relief promised by the June 1999 World Bank initiative.19 Moreover, there is heated debate about the merits of structural improvements sponsored by the World Bank.20
Aid from the industrialized world in the form of grants and loans seems an unsatisfactory solution to the lag in growth and development currently observed in Africa. As the U.S. example demonstrates, the level of aid provided may be affected by political agendas. In 1998, U.S. aid to the poorest developing countries amounted to 0.1% of the gross national product (about four dollars in taxes for each taxpaying American). From 1995 to 1997, annual U.S. foreign aid to Africa declined from $1.3 to $1.1 billion. That decline has been attributed to increased demand for domestic social spending during that period and a perception by some in Congress that the United States lacks “strategic interests” in Africa. Even in a climate of renewed interest in Africa, documented by the initiatives of the administration of President Clinton described above, support for aid in the form of debt relief may be diminished by other policy goals. In the fall of 1999, Congress authorized only a small portion of the debt relief sought by President Clinton in fulfillment of the G-8 pact. It was widely reported that the Clinton administration acquiesced in provision of only partial relief in order to maximize the possibility of success for the China Trade Bill, passed by the U.S. House of Representatives in May 2000 and the U.S. Senate in September 2000.

Aid for the purpose of helping the African continent battle the devastation of AIDS, proposed by the Clinton Administration through loans by the Export-Import Bank, is also a welcome strategy to support the health of Africa’s citizenry. Only the future

21 See Brett Parris, A Better World for Some?, OECD Observer, Oct. 2000, at 40. The percentage of GNP devoted to developing country assistance falls far short of the 0.7% to which the United States and other industrialized nation-members of the United Nations agreed. Id. at 40-41.


26 See Joseph Kahn, U.S. Offers Africa $1 Billion a Year for Fighting AIDS, N.Y. Times, July 19, 2001, at A1. The U.S. agreement to provide loans of up to $1 billion a year falls far short of the mark established by the United Nations, which requested contributions of up to $10 billion per year to its AIDS fund.
can confirm whether the provision of loans by the United States, as well as other leading industrial nations, to help impoverished nations battle such a fundamental threat to survival is an appropriate form of assistance. Indeed, agreement by developed-world pharmaceutical companies to provide vital medicines to African people at an affordable cost coupled with a program of grants to enable purchase appears to be a more effective solution to the current health crises on that continent.27

Despite the recent aid and trade initiatives by the industrialized world in favor of Africa, it is apparent that for various reasons—among them political controversy, perceived incompatibility of interests, and even racism28—these hold limited power to produce and sustain real change. This Article contends that a solution in the form of tax relief for specified investments may afford the greatest promise. This initiative and the potential obstacles to implementation are discussed below.

This Article proposes what some may view as a radical revision of the U.S. system of taxation of foreign source income. In particular, it advocates a shift to an exemption system in which income derived from investment in sub-Saharan nations is free of

27 Donald G. McNeil, Jr., U.S. At Odds With Europe Over Rules on World Drug Pricing, N.Y. TIMES, July 20, 2001, at A8 (discussing the debate over the pricing of drugs for the treatment of AIDS). Reporter Jeffrey Sachs comments:

When medical interventions in the United States are judged for their 'cost-effectiveness,' the usual standard is to accept a technology if it saves American lives at a cost of $50,000 to $100,000 a person each year. Europeans, for their part, have just decided to spend around $5 billion this year to fight mad cow disease, which has claimed around 80 lives. About 17 million Africans have already died of AIDS, and the millions more who are sick could be saved with drugs costing just $500 a year to produce. One maker of generic drugs, Cipla of India, said... it would provide the drugs to Africa at $350 to $600 a year .... Until very recently, the American and European pharmaceutical companies that hold the patents on the AIDS drugs were asking $10,000 or more for one person's annual supply, but now they are ready to provide them at little more than cost, meeting the competition of generics producers as long as the patent rights are respected ....


28 Karen DeYoung, Those Who Need Foreign Aid the Most Are Seeing It Go Elsewhere, WASH. POST, Nov. 25, 1999, at A1 (contrasting the massive outpouring of aid in response to the return of Kosovo Albanians, approximately $1.50 per day per refugee, with aid to victims of conflicts in Sierra Leone and Rwanda, $0.11 per day per refugee, and noting implied or outright charges of racism by representatives of African nations before the U.N. Security Council).
U.S. income taxation. This experimental regime would expire at the end of a ten- or fifteen-year period. That period would begin on the effective date of an income tax treaty between the United States and the African nation. If review of progress under the proposed regime confirmed a measure of success towards achieving targets, extension of the legislation would be recommended. The goals of the program are to increase the amount of U.S. investment in sub-Saharan Africa and to hold revenue loss to an acceptable level.

In addition to provisions governing the tax rate to be imposed by the African nation on specified income from U.S. operations in that region, the treaty would contain safeguards designed to deter U.S. taxpayers from abusing the resources of the affected African nations. These would include: (1) specification of the type of foreign source income eligible for U.S. tax relief (from activities relating to manufacturing, technology, natural resource exploration, or research and development, for example); (2) exchange of information and other information sharing arrangements permitting all parties to monitor investment activity; and (3) sovereignty-preserving provisions detailing minimum standards relating to investment activity required by the African nation in areas such as natural resource protection, infrastructure development (transportation, public utilities, etc.), and labor practices (including minimum compensation provisions). While a multilateral treaty is preferable, involving a negotiation en bloc between interested African nations and the United States, bilateral treaties between a single nation and the United States would also be encouraged.

Potential challenges to implementation of this proposal are numerous. Adoption of an exemption from tax for income from specified investments would counter the reigning mantra of the U.S. international tax regime, known as "capital export neutrality." In systems based upon the capital export neutrality principle, like that of the United States in large part, preservation of production efficiency is a prominent goal. Production efficiency theoretically results in allocation of capital to activities providing...

29 CHARLES H. GUSTAFSON ET AL., TAXATION OF INTERNATIONAL TRANSACTIONS 17 (1997) ("Capital-export neutrality is achieved when a U.S. investor pays the same total rate of U.S. and foreign tax on foreign-source income before tax as the rate of U.S. tax it pays on U.S.-source income before tax.").

the highest rate of return regardless of tax rate. The U.S. system implements this goal by taxing worldwide income of its multinational businesses (firms incorporated in the United States and doing business in domestic and foreign markets) under one rate structure and providing a credit against U.S. tax liability for foreign taxes paid.\footnote{See Cook v. Tait, 265 U.S. 47 (1924) (affirming Congress’ power to tax income received by U.S. citizens for property located abroad); see also I.R.C. §§ 901, 904 (1994) (regulating taxable income).} It removes a possible incentive to shift capital to lower-taxing jurisdictions where rates of return may be lower. The exemption system proposed in this Article directly challenges the capital export neutrality principle because it could provide an incentive to initiate investment in an African country if the tax rate were lower than that prevailing in the United States.

Although the production efficiency paradigm has gained hold in international tax policy discourse, it does not provide a persuasive case for rejecting the exemption system proposed in this Article. For good reasons, the U.S. tax system has in targeted areas ceded its claim on worldwide income of its multinational firms.\footnote{See I.R.C. §§ 921-23 (1994) (excluding qualified foreign trade income); I.R.C. § 911 (repealed 1976) (excluding certain foreign earned income); I.R.C. §§ 941-43 (repealed 1976) (former foreign sales corporation rules); I.R.C. § 881 (1994) (regulating taxation of a wholly-owned foreign subsidiary of a U.S. multinational company); see also Robert J. Peroni, J. Clifton Fleming, Jr. & Stephen E. Shay, Getting Serious About Curtailing Deferral of U.S. Tax on Foreign Source Income, 52 SMU L. REV. 455, 468 (1999) (noting that the deferral privilege is a tax incentive not available to earnings from domestic operations).} These provisions purport to promote competitiveness of domestic companies and offer incentives for export businesses.\footnote{See James R. Hines, Jr., Tax Policy and the Activities of Multinational Corporations 6-7 (Nat’l Bureau of Econ. Research, Working Paper No. 5589, 1996).} The present regime also features prominent loopholes that permit U.S. companies to fashion foreign operations without regard for production efficiency in a manner resulting in moderation of U.S. tax rates on worldwide income.\footnote{See James R. Hines, Jr., The Case Against Deferral: A Deferential Reconsideration, 52 NAT’L TAX J. 385, 388-90 (1999).} The current economic and social crises in sub-Saharan Africa, indicating a critical need for commercial partnerships with the industrialized world, suggest that modification of U.S. tax rules is essential to attract investment in that region.

Tax incentives for investments in sub-Saharan Africa would serve a redistributive function that comports with the concept of...
equity, a fundamental principle in the domestic arena. The sub-Saharan region of Africa seems a worthy target of concern. The globalization of the world economy, in which the United States is a determined player, is only strengthened by strong trade partners, including those in sub-Saharan Africa. Moreover, the pressure to focus on stability in Africa after the events of September 11, 2001 furnishes additional impetus to undertake measures that will bolster the economies of those countries.

The vibrancy of the U.S. economy relative to that of sub-Saharan Africa supports action. The U.S. Census Bureau indicates that the poverty rate in this nation has declined to the lowest level in two decades, with median household income rising to $40,816 in 2000. This report suggests that this is an opportune moment to implement efforts designed to affect destitution abroad. Notwithstanding the recent decline of the U.S. economy since the summer of 2001, which was exacerbated by the economic effects of the September 11th events, there may be some ability to sustain the revenue loss accompanying the proposed exemption system for African investment. Moreover, any revenue loss created by the proposed tax exemption for investment in Africa may be temporary if it leads to increases in income from other operations taxable by the United States.

The proposed exemption system raises four additional concerns which are addressed in detail below. First, U.S. obligations under the General Agreement on Tariffs and Trade ("GATT") must be considered. A World Trade Organization ("WTO") appeals panel held that the newly enacted tax exemption for extraterritorial income (derived from the sale and lease of exported property, among other things) constituted an illegal export subsidy. The preferential rules for extraterritorial income replace the former foreign sales corporation ("FSC") rules, which were repealed due to a similar WTO ruling in 1999.

35 See D'Vera Cohn, Poverty Declines to 20-Year Low, WASH. POST, Sept. 27, 2000, at A2 (relating the Census Bureau report of a decline in poverty rate to 11.8% in 2000 and historical lows in poverty rates among blacks, Hispanics, and Asian/Pacific Islanders).


37 See Trevor Drury & Chuck Gnaedinger, European Union Requests Sanctions Against United States in FSC Dispute, TAX NOTES TODAY, Nov. 20, 2000, available at
the proposal to exempt specified income from African sources would not cause the United States to violate its international trade obligations under the GATT.

The second concern is that a move toward an exemption system as proposed may cause U.S. firms to move offshore in search of lower-cost production, creating the so-called "runaway plant" problem.\footnote{Peter Merril & Carol Dunahoo, 'Runaway Plant' Legislation: Rhetoric and Reality, 72 TAX NOTES 221 (1996).} Labor proponents point to the potential for loss of jobs by American workers as the result of a shift by U.S. firms to offshore production.\footnote{See generally Jeffrey E. Garten, Free Trade Has To Be Managed, N.Y. TIMES, July 18, 2001, at A23 (discussing how globalization has linked national economies and requires coordinated management).} They have, therefore, challenged tax proposals favoring income from foreign operations. Given the tremendous importance of the labor sector to the social and economic health of this nation, such critiques must be considered seriously.

This Article concludes, however, that the proposal does not subordinate the interests of U.S. labor or create a shift of benefits directly from U.S. to foreign workers. There is substantial evidence that expansion of trade opportunities, under agreements like the North American Free Trade Agreement, has created phenomena like the maquiladora industry, in which American companies have closed U.S. plants to move assembly to locations just across the border in Mexico to obtain lower-cost labor.\footnote{See Elvia R. Arriola, Voices From the Barbed Wires of Despair: Women in the "Maquiladoras," Latina Critical Legal Theory, and Gender at the U.S.-Mexico Border, 49 DePAUL L. REV. 729, 762 (2000) (defining a maquiladora as a factory on Mexican soil that assembles raw material components of foreign-owned enterprises).} These operations have resulted in devastation of the local environment and atrocious abuses of workers, particularly women, who must toil under inhumane conditions for subsistence pay. In these circumstances, the benefits to U.S. firms in the form of zero tariff rates and a par-
tial tax exemption for income cannot be supported because they result in an unacceptable burden on U.S. and non-U.S. workers.

The proposal in this Article to eliminate U.S. tax on Africa-source income is not likely to result in the abuse of workers described above because it contains safeguards designed to protect both U.S. and non-U.S. workers. No U.S. firm would benefit from the proposed exemption unless a treaty containing protections for African laborers became effective. The treaty would prescribe appropriate working conditions, rates of pay, and other terms designed to ensure that workers would be treated appropriately.

The conditions set forth in the treaty would, in turn, decrease the likelihood that U.S. multinationals would move operations abroad for low return investments made profitable only by the opportunity to abuse the human, natural, and other resources of the host country. Despite these safeguards, it is possible that an exemption system for income derived from African investments nonetheless would result in a move of some U.S. production facilities abroad. Although the capital export neutrality principle underpinning the U.S. international tax system appears to support a shift of production abroad for greater returns to capital, the toll on U.S. workers should not be ignored. If job losses to U.S. workers occur in enterprises in which returns to capital are greater in sub-Saharan Africa, the plant relocations would serve efficiency goals. Equitable concerns could be served by continued support of tax incentives for education and other training opportunities as well as by appropriations for re-education of American workers.

The third concern raised by the proposal described in this Article is whether it actually benefits sub-Saharan Africa. The intention is to move African nations into positions of partnership with the United States. The greatest benefits will result if African nations are able to set appropriate terms and conditions for investment in their borders. These would include a tax rate that provides revenue necessary to finance public expenditures for infrastructure, administration, and other public needs, or invest-

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41 See Carrie Johnson, *Report Calls for Work Force Education*, WASH. POST, June 27, 2000, at E4 (noting that the 21st Century Workforce Commission, formed in 1998, has called for “partnerships between businesses and educators to solve the labor shortage plaguing the technology industry”).

42 The growth potential for U.S. labor appears to be in the services industries (either high technology or low technology) and not in the manufacturing sector. The most recent current account balance for the United States indicates a slight trade surplus in the services sector. U.S. CENSUS BUREAU, supra note 22, at 7.
ment allowances and tax credits for given investments. Whether
treaty negotiations give rise to a system that provides reduced tax
rates or tax incentives (such as allowances or credits against tax li-
ability), this Article’s proposal advances sub-Saharan nations to
positions as actors in the development of a tax system that will en-
courage and support investment gains.

The final concern addressed in this Article is whether the pro-
posed exemption system will cause the United States to violate in-
ternational taxation “norms.” A group of industrialized nations
have recently advanced a campaign to eliminate what is termed
“harmful tax competition.” The 1998 Organisation of Economic
Co-Operation and Development (“OECD”) report, Harmful Tax
Competition: An Emerging Global Issue, advocates elimination of tax
regimes which are viewed as unfairly competing for investment
dollars of multinational enterprises.43 The types of practices tar-
geted are those in which preferential tax regimes are established
for selected types of income.44 A list of harmful competition cul-
prits was published in the summer of 2000.45

The exemption system proposed in this Article, calling for
elimination of U.S. tax on income from specified investments in
sub-Saharan African nations, may accommodate a regime of the
type condemned in the OECD report. Unless an African nation
devises a system that meets an exception crafted in the report for
OECD-member Ireland, which sanctions adoption of a low taxa-
tion rate of general application,46 a preferential regime would be
subject to attack and possible sanctions by the OECD.

43 Organisation of Economic Co-operation and Development, Harmful
44 Id. at 19-21.
45 See John Burgess, 35 Countries Named as Unfair Tax Havens, WASH. POST,
June 27, 2000, at E2. The thirty-five countries listed are Andorra, Anguilla,
Antigua and Barbuda, the Bahamas, Bahrain, Barbados, Belize, British Virgin Islands,
Cook Islands, Dominica, Gibraltar, Grenada, Guernsey-Sark-Alderney, Isle of
Man, Jersey, Liberia, Liechtenstein, Maldives, Marshall Islands, Monaco, Montser-
rat, Nauru, Netherlands Antilles, Niue, Panama, Samoa, Seychelles, St. Lucia, St.
Christopher and Nevis, St. Vincent and the Grenadines, Tonga, Turks and Caicos,
the U.S. Virgin Islands, and Vanuatu. In order to address the controversy re-
going sanctions against these jurisdictions, the OECD established a global fo-
rum. Id.; see also Bob Goulder, OECD, Blacklisted Tax Havens Reach Landmark

46 Meredith J. Coleman, Comment, The Republic of Ireland’s Economic Boom:
Can the Emerald Isle Sustain Its Exponential Growth?, 21 U. PA. J. INT’L ECON. L. 833,
845 (2000) ("Ireland is a very attractive place for companies to start up. Why?
Two words: tax rates. Ireland’s tax rate is among the lowest in all of Europe.")
As developed below, this Article argues that the harmful tax competition agenda should exclude sub-Saharan nations that employ tax strategies to attract investment from the industrialized world. The OECD report, which currently applies only to financial and passive investment-type income, should not be extended to manufacturing and other active income, which are the types of income most likely to be the subject of treaties with Africa.\textsuperscript{47} Considering the significant barriers to investment in Africa, it is difficult to conceive of a case in which a preferential tax regime of an African nation could harm the revenue-raising capacity of an industrialized nation. The industrialized world should resist dictating appropriate tax regimes for Africa, particularly when no African nation constructed or adopted the OECD proposals. Moreover, the change in presidential administration in Washington, D.C. in early 2001 may signal a change in U.S. support of the OECD proposal. Both Secretary of Treasury O’Neill and Assistant Secretary for Tax Policy Olsen have publicly questioned continued U.S. support of these OECD initiatives.\textsuperscript{48}

The hegemony of the industrialized nations over establishment of international tax norms should not foreclose a system of compromises implementing strategies for developing nations. For example, from a tax policy standpoint, it is not clear why implementation of a limited preferential rate regime for targeted investments coupled with very sophisticated information reporting and exchange among nations would not be an acceptable alternative for the developing world.\textsuperscript{49} An example of such a compromise occurred in the summer of 2000 when the members of the European Union (“EU”) negotiated a settlement of a dispute among members


\textsuperscript{49} Brown, supra note 47, at 316-17.
regarding minimum withholding tax obligations on payments of interest and other investments from savings.\textsuperscript{50} Because several members opposed the twenty-five percent withholding plan, the EU accepted an alternate plan. Under that plan, those members objecting to the minimum withholding rate were permitted to avoid that obligation by agreeing to comprehensive information exchange.\textsuperscript{51} With input by African constituents, international tax norms that accommodate the developing world could be constructed.

3. **Equity Supports Move to Exemption System for Investment in Sub-Saharan Africa**

The U.S. system of international taxation purports to be guided by the principle of capital export neutrality, which dictates that the taxation system remain neutral regarding the location of investments by U.S. firms.\textsuperscript{52} Neutrality is a surrogate for production efficiency.\textsuperscript{53} If U.S. tax laws do not impact location decisions, firms will locate investment to maximize returns. If production efficiency is achieved worldwide, all firms will operate with the same prices of input and output and require the same pre-tax rate of return.\textsuperscript{54}

The U.S. tax regime adheres to the capital export neutrality principle in several ways. It taxes the worldwide income of U.S. firms and allows a credit for certain taxes paid to a foreign country in which operations are located.\textsuperscript{55} Out of a concern for revenue needs, the United States does not provide a refund to firms operating in a country with an effective tax rate higher than the one prevailing in the United States.\textsuperscript{56} The maximum foreign tax credit allowed a U.S. firm is equal to the U.S. effective tax rate multiplied by income derived from foreign operations (net foreign source in-

\textsuperscript{50} EU Finance Ministers Agree on Savings Taxation, WORLDWIDE TAX DAILY, June 22, 2000, at 121, available at LEXIS 2000 WTD121-H.

\textsuperscript{51} Id.

\textsuperscript{52} TREASURY DEPT., DEFERRAL OF INCOME EARNED THROUGH U.S. CONTROLLED FOREIGN CORPORATIONS: A POLICY STUDY 26-7 (2000) [hereinafter TREASURY DEPT. STUDY].

\textsuperscript{53} Joel Slemrod, supra note 30, at 6-7.

\textsuperscript{54} Id.

\textsuperscript{55} I.R.C. § 901(a) (1994).

\textsuperscript{56} I.R.C. § 904(a) (1994).
A firm does not benefit from a lower tax rate in a foreign jurisdiction because there is a residual U.S. tax liability on the foreign source income after the credit. Accordingly, without a radical revision of current U.S. taxation, an exemption of the type proposed in this Article would not provide any reduction of U.S. tax liability.

A principal objection to the adoption of a system exempting income from African sources is the departure from the efficiency principle. There are, however, numerous current instances in which the U.S. system rejects capital export neutrality. Firms may defer tax on foreign income by operating through a foreign subsidiary. With proper planning, in most cases, U.S. tax is never imposed on the earnings of these foreign corporations unless it is remitted or deemed remitted to the U.S. parent. Anti-abuse rules, contained in subpart F of subchapter N of the Internal Revenue Code, that deny deferral of tax on income of certain controlled foreign corporations are easily avoided by active businesses. The rules permitting deferral of tax on the earnings of foreign subsidiaries are justified by a concern for competitiveness of U.S. multinational enterprises with foreign firms. For the same reason, a substantial amount of income from services performed abroad by U.S. citizens and residents is exempted from U.S. tax.

In addition, sophisticated planners may seize the opportunity to shop for low-taxed income in order to inflate available foreign tax credits. By combining high-taxed foreign source income with lower taxed income from foreign sources, U.S. companies are able

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57 Id.

58 For example, if a U.S. firm is taxed at a 12% rate on income derived abroad ($12 on income of $100), there is a residual U.S. tax liability on that income, which remains after a credit is given against U.S. income tax liability for foreign taxes paid. Assume that the U.S. rate is 35%. The U.S. tax liability on that income is $35. After credit is given for $12 of foreign taxes paid, the U.S. firm owes $23 to the U.S. Treasury. See I.R.C. § 904(a) (1994).


60 For foreign corporations, only the United States source income and income from any sources that is effectively connected with the conduct of a United States trade or business is subject to U.S. tax. I.R.C. §§ 881-82 (1994).

61 TREASURY DEPT. STUDY, supra note 52, at 55.

to maximize the amount of available foreign tax credit. This manipulation of the foreign tax credit rules arises, in some instances, from the mere contractual designation of the place of sale of goods as outside of the United States. In other instances, firms are able to convert U.S. source income into foreign source income, inflating the available foreign tax credit and effectively reducing U.S. tax on domestic source income.

From the standpoint of efficiency analysis, these tax-savings techniques are harmful because they allow firms to manipulate U.S. tax rates based on the location, or ostensible location, of production. The waste resulting from the location of investment offshore is created by the employment of capital in low-taxed investments that provide lower returns. Despite the departure from the efficiency norm, however, these provisions have become accepted features of the system and it is not likely that the U.S. system will ever convert to one that is purely efficiency-based.

Offshore production and business dealings have been viewed for some time as a legitimate avenue of U.S. tax relief. The interest of the government in protecting its revenue base and the interests of U.S. firms in combating the so-called anti-competitive features of the tax system and in retaining flexibility to implement tax-reducing planning strategies indicate that a worldwide efficiency goal will continue to be superseded by national concerns. Yet, cross border tax-minimizing schemes have provided vehicles for sustained investment in the industrialized world and not the third world. The U.S. system’s departure from capital export neutrality-based principles to create incentives for investment in sub-Saharan Africa could move these nations to the role of partner and player in the world economy.

There is ample support for a move to an exemption system in the case of sub-Saharan nations. Concerning this region, a reliance on principles of economic efficiency seems inappropriate and

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63 See I.R.C. § 904(a) (1994).
64 See I.R.C. § 861(a)(6) (1994); Liggett Group, Inc. v. Comm’r, 58 T.C.M. (CCH) 1167, 1177 (1990) (deeming sales from a U.K. liquor producer to a U.S. distributor with immediate sales to U.S. customers as sales producing foreign source income, which increased the distributor’s foreign tax credit).
66 Cf. Peroni, Fleming & Shay, supra note 32, at 497 (noting that even those who think that a deferral subsidy is appropriate should recognize that eliminating it via legislation is not an unreasonable possibility).
67 See infra notes 124-25 and accompanying text.
wrong. As noted above, per capita gross national product ranges from $110 to $4,120 in these countries. For the period from 1984 to 1997, the percentage of the population living in poverty (under one U.S. dollar per day) ranged from 11% in Tanzania to 88% in Guinea-Bissau. Percentage of household income spent on food for the period from 1991 to 1997 ranged from 43% in Djibouti to 75% in Mali. Health expenditures, as a percentage of public expenditure, were 1.2% for all of sub-Saharan Africa, ranging from 0.2% in Nigeria to 6.1% in São Tomé and Príncipe. Yet, the external debt to GDP ratio in 1997 for many sub-Saharan nations exceeded one hundred percent.

The illiteracy rate among persons fifteen years of age and older was 41% (as a percentage of population) in all of sub-Saharan Africa in 1998. Life expectancies among the citizens of these nations is the lowest in the world. In Sierra Leone, for example, average life expectancy is thirty-seven years. Nearly 24,500,000 people in sub-Saharan Africa, more than one in every ten adults, are infected with the Human Immune Deficiency Virus, the virus that causes AIDS. Malaria, AIDS, and other devastating diseases have decimated the population and the drugs necessary to eradicate or treat these illnesses, although readily available in the industrialized world, are either not available or are not affordable. Civil war and inter-nation strife plague a large number of African nations. Of the forty-eight countries south of the Sahara, many are at war. As a result of these and other circumstances, U.S. gross direct investment in sub-Saharan Africa dropped 43.2% from 1997 to 1998.

These desperate circumstances of most of sub-Saharan Africa call for intervention by the industrialized world. The United States should respond by implementing the exemption system for sub-

68 See supra note 18 and accompanying text.
70 Id.
71 Id. at 318 tbl. 13-11.
72 Id. at 180 fig. 6-2.
73 Id. at 320 tbl. 13-13.
74 Id. at 313 tbl. 13-6.
76 U.S. Int'l Trade Comm'n, supra note 18, at 2-38. U.S. gross direct investment in sub-Saharan Africa dropped from $3.8 billion in 1998 to $2.2 billion in 1998. As a share of total U.S. foreign direct investment, direct investment in sub-Saharan Africa declined from 3.3% in 1997 to 1.7% in 1998. Id.
Saharan source income described in detail in the next section. There is support for such a move under a theory of distributive justice despite the divergence from the efficiency paradigm. As Professors Bankman and Griffith have noted in their work on progressive taxation, "the concept of economic efficiency carries normative force only when tied to the welfare of individuals." 77

This Article’s proposal shifts fictional U.S. tax revenue foregone on income from investments in Africa—that is, the U.S. taxes that might otherwise be collected on such income if no exemption were enacted—to the ultimate benefit of sub-Saharan nations. The immediate beneficiaries of the loss of fictional revenue by the U.S. Treasury are domestic firms. Relief from tax will be enjoyed by these firms if they make certain investments in Africa. The tax break may shift resources from a sector either in the United States or abroad, in which income from an activity is more highly taxed, to activities in Africa generating income that will be taxed at preferential rates if treaty terms are met. The intent of the proposal is to generate, or, in some cases, increase, deployment of capital in Africa by U.S. firms.

The foregoing of tax dollars in order to provide behavioral incentives is known as a "tax expenditure." 78 While special scrutiny has been accorded to tax expenditures by such highly-regarded tax theorists as the late Stanley Surrey and Paul McDaniel, they remain a feature of the U.S. tax system for both domestic and international purposes. 79 A theory of justice that supports an "expenditure" of tax revenue in an effort to contribute to development and growth in sub-Saharan Africa is appropriate and critical in view of the needs of that continent.

In critiquing a now-repealed Internal Revenue Code ("Code") provision with some similarities to the exemption system proposed

79 Id. at 5-6. As the authors opine:

The classification of an item as a tax expenditure is purely informative, just as the presence of an item in the direct budget of a government is informative; it is simply a way of announcing that the item is not part of the normative tax structure. This being so, it is appropriate to ask whether the presence of those items in the tax system is desirable or undesirable, given the existing budget policy, tax policy, and other relevant criteria.

Id.
in this Article, Professors Surrey and McDaniel found it an inefficient mechanism for delivery of the desired benefits. They urged either repeal of that Code section, the tax credit for business income from Puerto Rico or other U.S. possessions in former Code section 936, or restructuring to deliver the announced objectives. Although the possessions credit and this Article’s proposal are similar because they provide some tax relief for business income derived from a specified geographical source, they are dissimilar in design. The possessions provision consists of a credit at the U.S. corporate tax rate for a fictional tax that had not actually been paid to Puerto Rico. Reports indicated that the goal of encouraging investment in Puerto Rico, particularly employment of Puerto Ricans, was not achieved and that the huge benefits to the U.S. investors far exceeded any benefits to Puerto Rican employees.80

By contrast, the proposed exemption system for African source income is tailored to result in delivery of the projected benefits to sub-Saharan Africa. The participating African nations will collect an actual, not fictional, tax on income from U.S. business operations that is imposed at a rate determined by treaty. The treaty negotiation process is designed to enable the African nation, prospective recipient of the investment, to determine the proper taxation level, wage and labor safeguards, environmental, and other protections. If an exemption system for African income constitutes a tax expenditure—a form of government spending embedded in the tax code—the expenditure proposed is nonetheless properly structured to achieve the desired ends.81

Whether or not the proposal calls for a tax expenditure, a combination of circumstances suggests that the United States must address the economic crisis in Africa. As noted above, loan assistance has failed to position African nations in the new economy. Many of the loans will not and cannot be repaid. Conditions of debt relief have been critiqued by some as tantamount to involuntary servitude. Financed projects, intended by the industrialized world to ignite the local economy, have, in some instances, brought envi-

80 Id. at 160-61.
81 Before the tax expenditure label can be placed on a code provision, there must be general agreement regarding the proper structure of the income tax. Agreement as to whether a normative income tax would encompass an exemption system is problematic. See Graetz, infra note 136, at 272-77; Michael J. Graetz & Michael O’Hear, The “Original Intent” of U.S. International Taxation, 45 Duke L.J. 1021, 1102-03 (1997).
rornental and cultural devastation.\textsuperscript{82} It is apparent that the prac-
tice of strategic direction of assistance has not promoted the de-
sired level of growth in sub-Saharan Africa. Instead, efforts to as-
sist Africa may be better directed toward the economic
partnerships that can be provided in the stimulation of investment
by U.S. firms. A shift of U.S. tax policy to a theoretical base that
acknowledges the value of distributive justice and reflects it in the
international tax system by adopting an exemption of tax for pre-
scribed income from African sources would meet the need.

John Rawls' second principle in his seminal book, \textit{A Theory of
Justice}, maintains that "social and economic inequalities, for ex-
ample inequalities of wealth and authority, are just only if they result
in compensating benefits for everyone, and in particular for the
least advantaged members of society."\textsuperscript{83} According to Rawls, "A
conception of justice is a set of principles for choosing between the
social arrangements which determine [the division of benefits pro-
duced by society] and for underwriting a consensus as to the
proper distributive shares."\textsuperscript{84} Of the four institutions necessary to
sustain a just society, "the distribution branch is to preserve an
approximately just distribution of income and wealth over time by
affecting the background conditions of the market from period to
period."\textsuperscript{85} One job of the distribution branch is to adopt "a scheme
of taxation for raising revenue to cover the costs of public goods, to
make transfer payments, and the like."\textsuperscript{86} Whatever choices are
made, the distribution branch is "to satisfy the principles of justice
with the smallest loss in efficiency."\textsuperscript{87} The allocation branch is to
identify and correct "by suitable taxes and subsidies and by

\textsuperscript{82} See, e.g., Chinedu Reginald Ezeta, \textit{International Law of Self-Determination
and the Ogoni Question: Mirroring Africa's Post-Colonial Dilemma}, 19 L.O.Y. L.A. INT'L
& COMP. L. REV. 811 (1997) (explaining the harmful environmental consequences
of oil development and the destructive effect that oil production has had on Ogoni
culture); Wendy Irvine, \textit{Human Rights, Environmental Racism: The Nigerian Execu-
tions and the Case for the Ogoni}, 4 CIRCLES BUFF. WOMEN'S J.L. & SOC. POL'y 66
(1996) (discussing oil development in Nigeria as harming the culture); Lacey, \textit{su-
pra} note 20 (describing the impact of the construction of a dam on the culture, be-
liefs, and rituals of the Ugandan people); Onishi, \textit{supra} note 20 (depicting the pov-
erty and devastation in oil-rich Nigeria).

\textsuperscript{83} \textit{JOHN RAWL}, \textit{A THEORY OF JUSTICE} 13 (rev. ed. 1999).

\textsuperscript{84} John Rawls, \textit{Distributive Justice, in ECONOMIC JUSTICE} 319 (Edmund S.

\textsuperscript{85} \textit{Id.} at 349.

\textsuperscript{86} \textit{Id.} at 349-50.

\textsuperscript{87} \textit{Id.} at 350.
changes in the definition of property rights, the more obvious departures from efficiency caused by the failure of prices to measure accurately social benefits and costs."\(^{88}\)

While Rawls maintains that distributive justice depends on the institutions and the way in which they "allocate total income, wages and other income plus transfers," he acknowledges that "[s]ince the market is not suited to answer the claims of need, these should be met by a separate arrangement."\(^{89}\) "[P]rinciples of justice are satisfied" if "total income of the least advantaged ... is such as to maximize their long-run expectations."\(^{90}\)

Rawls' justice principle leads this writer to conclude that the proposed exemption system for African source income must not be rejected simply because it diverges from the efficiency goal. As described above, the current international tax system departs from the goal of worldwide efficiency in an effort to address other critical policy matters.\(^{91}\) The goal of encouraging economic growth and development in sub-Saharan Africa holds tremendous significance not only for residents of that continent, but also for the industrialized world and for the new economy. The failure to tap the productivity of the people and resources of Africa implicates growth and development in the world outside that continent.\(^{92}\)

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\(^{88}\) RAWLS, supra note 83, at 244.

\(^{89}\) Id. at 244-45.

\(^{90}\) Id. at 245. In addition, Rawls' first principle must be followed, which is "equality in the assignment of basic rights and duties" or, stated differently, "equal liberty and fair equality of opportunity." Id. at 13, 245.

\(^{91}\) See supra notes 32-34 and accompanying text.

\(^{92}\) Advocating study of the potential beneficial effects on the rate of economic growth, Professors Richard A. Musgrave and Peggy B. Musgrave noted the importance of increasing productivity of workers in low-income countries and found that:

An important contribution to this can be made by redirecting capital flows from high-income to low-income countries. As capital is redirected, world output will increase, since capital should be more efficient in countries where the capital-labor ratio is as yet very low. The suppliers of capital in the high-income countries stand to gain as larger returns are obtained from investment in low-income countries. There would, however, result a redistribution of income from labor in high-income countries (which would then operate with less capital) to labor in low-income countries whose productivity would be increased by the rising capital-labor ratio. An improved distribution of world income might thus be obtained at the cost of increased inequality (though over a much lesser range) in the developed countries.
Given the social, political, and economic crises in sub-Saharan Africa, any efficiency argument that would prevent the United States from providing an incentive for investment in that geographical area by its firms must be dismantled. Initially, it would be untenable to set up the economic efficiency goal, which is designed to achieve worldwide equilibrium in the cost of capital, as an obstacle to an exemption tax system designed to assist African nations, which at this moment have little opportunity to influence or participate in the world economy. Who would defend a choice to sacrifice the possibility for progress in sub-Saharan Africa—through increased investment and production—in allegiance to a principle which only has meaning in the industrialized world? Considering the near absence of Africa in the global economy, a decision to reject the proposed exemption system in the name of efficiency is a decision to continue the dominance of the industrialized world view in the global economy. The proposed exemption system invites the industrialized world, especially the United States, to consider whether it can continue to adhere to economic principles that ignore the special circumstances of sub-Saharan Africa that render production efficiency maxims inapposite.93

The overwhelming fiscal, social, and political needs of sub-Saharan Africa furnish persuasive rationales for departing from the business-as-usual capital export neutrality analysis that would reject the adoption of an exemption system for African source income in the U.S. taxation regime. Indeed, in the tax policy world, the role of distribution of income across borders has been acknowledged. Richard A. Musgrave and Peggy B. Musgrave noted that “[t]hose considerations, humanitarian or political, that provide the basis for concern with the domestic state of income distribution cannot be limited to the confines of one’s own nation.”94 While the Musgraves envisioned transfers among nations to encompass either development aid or measures “similar in nature to a negative income tax,” the exemption system proposed in this Article raises a third possibility.95

93 While capital exporting countries regard the efficiency principle to be neutral, in practice it is not neutral concerning developing countries because imperfect implementation of the policy, as in the United States, directs investment to low-tax industrialized countries.

94 MUSGRAVE & MUSGRAVE, supra note 92, at 774.

95 Id.
This Article's advocacy of an exemption system for African source income does not fit within the mainstream of U.S. international tax policy. Recent commentators have called for strengthening of the controlled foreign corporation regime to further limit the so-called "deferral privilege" (no taxation of income from foreign subsidiary until repatriation to the parent) for foreign subsidiaries, for further curtailment of the deferral privilege (pass-through taxation in most cases), and for taxation of multinationals by the "demand jurisdiction," which is the country that consumes the goods and services provided by the multinational. Given the compelling needs of the population of sub-Saharan Africa, and the considerable barriers to investment in Africa notwithstanding the prospect for adequate or even superior investment returns, this is an opportune moment to consider total exemption of African source income under prescribed circumstances. The next section further details operation of an exemption system for African source income.

4. EXEMPTION SYSTEM FOR PRESCRIBED INCOME FROM INVESTMENTS IN SUB-SAHARAN AFRICA

The proposal in this Article for an exemption from tax for prescribed income derived from sub-Saharan investments requires negotiation of income tax treaties between the United States and participating sub-Saharan nations. The plan contemplates that a

96 [TREASURY DEPT. STUDY, supra note 52, at 48.]
97 [See Peroni, Fleming & Shay, supra note 32, at 507-19; see also J. Clifton Fleming, Jr. et al., Fairness in International Taxation: The Ability-to-Pay Case for Taxing Worldwide Income, 5 FLA. TAX REV. 299, 318-321 (2001) (considering whether both fairness and efficiency concerns favor worldwide taxation rather than a deferral regime that acts as an exemption system).]
99 [Graetz & O'Hear, supra note 81, at 1104 ("The potential advantages of introducing exemption elements for business taxation surely merit reexamination in the United States today."); Hines, supra note 34, at 386.]
multilateral arrangement would best accommodate the exemption system proposed. Establishment of a multilateral treaty will require a change in U.S. income tax treaty policy because the United States is party to few income taxation treaties with more than one partner.\textsuperscript{101} A multilateral treaty would offer the greatest advantages to all parties. An arrangement covering a number of nations would provide U.S. firms with broader access to resources in a diverse regional area. It would provide the United States with more complete representation of the interests of sub-Saharan populations and sub-Saharan Africa with a stronger negotiating platform. As there is currently only one income taxation treaty in effect between the United States and an African nation—the treaty with South Africa—the multilateral agreement would add significantly to the number of U.S. treaties with third world nations, a neglected source of cooperative taxation arrangement.\textsuperscript{102}

The treaty would add four types of provisions not found in current treaties: (1) a provision exempting from U.S. income taxation specified income from investments made by U.S. firms in the geographical jurisdiction of signatory nations; (2) a provision specifying the rate to be imposed on such income by the nation in which the activity is located;\textsuperscript{103} (3) a provision identifying required labor practices; and (4) a provision detailing minimum protections for natural resources and other environmental conditions. It would also contain a provision, found in all current income taxation treaties, elaborating on information exchange, information reporting,


\textsuperscript{102} The first treaty between the United States and South Africa became effective in 1948. That treaty was repealed by the Anti-Apartheid Act of 1986. 22 U.S.C. § 5001 (1986). The current treaty was negotiated after South Africa ended its apartheid form of government, and was ratified by the U.S. Senate in 1997. Treaties currently in effect with third world countries include the treaties with China, India, Mexico, Singapore, and Venezuela.

\textsuperscript{103} No U.S. double income taxation treaty provides an exemption from U.S. tax for U.S. taxpayers or a connected provision setting the foreign rate upon which the exemption is dependent. United States treaties accord tax rate reductions: 1) on income subject to U.S. taxing jurisdiction and derived by residents of the foreign country which is party to the treaty and 2) on income subject to the foreign treaty partner’s taxing jurisdiction and derived by U.S. residents or citizens. In all U.S. income tax treaties a so-called “savings clause” reserves to the United States the right to tax worldwide income of its citizens and residents. UNITED STATES MODEL INCOME TAX CONVENTION art. 1 ¶ 4 (1996).
and other administrative matters; this provision would permit the parties to avoid fraud, abuse, and other unanticipated manipulation by potential beneficiaries under the treaty. The exemption would provide an incentive for investment in sub-Saharan Africa by eliminating any U.S. income tax derived from specified activities and by affording the developing nation an opportunity to attract investment by determining the appropriate level of taxation to be accorded production activity within its borders. Labor and environmental protections would protect against any potential "race to the bottom," in the form of rate shopping, caused by multinational firms seeking lower-taxed income. They would also protect U.S. and African workforces from the burdens that could result from a shifting of an activity to a location in which exploitative and abusive labor conditions and grossly inadequate wages reduce production costs and correspondingly increase returns to capital.

Potential activities eligible for the exemption could include income from natural resources exploration and development, manufacturing, sales and marketing, and related leasing and licensing, and research and experimentation relating to development of tangible and intangible property. The list of eligible activities would be expanded or contracted on the basis of the interests of governmental representatives negotiating the treaty. The presence of more than one African nation at the bargaining table could be expected to lead to discovery of synergism that would result from the combination of countries rich in natural or other resources with those offering a labor force either possessing skills ranging from manual to managerial ability, or well-placed to benefit from training. Thus, for example, a U.S. firm might find it feasible to establish operations in two or more African nations with a plan to mine a resource available in one country and to either refine or develop the material in another through processes uncovered by research and development activities in a third country.

Although most U.S. taxation treaties provide for tax rate reductions on specified income, including interest, dividends, royal-


105 See generally Merrill & Dunahoo, *supra* note 38 (suggesting the same).

106 See U.S. Int'l Trade Comm'n, *supra* note 18, at 4-1-4-42 (detailing areas of production in sub-Saharan Africa).
ties, business profits, and capital gains, none provides for a rate reduction in conjunction with an exemption system because they preserve the right of the United States to tax its citizens and residents on a worldwide basis. The rate-setting portion of the treaty would reflect the determination reached by representatives of the sub-Saharan governments of the amount of revenue necessary to support local infrastructure. The rate selected should reflect the fiscal burdens expected to be imposed on the African nation by the U.S. activity, which would include access to a robust work force, utilities, roads and transportation, site development, and communications and information dissemination networks.

The treaty would also specify labor standards and other workplace protections for African workers. Included among these are minimum wage provisions and protections against physical, emotional, and sexual abuse, which will ensure that workers maintain an adequate living standard and enjoy a safe and secure work environment. The appropriate wage level is a subject to be negotiated by the treaty partners. The provision will ensure that workers receive a wage at or above subsistence level for the region. This feature of the treaty will preserve an appropriate standard of living for African workers and will mitigate the flight of U.S. jobs offshore in search of cheaper labor. The inclusion of wage standards and anti-abuse requirements is designed to eliminate the subsidy of U.S. production at the expense of workers, which has arisen in Mexican maquiladora sites, as well as in Caribbean and Asian locations.

Success of the proposed exemption for African source income would depend upon adoption of a sophisticated information sharing and reporting network between the United States and participating African nations. The proposal is intended to provide incentives for investment in African nations. It is not intended to provide a device for circumventing U.S. taxation of income not legitimately derived from specified activities in Africa. For example, a tax-exemption for African source income could encourage U.S. investors to shift deductible expenses to taxable activities, thereby reducing income subject to taxation, and artificially shift income to African locales where it will be taxed at lower rates. Artificial manipulation of income and deductions in order to minimize taxable

108 Arriola, supra note 40, at 729.
income and to maximize the benefit of deductions would be prohibited under the treaty. Provisions comparable to those contained in the transfer pricing rules of section 482 of the Internal Revenue Code would form part of the treaty. In order to monitor activities eligible for the exemption, the treaty would require annual reporting by all signatories.

Establishment of a new set of source rules or modification of the current rules would further deter the misuse of the proposed exemption by investors seeking to avoid U.S. tax without a concomitant investment in the treaty-partnered African nations. Adjustment would be necessary in the current rules providing for the source of sales income, for example, because they are susceptible to abuse. Those rules generally provide that the source of sales income is the locale where title to the goods passes. Judicial interpretations of the rule have permitted sourcing of income in a location in which title passes even if substantial economic factors contributing to production arose elsewhere. Application of these rules to determine whether transactions are eligible for the exemption would invite manipulation and abuse by multinationals who could obtain African-source income merely by designating passage of title in a participating sub-Saharan nation. Accordingly, the rules designed for sourcing income eligible for the exemption would be most effective in deterring abuse if they were to adopt a test that looks to the location in which factors of production are significantly employed. A recent example of such a standard was proposed in the Clinton administration's budgets for 1998 to 2000 concerning the source of property produced and sold partly within and partly outside of the United States. The budget proposal, which was never enacted, would have abandoned the current fifty-fifty apportionment of the income to domestic and foreign sources.

109 See I.R.C. § 482 (1994); Treas. Reg. § 1.482-1 (2001) (permitting the Secretary of the Treasury to rearrange transactions between commonly controlled business to properly reflect income and deductions); see also Treas. Reg. § 1.861-8 (2001) (allocating and apportioning income and deductions to foreign source or U.S. source income for purposes of determining the appropriate tax credit).

110 Treas. Reg. § 1.861-7(c) (2001).

111 See A.P. Green Exp. Co. v. U.S., 284 F.2d 383, 388 (Cl. Ct. 1960) (holding that title passes outside the United States). The last sentence of Treasury Regulation section 1.861-7(c), which looks to the location of the substance of the sale to determine source in the case of tax avoidance, normally does not change this result. But see Treas. Reg. § 1.861-7(c) (2001) (looking to the location of the substance of the sale to determine the source in the case of tax avoidance).

The fifty-fifty rule automatically characterizes fifty percent of the sales income as foreign source even in cases in which very minimal foreign factors of production were involved. This results in artificial inflation of the amount of foreign source income derived by the domestic corporation and an increase in foreign tax credit limitation. As the foreign source income created by the fifty-fifty rule is not likely to be subject to foreign tax, the increase in foreign tax credit limitation allows the taxpayer to blend high taxed with non-taxed income to maximize use of the foreign tax credit.113

The Clinton proposal looked to the source of economic activity generating the income, an exercise targeted to result in less foreign source income.114 While the provision was never enacted by Congress, it furnishes a model for the type of source rule that would discourage manipulation by multinationals seeking to gain the benefits of exempt income without investment in sub-Saharan Africa.

The exemption system implemented by the treaty would be income-based and not entity-based. Thus, the exempted income could be derived by any domestic or foreign entity or individual (either a resident or a citizen) subject to taxation in the United States on worldwide income.115 In addition, distributions out of earnings and profits arising out of eligible African-source activities of domestic and foreign corporations would also be exempt from U.S. taxation.116 Unlike the recently enacted provisions exempting from U.S. taxation prescribed amounts of “extraterritorial income,” which were declared an illegal export subsidy by the WTO Dispute Settlement Panel in Geneva in July 2001 (a decision affirmed in January 2002 by the appellate body), the proposed exemption sys-

113 The United States, in effect, cedes jurisdiction to tax income from domestic sources under a place of economic activity test.

114 See Prop. Treas. Reg. § 1.863-9, 66 Fed. Reg. 9138-02 (Feb. 6, 2001). Location of significant factors of production in Africa would exist if one or more of the following was present there: workforce contributing substantially to production of goods or services, tangible or intangible assets equal to twenty-five percent or more of the fair market or book value of all assets employed in the activity, substantial management or administrative services.


116 This ensures that the specified income is excluded at both the shareholder and corporate level.
tem for African-source income does not offer a subsidy for export of U.S. goods.\textsuperscript{117}

In order to address revenue concerns, the exemption would expire at the end of a ten- or fifteen-year period.\textsuperscript{118} Congressional study of the results under negotiated treaties could cause extension or re-enactment of a similar provision.

5. \textbf{Benefits of the Proposal to Sub-Saharan Africa}

The tax system of most sub-Saharan nations generally consists of some combination of the following taxes: income taxes on individuals and corporations, property taxes, value-added taxes, and import and export duties. Most of these nations offer some type of investment incentive in the form of temporary rate reductions for specified activities or new enterprises.\textsuperscript{119} In the aftermath of civil and inter-nation wars, many nations are certain to view foreign investment as a means to bolster declining government revenues. The regime proposed in this Article furnishes a measured and limited means by which nations may structure a regime designed to attract U.S. resources and to protect local interests.

\textsuperscript{117} See Chuck Gnaedinger & Robert Goulder, \textit{WTO Interim Report Finds U.S. ETI Regime Violates Trade Rules}, 23 \textit{TAX NOTES INT'L} 7 (2001). The WTO Dispute Settlement Panel's final report was issued in August 2001. This decision was finalized in January 2002, when the WTO appellate body affirmed the final report. See Gale, Orszag & Sperling, supra note 36, at 1093; see also Raj Bhala, \textit{International Trade Law: Theory and Practice} 1429 (2001) (noting in articles XXXVI, XXXVII, and XXXVIII of the GATT the principle of non-reciprocity in trade negotiations between developed and developing countries and the provision for developed countries to adopt special measures to promote expansion of imports from developing countries).

\textsuperscript{118} To moderate revenue loss, the Economic Growth and Tax Relief Reconciliation Act includes a ten-year sunset provision that will cause the Act to expire after 2010. 26 U.S.C. § 6428 (2001).

\textsuperscript{119} The following nations offer preferential tax regimes for specified investments either by administrative arrangement or by statute: Benin, Botswana, Burkina Faso, Burundi, Cameroon, Central African Republic, Democratic Republic of Congo, Gabon, Ghana, Guinea-Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mauritania, Mauritius, Namibia, Niger, Nigeria, Senegal, Seychelles, Somalia, Tanzania, Uganda, Zambia, and Zimbabwe. See Awedhi Mushi, \textit{Tanzania Considers Tax Holiday for New Investments}, 20 \textit{TAX NOTES INT'L} 2672, 2672 (2000) (reporting that the Tanzanian government devised a measure to attract private capital by offering a five-year tax holiday to all new investment projects involving a specified amount of capital); \textit{Post-War Developments in the Liberian Tax System}, 22 \textit{TAX NOTES INT'L} 2437, 2440 (2001) (stating that the President of Liberia has the authority to waive taxes).
Africa is an under-utilized destination for U.S. foreign investment. Of the largest 7,500 controlled foreign corporations reporting to the Internal Revenue Service for 1996, only eighty are incorporated in sub-Saharan Africa.20 Most foreign investment by U.S. business occurs in Europe.121 While political instability and security concerns in Africa furnish a partial explanation for the lack of U.S. investment, it is apparent that U.S. taxation of the worldwide income of domestic businesses operating abroad is a significant impediment.

A system of worldwide taxation aims to remove an incentive to shift activities to lower-tax jurisdictions in the hope of promoting worldwide efficiency. This goal is purportedly achieved by taxation of all income from domestic and foreign sources at the U.S. rate, allowing a credit against U.S. tax liability for foreign taxes imposed at a rate up to the maximum effective U.S. rate.122 Yet the tax literature indicates that lower rates nonetheless attract investment by U.S. businesses.123 U.S. businesses shop for lower tax rates, without regard to production efficiency or maximization of returns on capital, in order to either blend lower-taxed foreign source income with higher-taxed foreign source income to maximize the available foreign tax credit or to defer higher U.S. taxes by operating through a subsidiary organized in a foreign country with low tax rates.

In these rate-shopping strategies, investment in Africa holds little attraction. Income from sales of property exported to Africa is deemed foreign source income under the rules outlined above, and therefore eligible to increase the foreign tax credit limitation, without regard to location of actual sales activity. Without a permanent establishment or other fixed investment in its geographical

121 Id. at 152 tbl. 2, col. 6. Rate-shopping alone does not explain the concentration of U.S. investment in Europe.
122 I.R.C. §§ 901(a), 904(a) (1994).
territory, the African nation generally will not tax such income. Moreover, given the broad availability of low-tax jurisdictions more traditionally viewed as offering economies or investment environments compatible with U.S. business goals, such as Bermuda, the Cayman Islands, and Ireland, there is no incentive to organize a subsidiary in sub-Saharan Africa. Thus, without the incentives offered by a treaty of the type proposed, the prospect of deferral of U.S. tax has not alone been sufficient to engender U.S. investment activity.

An exemption system of the type proposed in this Article would be compatible with traditional investment-attracting techniques employed by many developing countries, including those in sub-Saharan Africa. China, Singapore, Thailand, and Vietnam have viewed tax holidays, or a similar form of tax remission for foreign investors, as a vital means of attracting development. While economists reject tax rate reduction as a long-term strategy, a time-restricted reduction of tax rates to attract new investment and to encourage development combined with reconstruction of the entire tax system may provide a formula for economic recovery for many sub-Saharan nations.

The final benefit of the proposed exemption system for African-source income is the potential for development of a treaty network between the United States and Africa. Apart from the income tax treaties with South Africa and a handful of other nations and the Caribbean basin exchange of tax information agreements, there is a void in U.S. income tax treaty arrangements with the developing world. Considering the bilateral feature of most U.S. treaties, the lack of developing country treaties is not surprising. Indeed,


126 See supra note 102 and accompanying text.

the most distinctive aspect of the U.S. income treaty is its unvarying structure. For the most part, each treaty contains the same provisions relating to persons covered, anti-abuse provisions designed to prevent treaty-shopping by third parties, tax rate reductions, and source rules conceding primary tax jurisdiction. By its formulaic content, each treaty succeeds in asserting the U.S. view of the appropriate subject matter.

The hegemony of the U.S. treaty regime presently guarantees that no accords will provide any incentives for investment in sub-Saharan Africa. As described above, because the United States does not relinquish its right to tax worldwide income of its domestic multinationals and has not deviated from specified treaty-contracting areas, from the standpoint of a developing nation, U.S. treaties are unilateral mandates of the parameters of dialogue.128 Developing nations have been powerless to influence the treaty-making process, as symbolized by the existence of only one U.S. treaty with an African nation.129 The treaty proposed in this Article has the potential to upset this dynamic, by allowing African nations to shape the foundations of the exemption system.

6. PERCEIVED OBSTACLES TO IMPLEMENTATION OF PROPOSAL

There is evidence that implementation of the proposal, combined with reforms calculated to enhance the attractiveness of the African locale—such as strengthened tax administration and transparent tax laws in the short run and eventual infrastructure improvements in the long run—would result in increased investment in Africa. Despite expected gains, there are two potential obstacles to institution of the system: the reluctance of the United States, as a policy matter, to accept tax sparing arrangements in treaties and the current developed-world opposition to so-called "tax competition."

A tax sparing arrangement is one in which a country agrees to provide a credit against the domestic liability of its taxpayer for treaty would encourage participation of a larger number of developing countries in the global tax treaty network).


fictional taxes (taxes payable if a special tax break were not in place) paid to a foreign country. Tax sparing is similar to an exemption system because it operates to eliminate tax owing to the residence country (the country claiming a right to tax income of the multinational on the basis of residence or nationality) of the multinational on income derived abroad in the host country (the country in which activities generate the income). The fictional tax credit exactly offsets taxes due to the residence country, but, because the taxes are fictional as the result of a tax preference granted by the host country, no tax is actually paid to the residence country.

The long-standing policy of the United States opposes tax sparing arrangements in income tax treaties. Senator Jesse Helms, former long-standing chair of the U.S. Senate Foreign Relations Committee, has strenuously resisted incorporating a tax sparing arrangement in an income tax treaty. Tax sparing is rejected because it conflicts with capital export neutrality, the policy foundation of the U.S. international tax system. For sub-Saharan Africa, however, there is no advantage to entering into a treaty with the United States without the incorporation of the exemption arrangement prescribed in this Article, which is akin to a tax sparing provision. Thus, current U.S. tax treaty policy does not accommodate the types of arrangements the developing world would prescribe to encourage investment.

Recent reconsideration of the dominance of capital export neutrality supports revision of the United States' anti-tax sparing pol-

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130 See Paul D. Reese, Comment, United States Tax Treaty Policy Toward Developing Countries: The China Example, 35 UCLA L. Rev. 369, 379 (noting that the United States has not embraced the concept of tax sparing and that unlike many industrial nations, it follows a strict policy of capital export neutrality).


132 See Dagan, supra note 128, at 993-94.

133 See id. at 995.

134 In addition, recent efforts by a United Nations Committee to update its Model Double Taxation Convention Between Developed and Developing Countries also fails to provide for investment incentives of the type sought by developing countries. United Nations Model Double Taxation Convention Between Developed and Developing Countries (Draft of 11 January 2001), WORLDWIDE TAX DAILY, June 15, 2001, available at LEXIS 2001 WTD 116-41.
icy. As mentioned above, for various reasons, the United States has departed from capital export neutrality principles to encourage certain activities. Moreover, U.S. multinationals have discovered that certain provisions of the tax code may be manipulated to achieve results akin to a tax exemption for some income from activities abroad. Yet, the express and unintended exceptions from the export neutrality doctrine have operated to support investment in the developed world.

Lawyers, accountants, economists and legal scholars have begun to re-examine the preference for export neutrality in the face of the realities of the current hybrid system in the United States. It is not likely that the United States will find a basis for partnership with developing countries, especially sub-Saharan Africa, if it does not implement an exemption system to accommodate its need to attract U.S. investment. Some movement toward recognition of the need for investment incentives for the developing world was made by Congressman Crane when he introduced the Economic Revitalization Tax Act of 2001, to re-introduce an exemption for most of the income of foreign corporations engaged in the active conduct of a trade or business in the Commonwealth of Puerto Rico. Adoption of the treaty exemption strategy recommended in this Article would provide an important additional step toward providing support for development in sub-Saharan Africa.

An exemption system of the kind proposed in this Article is not unprecedented. The repealed section 936 credit, still in force for grandfathered companies, provided a partial exemption for investments in Puerto Rico and other U.S. possessions. Originally

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135 See supra note 132 and accompanying text.
136 See supra notes 100–01. In discussing the issue of equitable international taxation, Michael J. Graetz writes:

Achieving fairness in international income taxation is complicated further by the question whether the use of the tax law to redistribute income should stop at the nation’s borders. Interrogation of this question, so far, has been largely absent from the international income tax literature, having generally been left to political philosophers. At a minimum, questions of international redistribution introduce two concerns: first, the issue of a worldwide entitlement to a minimal level of resources at least to prevent starvation, and perhaps malnutrition; second, the question of whether rich nations have any obligation to reduce misery to an ‘acceptable’ level worldwide.


conceived as a mechanism to enable U.S. firms to compete with foreign firms in the Philippines, it became a device to foster economic development in U.S. possessions generally.\textsuperscript{138} The provision was repealed in 1996 in response to complaints that expected gains to the local workforce were illusory.\textsuperscript{139}

In addition, notwithstanding its adoption of rules in 1962 to tax certain "tax haven" income of controlled foreign corporations, Congress carved out an exception for corporate earnings invested in projects in less developed countries. Until its repeal in 1975, Code section 954(b)(1) preserved the traditional exemption of the income of a foreign subsidiary from U.S. taxation for specified income derived from these nations, which promoted qualified investments in poorer regions.\textsuperscript{140}

Many industrialized nations opt for tax sparing provisions in treaties with developing countries. Canada, France, Germany, Italy, Japan, and the U.K. enter into such arrangements with developing nations.\textsuperscript{141}

By implementing an exemption regime for African source income, the U.S. gains the potential to support economic growth and development in one of the poorest continents. By doing so, it stands to lose revenue over a limited period of no more than fifteen years.\textsuperscript{142} Unrelenting allegiance to a neutrality standard, which has never been viewed as responsive to all economic issues raised by

\textsuperscript{138} U.S. GEN. ACCT. OFF., TAX POLICY: PUERTO RICAN ECONOMIC TRENDS (1997).

\textsuperscript{139} The General Accounting Office report showed, for example, that the share of manufacturing employment in Puerto Rico declined from 22.4\% of total nonagricultural employment to 16.3\%. \textit{Id.} at 11. Most corporate beneficiaries of the section 936 credit have been engaged in the manufacturing sector. \textit{Id.} at 31. Puerto Rico has responded by asking for an enhanced wage tax credit for new investments based on actual jobs created. \textit{Id.} at 47. Between 1982 to 1996, the study period covered by the report, "the share of domestic net income earned by Puerto Rican residents from both property and employee compensation declined from 69.3\% to 59.8\% . . .," but residents' income in absolute dollars grew from $16.3 billion to $23.8 billion. \textit{Id.} at 30.

\textsuperscript{140} I.R.C. §§ 954(b)(1) (repealed 1975), 955 (1962).


\textsuperscript{142} The exclusion for extraterritorial income in the provisions replacing the former Foreign Sales Corporation regime, for example, is estimated to cost $25.6 billion in revenue over the five year period from 2001-2005. JT. COMM. ON TAX'N, 107TH CONG., ESTIMATES OF FEDERAL TAX EXPENDITURES FOR FISCAL YEARS 2001-2005, 16 tbl. 1 (Comm. Print 2001). The proposal in this Article can be expected to result in a far smaller loss of revenue in view of its limited focus.
cross border transactions, cannot justify the United States’ failure to address the needs of the developing world.

The second obstacle to implementation of the proposed exemption for income from sub-Saharan African investments is the developed world’s opposition to so-called “tax competition.” As discussed above, this opposition culminated in publication of the OECD’s Harmful Tax Competition Report in 1998. Many commentators have recognized, however, that, regarding developing nations, the Report’s conclusions about the harmful effects of tax competition may be inapposite. Members of the Congressional Black Caucus, developing nations, and others have disputed the efficacy of the OECD proposal to take retaliatory actions against low-tax jurisdictions.143

Critics of the report have noted the lack of developing world input into the recommendations. Moreover, the report’s specification of the type of tax competition that is harmful negotiated an indiscernible line drawn to protect the preferential regimes of OECD members, some of the leading powers of the developed world, and to condemn investment-attracting strategies of desperately poor nonmembers. It is difficult to discern a significant difference between an investment-importing tactic of Ireland, which is one of tax base broadening and drastic rate reduction, and an exemption from taxation or rate reduction for foreign investment which might be employed by an African nation. In both cases, the host nation employs a tax rate reduction strategy to compete for investment which might go to higher-tax industrialized nations.

In light of the considerable controversy surrounding its publication, the Harmful Tax Competition Report fails to enunciate generally accepted international tax norms.144 Consequently, it con-

143 See Cordia Scott, OECD Tax Haven Crackdown Is Out of Line, O’Neill Says, 91 TAX NOTES 1061, 1061 (2001) (noting that O’Neill is troubled by the promise that low tax rates are suspect and that others should interfere with a country’s tax system); Cordia Scott & Andrion Howell, Congressional Black Caucus Says OECD Tax Move Unfairly Blasts Developing Nations, 22 TAX NOTES INT’L 1600, 1600 (2001) (observing that many of the high-tax competitors of the United States would like to use the OECD attack on low-tax countries to undermine the comparative advantage of the United States); Paul Tadros, Barbados Given Three-Pronged Approach to Removal from OECD Blacklist, 22 TAX NOTES INT’L 2289, 2289 (stating briefly the extensive discussions on the OECD’s actions and appropriateness of listing Barbados as having harmful tax practices) (2001).

144 See generally Brown, supra note 47, at 319 (noting that the Harmful Tax Competition Report was prepared without input from developing nations); Gilbert N.M.O. Morris, An Observer’s Perspective—The Opportunities in America’s Rejection of the OECD Initiative, 22 TAX NOTES INT’L 2619 (2001) (applauding Secre-
stitutes no barrier to adoption of the exemption system proposed for investment income derived by U.S. taxpayers from sub-Saharan Africa.

7. CONCLUSION

Much respect is accorded the United States in its position as economic powerhouse and leader of the global economy. To be sure, after the terrorist attacks on the United States in September 2001, its economic position has been challenged. Yet, some of the instability in other parts of the world that has led to terrorism can be attributed to the practice of the United States and the rest of the developed world to underestimate the social and economic crisis facing a large portion of the developing world.

The world faces a critical moment in which the needs of the populations of poorer economies must be acknowledged. Many are seeking solutions. Jubilee 2000, a consortium of religious and public interest groups, has made a commitment to work toward the elimination of poverty in sub-Saharan Africa. The European Union has begun to revisit the so-called “Tobin Tax,” a tax on cross-border financial transactions, as a means to achieve a similar end. A group of fourteen industrialized nations has embraced the “Third Way” movement, a coalition of progressive industrialized and developing nations striving to “balance the forces of capitalism with the ideals of social justice.” The International

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146 The Tobin Tax is a one percent tax on international financial transactions used to fund development projects in poorer countries. It is named after James Tobin, a Yale economics professor and Nobel Prize winner. See Highlight of French Finance Minister to Push For Tobin Tax at ECOFIN Meeting, FIN. TIMES, Aug. 28, 2001.

147 William Drozdiak, Summit Considers ‘Third Way’ to Solve Global Problems, WASH. POST, June 4, 2000, at A24. The group includes Argentina, Brazil, Canada,
Monetary Fund is working toward a program of debt relief for Africa. Yet, none of these measures alone, or in combination with direct foreign aid, holds the promise to appreciably abate destitution in sub-Saharan Africa.

The current debate concerning the deployment of funds to support anti-terrorism efforts or to rejuvenate the faltering U.S. economy must include dedication of funds to alleviate the extremely disadvantaged population of sub-Saharan Africa. If, for example, Somalia or some other African locale is considered a platform for terrorist action, some consideration might be given to alleviating the conditions in those countries that create criminals dedicated to disrupting the status quo in the developed world. A Congress considering allocation of resources for security measures in Africa should consider implementation of the proposal made in this Article. A balancing of the interests of the United States in enhanced security measures and a robust economy is short-sighted if it does not include consideration of its long-term interests in development and stability in the developing world.

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148 See WORLD BANK, supra note 6, at 250.