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The HIV/AIDS Crisis: How Are Trade and Commerce Ministries Responding?

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This paper is one of four background papers prepared for the Plenary Session on HIV/AIDS, AGOA Forum, Washington, DC, October 30, 2001. The Africa Bureau of the U.S. Agency for International Development sponsored the preparation of the background papers. These papers will be revised and participant comments will be incorporated into the final versions, which will be distributed after the meeting.

Introduction⁽¹⁾

The Trade and Development Act of 2000, which contains the African Growth and Opportunities Act (AGOA) provisions, recognizes the increasing importance that sub-Saharan Africa plays in trade with the United States. The overall amount of trade between the United States and sub-Saharan Africa was US\$29.4 billion in 2000, an increase of about 50 percent from 1999.

- U.S. exports to sub-Saharan Africa were US\$5.9 billion, more than exports to all of the former Soviet Union combined (including Russia)
- U.S. imports from sub-Saharan Africa were US\$23.5 billion, led primarily by crude oil and minerals.

Over time, trade with sub-Saharan Africa has become increasingly concentrated. Angola, Kenya, Nigeria, and South Africa accounted for nearly 72 percent of U.S. sales in 2000; the leading export products were aircraft and oil and gas field equipment. Approximately 87 percent of total imports from sub-Saharan Africa originated from four countries (Angola, Gabon, Nigeria, and South Africa), with the leading products being crude oil and minerals such as platinum, diamonds, and steel.

Overall, however, sub-Saharan Africa still accounts for less than 1 percent of total U.S. merchandise exports, and less than 2 percent of U.S. merchandise imports. Although overall world trade has tripled over the last two decades, sub-Saharan Africa total trade increased by only 10 percent, resulting in a decrease in the share of sub-Saharan Africa in global trade from about 4 percent to less than 1.5 percent. This is the result of many factors, including weakening economic performance, decreases in commodity prices, war, famine, and drought.

The interaction between the HIV/AIDS epidemic and the trade and commerce sectors of sub-Saharan African economies occurs in a number of different ways:

- **Intellectual Property Rights.** The questions of compulsory licensing and parallel importing as they relate to the provision of HIV/AIDS drugs are complex, yet important in understanding whether these drugs are to become available for sub-Saharan African countries. For example, understanding the role of intellectual property rights in stimulating research and development is critical. Patents can also encourage both domestic and foreign direct investment.
- **Restrictive Trade Practices.** Certain trading patterns, such as tariffs and delays at border crossings, may be altered to mitigate the impact of the epidemic.
- **Tourism.** Although tourism is an important source of foreign exchange for many countries, the epidemic may be exacerbated by activities that take place during tourist visits. The industry itself may be vulnerable to perceptions of higher risk on the part of incoming tourists.

- **International World of Work.** The workplace offers a unique setting to provide prevention and care programs. The recent International Labor Organization's (ILO's) Code of Practice on HIV/AIDS gives guidance on how to implement such programs in the workplace.
- **Effect on Competitiveness.** Through different mechanisms, including increasing unit labor costs and decreasing investment flows, HIV/AIDS may affect a country's international competitiveness.

Major U.S.-African Trading Partners: 2000⁽¹⁾		
Country	Exports (%)	Imports (%)
Angola	3.8	15
Gabon		9
Kenya	4	
Nigeria	12	45
South Africa	52	18

Impact of HIV/AIDS on Trade and Commerce Sectors

- Intellectual property rights
- Restrictive trade policies
- Tourism
- International World of Work
- International Competitiveness

How Can Intellectual Property Rights Affect the HIV/AIDS Epidemic?

“Intellectual property rights are the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time” (2).

As part of the World Trade Organization’s overall agreement, the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement lays out the international standards of protection for intellectual property rights, including patents. The general rule affecting patents is that both product and process inventions in all fields of technology can be patented, and thus protected under the agreement. There are certain types of exceptions to these patent rights, such as the following:

- When the exception does not unreasonably conflict with normal exploitation (i.e., if the patented invention will be used in research);
- When *compulsory licensing* is allowed under certain conditions; or
- When *parallel imports* are allowed under certain conditions.

The TRIPS Council held a special session in June 2001 on Intellectual Property and Access to Medicines. The council chair summarized the meeting as follows:

“[A]ll members are determined to ensure that the TRIPS Agreement is part of the solution and not part of the problem of meeting the public health crises in poor countries...Members recognize that patents are important for public health policies because they provide incentives for research and development into new drugs...Many delegations said that the TRIPS Agreement could provide sufficient flexibility to enable public health needs to be met, if it is properly interpreted and applied.” (3).

Since drugs that treat HIV/AIDS are relatively new, most are still under patent, as defined by the TRIPS Agreement, particularly in developed countries. Patent protection has not been applied for, however, in all countries. In a recent study for some countries in Africa, for example, only 21 percent of possible patent applications for AIDS drugs have been filed (see box). When patents do exist, alternative access to these drugs is available through two mechanisms: compulsory licensing and parallel importing. Recently, much attention has been paid to the conditions under which these mechanisms are valid.

Issues Surrounding Intellectual Property Rights

- **Compulsory licensing** may be in effect in emergency situations
- **Parallel importing** may be allowed under certain conditions

Patent Protection in Africa

A recent study of 53 African countries found that only 21 percent of potential patents actually exist, thus allowing for the importation of generic drugs. Although this is true for most African countries, it is not true in South Africa, where 11 of the 15 most common drugs do have patent protection. In addition, one of the most commonly used AIDS drugs, Combivir, does have patent protection in most African countries (8).

United States

“On February 21, 2001, the Bush administration decided to let stand a May 2000 executive order that prohibits U.S. retaliation against African nations promoting access to HIV/AIDS pharmaceuticals and medical equipment as long as their efforts are consistent with international treaties and agreements, including TRIPS” (5).

Compulsory Licensing

Compulsory licensing, or use of a patent by a third party without the consent of the patent owner, is allowed under the TRIPS Agreement under a number of conditions that protect the patent owner's rights. Two of the main conditions include the following:

- An effort must be made to obtain voluntary use of the license, unless there is a national emergency, other circumstances of extreme urgency, government non-commercial use, or anticompetitive practices.
- Remuneration must be made to the right patent holder.

Once compulsory licensing occurs, it cannot be given to a single party for its exclusive use, and it usually applies only to production for the domestic market. One issue for further discussion by the TRIPS Council in subsequent sessions is whether compulsory licensing may be used for import rather than local production. Because many smaller developing countries may not have the domestic capacity to produce sophisticated pharmaceuticals, they would like to purchase drugs on the international market that have been produced under compulsory licensing, after they become subject to the TRIPS Agreement in 2005 (4).

Parallel Importing

Parallel, or gray-market, imports are those goods that are produced legitimately by the patent holder in one country, purchased by another company, and sold in another country by the second company. This practice is addressed in the TRIPS Agreement via the legal principle of "exhaustion"—a patent right in the specific purchased product is "exhausted" once the patent holder has sold the product. Any issue regarding the exhaustion of intellectual property rights cannot be raised as a dispute in the World Trade Organization, although issues of national treatment and most favored nation treatment can be raised. Note that parallel imports are not the same as "generic" products; if the product is under patent in a particular country, then a generic product is an illegal copy of the patented drug. At the recent TRIPS Council meeting, developed countries warned that parallel imports could affect the negotiations currently taking place for selling HIV/AIDS drugs for lower prices in developing countries (4).

Kenya and South Africa

The Parliament of Kenya recently joined the South African government in passing a bill to allow domestic production and importation of various medicines, including antiretroviral drugs. The bill requires that Kenya give the relevant pharmaceutical firms six months' notice prior to granting the compulsory licensing (6).

Brazil

Brazil recently announced that it would begin domestic production of a generic version of Nelfinavir, after declaring AIDS a “national emergency.” Some royalty payments will be made to patent holders. Earlier domestic production of AIDS drugs was undertaken based on a different Brazilian law that allowed domestic production of a generic drug if a foreign company did not begin production in Brazil within three years of being granted a patent (7).

What Restrictive Trade Patterns Affect HIV/AIDS?

Restrictions on trade patterns take various forms, including tariffs, quotas, delays at border crossings, and other nontariff barriers. Some trade restrictions are based on official government policies, such as tariffs and quotas, and as such are under the direct control of the relevant ministry. Other practices, such as delays at border crossings, are the result of many factors that are not explicitly under the control of government. Identifying some of these trade restrictions, as well as how they affect the HIV/AIDS epidemic, may help countries mitigate some of the impact of the epidemic.

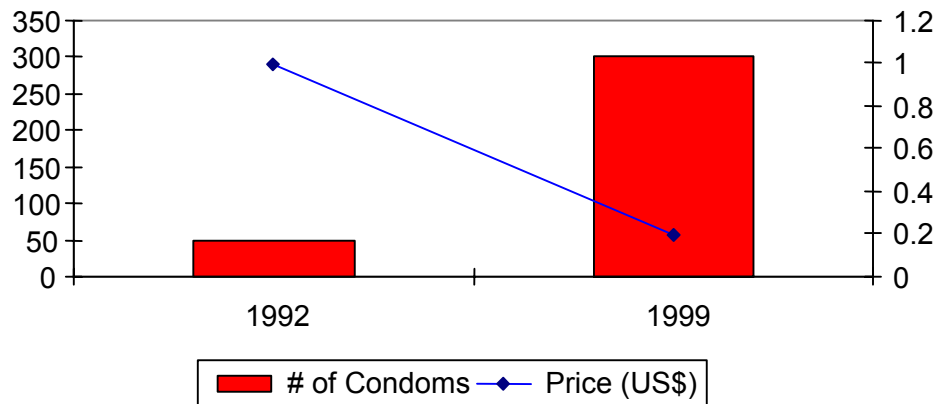
One trade restriction that is under the control of national governments is tariffs imposed on imports. When a tariff is imposed, the domestic price of a good rises above the international, competitive price. The higher relative price of the good can cause a decrease in the demand for it, relative to other goods. When the purchase of this good would result in a positive impact on the HIV/AIDS epidemic, lifting tariff duties may result in increased purchases, and thus slow the epidemic.

For example, in the early 1990s, Brazil had some of the highest condom prices in the world; the average cost of a condom in 1992 was US\$1. This high price was due to a combination of very high import tariffs and other retail taxes. As a result, the per capita use of condoms was very low—only about 50 million condoms were sold per year. Once the price distortion was recognized, various organizations conducted advocacy campaigns to lower the taxes on condoms. By 1999, the average price per condom decreased to US\$0.20, and total sales increased to 300 million units per year (see Figure 1). Thus, this represents an example in which the removal of a trade distortion had a clear impact on purchases; the resulting increase in condom use could only have a positive impact on the HIV/AIDS epidemic (9).

How Do Trading Patterns Affect HIV/AIDS?

- High tariffs or other nontariff barriers can affect prices or access to products for prevention or treatment.
- Delays at border crossings increase risky behaviors.
- Policies can be enacted to address these trade practices, such as decreasing tariffs or facilitating border crossings.

Figure 1. Impact of Tariff Reduction on Condoms Sold in Brazil



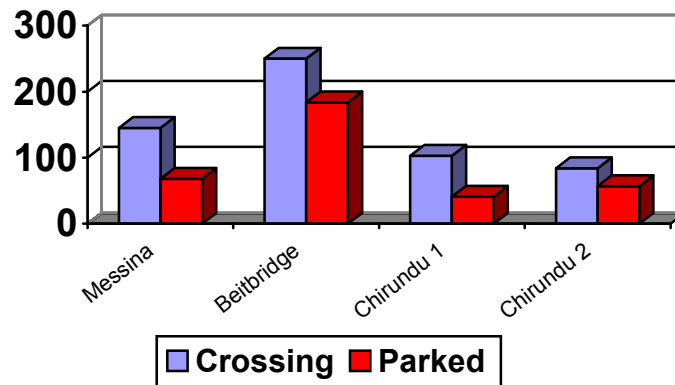
Sometimes, however, potential changes in policy to mitigate the epidemic are not so obvious. For example, delays at border crossings in sub-Saharan Africa increase high-risk behavior, such as the use of commercial sex workers. A 1993 survey of 168 drivers in Cameroon found that the average trip length was 14 days. During the trips, about 62 percent had sex at least once, while 25 percent had sex every night (10). A recent survey of four border crossings in southern Africa found that several thousand truckers cross each border monthly, with about 1,000 sleeping at least one night at each border. The delays are extensive; as Figure 2 shows, for every two trucks that cross the border at each of these four stops, there is at least one that remains parked at the border because of delays. These numbers do not include trucks parked in the towns; in Messina, South Africa, where between 120 and 180 trucks cross daily and between 60 and 80 trucks are parked at the border, it was estimated that about 200 trucks were parked daily throughout the town (11).

Delays are the result of many factors, including lack of infrastructure and staggered border opening hours. One study reports that delays at the South Africa border are related to the country's concern about migration flows (11).

What can be done to reduce time at border points? The Common Market for Eastern and Southern Africa (COMESA) has devised various policies, some of which are designed to facilitate border crossings. Among them:

- Standardization of **customs rules and regulations** results in faster movement of goods and services by reducing time spent at border points.
- Introduction of a **COMESA carrier license and insurance** that would be valid throughout the region will facilitate movement between countries.
- Introduction of a **customs bond guarantee** reduces delays at borders.

Figure 2. Average Number of Trucks Crossing Border and Parked at Border Daily, South Africa



COMESA Policies to Facilitate Border Crossings

- Standard customs rules and regulations
- Carrier license and insurance
- Customs bond guarantee

What Is the Interaction Between Tourism and HIV/AIDS?

Over the last 20 years, tourism has become an increasingly important part of the economies of AGOA countries. The number of international tourists arriving in the area increased from 2.6 million in 1980, to 5.1 million in 1990, to 13.2 million in 1998. Overall, the total receipts from international tourism rose from US\$2.5 million in 1980 to more than US\$6 million in 1998, in real terms (see Figure 3). In addition to an increase in overall receipts, tourism has also increased in relation to exports. In 1980, tourism was about 5 percent of total exports; by 1998 this percentage had increased to more than 13 percent. South Africa and Kenya together account for about one-half of total international tourism receipts (12).

Thus, tourism plays an important and growing role, particularly in certain economies, by providing jobs, income, tax revenues, and foreign currency. The interaction between HIV/AIDS and tourism is complex; due to riskier behaviors adopted by tourists while on vacation, the HIV/AIDS epidemic is exacerbated. At the same time, tourists may be discouraged from visiting countries with high HIV-prevalence rates because of a fear of infection (13). Several studies have found that, in general, tourists increase risky behavior in a number of ways. Sexual activity increases, both with other tourists and with local people; however, the use of condoms is not consistent during these sexual encounters. Young people, in particular, increase sexual contact during tourist visits, with a large percentage of these contacts being unsafe. Finally, the increase in alcohol consumption that occurs during holidays increases risky behavior even further (14).

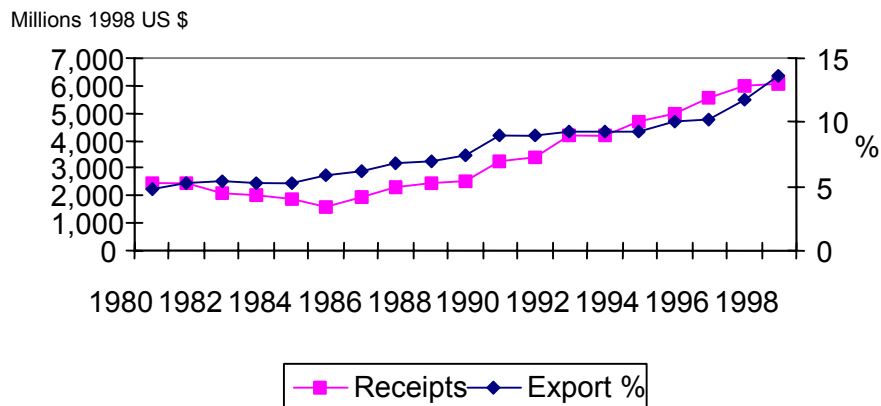
Although there is little quantitative evidence regarding the negative impact of HIV/AIDS on tourism, anecdotal evidence suggests that the HIV/AIDS epidemic may have an impact on overall tourism receipts. Early in the epidemic in the late 1980s, the British military banned soldiers from visiting tourist sites, such as Mombasa or Molindi, because of HIV/AIDS. After this story reached the British public, one travel agency reported cancellations of US\$3 million from British tourists. Another study in Thailand, however, found that tourists were not changing plans based on fears regarding the expanding HIV/AIDS epidemic (13).

What can ministries of tourism do to encourage tourism amid the HIV/AIDS epidemic? Studies in the Dominican Republic and Indonesia found that tourists were receptive to the idea of having information about HIV/AIDS located in their hotel rooms, particularly those tourists who perceived themselves to be at high risk (15, 16). In addition, instituting a 100 percent condom-use policy between sex workers and their tourist clients would have an impact on the transmission of the virus. This policy has been shown to be effective in increasing condom use in both the Dominican Republic and Thailand (13). Finally, treating STIs and providing materials about HIV/AIDS to workers in the tourist industry, as well as supplying condoms, could have a mitigating effect on the epidemic as well.

Interaction Between HIV/AIDS and Tourism

- Risky behavior adopted by tourists exacerbates the epidemic
- An increasing epidemic may affect tourists' willingness to visit, resulting in a loss of foreign exchange

Figure 3. International Tourism: Total Receipts and Receipts as Percent of Total Exports



Risky Behavior of Tourists

- Sexual activity increases
- Condom use is infrequent
- Young people in particular are at risk
- Alcohol consumption increases

Policies for Tourism Industry

- IEC materials for tourists
- 100% condom use policy
- STI treatment, IEC materials for workers

What Policies Can Be Adopted in the International World of Work?

“We want to maintain an open policy with our employees who are carrying the disease by accepting their condition with no fear of victimization.”

— NamWater CEO (17)

The ILO recently adopted a Code of Practice on HIV/AIDS and the World of Work. The code defines HIV/AIDS as a workplace issue and provides guidelines regarding the various issues associated with HIV/AIDS, including the appropriate use of testing in the workplace, the provision of workplace prevention programs, and responsibilities for care and support for affected people. Within these issues, particular attention is paid to how crosscutting topics, such as stigma, discrimination, and gender inequality, affects programs that might be enacted by government, employers and their organizations, and workers and their organizations. The code applies to all employers and workers in the public and private sectors, including formal and informal sectors (18).

Testing

The code recognizes both appropriate and inappropriate testing procedures. For example, testing is deemed inappropriate when used to hire or fire workers or used in any discriminatory way. It is appropriate, however, when offered on a voluntary basis, or when workers have occupational exposure. In all cases, confidentiality should be strictly enforced.

Although most African businesses do not currently mandate the testing of their workers, the code will help prevent these practices from occurring. For example, executives in numerous companies in Zimbabwe indicated that what they really thought was needed was a mandatory screening program (19). Some companies avoid the issue of mandatory testing by allowing their employees to be tested for insurance purposes (19). Other companies test their workers in violation of the existing law, thus risking a potential legal response from either the government or their employees.

Prevention

“Workplace information and education programmes are essential to combat the spread of the epidemic and to foster greater tolerance for workers with HIV/AIDS (18).”

The ILO code discusses in great detail the types of prevention programs that should be adopted, including their objectives, such as attitudinal and behavioral change, and their content. The types of programs the code advocates include

- Information and awareness-raising campaigns;
- Educational programs;
- Gender-specific programs;
- Linkage to health promotion programs;
- Community outreach programs; and
- Other practical measures to support behavioral change.

As with any intervention, workplace programs for HIV/AIDS will only be widely adopted if leaders are convinced that the programs actually work. For managers, there is a need to know that expending resources on HIV/AIDS prevention will result in preventing new infections. While there are limited data on the impact of workplace prevention programs, a few studies have shown tremendous efficacy of prevention programs. Other studies have found that the treatment of STIs resulted in a significant reduction in the incidence of HIV, although these studies are not specific to workplace treatment programs.

Despite the efficacy of prevention programs, such as peer education, condom distribution, and STI treatment, most managers have not pursued such a comprehensive prevention program. Managers argue that employees are already aware of HIV or that the employees do not engage in “immoral” activities. When prevention programs are initiated, they almost always exclude participation by management. AIDS is usually viewed as a problem of the uneducated workers, even though the data indicate that the financial impact of losing a senior member of staff is much greater than losing an unskilled worker.

While providing prevention programs in the workplace is critical, these issues also need to be addressed within the entire community where the workers live. Even fewer companies are, in fact, willing to make contributions to their communities; they often view HIV/AIDS prevention as the responsibility of the government or nongovernmental organizations, not their responsibility. It is often common to hear managers say that they already pay their taxes and therefore should not have to take on the responsibility of the government. However, other companies have recognized that, although the primary responsibility for health care may be with the government, the private sector needs to ensure that minimum health care standards are being met.

Care and Support

The ILO Code of Practice recommends that the workplace be involved with various aspects of care and support, either onsite or through the community. Care and support should include

- Counseling;
- Occupational and other health services;
- Linkages with self-help and community-based groups;
- Continuation of benefits;
- Social security coverage;
- Assurance of privacy and confidentiality;
- Parity treatment with other serious illnesses; and
- Employee and family assistance programs.

Whether workers infected with HIV should be treated in the workplace increasingly has become an issue for businesses in Africa. For most companies, the first step in establishing an appropriate treatment strategy could involve a focus on TB. Isoniazid prophylaxis, for example, was found to increase life expectancy in Spain for HIV-infected workers by three years (21). Cotrimoxazole has also been shown to be extremely effective as a prophylaxis against TB and other opportunistic infections (22).

An increasingly important issue regarding HIV/AIDS concerns the introduction of highly active antiretroviral therapy (HAART). HAART has been shown to be extremely effective in reducing the morbidity and mortality of individuals in developed and developing countries (23). Even in developing countries, such as Brazil, antiretrovirals were found to decrease mortality by 32 percent (24). Nevertheless, HAART is extremely expensive for most of Africa. The price is coming down, however, with generic manufacturers offering a combination of drugs for as low as US\$295 a year. Distribution issues remain important when discussing widespread use of antiretroviral therapy.

The provision of HAART can produce significant savings, particularly for companies that invest heavily in employee training and benefits. The benefits accrue through delaying the impact of AIDS (health care, recruitment, etc.) for a number of years. On a purely economic basis, companies are likely to find that the benefits of HAART exceed the costs for senior staff but not for unskilled workers. There are ethical issues, however, associated with providing HAART only to senior staff. In the end, the decision to provide HAART to employees may extend beyond an economic rationale.

The International World of Work

The newly adopted ILO Code of Practice on HIV/AIDS and the World of Work discusses best practices for

- Testing
- Prevention
- Care and Support

Zimbabwe

In 1993 in Zimbabwe, 40 factories implemented HIV/AIDS prevention programs. In 1994, 20 of these companies added peer education to their prevention programs, while the remaining companies continued with their existing programs. Factories offering peer education had a much lower incidence of HIV than factories that did not (20).

Zimbabwe

Some companies have made significant contributions beyond their workplace. Private sector contributors to community-wide HIV/AIDS prevention efforts in Zimbabwe include Barclay's Bank, Delta, Southampton, Johnson and Johnson, BP, and Old Mutual (19).

Does HIV/AIDS Affect International Competitiveness?

There are several mechanisms by which HIV/AIDS affects the international competitiveness of an economy:

- AIDS deaths lead directly to a reduction in the number of workers available. These deaths occur to workers in their most productive years. As younger, less experienced workers replace these experienced workers, productivity is reduced, thus resulting in a decline in international competitiveness.
- A shortage of workers also leads to higher wages, which leads to higher domestic production costs. These higher production costs again lead to a loss of international competitiveness, which can cause foreign exchange shortages.
- Lower government revenues and reduced private savings (because of greater health care expenditures and a loss of worker income) can cause a significant drop in savings and capital accumulation. This will have an impact on international competitiveness, since a reduction in investment funds may result in reduced investment in new technology and new production techniques.

The impact of HIV/AIDS on competitiveness is difficult to assess quantitatively. Most studies have found that estimates of the macroeconomic impacts are sensitive to assumptions about

- How the epidemic affects savings and investment rates;
- Levels of employees' education, skill, and training; and
- Mechanisms for financing costs—deficit financing vs. other mechanisms.

Few studies have been able to incorporate the impacts found to date at the household and firm levels in macroeconomic projections. Some studies have found that the impacts may be small, especially if there is a plentiful supply of excess labor and if worker benefits are small. Other studies have found significant impacts. The magnitude of the impacts depends partly on the structure of the economy. Economies based on extractive industries or export agriculture are likely to be most severely affected.

Certain sectors are particularly at risk for significant impact from HIV/AIDS, depending on the level of skill required. For example, the mining sector is a key source of foreign exchange for many countries. Most mining is conducted at sites far from population centers, forcing workers to live apart from their families for extended periods of time. They often resort to commercial sex, with resultant HIV infection and the spread of the infection to their spouses and communities when they return home. Highly trained mining engineers can be difficult to replace. As a result, a severe epidemic can seriously

threaten mining production, increase unit labor costs, and affect exports and subsequent foreign exchange balances.

Another sector that could be severely affected is the water sector, which in turn affects export agriculture. Developing water resources in arid areas and controlling excess water during rainy periods requires highly skilled water engineers and constant maintenance of wells, dams, embankments, and so forth. The loss of even a small number of highly trained water engineers can place entire water systems, and significant investment in them, at risk. In addition, these engineers may be especially susceptible to HIV because of the need to spend many nights away from their families. Other heavily affected sectors include agriculture, transport, health, and education.

Effect on International Competitiveness

- AIDS reduces the number of workers available, and worker productivity is reduced.
- Worker shortages lead to higher wages, higher production costs, and a loss of international competitiveness.
- Lower government revenues and reduced private savings can cause lower savings and capital accumulation, resulting in a loss of competitiveness.

Conclusion

As discussed above, trade between the United States and sub-Saharan Africa has been increasing in recent years. The Trade and Development Act of 2000 is intended to encourage this trend through increased trade and investment incentives. The HIV/AIDS epidemic, however, may have an impact on the ability of the 35 AGOA countries to take advantage of the opportunities provided by the Trade and Development Act.

What can the ministries of trade and commerce do to address the potential impact of HIV/AIDS?

- Ministries should be aware of the opportunities available through the TRIPS Agreement and negotiations with the pharmaceutical companies to increase access to essential HIV/AIDS drugs.
- Certain tariff and nontariff-related barriers exist that have an impact on the transmission of HIV/AIDS, such as high tariffs on condoms and delays at border crossings. Policies can be implemented to address these barriers, including lowering relevant tariffs and standardizing various customs rules and regulations to facilitate border crossings.
- Foreign exchange earnings may be at risk due to fluctuations in tourism receipts due to HIV/AIDS. Information and condom campaigns for both tourists and workers in the tourism industry may be effective in fighting the epidemic.
- Ministries may explore the relevance of the newly adopted Code of Practice on HIV/AIDS and the World of Work for domestic workplace guidelines.
- Certain sectors are particularly vulnerable to the HIV/AIDS epidemic, such as mining, transport, water, and export agriculture. Awareness of this vulnerability may increase the incentive to institute workplace programs and to develop plans to address the possible consequences of HIV/AIDS.

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