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Now Is The Time For African Growth And Opportunity Act 2.0

Law360, New York (March 11, 2014, 6:36 PM ET) -- Africa is on the rise. The continent is showing the type of sustained growth that attracts serious international investment and fosters new and diversified forms of trade. African markets are yielding some of the highest foreign investment returns in the world.[1] Over the past decade, the number of middle class consumers in Africa has expanded more than 60 percent, faster than any other region.[2] That emerging middle class, and the accompanying consumer demand, is a powerful economic engine that will bring African markets further into global supply chains. Africa is, in sum, the next frontier for international business.

Yet, Americans are somewhat oblivious to the idea of Africa as a success story, and the U.S. private sector has been slow to engage Africans as business partners and customers. Africa is the destination for just 1 percent of U.S. foreign direct investment and at least half of U.S. FDI in Africa is concentrated in extractive industries.[3] Because trade flows tend to follow investment patterns, U.S. imports from the continent are overwhelmingly concentrated in the petroleum sector.

U.S. economic rivals, meanwhile, have aggressively expanded their presence across the continent. China has forged economic ties with numerous African countries, investing large sums of money to extract resources and even relocating thousands of Chinese entrepreneurs to start local businesses. Not surprisingly, China has supplanted the United States as Africa's largest trading partner.[4] Brazil and India have greatly escalated their investments on the continent, and the European Union is doggedly attempting to sign reciprocal trade agreements with African regional blocs — agreements which, if enacted, will place U.S. firms at a competitive disadvantage in African markets.

U.S. policymakers appreciate the danger of falling behind in Africa. The White House's U.S. Strategy Toward Sub-Saharan Africa, as well as the Power Africa and Doing Business in Africa initiatives, are laudable ideas that may foster better commercial relationships with African countries. But policymakers should focus on the key vehicle for enhancing trade and investment with the continent: the African Growth and Opportunity Act (AGOA), the landmark preference program that is set to expire in September 2015. Comprehensive legislation will be more effective in rebooting U.S. economic engagement with Africa than one-off, temporary agency initiatives. The AGOA renewal process is the ideal avenue to facilitate game-changing trade and investment with Africa's fast-growing economies.

The Current State of AGOA

AGOA is the cornerstone of U.S. trade policy with Africa. Enacted in 2000, the program provides duty-free access to the U.S. market for qualifying countries by extending preferences on products eligible under the U.S. Generalized System of Preferences and designating a further 1,800 tariff lines as duty-free. Congress has amended the legislation three times to make technical changes and to extend the scope of certain provisions — most notably those relating to imports of textile and apparel.

With AGOA's expiration quickly approaching, discussions over the future of the program have intensified. The Office of the U.S. Trade Representative requested the U.S. International Trade Commission to conduct detailed studies on AGOA, including the potential economic effects of granting additional duty-free access and modifying the program's rules of origin.[5] A bipartisan, bicameral group of lawmakers — including the chairmen of the committees with jurisdiction over trade and foreign affairs — requested the Government Accountability Office to analyze AGOA's performance and, importantly, to suggest changes that would stimulate new trade and investment between the United States and African countries.[6]

These activities are encouraging. However, there is a legitimate concern that, given the political and parliamentary challenges of moving legislation through Congress, and USTR's focus on trade negotiations with Asia-Pacific countries and the European Union, AGOA will fall by the wayside. That would be unfortunate. Failure to enhance the program would be a costly missed opportunity (especially in light of the geostrategic considerations noted above), and failure to renew the program well in advance of its expiration would destabilize supply chains and result in closed factories and lost jobs (as happened in 2012, when Congress delayed renewing a provision that ensures duty-free treatment for clothing regardless of the fabric's country-of-origin).

One of the stated goals of AGOA is to "change the course of trade relations between Africa and the United States for the long-term, while helping millions of African families find opportunities to build prosperity."[7] Yet, the vast majority of imports under the program are primary commodities such as crude oil and minerals, which were being imported long before AGOA and which create minimal economic benefits for ordinary Africans. Just three countries — Angola, Nigeria, South Africa — represent over 90 percent of AGOA exports. While the program has, undoubtedly, been successful in increasing U.S. imports from Africa, much improvement can be made.

Simple Ways to Improve AGOA

At the 2013 AGOA Forum, U.S. Trade Representative Michael Froman stated that AGOA renewal is "a matter of substance, [as] much has changed since 2000," and asked how to increase and diversify the program's utilization.[8] Below are four ways to do exactly that. Notably, each of these suggestions has been advocated by a diverse group of African countries, U.S. industry, nonprofits and academics.[9]

1. Provide Duty-Free, Quota-Free (DFQF) Access for More Products

Many of the products not designated as duty-free under AGOA, as well as those constrained by separate measures such as tariff-rate quotas (TRQs), are ones for which African countries have a comparative advantage. Examples include certain types of seafood, leaf tobacco, peanuts, cocoa and some light manufactures. This exclusion undermines the effectiveness of the program.

In December 2013, World Trade Organization members adopted an agreement designed to provide greater market access for agricultural products subject to TRQs.[10] Developed country members also renewed their pledge to provide no less than 97 percent DFQF treatment for imports from least developed countries.[11] Enhancing DFQF coverage under AGOA would help the United States comply with these multilateral accords. In fact, because of the TRQ agreement, the United States inevitably will have to provide new market access for quota-constrained agricultural products with low fill rates. Using AGOA as a means of ensuring that the new access is granted to poor countries, as opposed to being consumed by existing suppliers with more advanced economies, would be a win-win for the United States.

2. Design Better Rules of Origin

Rules of origin are requirements on the working or processing that must be undertaken locally in order for a product to be considered the "economic origin" of the exporting country. While AGOA's rules of origin serve the important purpose of preventing transshipment — whereby goods made elsewhere are merely routed through a beneficiary country to obtain preferences — they are unduly restrictive.

AGOA's nonapparel rule of origin, for example, provides that, for products incorporating materials sourced from non-AGOA beneficiaries, 35 percent of the product's appraised value must come from materials or labor from the exporting country. That high threshold prevents AGOA beneficiaries from exporting canned seafood under the program, because much of the fish in African waters is caught by European-flagged ships, and the cutting and processing done onshore (by African workers) only adds about 15 percent of the final value of the product.

Similarly, AGOA's rules of origin for apparel are too complex, and the provision allowing duty-free imports of clothing made from fabric originating outside Africa (the "third country fabric" provision) has been subject to renewal every few years. Relaxing these rules, and making them coterminous with the entire program, would stimulate African industry and benefit U.S. investors.

3. Improve Trade Capacity Building Efforts

A handful of U.S. agencies are involved in trade capacity building initiatives in Africa. Because these initiatives emanate from various legislative, regulatory, and funding sources, inefficiencies abound. AGOA renewal legislation is the ideal vehicle to harmonize such efforts.

The legislation can also be used to better target specific areas of need, such as training African exporters in U.S. food safety regulations. Many AGOA countries have the capacity to export niche agricultural products that would thrive in "organic" and "fair trade" market segments. The best way for the United States to spur such exports is to help African businesses meet sanitary and phytosanitary requirements.

4. Incentivize U.S. Investment in Africa

As noted above, U.S. FDI in Africa is vastly outpaced by the investments of China and others. This could have long-term economic and strategic consequences. Accordingly, policymakers should provide tax incentives to foster U.S. private investment in African markets. AGOA renewal legislation could, for example, provide tax exemptions for repatriated income earned through FDI in certain value-added sectors.

Increased and diversified U.S. FDI in Africa would likely entail a corresponding boost in U.S. exports to Africa. Already, such exports support well over 100,000 jobs in the United States.[12] As the continent's economies continue to grow, there will be more opportunities to satisfy African consumer demand with American goods and services. AGOA renewal can set that process in motion.

Conclusion

Given the increasing importance of African markets to the world's economy, the United States cannot afford to let AGOA expire or continue to be underutilized. Simple enhancements to the program — more DFQF access, less prohibitive rules of origin, targeted capacity building assistance, incentives for U.S. FDI — would foster greater trade and investment between the United States and the fast-growing economies of Africa.

Several catalyzing events are on the near horizon. The ITC will issue its public report by April 17 and the GAO's report to Congress should follow soon thereafter. In August, the White House will hold the first-ever U.S.-Africa Leaders Summit and the United States will host the annual AGOA Forum. The window of May-July, therefore, is the ideal time for congressional hearings on the future of AGOA, so that specific ideas can be on the table for the August events.

The administration and Congress both need a "win" on trade, in part to spur progress on other economic issues. AGOA 2.0 could be that sought after victory. Now is the time for action.

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[1] See Ventures Africa, "Africa Offers Highest Investment Returns" (May 27, 2013); Forbes, "Top Five Investment Opportunities in Africa" (Dec. 28, 2011).

[2] Deloitte on Africa, "The Rise and Rise of the African Middle Class" (2012).

[3] Alexis Arieff, et al., "U.S. Foreign Assistance to Sub-Saharan Africa: The FY2012 Request," Congressional Research Service Report R41840, at 5 (May 20, 2011). See also John Banks, et al., "Top Five Reasons Why Africa Should be a Priority for the United States," Brookings Institution Africa Growth Initiative (Mar. 2013).

[4] Government Accountability Office, Report 13-199, "Sub-Saharan Africa: Trends in U.S. and Chinese Economic Engagement," at 19 (Feb. 2013).

[5] See Letter from USTR Michael Froman to ITC Chairman Irving Williamson, requesting, pursuant to section 332(g) of the Tariff Act of 1930, four investigations regarding AGOA, Sept. 30, 2013.

[6] See Letter from Reps. Edward Royce and Dave Camp, et al. to Comptroller General Gene Dodaro, requesting study regarding AGOA, Dec. 12, 2013.

[7] Summary of AGOA, available at http://trade.gov/agoa/legislation/index.asp (last visited Feb. 26, 2014).

[8] Remarks by M. Froman to the AGOA Forum in Addis Ababa, Aug. 2013, available at

http://www.ustr.gov/Froman-AGOA-Forum-on-The-Future-of-US-Africa-Trade-and-Economic-Cooperation (last visited Feb. 26, 2014).

[9] See, e.g., AGOA: Trade and Investment Performance Overview, ITC Inv. No. 332-542 (containing written submissions by, inter alia: the African Diplomatic Corps; members of the Common Market for Eastern & Southern Africa; the governments of Cabo Verde, Madagascar, Mauritius, Nigeria, and South Africa; the U.S. Chamber of Commerce; multiple U.S. companies and trade associations; and multiple non-profit organizations); “Reviving AGOA,” Center for Global Development Brief (2011); “The African Growth & Opportunity Act: Toward 2015 and Beyond,” Brookings Institution Africa Growth Initiative (May 2011); “The African Growth & Opportunity Act: Looking Back, Looking Forward,” Brookings Institution Africa Growth Initiative (June 2012); “U.S. Policy Toward Sub-Saharan Africa,” chapter 62 of the Cato Handbook for Policymakers, 7th ed. (2009); “Beyond AGOA: An Updated Case for a Trans-Atlantic Trade & Investment Partnership Between Africa and the United States,” Wilson Center & Manchester Trade (April 2013). See also “Embracing Africa's Economic Potential: Recommendations for Strengthening Trade Relationships Between the United States and Sub-Saharan Africa,” U.S. Senator Chris Coons (Chair, Senate Foreign Relations Subcommittee on African Affairs) (Mar. 7, 2013).

[10] See World Trade Organization, Document WT/MIN(13)/W/11 (Dec. 5, 2013).

[11] See World Trade Organization, Document WT/MIN(13)/W/16 (Dec. 5, 2013).

[12] John Banks, et al., “Top Five Reasons Why Africa Should be a Priority for the United States,” at 11, Brookings Institution Africa Growth Initiative (Mar. 2013).

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