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Navigating the US Congressional Process of Reauthorising AGOA

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RECOMMENDATIONS

- At the 2014 US–Africa Leaders Summit, African leaders should focus their AGOA reauthorisation advocacy on the US Congress rather than on US President Barack Obama's Administration.
- African stakeholders should present clear policy recommendations to Congress on AGOA renewal and respond to lobbying efforts opposing their priorities.
- African stakeholders should engage with the group of members of congress and congressional staff who will be drafting and shepherding AGOA reauthorisation legislation through the process.
- To improve the chances of a smooth and timely AGOA reauthorisation process, African policymakers should avoid implementing new trade policies that may impact on US vested interests.

EXECUTIVE SUMMARY

The African Growth and Opportunity Act (AGOA), which provides eligible African countries with duty-free access to the US market, is scheduled to expire on 30 September 2015. While some believe reauthorisation will be resolved at the US–Africa Leaders Summit in August 2014, several steps must be completed before AGOA can be renewed. The legislative process is under way as members of congress and their staff have started to examine whether to reauthorise AGOA, and if it is reauthorised, for how long and what changes need to be made.

INTRODUCTION

On 4–6 August 2014, approximately 51 African leaders will descend on Washington, DC for the first ever US–Africa Leaders Summit.[2] African leaders are expected to arrive with a list of items to address with US President Barack Obama and his administration, with the need to expeditiously reauthorise AGOA near the top. In preparation for the summit, the African Union recently announced the formation of a committee to devise a unified African position in advance of AGOA 'negotiations'.[3] While President Obama and his administration play a crucial role in the debate over AGOA renewal, African AGOA stakeholders should prioritise their advocacy on the US Legislative Branch rather than the US Executive Branch.

BACKGROUND ON AGOA

First enacted as part of the Trade and Development Act of 2000, AGOA is a non-reciprocal trade preference programme that provides eligible sub-Saharan African countries with duty-free access for certain exports into the US market. AGOA expands the number of these products beyond the Generalized System of Preferences, which covers approximately 4 600 items, to more than 6 400. The law requires the US President to determine which countries can take advantage of these benefits based on whether they meet certain criteria, including progress towards the establishment of a market-based economy; rule of law; elimination of barriers to US trade and investment; economic policies to reduce poverty; efforts to combat corruption and bribery; and protection of internationally recognised worker rights. Accordingly, the purpose of AGOA is to expand US trade and investment with sub-Saharan Africa, stimulate economic growth and encourage sub-Saharan Africa's economic integration.[4] AGOA, described by US and African officials as the cornerstone in the foundation of US–Africa trade and economic co-operation, will expire on 30 September 2015. African stakeholders who seek stability and certainty in their planning are anxiously awaiting action on its reauthorisation.

ROLE OF THE US EXECUTIVE BRANCH

The US Executive Branch has an important role in AGOA reauthorisation besides the requirement that the president sign the legislation before it becomes law. For example, in a 17 October 2013 letter, the US Trade Representative requested that the US International Trade Commission (USITC) launch four investigations to examine AGOA's impact on sub-Saharan Africa, and to identify factors that have impacted on trade, investment and the economic climate of the region. The first report provided an overview of AGOA's trade and investment performance, and was released in April 2014. The additional three reports, which are to remain confidential, examined the economic effects of providing duty-free treatment for AGOA imports on US industries and consumers, rules of origin and the EU–South Africa Free Trade Agreement.[5] On 14 January 2014, USITC held a public hearing that featured testimony from the co-chairs of the African AGOA Ambassadors Group, several business and agricultural trade associations and recognised AGOA experts.

After assessing the results of these investigations and weighing up other stakeholder input, the US Executive Branch will make recommendations to Congress, detailing any modifications to AGOA and suggesting a date when AGOA reauthorisation should expire (current debate is between 5 and 15 years). Congressional sources expect that these recommendations will be delivered before the Leaders Summit, and will be pre-screened with key congressional members and staff so that the legislation that is ultimately introduced encompasses as many US Executive Branch recommendations as possible.

ROLE OF US CONGRESS

While the US Executive Branch has an important role in AGOA reauthorisation, the US Congress plays a more central role in the timing and content of reauthorisation legislation. The US legislative process can be opaque and complex, therefore African stakeholders should learn the procedure and engage key players in order to shape the AGOA reauthorisation outcome. According to Gregory Simpkins, Majority Staff Director of the US House of Representatives Committee on Foreign Affairs, Subcommittee on Africa, Global Health, Global Human Rights and International Organizations, 'it will be helpful for African policymakers to understand that the congressional process has a number of steps. Because that process is thorough, it will take some time and it does not mean that things aren't moving.'[6]

The first step in the legislative process is the drafting of AGOA reauthorisation legislation. Simpkins noted that 'it is also important for representatives of African governments to meet with congressional staff on a regular basis as the staff are the ones responsible for drafting the legislation'.[7] According to congressional sources, the House Foreign Affairs and House Ways and Means Committees will lead the initial drafting. During this process, these committees are expected to solicit formal stakeholder input through congressional hearings. African stakeholders hoping to present their views formally to members of congress ought actively to seek opportunities to testify at AGOA-related hearings.

Congressional sources hope that a bill will be introduced by the end of 2014 whereafter the House Parliamentarian will refer it to committees with jurisdiction or a stake in the legislation. It is not yet known which congressional committees will have jurisdiction. However, because the House Foreign Affairs and Ways and Means Committees are spearheading the drafting, they almost certainly will draft the legislation so as to prompt the House Parliamentarian to refer the bill to their committees. After the referral, the committees are expected to debate the legislation, consider possible amendments and recommend consideration to the full House of Representatives. Depending on how the debate in the House is structured, all House Members have an opportunity to propose amendments. Once approved in the House, the bill will be referred to the Senate.[8]

Based on past AGOA legislation precedent, the Senate Finance Committee is expected to have jurisdiction to consider the bill. While the Senate Foreign Relations Committee and other committees will have a jurisdictional stake in the bill, Senate rules dictate that only one committee can process it. After committee consideration, the full Senate will debate, amend and vote on the legislation. Once both chambers have passed the identical versions of the legislation, the US Congress will send the AGOA reauthorisation legislation to the president for signature.

SWIFT AGOA REAUTHORISATION UNLIKELY

African stakeholders seeking swift AGOA reauthorisation ought to temper their expectations as the already-complicated legislative process is fraught with timing difficulties. Washington, DC is currently mired in a partisan stalemate: the Democratic Party controls the White House and the Senate, while the Republican Party controls the House. As a result, Congress often waits until the last minute to consider expiring laws and sometimes fails to act before expiration.

Stakeholders pressing Congress to act quickly to renew AGOA point to the last-minute reauthorisation of AGOA's Third Country Fabric Provision in September 2012. According to a senator's report, the failure to reauthorise that provision in a timely manner 'reduced new apparel orders by 30–35 percent in 2012 compared to the same period in 2011'.[9] Others have noted that the 11th-hour reauthorisation also led to job losses in AGOA-eligible countries, and caused investor flight and the cancellation of contracts.[10]

Those seeking rapid AGOA reauthorisation in this challenging legislative environment face additional hurdles. First, AGOA reauthorisation momentum will be difficult to achieve during the Leaders Summit and concurrent 2014 AGOA Forum as the events will occur during a congressional recess when most members of congress will be out of town. The congressional elections in November 2014 create another complication as members will spend time campaigning in their states and districts. Even when Congress is in session during the months leading up to elections, leaders often schedule debates on measures that score political points for campaign advertisements rather than dealing with substantive policy issues.

While it is unlikely that AGOA will be considered before the November elections, prospects for consideration are slightly better for the so-called lame duck session after the elections when many defeated or retiring members are not constrained by political pressures. Although trade legislation has historically had success during this period, these sessions are not characterised by prolific or substantial legislating. This is partly due to the fact that the party that did better in the election is not motivated to pass significant legislation as it would have an advantage in the new Congress, with either a greater majority or new control of a body. US election experts are predicting that the Republicans could gain control of the Senate in 2015. Under that scenario, Republicans may opt to delay consideration of AGOA until the start of the new Congress.

If consideration of AGOA reauthorisation does not occur until 2015, there will be additional delays in the new Congress. Because it usually takes several months to organise committees, the legislative process is slow to get under way. Furthermore, advocates may have to educate new members of congress and their staff who could be unfamiliar with AGOA.

US INTEREST GROUPS

In addition to difficulties with the congressional calendar, proponents of swift AGOA reauthorisation face hurdles from US lobbying interests. It is difficult to predict the reaction of US interest groups: ordinarily, these groups will wait until legislation is officially introduced before announcing a public position or mounting a campaign to support or defeat a bill. Despite the absence of legislation, some interest groups have already publicly conveyed concerns or proffered suggestions for AGOA reauthorisation; for example, on 18 November 2013, a range of food and agricultural organisations wrote to Congress 'to register their strong opposition to a long-term or permanent extension of AGOA'.[11] Their primary concern was that certain AGOA countries maintained unfair and World Trade Organization-incompatible barriers to US agricultural exports that ultimately jeopardised US jobs. Similarly, the US Chamber of Commerce, which represents three million US businesses, supplied testimony to USITC that advocated for requiring AGOA eligibility to be contingent on whether the African country provided a favourable business climate for US companies and fostered greater two-way trade.[12]

BIPARTISAN AND BICAMERAL SUPPORT

Despite these obstacles, AGOA reauthorisation may have a chance of becoming law in 2014, given that it appears to have bicameral and bipartisan support. On 12 December 2013, a bicameral and bipartisan group of 16 members of the committees of jurisdiction jointly requested that the Government Accountability Office (GAO) – the investigative arm of Congress – examine ways to increase AGOA's effectiveness. In particular, the requestors wanted GAO's recommendations for 'enhancing economic development in sub-Saharan Africa, the ability of African businesses to utilise the full range of opportunities available under AGOA, and the efficacy of AGOA in increasing two-way US–sub-Saharan African trade'.[13] Once the GAO completes its investigation, the results will help inform the current bipartisan drafting process.

During the reauthorisation process, African stakeholders should focus on the key members of the appropriate committees and subcommittees of jurisdiction. Because these members of congress and their staff are tasked with crafting the legislation and guiding it through the legislative process, they are most likely to shape the final contents. According to a former congressional staff member who worked on the first AGOA legislation, 'sponsors of the original AGOA legislation agreed to exempt canned peaches from duty-free treatment in order to obtain support of influential House Ways and Means member Bill Thomas, who represented a congressional district with significant producers of canned peaches'.[14]

Although AGOA reauthorisation currently enjoys bipartisan support, a bill that receives a high-cost score from the Congressional Budget Office could become problematic for conservative Republicans and make AGOA a partisan issue. A more likely scenario is that members with regional, rather than partisan, interests will band together to amend the current AGOA law. For example, members whose state or district has a significant poultry industry presence may use AGOA authorisation legislation to address alleged unfair trade practices by African nations.

CONCLUSION

Although African stakeholders hope that AGOA reauthorisation will be resolved at the upcoming US–Africa Leaders Summit, the process is expected to be a marathon rather than a sprint. African leaders travelling to Capitol Hill to meet members of congress who serve on committees with a jurisdictional interest in AGOA should embrace this opportunity to engage those most responsible for the outcome of the reauthorisation debate. However, once the African leaders leave Washington, DC, African proponents of AGOA reauthorisation must continue sustained efforts to inform and engage the US Congress. Only then will the essential decision-makers understand the urgency to examine and renew AGOA.

ENDNOTES

1 Eric Tamarkin is an independent researcher and formerly served as counsel to the US House of Representatives and the US Senate.

2 The White House invited all African leaders, except for those from the Central African Republic, Eritrea, Sudan, Western Sahara and Zimbabwe. The African Union Commission Chairperson was also invited.

3 African Manager, 'Equatorial Guinea: AU Summit elects committee to renegotiate AGOA', http://www.africanmanager.com/site_eng/detail_article.php?art_id=22179. The committee includes Algeria, Cameroon, Chad, the Democratic Republic of Congo, Equatorial Guinea, Ghana, Kenya, Libya, Tunisia, Mauritania, Namibia, Nigeria, Senegal, South Africa, Uganda and Zambia.

4 Office of the United States Trade Representative, 'African Growth and Opportunity Act (AGOA)', http://www.ustr.gov/trade-topics/trade-development/preference-programs/african-growth-and-opportunity-act-agoa.

5 USITC (United States International Trade Commission), 'Sub-Saharan African trade and investment under AGOA will be focus of four new USITC investigations: Reports will aid negotiators in AGOA renewal discussions', Washington, DC: USITC, 13 November 2013, http://www.usitc.gov/press_room/news_release/2013/er1113ll2.htm. Reference to the European Union–South Africa Free Trade Agreement is interpreted to include the Trade Development and Cooperation Agreement and the negotiations of an Economic Partnership Agreement.

6 Telephonic interview, Gregory Simpkins, Majority Staff Director of the US House of Representatives Committee on Foreign Affairs, Subcommittee on Africa, Global Health, Global Human Rights and International Organizations, 30 June 2014.

7 *Ibid.*

8 The Senate is not precluded from considering AGOA reauthorisation legislation concurrently with the House. The order of events described reflects the consensus view of congressional staff involved in the process.

9 US Senator Christopher Coons of Delaware, 'Embracing Africa's Economic Potential: Recommendations for Strengthening Trade Relationships Between the United States and Sub-Saharan Africa', 7 March 2013, http://www.coons.senate.gov/embracing-africas-economic-potential.

10 Schneidman, Witney, 'Why Congress should extend the African Growth and Opportunity Act now', Brookings, 21 October 2013, http://www.brookings.edu/blogs/africa-in-focus/posts/2013/10/21-african-growth-and-opportunity-act-schneidman.

11 National Oilseed Processors Association, Letter published on website, 18 November 2013, http://www.nopa.org/content/newsroom/2013/2013%2011%2018%20AGOA%20Ag%20Coalition%20Letter.pdf.

12 Scott Eisner, 'Statement of the US Chamber of Commerce on the African Growth and Opportunity Act (AGOA) United States International Trade Commission', 14 January 2014, http://www.usitc.gov/press_room/documents/testimony/332_542_009.pdf.

13 House Committee on Foreign Affairs Chairman Ed Royce, 'Bipartisan Congressional Leaders Push to Increase Effectiveness of AGOA: Landmark Legislation to Boost US–Africa Trade, 12 December 2013, http://foreignaffairs.house.gov/press-release/bipartisan-congressional-leaders-push-increase-effectiveness-agoa-landmark-legislation.

14 Telephonic interview, Anthony Carroll, Vice President of Manchester Trade, 8 July 2014.

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