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TRADE NOTES

INDUSTRIAL RELATION ISSUES FOR AGOA INVESTORS: THE CASE OF EPZ'S

Since the signing of The African Growth and Opportunity Act (AGOA) in 2000 Kenya has began to take greater advantage of this new trade arrangement. In 2003 the Institute of Economic affairs (IEA) held a forum entitled "Industrial relation issues for AGOA investors- the case of EPZ's." The essence of the forum was to look at the AGOA agreement since it was signed against the backdrop of the strikes that took place in the EPZ which has seen an increased level of investment to take advantage of AGOA. The forum was well attended and attracted a wide variety of participants from the different sectors. in this forum there were five main speakers, ***Ms Jane Ndurumo*** (***Ministry of Tra***de) spoke on the benefits of AGOA since accreditation; ***Ms Elizabeth Mueni*** (***Actionaid Kenya***) gave us an NGO view abut AGOA; ***Mr Albert Gumo*** (***Chief Executive, Export Processing Zone Authority***) spoke of AGOA under the EPZ; ***Ms Regina Brown*** (***East and Central Africa Hub***) spoke on the US-Kenya relationship under AGOA; and lastly ***Mr. James Ngusi*** (***Central Organisation of Trade Union***) spoke on the relationship between AGOA and COTU. The forum was chaired by ***Mr Dennis Kabaara*** (***Chief Executive, Institute of Economic Affairs***) and moderated by ***Ms. Radha Upadhyaya*** (***Director Institute of Economic Affairs***). Trade Notes brings the issues that were discussed during this public forum.

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What is the African Growth and Opportunity Act?

AGOA is a trade preference arrangement that opens up the US market to most of the goods produced in Africa on a nearly duty and quota free basis. Under the Generalised System of Preferences (GSP) duty free treatment was extended to AGOA eligible countries for 1800 tariff lines items in addition to the 4600 items available to non-AGOA GSP beneficiary countries. There are addition lines that have been added to the list that previously were not there. These are footwear, luggage, handbags and watches. For apparels the Act provides for duty free and quota free access to the US without limits from US fabric, yarn and thread for eligible countries.

It gives the opportunity for increased growth of duty free and quota free apparel imports made from fabric produced in beneficiary countries and apparel imports made with African Fabric and yarn subject to a cap. For Kenya under the special rule for lesser developed beneficiary countries with per capita income below $ 1500 enjoy duty free access for apparels made from fabric originating anywhere in the world until 30th September 2004.

In the international arena the signing of the Agreement in Textiles and Clothing (ATC) represents the most important event in the 1990s for the fibers and textiles industries. The Agreement on Textiles and clothing was one of the multilateral trade agreements that was an important component of the Uruguay Round of Multilateral Trade Negotiations signed in Marrakech in April 1994, establishing the World Trade Organisation (WTO). The ATC became an integral part "of the multilateral trading system enshrined in the WTO by being binding on all members." This is in stark contrast to the previous General Agreement on Tariffs and Trade where members were allowed upon joining to exclude themselves from any commitments that they did not ascribe to. It was envisaged that after a ten year period, on 1st January 2005 all WTO members will be obliged to follow the same rules and principles and remove all special dispensations that may exist between them.

President Bill Clinton signed into law on 1st May 2000 as Title 1 of The Trade and Development Act of 2000 the African Growth and Opportunity Act (AGOA). The Act will be in place for a period of eight years until October 2008 and it will have the possibility of being extended. AGOA offers tangible incentives for eligible African countries to carry on their efforts to develop free markets by opening up their economies. Subsequently, on 6th August 2002 President Bush signed amendments to AGOA also know as AGOA II that greatly enhances preferential access for imports beneficiary Sub-Saharan African countries. It is claimed that AGOA gives African countries that reform their economies the most liberal access to the market in the United States (US) that is currently available to any region or country that the US has not entered into a free trade agreement with. This is because AGOA represents a significant extension of US Generalised system of Preferences (GSP) regime. The US's desire is to support their domestic business by encouraging African countries to reform which will then lead to stronger markets and more effective partners for the US firm. It is hope that AGOA may change the direction of trade relations between the US and Africa for the better and in the long run assist millions of people across the continent to get opportunities and attain a modicum of prosperity.

In fact most of the apparel that is shipped under AGOA has been done under the so-called Special Apparel Provision. The latter is a temporary concession that will last until 30 September 2004 and has been added to the general apparel provision Act. This gives apparel makers the leeway to source yarn and fabric from any country without loss of AGOA benefits. Therefore, least developed beneficiary countries have a great opportunity to increase their competitive edge as they are allowed to source materials from the most competitive suppliers worldwide. Countries that do not have this special provision are forced to source yarn and fabric made from their region or in the US

Which countries are eligible?

The AGOA Act authorises the US President to name countries that are eligible to receive the benefits of AGOA if they are making a determined effort to establish, or are continually taking steps forward towards establishing market based economies, the rule of law and political pluralism, elimintion of barriers to US trade and investment, protection of intellectual property, efforts to combat corruption, policies to reduce poverty, increasing availability of health care and educational opportunities, protection of human rights and elimination of certain child labour practices. In addition the Act further stipulates that countries :-

1. cannot engage in activities that undermine US national security or foreign policy interests,
2. cannot engage in gross violations of internationally – recognised human rights,
3. cannot provide support for acts of international terrorism and
4. must have implemented its commitments to eliminate the worst forms of child labour.

The United States Trade Representative (USTR) chairs extensive Trade Policy Staff Committee (TPSC) review process to determine the countries that they deem are eligible for AGOA beneficiary status. This process determines country specific areas and issues of concern and the eligibility criteria is the means used to pursue the economic reforms outlined above. The US President therefore receives recommendations from the USTR about individual countries' progress and efforts in these areas.

East and Central African Global Competitiveness Hub

As part of the wider US policy shift towards Sub-Saharan Africa in October 2001 President Bush introduced the Trade for Africa Development and Enterprise Initiative. USAID through this initiative was mandated to create three trade hubs in Africa- one in Gabarone, another in Accra and the final one in Nairobi. The hub in Nairobi is responsible for 18 countries (Burundi, Central African Republic, Comoros, Democratic republic of the Congo, Republic of Congo, Djibouti, Eritrea, Ethiopia, Gabon, Kenya, Madagascar, Mauritius, Rwanda, Seychelles, Somalia, Sudan, Tanzania and Uganda) and has three main components or objectives.

Firstly, the desire is to build capacity for trade policy formulation and implementation. Provide training in WTO and regional trade negotiations and trade facilitation, which may foster regional integration and a globally competitive COMESA FTA. ***Secondly,*** to develop and implement Private sector Business Support Strategies for Increasing Trade under AGOA and Building trade linkages. In Kenya we are placing emphasis on increasing the sale of handicrafts and leather goods to the US market under AGOA. Sectors that the US believes have a lot of potential. At the moment the US recognises that we have gone beyond AGOA 1 and now the emphasis needs to be on addressing the actual bottlenecks that hinder exporters in Kenya from increasing sales in the US. ***Thirdly***, the aim is for the hub to improve the efficiency and reduce the cost of trade related transportation.

The common tread through these three objectives is the strengthening of capacity and private sector entities through targeted training and promoting public-private partnerships in the formulation and implementation of policies and practice facilitation of efficient trade.

Trade profile since the signing of AGOA

Kenya was the first country to be accredited for AGOA exports of hand-loomed, handmade and folklore items. As of 2002 Kenya recorded $129 million in AGOA exports that represents some 68 percent of the total exports to the US. The Ministry of Trade and Industry reports that for textiles and apparel exports to the US have gone up from $45 million in 2000 before the signing of AGOA to stand at $123 million in 2002. Under the auspices of AGOA related investments have risen from a level of $ 15.3 million in 2000 to $77.1 million in 2002. Furthermore, Kenya has benefited greatly from the start up of 18 new companies exporting under AGOA which started their operations in 2002 all producing garments or related services for export. There has now been the development of 30 000 jobs directly related to AGOA. This positive trend has seen the revival of cotton growing, closed ginneries and opening of new garment factories more jobs it is believed will be created indirectly and directly.

After Kenya was accredited to be AGOA eligible the country became an attractive investment destination especially under the Export Processing Zone (EPZ) and Manufacture under Bond (MUB) programme. Indeed many investors from all over the world have already invested in the country and many other countries have expressed interest to invest in Kenya. During the AGOA Economic Forum held in Mauritius in January 2003 there was a marked increase in investor's confidence in the country. Unfortunately, all this good work was put under several strain by the series of strikes that hit various sectors of the economy especially the textile sector early on in the year.

These were unfortunate incidents especially after the peaceful transition after the December general elections. It remains incumbent upon the government to rally support with the various different stakeholders to address their various grievances especially at this crucial time when all efforts need to be put towards reviving the ailing economy. On a positive note the Government is committed to creating an enabling environment for investors and protection of their investment. As a result of the strikes a stakeholders works committee on Industrial relations has between constituted to address the industrial unrest at the EPZ. This has been put under the chairmanship of the Ministry of Labour and Human Resource Development and shows the governments commitment to tackle the issues that may lead to labour unrest.

The Export Processing Zone Programme

The Kenya Government under the Industrial Sector Adjustment Programme established the EPZ programme in November 1990 to facilitate the industrialisation of the economy. This strategy it was hoped would move the industrial focus away from import substitution industrialisation (ISI) towards export-orientated industrialisation

(EOI). This policy shift was bourn out of the poor performance of the countries manufactured exports under ISI and the inability of industry to create more jobs and enhance efficiency. In this regard the Government set up the EPZ programme through the EPZ Act. The latter allows licensing of operating enterprises under the EPZ Act and the establishment of the EPZ Authority which is given the mandate of administering and regulating the programme under the provisions of the EPZ Act.

The Economic Objectives of the EPZ Programme

The following are some of the economic objectives of the EPZ:-

1. Stimulation of domestic and foreign investment in export orientated investments in EPZ's through establishment of manufacturing, commercial service and development enterprises.
2. Generation of direct and indirect employment through subcontracting non core activities to domestic operators.
3. Transfer of new skills and expertise in management marketing and production technologies in Kenya.
4. Creating forward and backward linkages by EPZ's to /from domestic companies through the supply of raw materials, goods and services.
5. Boost Kenya's export sector

Outlook: Performance in 2002

The EPZ sub—sector has grown at an impressive rate over the last 5 years at an average of 30 percent. This has occurred despite the downturn of the domestic manufacturing sector and has made the following contribution to Kenya's economy.

Selected Key Indicators

Gazetted Zones	31
Operating enterprises	52
Employment	Over 25 000
Private investment	Kshs 11 Billion
Output	Kshs 9.6 Billion
Exports	Kshs 8.5 Billion
Domestic sales	Kshs 1 Billion
Domestic expenditure	Kshs 3.5 Billion
Imports	Kshs 6 Billion
Investment in zones	Kshs 5 Billion

Kenya has been fortunate enough to have a good mix of products in the EPZ programme. However, it is worth noting that in recent times the number of textile plants that have set up operations in the EPZ has risen due to the preferential access to the US market that Kenya gets through AGOA. The US thus remains the main export market for EPZ products and the table below shows the break down.

Challenges and Opportunities from AGOA

Even though there are challenges the EPZ Authority looks at them in terms of opportunities they represent. The AGOA landscape beyond the year 2004 poses a challenge to Kenya as well as an opportunity because the local industries will be expected to source their fabric locally or from an AGOA certified Sub-Saharan African country. There is a need to re-examine and assess whether the local cotton industry can supply cotton more cheaply or

USA Kshs 4.3 Billion	72%
COMESA Kshs 674 Million	11%
Europe Kshs 517 Million	9%
Rest of the World	8%

perhaps if Kenya would be better off obtaining the required cotton from within the region. The aim would be to rejuvenate and modernise the stalled textile plants that would enable the apparel factories in the EPZ to source the fabric locally at competitive prices in order that they continue to enjoy the US preferences under AGOA.

Access to the US market under AGOA now presents a new challenge for Kenya to diversify the product range that Kenya export to the US. The AGOA protocol offers some 2500 items other than garments that Kenya may export to the US. The COMESA market remains an important component for Kenya's trade policy and is another avenue from which investors in the EPZ may exploit. Furthermore, under the EPZ Commercial License there are opportunities to have the country develop further as regional trade centre that may take full advantage of the East African Community (EAC). Based on the gains that have been made in the previous years the EPZ Authority aims for the following targets as shown in the following table by the year 2005.

Gazetted Zones	31
Operating enterprises	118
Employment to double the current figure	38 558
Investment	Kshs 20 Billion
Output	Kshs 14.9 Billion
Exports	Kshs 15 Billion
Domestic expenditure	Kshs 6.5 Billion
Domestic sales as a percentage of output	9%

With the changes to come in the textile and clothing sectors the challenges and risks involved will be daunting particularly for the smaller exporters like Kenya. To stave off these challenges a comprehensive strategy must be employed.

The strategy will require a closer working relationship between private and public sector to develop a more effective response. The government will need to provide the enabling environment for the business sector to thrive and produce the effective supply response to the AGOA market.

There will be need to invest in human capital and machinery so as to improve productivity and so reduce the costs and prices. Together with this training institutions and schemes must be encouraged to enhance their training capacities that will translate into better workmanship. As a strategy it will be very important to avoid mass markets even though they may be large and easy to target and sell in. The key is to target niche markets, such as the leather sector. Competition in such markets is less cutthroat but there will be a need to develop design and fashion skills to take advantage of these niche markets.

Materials used for the textile sector must be sourced from a wide sourcing base which will lead to flexibility that can lead to fabrics being obtained from the cheapest sources. The government can facilitate this by supporting regional initiatives such as the East African Community or the Common Market for Eastern and Southern Africa. This will allow Kenya to take advantage of preferential market access initiatives.

US Technical Assistance Programs for AGOA

President Bush announced in March 2002 his intention to set up the Millennium Challenge Account (MCA), a special development assistance program that seeks to spur economic growth in developing countries. The specific focus of the MCA is to spur economic growth through investing in agriculture, health, trade and capacity building, that it is hoped may translate into poverty reduction. It is hoped that congress will approve this initiative and subsequently US development assistance should increase by 50 percent over a period of three years with a target level of $5 billion higher than the core assistance. Even though this is a global initiative the hope is that a substantial part of this funding will go to Sub-Saharan Africa.

The US wants to implement the MCA as a new move towards development assistance. At the outset the MCA seeks to promote pro-growth and pro-development policies by selecting those countries for assistance that consistently out perform their peers on 16 indicators related to just rule, those that invest well in the education and health of their people as well as promoting economic freedom. It is also envisaged that the MCA will develop a partnership between the developing country and their citizens so that they may map out their own priorities and funds to access MCA funding. Only those countries that have clearly developed and well implemented programs with set objectives and benchmarks may get funding. A new government corporation will take charge of the MCA while a cabinet-level Board of Directors will oversee the process and will be chaired by the US Secretary of State. MCA grants will be given only to those poor countries that have not been prohibited from getting foreign assistance. Therefore, from 2004 only countries with per capita incomes of less than $ 1435 and may borrow from the International Development Association (IDA) would be eligible. In 2005 the facility will be extended to all countries with incomes below $ 1435 and in the subsequent year all countries with incomes up to $ 2975 will be eligible.

The US government delivers its development assistance in SSA through USAID's various field offices. USAID has policy and strategic interests that are the same as the US Development Assistance. Namely, promotion of equitable economic growth; open societies for investment and commerce; political pluralism, gender equality; reduction of conflict and the spread of HIV/AIDS, ensure public health, education, and agricultural development and sustainable natural resource management. Thus, in support of AGOA USAID has technical assistance programs that help to promote economic growth, trade and global competitiveness that it is hoped will increase household incomes and reduce poverty. USAID programs further support trade capacity building and technical training as well as US-Africa private sector development. The USAID capacity building programs fall under the auspices of the United States Trade Representatives Activities, the US

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Department of Commerce programs and US Department of Agriculture. These all help to promote a safe environment for trade and investment.

On going activities under AGOA

The NARC government is very keen to support the AGOA initiative and hopes to see more Kenyans take advantage of it. To this end there are several activities that going on under AGOA. This is a sensitisation programme for AGOA jointly with other stakeholders in all major towns in the country to ensure that all business people are well informed of the opportunities under AGOA. Continued private sector participation in addressing the issues relevant to AGOA.

The government is also doing a follow up to the fast track approval for some selected products since this would ensure that some of the products would not have to go through interminable delays and producers will easily the technical assistance available through the Food Drug Administration (FDA), and the various other US Department of Agriculture (USDA) regulatory bodies which have to complied with when exporting food products to the US. President Bush acknowledged the concerns of SSA countries in Mauritius and promised that they would raise technical assistance for businesses and institutional support. In Kenya's case support will be given to KEPHIS among others, while American Plant Health Inspectorate Services APHIS will send experts to carry out research on our fresh produce and other fruit and vegetables to enable Kenya to better access the US market.

Conclusion

AGOA represents a good opportunity for Kenya to export to the USA market duty free and use this market to diversify into others. However, to do this will require enhanced efficiency and better marketing of our products. AGOA may assist Kenya with her efforts at poverty eradication and job creation if this trade provision is fully exploited. Since its inception AGOA, Kenya has seen the increase in investment and the number of jobs created as has been highlighted, but more work needs to be done to maintain country eligibility in terms of sourcing of fabric, illegal trans-shipment and diversification of products. Finally, some recommendations are made under challenges and opportunities that aim to improve the benefits accrued under AGOA.