

■ BUSINESS

SA's new copyright bills could sink Agoa

Contentious laws could 'substantially lower' protections

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Western Cape premier Alan Winde testified at congressional hearings on Agoa. He says there are 600 US companies based in South Africa that invest a combined R209bn in the economy, R33bn in his province.

Image: Trevor Samson

While South Africa pleads its case to retain preferential access to US markets, an intellectual property expert has raised concerns in the US Congress about two contentious South African bills that, if passed by parliament, could see copyright

protections substantially lowered.

International Intellectual Property Alliance executive director Kevin Rosenbaum, representing US copyright industries, raised concerns about the Copyright Amendment Bill and the Performers Protection Amendment Bill that South Africa seeks to make law, but which have been flagged as probably unconstitutional.

Rosenbaum was speaking at public hearings by the US Trade Representative's office to receive oral testimony related to sub-Saharan African countries' eligibility for Africa Growth and Opportunity Act (Agoa) benefits.

“Though South Africa’s president referred the bills back to the National Assembly in 2020 – due to reservations regarding the bills' compliance with South Africa’s constitution and its international commitments – the National Assembly has thus far made only minor revisions to the bills without addressing the major concerns,” he said.

The senior global policy counsel of the App Association, Brian Scarpelli, said US tech start-ups wanted to invest in South Africa and other African markets but needed to address barriers to the protection of intellectual property.

“These barriers can be laws, regulations, policies or sometimes just informal practices that exclude US goods and services from foreign markets. They seek to artificially stimulate export of particular goods or services or they may fail to provide adequate protection, such as in the case of intellectual property,” he said.

Scarpelli urged the subcommittee to address barriers to digital trade across Agoa-eligible markets by introducing further protections for intellectual property and access to markets for US-based tech start-ups.

A number of concerned organisations, including those representing creative artists, have warned that the bills before the National Assembly could harm rather than help the creative arts industry and need to be reconsidered.

While the bills seek to introduce fair copyright to South Africa, ensure fair royalties for creators and fair use for communities, as well as to bring laws in line with international treaties and best practice, experts warn that they infringe on copyright protections and could be unconstitutional.

Government officials and business leaders pled South Africa’s case to remain a

participant in Agoa at the congressional review hearing on Tuesday.

South Africa has been part of Agoa since its inception in 2000 but there are fears it could lose its membership because of its perceived closeness to Russia amid the war in Ukraine. Several senior US legislators have written to US trade representative Katherine Tai to request that an upcoming Agoa forum due to be held in South Africa be moved to another country.

Agoa provides preferential access for about 20% of South Africa's exports to the US, or 2% of the country's global exports.

Sasol Chemicals' head of marketing, Arrie Krüger, urged the US Congress to consider maintaining Agoa into the foreseeable future, as it allowed the energy giant to capitalise on technical expertise in the American market.

“At Sasol, we believe that Agoa has achieved and continues to achieve these objectives set out at the start. The benefits of Agoa don't always just extend to direct beneficiaries. We extract gas in Mozambique into high-value products exported to the US.”

Krüger said access to Agoa allowed Sasol to employ 28,000 people worldwide, invest \$12bn in the US, produce more than 3-million tonnes of chemicals and sell to 6,500 customers in 118 countries.

Western Cape premier Alan Winde said there were 600 US companies based in South Africa that invested a combined R209bn in the economy, R33bn of which was invested in his province. He said the US was also an important source market for South African tourism.

“One of the commodity exports, if you look at wine, lots of small companies that were previously disadvantaged, these companies have used Agoa to really grow, which gets their brand going but also creates jobs,” Winde said.

He said citrus fruit exports created 30,000 jobs in South Africa and the value chain

“ The National Assembly has thus far made only minor revisions to the bills without addressing the major concerns ”

- International Intellectual Property Alliance executive director Kevin Rosenbaum

added 20,000 US jobs on the back of citrus goods entering the US market.

“Agoa is something that we really do value. I have personally led a delegation to Washington so that we could engage meaningfully on Agoa, as it would be very detrimental if we were to lose Agoa – as a country and as a region,” he said.

Meanwhile, South Africa has officially submitted a request to the World Trade Organisation’s (WTO's) general council for the introduction of the EU Carbon Border Adjustment Mechanism (CBAM) to be implemented fairly.

The CBAM policy to be introduced in 2026 is a carbon tariff on carbon-intensive products, such as cement and similar products imported by the EU.

Speaking at a seminar on CBAM by Trade and Industrial Policy Strategies (TIPS) on Tuesday, economist Seutame Maimela said South Africa and the continent had two-and-a-half years to either challenge CBAM or prepare for it. He said carbon pricing could put South Africa at an advantage. South Africa has a R159-a-tonne carbon tax.

“Carbon pricing will be an opportunity for South Africa to pay fewer carbon penalties while other African countries will not immediately have that opportunity,” Maimela said.

He said up to \$7.3bn in African exports are at risk. South Africa’s most vulnerable sectors are iron, steel and aluminium, worth \$1.5bn in exports.

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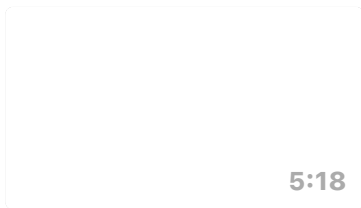


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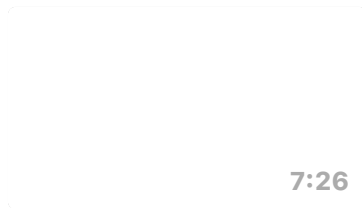
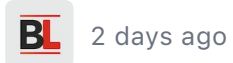
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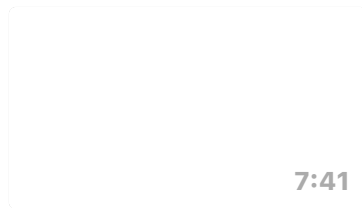
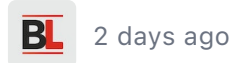
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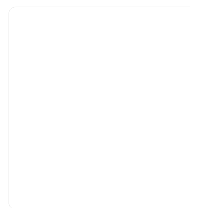
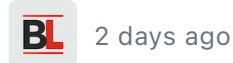
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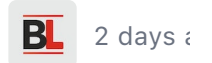
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