South Africa's trade and investment relationship with the United States post-AGOA

INTRODUCTION

This policy brief considers the three main options available to South Africa in a post-AGOA trade and investment relationship with the United States: to stay in AGOA, negotiate a Free Trade Agreement, or fall back on Most Favoured Nation terms and the Generalized System of Preferences.

BACKGROUND

The African Growth and Opportunity Act (AGOA) has been recognised as the cornerstone of America's engagement with Sub-Saharan Africa for the past 14 years. It is therefore central to an understanding of the South Africa-US trade relationship.

The recent extension of AGOA by a further 10 years presents many opportunities for improving that trade relationship and expanding economic ties. There are, however, areas for caution, as was seen in the debates around the extension of AGOA and the terms of the inclusion of South Africa as a beneficiary of AGOA.

As AGOA is a unilateral extension of preferential access to the US market there was concern among US business and policymakers that the lack of reciprocity in access to the South African market was a problem, particularly for products such as poultry, pork and beef. The negotiations around the extension of AGOA brought in a strong element of reciprocity to improve access for those products, and importantly it signals the likely way forward for the future direction of trade relationships between the two countries.

While there were favourable outcomes to both the negotiations to include South Africa into AGOA and the successful resolution of the conditionalities imposed on South Africa through the special out-of-cycle review process, the negotiations were complicated, tough and often bruising. Rebuilding the relationship following that period is therefore a priority if South Africa and US are to both benefit from the extension of AGOA. However, rebuilding that relationship will also need to take into cognisance the likely trajectory of the trade relationship which is set to increasingly require greater access to the South African market.

US-SA TRADE RELATIONSHIP

Since AGOA was signed into law in 2000 there has been steady growth in the trade between the two countries, aside from a dramatic drop in 2009 in the aftermath of the financial crisis. The trade between the two countries has been of mutual benefit (in rand value of imports and exports) with low levels of trade deficits. In 2014 there was a trade deficit and in 2015 a trade surplus.

The US share of South Africa's total exports is little changed from where it was in 2001. It was about 9% of South Africa's export share in 2013 – a similar position since 2001. This static picture can be sharply contrasted with China, which has quadrupled its total share of

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trade with South Africa since 2001 and has occupied the top position in South Africa's trade since 2010.

In looking at the import and export intensity between South Africa and the US there is scope for South Africa to benefit more from the relationship, particularly as the largest component of South Africa's exports are commodities – 70% of South Africa's exports are made up of commodities while the United States exports mainly high value-added manufactured products to South Africa.

There have, however, been significant levels of exports of motor vehicles and machinery equipment to the US, much of which is included under AGOA. The fastest growth areas for SA exports to the US over the past five years have been in electrical and electronic equipment; edible fruit, nuts, citrus; ores; and machinery.

Of the total SA exports to the US, 38% went under AGOA (including GSP – Generalized System of Preferences) in 2014. The total tariff revenue that South African exporters are relieved of paying as a consequence of AGOA is about $47 million, with the main beneficiary being the automotive sector. Other beneficiaries were base metals, agriculture and chemicals. The benefits of the trade relationship between the countries and the extension of AGOA are very clear for these sectors.

CHANGING US VIEW ON TRADE WITH SOUTH AFRICA

An analysis of the negotiations to conclude AGOA and resolve the special out-of-cycle review process highlights the changing nature of the US view on trade with South Africa and the increasing pressure that was applied to ensure reciprocity. The initial issues in the negotiation focused on the anti-dumping duty on poultry exports to South Africa. However, the issues were extended to include those raised by the US lobbies, which included their concerns with South Africa's animal health regulations on poultry, beef and pork; policies on intellectual property rights; regulations on black economic empowerment; policies on investment; and the draft Private Security Bill. While the poultry, beef and pork issues including the sanitary and phytosanitary and health aspects were resolved, the others are still in contention.

During the out-of-cycle review the submission made by the American Chamber of Business in South Africa noted the importance of US firms for the South African economy and that exclusion from AGOA and a negative trade relationship would impact on the ability of American companies to do business in South Africa.

FUTURE RELATIONSHIP

At the conclusion of the protracted negotiations and the decision for South Africa's continued inclusion into AGOA was a commitment by both governments to enhancing the trade and investment relationship.

The direction of the formal trade agreements between the two countries has a direct bearing on the business dynamics and the practicalities of enhancing the trade and investment relationship. Understanding the future options for the trade relationship is therefore crucial.

The options for the future relationship can be categorised as three possibilities:

1. Stay in AGOA for the remainder of the length of the Act.
2. A Free Trade Agreement (FTA).
3. Fall back on Most Favoured Nation (MFN)/ GSP should remaining in AGOA not be viable.

What needs to be considered in the immediate to short term is the potential costs of AGOA rising as US vested interests leverage AGOA to demand market access or policy changes that impact on South Africa's sovereignty.

The US has on several occasions excluded countries from AGOA, including Madagascar (which was subsequently reinstated), Swaziland, South Sudan and The Gambia. Excluding countries remains at the discretion of the US and there is precedent for using that policy option. The changes made to the AGOA Act in the latest extension give greater scope to exclude countries from AGOA.

The overwhelming signal in the negotiation process, and in the wording of the extension of AGOA, is that the US is seeking reciprocity in market access either through AGOA or through the conclusion of a FTA with countries or trade blocks. There is a clear policy directive that an FTA is desirable and the US would like to transition towards such an arrangement. Given that stated desire the continued benefits under AGOA are likely to be used as a lever for South Africa and the Southern African Customs Union to return to the negotiating table to conclude an FTA.

One of the motivations by African countries when arguing for a 10-year extension of AGOA (as opposed to shorter cycles of renewal) is that it would give greater certainty to both domestic and American investors, and that they would be able to generate a return on their investment in that period and also invest in sectors that had longer lead times in terms of market access.

While the 10-year extension gives that certainty, doubt is created by the other provisions in the Act. There is also the strong likelihood that South Africa will not be included in the next extension of AGOA.

What needs to be considered in the immediate to short term is the potential costs of AGOA rising as US vested interests leverage AGOA to demand market access or policy changes that impact on South Africa's sovereignty. In addition, the pressure by the US to transition South Africa's preferential benefits into reciprocal free trade negotiations may rise especially if there are new directions in the US Congress or many African countries decide to enter into FTAs (similar to the European Union-Economic Partnernship Agreements and the US-Trans-Pacific Partnership). In this case South Africa will be under pressure to consider its options.

CONCLUSION

Concluding an FTA will take several years and after the collapse of the previous attempt at an FTA there are no guarantees of a successful outcome. Should South Africa not be eligible to remain in AGOA and an FTA is not concluded, a fall-back position is to rely on GSP for exports to the US. GSP has, however, proved to be unreliable and may be subject to the same conditionalities as AGOA, but with less product lines and more administratively cumbersome.

The prospect of falling back to GSP will in effect be similar to falling back to a normal MFN relationship with the US, subject to normal duties. For South African exporters into the US market it will mean competing with countries such as Chile, Mexico, Canada and the TPP members that have free trade agreements with the United States.