Trade in Services International

October 25, 2014

Mr. Douglas Bell.
Chair, Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th St., NW
Washington, DC 20508

RE: Docket #USTR-2014-0018: Request for Public Comments on the African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Pub. L. 106-200)

Dear Mr. Bell:

Trade in Services International (TiSI) welcomes the opportunity to comment[1] on the African Growth and Opportunity Act (AGOA). TiSI is dedicated to helping service-industry stakeholders leverage the global services[2] economy for export expansion, employment, and sustainable development.

Our comments focus on technical assistance and trade capacity building of services economies in sub-Saharan Africa (SSA) in light of the Congressional review of AGOA. On July 29, 2014, the US House Ways and Means Committee held a hearing on AGOA. Committee Chairman Nunes of California and Ranking Member Rangel of New York announced they are working together to seamlessly renew AGOA. Congressional representatives will explore the technical assistance and capacity building provisions of AGOA. For example, they will consider country eligibility criteria, product coverage, and changes to improve supply-side issues such as vocational and educational training. At the hearing, Congressman Blumenauer of Oregon suggested AGOA contribute to environmental sustainability. Congressman Reichert of Washington noted some trading partners are using national export strategies to benefit from AGOA. To promote stable and sustainable economic growth and development in sub-Saharan Africa, the US should craft technical assistance programs to strengthen services economies and trade in the region.

Technical assistance under AGOA should support fundamental policies that influence the growth of services economies:

- Investment rules that welcome foreign-service providers,

[1] Submitted via www.regulations.gov.
[2] Services include: business, communication, construction, distribution, educational, environmental, financial, health related, tourism and travel, recreational, cultural and sporting, and transport services, WTO, Services Sectoral Classification List, July 1991, MTN.GNS/W/120, http:// WTO.org.

- Transparent and accountable regulatory regimes,
- Open government procurement,
- Effective competition policy,
- Commercial use of intellectual property rights,
- Deep capital markets that facilitate financial intermediation, and
- Regulatory cooperation in telecommunications.

Trade capacity building under AGOA should enable trading partners to fully implement and benefit from investment arrangements with the United States. In addition to AGOA, the US has formal trade arrangements[3] with several sub-Saharan African countries to support trade and investment. For example, the US has *Trade and Investment Framework Agreements* (TIFAs) with 8 countries: Angola, Ghana, Liberia, Mauritius, Mozambique, Nigeria, Rwanda, and South Africa.[4] The US also has TIFAs with the *East African Community* (EAC), the *Common Market for Eastern and Southern Africa* (COMESA), and the *West African Economic and Monetary Union* (WAEMU).[5] The TIFA is traditionally a starting point for US bilateral cooperation on trade. TIFAs emphasize the importance of the investment climate in facilitating trade in goods and services; establish coordinating councils to monitor trade and investment relations; and work to remove specific impediments to trade as they arise. The TIFA can help AGOA partners take pragmatic steps to create a more transparent trading environment.

The US has invested several years, substantial capital, and technical expertise in creating significant trade arrangements that should be comprehensively implemented. In addition to TIFAs, the US has a *Trade, Investment, and Development Cooperative Agreement* with the *Southern African Customs Union* (SACU).[6] The US has Bilateral Investment Treaties (BITs) with Cameroon, the Democratic Republic of Congo, Mozambique, Rwanda, and Senegal.[7] BITs are more stringent than TIFAs and spell out specific rights and responsibilities, such as, national treatment, most-favored-nation treatment, and institutional and procedural transparency. The BITs can help AGOA partners implement fundamental rules that contribute to institutional accountability.

US trade capacity building should enable trade related ministries in sub-Saharan Africa to implement the aforementioned trade arrangements as a foundation for building services economies. The US Agency for International Development and the Millennium Challenge Corporation should help our trading partners to effectively administer each agreement. Assistance should help those responsible for implementing provisions understand: the scope of the respective agreement, the potential benefit of the specific provisions to their economies, and what is required in terms of institutional practices and procedures.

Strategically the USG should concentrate on the big three: Nigeria, South Africa, and Kenya, which can set the standard for the regional economic communities of the EAC, COMESA, WAEMU, and SACU. The US should support trade in services policy regimes in Nigeria, South Africa, and Kenya that deepen interregional trade and provide market access in

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[3] http://www.ustr.gov/countries-regions/africa.
[4] Ibid.
[5] Ibid.
[6] Ibid.
[7] Ibid.

practice for local service providers from other SSA countries. The US should encourage Nigeria, South Africa, and Kenya to eliminate restrictions in law and practice that impede neighboring service providers from accessing their markets. Nigeria, South Africa, and Kenya are economic engines for the rest of the region. A US policy that helps the three build high standard regulatory regimes that are transparent and accountable will help services economies in the region evolve.

The US should strengthen services economies in sub-Saharan Africa with technical assistance to regulatory institutions and judicial infrastructure. In SSA, "Governments are doing very little to build institutions.[8] This creates an unnecessary drag on investment and economic growth. AGOA should support cooperation between trade related ministries by bringing authorities together to exchange experts, compare review processes, and reduce friction due to different rules and institutional practices. For example, the US should bring effective regulators together at the national and regional level to convey to their counterparts how they have undertaken reform. This type of approach enables local regulatory leaders who have successfully reformed in banking or telecommunications, for example, to persuade other regulatory authorities that they can change institutional practices and procedures to better engage with the marketplace. Helping trade related ministries meet the specific obligations of trade arrangements with the US will reduce the risk associated with opaque and arbitrary investment environments; help develop more transparent and contestable marketplaces; and create greater confidence in the ability to conduct business with AGOA trading partners.

Increasing transparency in government procurement is important to growing service firms and strengthening services economies. In SSA, governments are significant buyers of services. Consequently, government procurement practices influence the services economy. Measures of accountability, transparency and corruption in the public sector[9] demonstrate severe shortcomings. With greater transparency, service firms would be better able to track procurements, prepare appropriate proposals, and meet qualification requirements. Service firms in SSA would be able to determine bidding opportunities, processes, specifications, and timelines with transparent procurement practices. Service enterprises would then compete on technical expertise and cost rather than remaining outside of the government procurement market due to an absence of information on bidding opportunities and criteria. Attention to government procurement practices is particularly important for local service providers in the region as the public sector is often an important client.

The US should build the capacity of competition authorities to effectively implement competition policies to reduce monopolistic practices across service industry sectors. The effectiveness of competition authorities influences the quality, cost, and scope of service products in the marketplace. Authorities that pursue antitrust violations in SSA, in some instances, face significant concentrations of ownership as well as considerable political challenges. For example, in several SSA countries competition concerns are pronounced in telecommunications.[10] Nascent authorities with limited experience, minimal resources, and in some cases, political interference, struggle to effectively address anticompetitive practices to

[8] Javier Blas, Inequalities mar continent's rise, Financial Times, October 6, 2014.
[9] 2014 Ibrahim Index of African Governance, http://www.moibrahimfoundation.org.
[10] Alex Kuhn, David Lewis, Summary Needs Assessment Report, African Competition Forum, February 2011, http://www.africancompetitionforum.org.

improve services markets.[11] Therefore the US should strengthen competition authorities to effectively carryout their responsibilities.

The US should also help businesses in sub-Saharan Africa effectively use intellectual property rights. Astute use of intellectual property rights in service industries such as information technology, media and entertainment, and professional services will enable service firms to generate revenue streams beyond their original service. These services are all significant industries in SSA. For example, Nigerian technology entrepreneurs are credited with developing websites and mobile phone apps to fight the spread of Ebola.[12] Service industries in SSA do have a commercial interest in effectively using intellectual property rights to increase revenue and profitability. US technical assistance should help service firms in SSA understand the IPR regime to support service industry growth and evolution.

The US should provide regulatory capacity building in banking, securities, and insurance to deepen capital markets and expand financial intermediation fundamental to trade competitiveness. Indeed, financial reform and institutional strengthening has expanded capital markets in South Africa, Nigeria, and Kenya. For example in 2012, the Johannesburg Stock Exchange listed 400 companies and had a market capitalization of $929 billion; the Nigerian Stock Exchange listed 200 companies and had a capitalization of $55 billion; the Nairobi Securities Exchange listed 62 companies and a capitalization of $14 billion.[13] Maturing and extending capital markets across sub-Saharan Africa will boost investment and catalyze international trade.

The US financial sector and legal sector are benefiting from financial reform and growing investment. For example, the emergence of sovereign wealth funds in Nigeria, Ghana, Angola, Botswana, Gabon, and Mauritania bodes well for US services trade. US investment firms are active in mergers and acquisitions, the sovereign bond market, and management of sovereign wealth funds.[14] Furthermore some of the well-capitalized sovereign wealth funds are investing in the US bond market. Growth and increasing maturity in the financial sector is contributing to direct investments in infrastructure, real estate, and tourism in sub-Saharan Africa. Large foreign investments also attract US law firms to manage complex contracts and negotiations.[15]

In contrast to banking and securities, the shallow insurance market stunts service industry expansion. The transport, construction, and engineering sectors require adequate insurance to mitigate risk. The insurance market in SSA is relatively shallow due to a regulatory environment characterized as opaque and underdeveloped.[16] Often insurance commissioners have minimal resources and lack independence. There are restrictions on cross-border insurance trade and investment that can be overcome, but only with permission from the regulator. This exemplifies the link between the regulatory environment and the ability to trade and invest in the insurance sector. To the extent that the regulatory approval process runs smoothly, the barriers are reduced;

[11] Linda Schmid, Transatlantic Regulatory Cooperation and Services Can It Help the Developing World, The German Marshall Fund of the United States, April 2008.
[12] William Wallis, Nigeria harnesses technology talents to fight spread of Ebola, Financial Times, October 20, 2014.
[13] William Wallis, JSE plan viewed with caution, Financial Times, November 6, 2012.
[14] Javier Blas & Patrick Jenkins, Continent offers growth potential on a vast scale, December 16, 2013.
[15] http://www.legalweek.com/legal-week/analysis/2156435/africa-firms-finally-focus-continent-investment-flows.
[16] Alistair Gray, Insurers eye opportunities in open landscape, Financial Times, December 16, 2013.

however, that frequently is not the case. Anticipated growth in the region of 6% does attract investment. For example, Prudential is acquiring insurance firms in sub-Saharan Africa.[17] A robust insurance market would attract greater investment, deepen capital markets, and thereby improve trade competitiveness in the region.

Regulatory efficiency is important for telecommunication services. Exceptional regulation in the telecom sector will be critical to broadband growth in the interior. The Telegeography map[18] of submarine cables landing in coastal African nations provides a dramatic illustration of how countries in the interior will have to ensure a regulatory environment that encourages cross-border broadband deployment. The USG should therefore actively support regulatory cooperation in telecommunications by bringing regulatory authorities together to exchange experts, compare regulatory review processes, and reduce regulatory friction.

Trade capacity building under AGOA should strengthen our trading partners' institutional capacity to carry out their trade related responsibilities. Technical assistance should help trade related ministries ensure attractive investment climates, proactive coordinating committees on trade and investment, and the removal of specific trade impediments. Capacity building should help ministries institutionalize publication of rules and regulations as well as administrative transparency. Economies that can maintain regulatory transparency and accountability, and practice good governance will build services economies critical to development and prosperity.

Thank you for the opportunity to comment on the African Growth and Opportunity Act. Please do not hesitate to contact me at tisi2015@gmail.com, if you have questions or require additional information.

Sincerely,

Linda Schmid

Linda Schmid
International Trade and Development Adviser
Trade in Services International

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[17] Ibid.
[18] http://www.telegeography.com.