



**Further Comments of the National Foreign Trade Council
to the Office of the U.S. Trade Representative
Concerning African Growth and Opportunity Act:
Out-of-Cycle Review of South Africa Eligibility for Benefits
August 7, 2015
(Docket ID: USTR-2015-0009-0001)**

On August 4, 2015, the National Foreign Trade Council (NFTC) responded to a request for comments published in the Federal Register on September 21, 2015 by the Office of the US Trade Representative concerning African Growth and Opportunity Act: Out-of-Cycle Review of South Africa Eligibility for Benefits. The NFTC, organized in 1914, is an association of several hundred U.S. businesses engaged in all aspects of international trade and investment. Comprised of companies representing a broad cross section that drives the US economy, we are dedicated to an open rules-based international trading system.

We would like to offer further comments with respect to this request. The focus is specifically on the private security and related services industry.

Section 104 of AGOA requires that a country has established or is making continual progress toward establishing, *inter alia*: a market-based economy; the rule of law, political pluralism, and the right to due process; the elimination of barriers to US trade and investment; economic policies to reduce poverty; a system to combat corruption and bribery; and the protection of internationally recognized worker rights.

Pending private security legislation places SA in breach of Section 104 of AGOA

The South African Parliament has passed the *Private Security Industry Regulation Amendment Act (PSIRA)* which is currently before the President of South Africa awaiting enactment. Section 20 of the PSIRA Act provides that foreign-owned private security firms, including companies that supply, manufacture, install and distribute equipment to the private security industry, will be required to sell at least 51 percent of their South African businesses to South Africans.

This amounts to a forced expropriation of US property interests in South Africa. It will effectively restrict foreign ownership of American and multi-national security firms operating in South Africa to a minority shareholding. This clearly discriminates against US interests versus South African interests, and erects a barrier to US trade in that country.

In fact, Section 20 of the PSIRA Act undermines many of the arguments on which the South African government is basing its proposition that South Africa should remain a beneficiary of AGOA. We have outlined these assertions and why the PSIRA Act undermines them below.

1. *South Africa says AGOA contributes to the fight against poverty, unemployment and inequality in South Africa.*

This is certainly true and so any threat to AGOA is a threat to the fight against poverty and job creation.

Multi-national private security firms operating in South Africa employ many thousands of employees and have contributed substantial capital investment and infrastructure development as well as introduced international best practice in skills training and development that have uplifted the entire sector. These are much-needed jobs in a country which is suffering from unemployment levels upwards of 25%.

Should Section 20 be implemented, it is likely that many of these firms may disinvest of their South African operations.

This was reinforced by a report compiled by independent economic consulting firm DNA Economics, which explained that where parent companies are uncomfortable with holding only a minority share, a likely scenario where brand identity and intellectual property are at stake, they would divest of their local stake.

The result would then be job losses and a loss of future investment.

The report added that the greatest cost is likely to come in the form of reduced incentives for international firms not only to invest in the private security industry, but also in other sectors due to fear of increased risk of expropriation in the economy.

It is clear, therefore, that Section 20 has the potential to directly undermine South Africa's economic growth.

2. South Africa is open for trade and investment

South Africa characterizes itself as a relatively open economy, which safeguards the property and investments of both South African citizens and foreigners.

The enactment and implementation of forced expropriation through Section 20 would constitute a step in the opposite direction, thereby undermining Section 104 of AGOA.

It would move South African toward a more closed and autarkic economy, as opposed to a more open market-based one, and would dilute the protection of foreign property rights.

Stated reason for Section 20 has no basis

The reason for the introduction of the foreign ownership limitation clause into PSIRA is of relevance to the extent that it is not in any way accurate.

According to the Minister of Police, the provision was introduced to address concerns that foreign owned private security companies could pose a threat to national security. Quite simply, there is no reason or evidence to support this contention.

The multi-national security firms that have invested in South Africa for many years cannot pose a threat to South Africa's national security, to the contrary.

Every person that works for these companies (about 50,000, which accounts for approximately 10% of the entire sector), are permanent residents or citizens of South Africa. By law (the current PSIRA Act) only South African citizens are allowed to work for this sector and this applies to every person employed, from guard to director.

In addition, South African law does not allow any private security company (international or local) to gather intelligence or participate in any mercenary activity. There is already legislation to this effect (Regulation of Foreign Military Assistance Act, 1998) that is quite separate from the PSIRA Act.

In terms of firearms, very few private security personnel are authorised to carry weapons. Those that do must be authorised under a regulated authorisation process, which includes South African nationality as a mandatory test. Furthermore, according to the South African industry regulator, PSiRA (March 2015), 1908 private security companies are responsible for 75,450 firearms. The regulator confirmed that total legal firearms in South Africa number 4.6 million – therefore, the private security industry accounts for only 1.61% of all legal firearms in South Africa.

Conclusion

The South African government is of the view that it has adhered to both the letter and spirit of the AGOA eligibility criteria.

We would submit that the implementation of Section 20 would do the opposite; it would directly undermine both the letter and spirit of the AGOA eligibility criteria.

Our recommendation therefore is that should the South African government fail to send the PSIRA Act back to Parliament for the conclusive removal of Section 20, proportionate countermeasures short of non-eligibility should be considered by the Committee.