Forget the World Cup, 2010 Could Be a Difficult Trade Year for Africa

Trade Hound

By Victor Mroczka
mroczka@hugheshubbard.com

Despite all the positives surrounding the coming World Cup in South Africa this year, there are a number of developments that could restrict or even derail any positive developments in 2010.

First, looking at Nigeria and the attempted Christmas Day attack by Umar Farouk Abdulmutallab, without a functioning President (or even a capable interim) or an Ambassador in the United States, or a respectable lobbying/legal presence to communicate with the Obama Administration and the U.S. Congress, Nigeria made it very easy for the U.S. government to name Nigeria (along with African nations Algeria, Libya, Somalia, and Sudan) as one of the countries whose citizens now undergo more intensive security screening before being permitted to board flights to the United States. Todd Moss, a former State Department official, put in pointedly when he stated in a recent article "(the United States) cannot have a partnership if there is no one on the other end of the line." Sadly, some Nigerians believe that this is a politician's problem and continue to feel that they do not have any say in what its government does. And this is part of the problem. If Nigerians sit idly by and do not demand more responsible action from their elected officials, then Nigeria's reputation will continue to suffer in 2010 as the attempted terrorist act will be added to the growing list of negatives that Nigeria is known for worldwide.

> *If successful, the case could lead to lawsuits against other countries with past human rights violations, such as Nigeria, Kenya, Sudan, and Congo. Imagine the impact on trade and investment if stakeholders are weary of pending litigation and take their money elsewhere. This case should be monitored very carefully for the repercussions could prove disastrous*

Second, there have been a number of developments regarding U.S. market access that will have a growing detrimental impact on ALL COUNTRIES involved in U.S.-Africa trade. On December 20, 2009, U.S. President Obama issued a proclamation to demonstrate that the African free ride is over and that there will be consequences for failing to play by the rules. The United States removed Madagascar, Guinea, and Niger from the list of countries eligible to receive benefits under the African Growth and Opportunity Act (AGOA). These changes became effective on January 1 and are a result of those countries failing to make continual progress toward establishing the rule of law. Specifically, Guinea underwent a military coup in late 2008, Madagascar had one in March 2009, and Niger's President extended his presidency to a third term in direct contradiction to that country's constitution. The impact will be felt the greatest in Madagascar, where the lack of trade benefits will devastate that country's textile industry.

These actions send a very direct and loud signal to all African free trade beneficiaries - governments, producers, exporters, U.S. customers, and investors – that the Obama Administration takes the eligibility criteria of duty-free access to its market very seriously and the rules will be enforced. This should be a wakeup call to those countries such as Nigeria and Kenya which are very close to (if not already) failing to abide by the rules of AGOA.

And speaking of abiding by the rule of law, the rules themselves may be about to change regarding trade with the United States. As reported in a previous Trade Hound article, there is a movement in Washington, DC to reform all the trade preference/U.S. duty-free market access programmes and possibly consolidate them into one programme for all countries. While this may sound like a good idea from an administrative standpoint, it has the potential to have a devastating impact on a number of African industries - making 2010 a roller coaster year in terms of trade. In November 2009, U.S. Congressman Jim McDermott introduced legislation to reform both the GSP and AGOA programs. The legislation, if passed, will have two significant impacts on Africa. First, the legislation calls for opening up the U.S. market and allowing for duty-free access to all least-developed countries. In reality, what this means is that African exporters and producers that enjoyed the protection of AGOA to gain access to the U.S. market in areas such as textiles and apparel, will now have some unwanted competition in the forms of textile powerhouses such as Cambodia and Bangladesh. Those Asian countries were already competing with African textile manufacturers WHILE paying a double-digit duty on their exports. What will happen once those duties are lifted?

Furthermore, the legislation calls for the amendment of the definition of "least developed country" – an eligibility criterion needed to receive duty-free access. The legislation calls for "least developed countries" to be classified according to the definition used by the United Nations, as opposed to the more encompassing one under AGOA. Under the UN definition, countries such as Kenya, Ghana, Nigeria, Mauritius, Botswana, Namibia, and South Africa, will lose AGOA benefits once AGOA expires, disrupting trade and investment for years to come. Unfortunately, the response from African stakeholders has been somewhat restrained, with the focus only being on the impact to the textile and apparel exporters. Where are the other industries? Why aren't the governments and exporters doing more? Do they not care about the U.S. market? Where are the trade soldiers advocating their causes throughout Washington, DC? If more is not done to try to stall or otherwise amend this legislation, the impact will extend beyond just merely textiles, and could shut down numerous industries throughout these countries (for example, the oil, gas, and food industries) that depend on the U.S. market for revenue. Not reacting to this type of attack on its U.S. trade benefits would be a colossal failure on the part of those countries' stakeholders, particularly the exporters upon whom the impact will be immediate and direct. Is this the "year of Africa" they want? Let's hope not.

Finally, there is something that has for the most part gone under the radar, but could have an enormous trade impact for years to come. There is a lawsuit going on in the United States pitting South African apartheid victims against U.S. multinational corporations such as General Motors and IBM that allegedly aided the South African apartheid regime. The case is significant for two reasons. First, in reversing a legal stance taken by the Bush Administration in 2005, lawyers in the Obama Administration formally sided with the alleged victims by not seeking dismissal of the case (the alleged victims are also not being opposed by the South African government). Second, if successful, the case could lead to lawsuits against other countries with past human rights violations, such as Nigeria, Kenya, Sudan, and Congo. Imagine the impact on trade and investment if stakeholders are weary of pending litigation and take their money elsewhere. This case should be monitored very carefully for the repercussions could prove disastrous.

Whew. While we are definitely living in interesting times and 2010 does hold many positives for Africa as a whole, there are a number of movements afoot that threaten with one hand to taketh away what the other hand giveth. How much either hand holds depends on the actions of many throughout the continent. Looks like it's going to be an interesting year indeed.

The views are Mroczka's own and should not be attributed to any of his clients or his firm

•Cote d ivoire team celebrating a goal at the 2006 World Cup in Germany