

African Growth and Opportunity Act (AGOA)

Overview

What is AGOA? AGOA (P.L. 106-200, as amended), a cornerstone of U.S. trade policy toward sub-Saharan Africa since 2000, is a nonreciprocal U.S. trade preference program that provides duty-free access to the U.S. market for most exports from eligible sub-Saharan African countries. In addition to preferential market access, the act also requires an annual forum, known as the AGOA forum, held between U.S. and AGOA country officials to discuss trade-related issues. Additionally, AGOA provides direction to select U.S. government agencies regarding their trade and investment support activities in the region.

Which countries are eligible? AGOA lists 49 sub-Saharan African countries that are potential candidates for program benefits. AGOA eligibility criteria address issues such as trade and investment policy, governance, worker rights, and human rights, among other issues, which countries must satisfy to be beneficiaries of the AGOA preferences. The President annually reviews and determines each country's AGOA eligibility. There are currently 39 AGOA-eligible countries. In the most recent eligibility determination, President Trump reinstated AGOA benefits for the Democratic Republic of the Congo (DRC), effective January 1, 2021. The Trump Administration also initiated a review of South Africa's eligibility under the Generalized System of Preferences (GSP) due to concerns over its protection of intellectual property rights, which has potential implications for South Africa's AGOA eligibility as AGOA builds on GSP and requires that beneficiary countries satisfy both programs' eligibility criteria (see "**Relation to GSP**" below).

Ten sub-Saharan African countries remain ineligible for the program's preference benefits in 2021. They include (with noted eligibility violations): Burundi (political violence), Cameroon (human rights), Equatorial Guinea (income graduation), Eritrea (human rights), Mauritania (worker rights), Seychelles (income graduation), Somalia (never eligible), South Sudan (political violence), Sudan (never eligible), and Zimbabwe (never eligible). In addition, Rwanda's AGOA benefits for apparel exports have been suspended since July 31, 2018, following an out-of-cycle eligibility determination in response to increased tariff barriers on used clothing imports from the United States.

What is the authorization status? AGOA was first established by Congress in 2000 and has been amended several times. The Trade Preferences Extension Act of 2015, P.L. 114-27, extended AGOA's authorization for ten years to September 2025. The African Growth and Opportunity Act and Millennium Challenge Act Modernization Act of 2018, P.L. 115-167, required the Administration to provide information on AGOA through an official AGOA website, promote AGOA utilization,

product diversification, and regional cooperation, and educate African entrepreneurs.

What is the goal? Through AGOA, the U.S. Congress seeks to increase U.S. trade and investment with the region, promote sustainable economic growth through trade, and encourage the rule of law and market-oriented reforms.

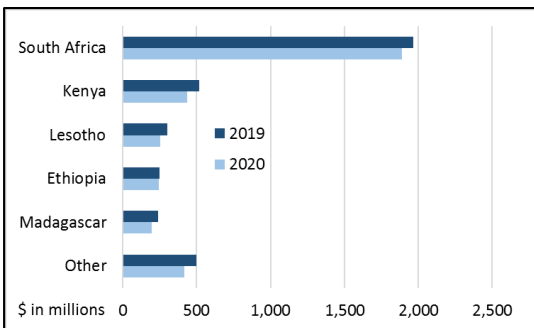
Supporting views. Supporters of AGOA argue that the program affords African producers an important competitive advantage in the U.S. market, thereby enabling exports, encouraging investment in the region, boosting private sector activity and economic growth, and ultimately generating demand for U.S. goods and services as the region's economies develop.

Opposing views. Opposition is mostly from U.S. producers that may face increased import competition from AGOA countries. Such concerns are generally limited due to the low volume of U.S. imports under AGOA, but import competing U.S. producers have lobbied to keep certain products, particularly sugar, out of the program.

U.S. Imports under AGOA

Total U.S. AGOA imports were \$4.1 billion in 2020, down 50% from \$8.4 billion in 2019, due mostly to a decline in oil imports. Imports remain concentrated in few countries and industries, but diversification has grown.

- Energy product imports (crude oil) declined by 85% in 2020 to \$695 million, and accounted for only 17% of AGOA imports. This represents a significant shift, as crude oil has historically accounted for the vast majority of AGOA imports (e.g., \$48 billion at their 2011 peak). Nigeria was the top supplier (\$461 million) in 2020.
- AGOA non-energy imports declined by 9% in 2020 to \$3.4 billion, but have tripled since the program began in 2001. Top non-energy import categories include textiles and apparel (\$1.2 billion), transportation equipment (\$652 million), ag products (\$626 million), minerals and metals (\$332 million), and chemicals (\$329 million).
- South Africa is the top supplier of AGOA non-energy imports (**Figure 1**), but its dominance has declined. Decreasing auto imports from South Africa and increasing apparel imports from other top countries are the main trends underlying this shift.

Figure 1. Top AGOA Countries, Non-Energy Products

Source: Analysis by CRS. Data from USITC.

Key Aspects of AGOA

Trade preferences. AGOA's main component is duty-free treatment of U.S. imports of certain products from beneficiary countries. This tariff savings can help AGOA exporters compete with lower-cost producers elsewhere.

Relation to GSP. The Generalized System of Preferences (GSP) is another U.S. trade preference program, but unlike AGOA, GSP is not regionally based. The AGOA preferences include all products covered by GSP, as well as some products excluded from GSP, such as autos and certain types of textiles and apparel. To remain eligible for AGOA, sub-Saharan African countries must meet the eligibility requirements for both programs (19 U.S.C. §2466). Both GSP and AGOA grant additional benefits to least-developed countries. AGOA beneficiaries maintain access to both programs, even when GSP authorization lapses, which occurred on January 1, 2021.

Apparel and third-country fabric provision. AGOA's duty-free treatment of certain apparel products is significant because (1) apparel articles face relatively high U.S. import tariffs; (2) they are generally excluded from GSP; (3) they can be readily manufactured in developing countries as their production requires less skilled labor and capital investment; and (4) production in this sector can be a first-step toward higher value-added manufacturing. The third country fabric provision in AGOA, which is a major factor in AGOA countries' competitiveness in the sector, allows limited amounts of U.S. apparel imports from least-developed sub-Saharan African countries to qualify for duty-free treatment even if the yarns and fabrics used in their production are imported from non-AGOA countries (e.g., apparel assembled in Kenya with Chinese fabrics can qualify for duty-free treatment under AGOA).

Trade capacity building (TCB). AGOA also directs the President to provide TCB to AGOA beneficiaries. The U.S. Agency for International Development (USAID) administers certain TCB-related projects in support of AGOA, including funding three African Trade and Investment Hubs, which work to increase AGOA utilization and regional producers' access to international markets. AGOA also directs other agencies, including the Export-Import Bank, U.S. Foreign Commercial Service, and USDA, on their activities in sub-Saharan Africa.

AGOA forum. AGOA requires the President annually to convene a forum on trade and investment relations, and AGOA implementation. The forum typically alternates

between the United States and an AGOA country, but was cancelled in 2020 due to the pandemic.

Country eligibility reviews. The President determines eligibility based on statutory criteria. The process includes an annual public comment period and hearing, and, as amended by the 2015 reauthorization, allows for out-of-cycle reviews (outside the annual review period) in response to public petitions. The Administration may remove country eligibility entirely or for specific products, but must notify Congress 60 days before any termination.

Reporting requirements. The 2015 reauthorization reinstated a previous AGOA requirement to report biennially on overall U.S. trade and investment relations with the region. USTR issued the latest report in 2020.

Reciprocal trade negotiations. Since 2000, Congress has directed the executive branch to seek reciprocal trade and investment negotiations with AGOA countries. The first attempt, with the Southern African Customs Union (SACU), was suspended in 2006 due to divergent views over scope. In a new effort, the Trump Administration began free trade agreement (FTA) negotiations with Kenya in 2020, which the Biden Administration has not resumed to date. Then-USTR Lighthizer described the talks as an opportunity to negotiate a new "model" bilateral FTA with an African country, but did not specify in what ways the new approach would differ from past negotiations. U.S. FTAs typically include comprehensive tariff elimination as well as enforceable commitments on services, investment, intellectual property rights, labor, and environment. President Uhuru Muigai Kenyatta of Kenya argues that a bilateral U.S. FTA will not hinder Kenya's participation in broader regional integration initiatives, but some African officials express reservations over the bilateral approach.

FTAs hold the promise of transformative change in ways that are not possible through [...] preference programs.

2020 Biennial Report on AGOA Implementation

Issues for Congress

AGOA generally enjoys bipartisan support in Congress and is not subject to reauthorization until 2025. Current issues Congress may consider include the following:

- **FTA negotiations.** An FTA would have implications for AGOA and U.S. trade relations in the region. As the Biden Administration sets its FTA negotiating priorities for the region in consultation with Congress, including on whether to resume bilateral talks with Kenya, key considerations include (1) what flexibilities (e.g., longer phase in periods, less extensive commitments, greater technical assistance, or flexible rules of origin such as an AGOA style third-country fabric rule) are appropriate; (2) effects on broader AGOA utilization; and (3) effects on regional initiatives, such as the African Continental Free Trade Area (AfCFTA).
- **Increased U.S. tariffs.** The Trump Administration imposed tariff increases (Section 232) on steel and aluminum, which raise the cost of imports from AGOA countries, notably South Africa, a top U.S. supplier of aluminum. The tariffs remain in place unless the Biden

- Administration or Congress (through legislation) removes or amends them. Congress may examine the tariffs' effects on AGOA participants and their alignment with congressional goals.
- **Third-party agreements.** Reciprocal agreements between AGOA beneficiaries and third parties (e.g., EU-South Africa) may disadvantage U.S. exporters. Congress may examine possible U.S. responses.
- **Beneficiary country participation.** Nearly 90% of U.S. non-energy imports under AGOA in 2020 came from five countries. Congress may examine factors affecting other countries' capacity to export under AGOA.

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