EAST AFRICAN COMMUNITY SECRETARIAT

POSITION PAPER ON ENHANCING EAC-U.S. TRADE AND INVESTMENT RELATIONSHIP UNDER A NEW POST-2015 AGOA PROGRAM

EAC SECRETARIAT
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1.0. BACKGROUND

The African Growth and Opportunity Act, 2000 (AGOA) is a United States Trade Act, enacted on 18 May 2000 as Public Law 106 of the 200th Congress. The main objectives of AGOA are to stimulate economic growth, encourage economic integration and facilitate sub-Saharan African integration into the global economy. It significantly enhances market access to the US for qualifying Sub-Saharan African (SSA) countries. Qualification for AGOA preferences is based on a set of conditions contained in the AGOA legislation. In order to qualify and remain eligible for AGOA, each country must be working to improve its rule of law, human rights, and respect for core labor standards. The Act originally covered the 8-year period from October 2000 to September 2008, but legislative amendments signed into law by US President George Bush in July 2004 served to extend AGOA to 2015. At the same time, a special dispensation relating to apparel was extended by three years to 2007; and in December 2006, these were extended to 2012.

On August 10, 2012, President Obama signed into law amendments to AGOA (Public Law 112-163) that added South Sudan to the list of SSA countries, and extended the third-country fabric provision to September 30, 2015.

Country eligibility for AGOA is determined by the US President (and listed in section 107 of the African Growth and Opportunity Act - and takes into account whether countries meet with a number of requirements. Countries need to "have established, or are making continual progress toward establishing the following: market-based economies; the rule of law and political pluralism; elimination of barriers to U.S. trade and investment; protection of intellectual property; efforts to combat corruption; policies to reduce poverty, increasing availability of health care and educational opportunities; protection of human rights and worker rights; and elimination of certain child labour practices".

The eligibility criteria for the Generalised System of Preferences (GSP) and AGOA substantially overlap, and countries must be GSP eligible in order to be eligible for AGOA. While GSP eligibility does not imply AGOA eligibility, the majority (45 of 48) of Sub-Saharan African countries are currently GSP eligible. 38 of these are also AGOA-eligible.

Separate rules of origin apply to wearing apparel: AGOA eligibility does not automatically imply eligibility for the '*Wearing Apparel*' provisions. In order to export apparel (and certain textile items) to the U.S. duty-free under AGOA, countries must have implemented a 'Visa System' to the satisfaction of US authorities and one that ensures compliance with the AGOA rules of origin. As of May 2006, 25 of the 37 AGOA-eligible countries had complied with this condition and had obtained the necessary visa system, allowing them to export apparel to the US duty-free under AGOA. The most recent beneficiary is the Republic of Chad, which gained eligibility on April 26, 2006. Countries determined to be 'Lesser Developed Countries' (LDCs) are now allowed until September 2007 (-following amendments to AGOA under the 'AGOA Acceleration Act of 2003') to utilise external, non-originating textiles in the production of garments, without compromising the AGOA-eligibility status of the finished garment. All EAC Partner States comply with eligibility criteria under AGOA.

In 2007, the apparel "abundant supply" provisions were enacted. Their intention was to set requirements for local textile fabric sourcing where it was considered that sufficient quantities were available in AGOA-eligible countries; third country fabric would thus first have to be sourced locally or regionally before third country imports could be utilized for onward exports of denim garments. A subsequent legislative revision in September 2012 extended the apparel provisions to the end of 2015 to coincide with the current expiry of the AGOA legislation.

AGOA builds on existing US trade programs by expanding the (duty-free) benefits previously available only under the country's Generalized System of Preferences (GSP) program. Duty-free access to the U.S. market under the combined AGOA/GSP program stands at approximately 7,000 product tariff lines, including the roughly 1,800 tariff lines that were added (to the GSP pool) by the AGOA legislation.

While the current legislation extends duty-free preferences to 39 Sub-Saharan African beneficiary countries (the actual number fluctuates annually, in line with US Presidential determinations), it is currently set to expire at the end of 2015. It will be up to the US Congress to extend or amend the legislation beyond this date.

AGOA is a Market Access tool to enhance trade between the US and SSA. As such, AGOA as enacted does not provide for the development support needs of the SSA countries.

Some countries have been developing and implementing National AGOA Strategies to address the challenges the private sector is facing in accessing the US market. In addition, SSA countries have implemented far reaching structural reforms and investment infrastructure to improve the doing business environment.

The U.S.-Sub-Saharan Africa Trade and Economic Cooperation Forum or AGOA Forum institutionalizes America's Economic engagement with Africa and secures through structured dialogue on all levels of Government, Private Sector, and Civil Society for strengthening trade, building mutually beneficial economic opportunities between the United States of America and sub Saharan Africa. Twelve AGOA Forums have so far taken place. The 12th AGOA Forum was held on 9th – 13th, August 2013 in Addis-Ababa, Ethiopia under the theme "Trade and Technology for sustained change".

The 2013 AGOA Forum, held in Addis Ababa in August, saw African and US representatives meet to discuss how to improve and renew AGOA in a way that would make it more compatible with the changing economic landscape in Africa.

2.0 STATUS OF TRADE BETWEEN EAC AND U.S

2.1 Trade between EAC and U.S. under AGOA

Total trade between the EAC and U.S. has increased from $ 2,372 million in 2000 to $ 3,167 million in 2013. Exports to U.S. from the EAC have increased from $186 million to $577 million while imports increased from $328 million to $1,184 million (see table 1 and 2 below) in the same period.

Despite the increase in the EAC exports to U.S., imports have exponentially grown a situation that has led to a continued increase of the trade imbalance against the EAC as shown in graphs 1 and 2 below.

This situation will not enable the EAC achieve the intended objectives of AGOA which are to stimulate economic growth, encourage economic integration and facilitate sub-Saharan African integration into the global economy.

Table1: Total Exports by EAC Countries (AGOA plus non-AGOA goods): Value (Million US$)

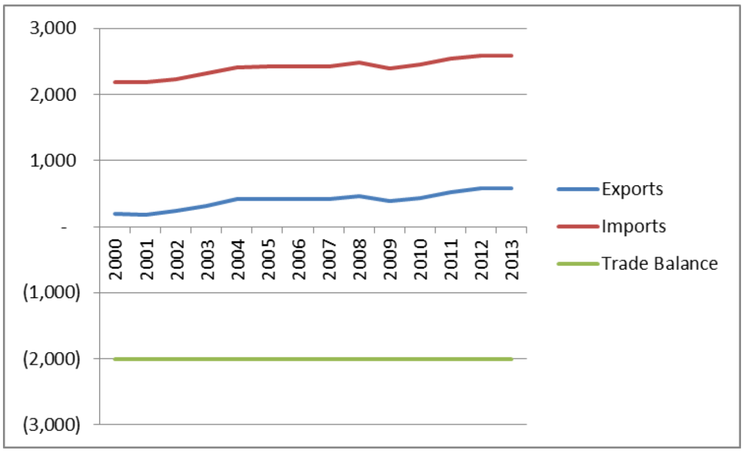
Year	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Uganda	29	18	15	35	26	26	22	27	53	30	58	46	34	47
Tanzania	35	27	25	24	24	34	35	46	54	49	43	58	116	70
Kenya	109	129	189	249	352	348	353	326	344	280	311	380	390	432
Rwanda	5	7	3	3	5	6	9	13	14	19	21	31	33	24
Burundi	8	3	1	6	3	4	2	1	3	4	3	10	5	4
Total	186	184	233	317	410	418	421	413	468	382	436	525	578	577

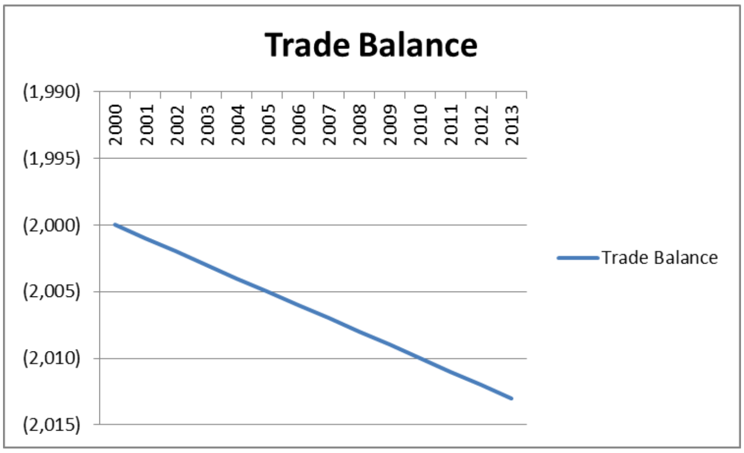
Source: US Department of Commerce

Table 2: Total Imports by EAC Countries from the U.S (Million dollars)

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Uganda	27	32	23	42	63	59	51	75	78	113	85	87	81	111
Tanzania	45	64	62	64	125	94	159	172	166	154	158	251	231	414
Kenya	235	574	268	193	387	626	516	576	441	638	345	447	547	620
Rwanda	19	17	10	8	11	10	11	14	19	33	29	119	29	24
Burundi	2	5	2	3	17	7	6	7	7	8	14	32	20	15
Total	328	692	365	310	603	796	743	844	711	946	631	936	908	1184

Source: US Department of Commerce





EAC PERFORMANCE UNDER THE AGOA

EAC Exports under the AGOA (including the GSP) picked at $356,248,000 in 2013 with Kenya contributing 96%, Tanzania 3%, Uganda 0.4%, Rwanda 0.2% and Burundi 0%. The contribution of the AGOA to the total EAC exports increased from 57% in 2011 to 62% in 2013. This relatively high level of contribution of the AGOA to the EAC exports is largely due higher textiles and apparel plus agricultural exports of Kenya, which evens out the minimal exports by the other Partner States as shown in table 2 graph below.

Overall, however the utilisation of the AGOA by the EAC is far below the anticipated levels. For example, the EAC is performing far below selected Southern Africa countries (i.e. Angola, South Africa, Lesotho, Namibia and Botswana). Exports under the AGOA from these southern African countries in 2011 stood at US$16,097m while that of EAC stood at US$301m. In 2013, EAC exports were US$356m while the Southern Africa Countries exported US$10,708m under the AGOA. The big volumes of oil and other minerals, which are mainly traded by Southern Africa countries, do explain the fundamental difference in the exports from the two regions.

Table 3: EAC EXPORTS TO UNITED STATES OF AMERICA AGOA INCLUDING GSP: Value (Thousand dollars) Year

	2011	2012	2013	
Country				
BURUNDI	0	18	0	0.00%
KENYA	292,595	292828	342,902	96.25%
RWANDA	597	377	782	0.22%
TANZANIA	5,751	11,840	10,986	3.08%
UGANDA	2541	1838	1578	0.44%
TOTAL	**301,484**	**306,901**	**356,248**	

Source: US Department of Commerce

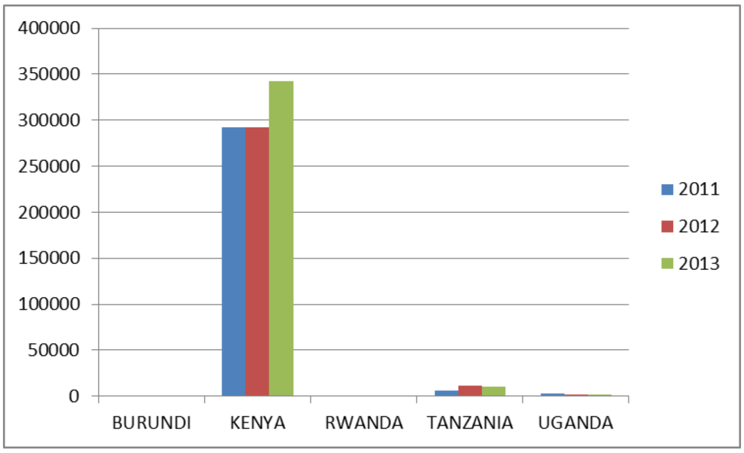
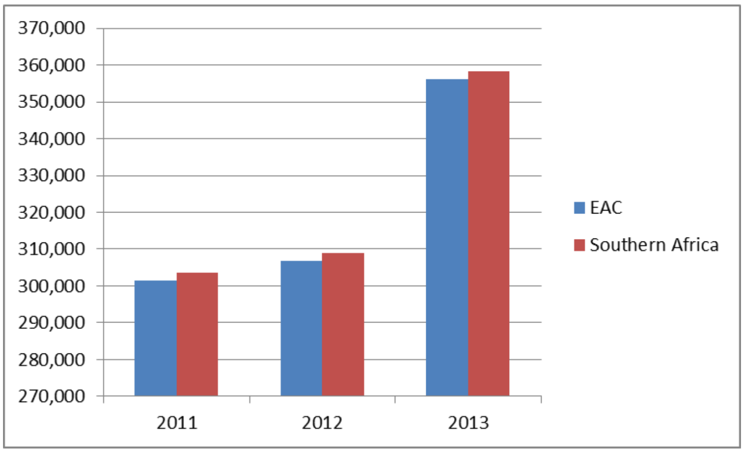


Table 4: SOUTHERN AFRICA EXPORTS TO THE UNITED STATES (AGOA - INCL. GSP) Unit: Thousand US$, Customs Value

	2011	2012	2013
Angola	11,834,349	7,292,421	6,713,608
South Africa	3,797,406	3,678,217	3,667,886
Lesotho	314,335	300,618	320,879
Botswana	17,063	12,184	5,929
Namibia	134,317	1,151	566
Total	**16,097,470**	**11,284,591**	**10,708,868**

Source: US Department of Commerce



Source: US Department of Commerce

Table 5: EAC EXPORTS TO UNITED STATES OF AMERICA AGOA SPECIFIC: Value (Thousand US$)

Year	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**
Country						
BURUNDI	0	0	0	0	0	0
KENYA	252,243	204,982	205,000	288,273	287737	336,535
RWANDA	5	19,200	21,500	17	8	9
TANZANIA	1925	1542	2117	5,131	10,446	10,360
UGANDA	52,7	30,900	57,700	787	64	56

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TOTAL	365,043	263,712	434,6	294,208	298,255	346,960

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Source: US Department of Commerce

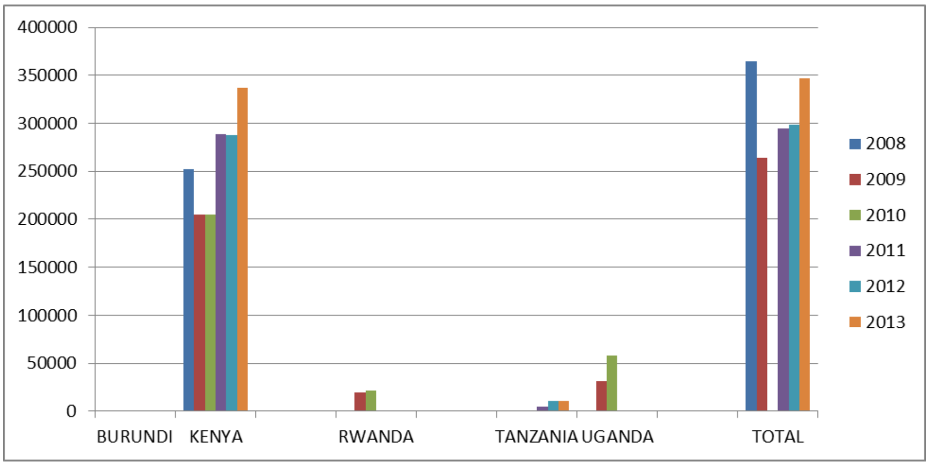


Table 6: SOUTHERN AFRICA AGOA EXPORTS TO THE UNITED STATES (AGOA EXCL. GSP)
Unit: ~~$ 1000~~Thousand US$, Customs Value

2000	2011	2012	2013
Angola	11,534,112	6,660,738	6,003,258
South Africa	2,464,831	2,384,109	2,578,238
Lesotho	314,311	300,609	320,807
Botswana	15,479	10,427	5,856
Namibia	13	216	
Total	**2,794,634**	**2,695,361**	**2,904,901**

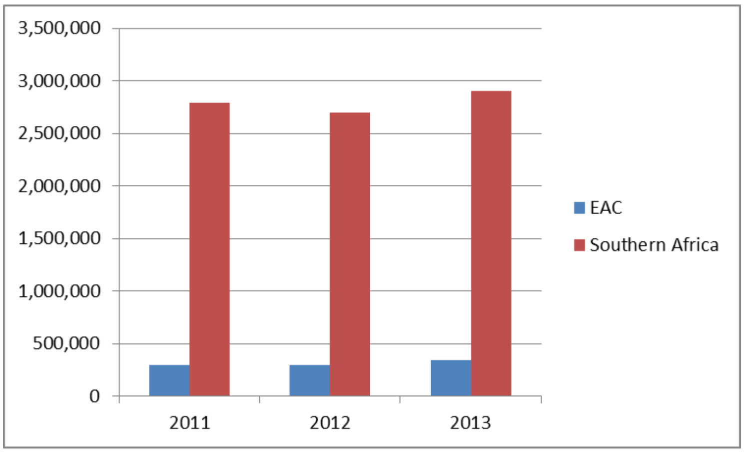


Table 7: EAC EXPORTS TRADE PERFORMANCE UNDER AGOA Unit: Thousand US$, Customs Value

Year	2011	2012	2013
Total Export	525,000	578,000	577,000
AGOA Exports+ GSP	301,484	306,901	356,248
AGOA Specific Exports	294,208	294,208	294,208

Source: US Department of Commerce

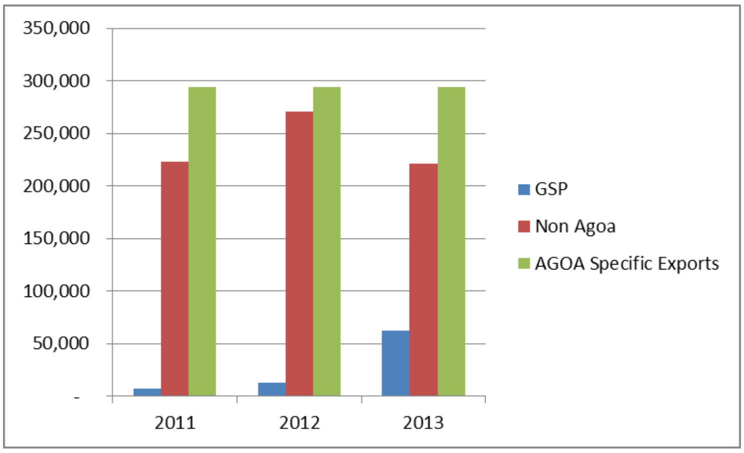
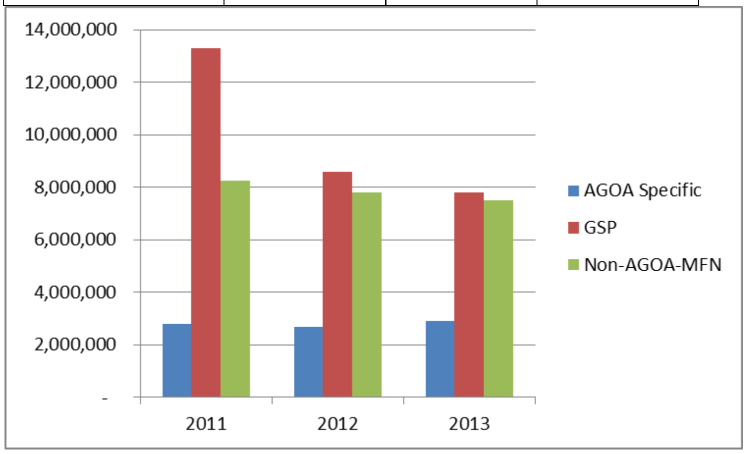


Table 8: SOUTHERN AFRICA EXPORTS TRADE PERFORMANCE UNDER AGOA Unit: US$, Customs Value

	2011	2012	2013
AGOA Specific	2,794,634	2,695,361	2,904,901
GSP	13,302,836	8,589,230	7,803,967
Non-AGOA-MFN	8,246,295	7,789,873	7,493,381



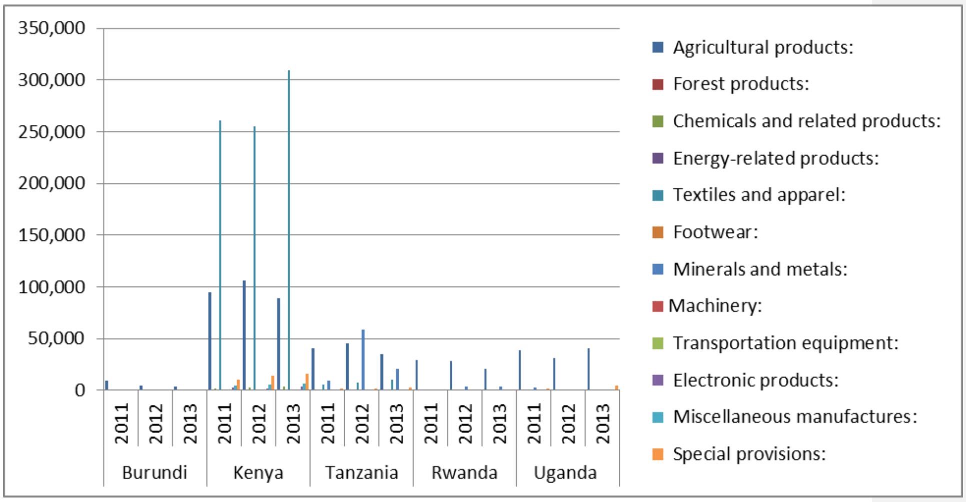
BILATERAL TRADE BY SECTOR EAC- UNITED STATES

Table 9: EAC Exports to U.S. by Sector

Value (Thousand US$) / Year-to-date is January-December (full-year)

	Burundi			Kenya			Tanzania			Rwanda		
	2011	2012	2013	2011	2012	2013	2011	2012	2013	2011	2012	20
Agricultural products:	9,526	4,738	4,114	95,198	106,514	89,198	41,190	45,367	35,009	29,553	28,445	20
Forest products:		2		748	869	891	351	312	236	680	525	
Chemicals and related products:				1,630	2,851	3,258	163	603	461			

Energy-related products:					29							
Textiles and apparel:		1		261,291	255,158	308,931	5,316	7,548	10,403	152	12	
Footwear:				213	198	137	9	2		39		
Minerals and metals:			10	1,321	1,273	1,339	9,073	58,340	20,744	216	3,968	3
Machinery:		29	31	450	831	871		11	8			
Transportation equipment:				959	466	835	99	70	163			
Electronic products:		2	135	3,100	2,296	3,856	29	83	61			
Miscellaneous manufactures:		14		4,969	5,399	6,329	263	1,190	472	139	164	
Special provisions:	32	22	7	10,584	13,866	16,408	1,750	2,048	2,766	79	172	



2.2 The EAC Trade and Investment Environment:

EAC is demonstrating real momentum in making its own regional markets a reality. The five EAC Partner States are bringing together their resources, capacity and political will to create one community, and more importantly, one trade and investment hub. The EAC aims to strengthen the EAC

Investment Promotion agenda to utilize these opportunities and be in a position to realize benefits as a region.

EAC's potential is huge, making it an essential market. The region has vast investment opportunities in the agro-processing, mining, tourism, fishing, manufacturing and services as well as roads, railways, ports, telecommunication, energy, Research and Development, Private Equity, Real Estate and property, mergers and acquisitions and the Lake Victoria Development Programme.

EAC is emerging as Africa's powerhouse of science and innovation, springing from talented IT savvy people in many fine institutions and organizations. All over the world, ambitious targets for energy efficiency and renewable power are driving the rapid development and roll-out of "green" technologies and the grids to enable them. Yet global competition is intensifying to invent the products and services of the future**.**

The EAC is committed in providing an investment-conducive environment as part of its quest to establish a free market system and integrate it into the global economy, thus, building a better future for the EAC citizens, which will enhance regional stability and security in the region.

The EAC continuously seeks to improve the business environment for the economies to benefit from increased trade and investment. Reforms are implemented in the form of structural adjustment programmes which enabled the private sector to thrive.

EAC signed in 2012 a Cooperation Agreement with the World Bank whose aim is to improve the investment climate in the Community. This is a four- year programme which when implemented will go a long way to improve the operating environment for business community in the region. The programme has taken off with the involvement of both public and private sectors participating actively.

On legal framework for investment, all the countries have investment laws which are modern, based on international best practice.The EAC is also in the process of upgrading its investment code into a single legislative instrument which will ensure more comfortable environment to operate in as a single investment destination.

On top of these government efforts, the use of investment incentives is also active in the EAC. These incentives are specifically designed to influence the size, location, industry with the aim of increasing the rate of returns by reducing costs and risks to the private investors.

2.3 U.S Investment in EAC inflows

The improved business and investment climate since 2000 can be attributed to better macroeconomic conditions, sounder governance, a less burdensome regulatory environment, and a more open trade and investment regime overall. At the same time, SSA remains a highly challenging place to do business, especially when compared with other emerging economies. Issues that continue to discourage investment in SSA countries include poor investor protection, slow removal of investment barriers, and insufficient infrastructure. Of the 49 SSA countries Rwanda, Sierra Leone, and Burundi (AGOA beneficiary countries) are among the best performers, making improvements across most measures. South Sudan and Djibouti (also AGOA beneficiaries) as well as Somalia and Eritrea (which have never been AGOA beneficiaries), are among the worst performers.

Despite efforts by both parties, the investment flows from the U.S. to Africa have been less than stellar. Currently only about 1 percent of U.S. FDI flows to Africa. Moreover, the investment concentrates in only a few sectors; i.e., mining and financial services; and in few countries, i.e., Egypt, Nigeria, South Africa, and Angola. These investments are attributed mainly to large firms and underscore the limited investment activity of America's small and medium enterprises in Africa. This poor investment flow has also affected the trade flow between the two parties as U.S. investment in Africa could play a critical role in opening up market opportunities.

The U.S. Congress can influence the flow of U.S. investment in Africa by providing certain incentives to U.S. businesses that invest in Africa. The Brookings Institution recently recommended that the Congress provide a tax rate of zero on repatriated earnings for US companies that invest in non-extractive sectors in AGOA- eligible countries. Some estimates show that such an incentive could increase U.S. investments in Africa by 20 percent with a relatively minimal loss of tax revenue. Secondly, the small industry population in Africa is one of the major reasons for lack of competitiveness of AGOA eligible countries. Increased US investment in Africa would potentially change this as the increased US investment help put AGOA eligible countries on the global sourcing map. Besides, since the US investors can find their own market, this will strengthen the link between trade and investment.

3.0 CHALLENGES IN IMPLEMENTATION AGOA INITIATIVE

The EAC Partner States are AGOA eligible but have been facing challenges while implementing the initiative. They have not been able to fully realize the benefits offered by AGOA. Below are some of the challenges:

i. AGOA is a unilateral program which can be modified or terminated in favour and at the discretion of the US Government. AGOA legislation authorizes the President to (1) designate an SSA country as a beneficiary SSA country if the President determines the country meets the eligibility requirements set forth by the authorizing legislation, and (2) grant certain unilateral trade benefits to designated beneficiary SSA countries.

ii. Lack of predictability and sustainability of AGOA due to its limited lifespan. The current AGOA expires in 2015 and therefore investors are not motivated to invest in SSA due to the unpredictable nature of the program. AGOA is a short-lived initiative but investments under AGOA are long term.

iii. The expiry of the 3rd Country Fabric Provision in 2015:AGOA's third country fabric provision allows beneficiaries countries to use yarn and fabric from any country, and this has been a key factor for the success of the apparel industry in Africa. In fact 95 percent of the apparel and textile products under AGOA are dependent on the third country fabric provision. However, the provision on apparel and textile has been subject to renewal every two or three years, and this has resulted in major uncertainties and has negatively affected AGOA eligible countries in terms of significant loss of orders and consequently, unemployment.

iv. Country eligibility: As part of the legislation, the U.S. undertakes an annual review of all beneficiary countries to determine whether they are conforming with AGOA's conditionalities. Some beneficiary countries in the past have lost their eligibility on political grounds. This has resulted into trade disruptions affecting regional supply chains. In some cases, such withdrawal of AGOA benefits has had negative economic impacts and consequences to other unintended member countries including US investors and suppliers.

v. Higher Transportation Costs to the U.S. Market: There is lack of direct flights from EAC to the US and the same applies for sea transport. This affects the cost of shipment of products such as cut flowers and apparel among others.

vi. High transaction costs due to inadequate well-developed infrastructure, appropriate information and communication technology, post-harvest handling facilities, cold chain facilities, power, irrigation, water and sanitation, poor road and railway networks.

vii. Stringent Sanitary and Phytosanitary (SPS) measures: For agricultural products, such as fresh produce and beef, majority of East African producers are often unable to meet U.S. SPS requirements and are thus unable to export to the United States.

viii. Stringent Rules of origin: AGOA rules of origin are based on those in the U.S. GSP program. To be eligible for AGOA benefits, products must be grown, produced, or manufactured in one or more of the beneficiary countries and exported directly from an AGOA beneficiary country to the United States. With these conditions, most of products from eligible countries cannot access US market. Moreover, unless "wholly obtained" from a single AGOA country, goods are subject to a 35-percent value-content rule. According to industry sources, some SSA industries, such as tuna processing, have difficulty achieving the 35 percent value addition and therefore cannot export to the United States duty-free under AGOA. The restrictive rules of origin also do not reflect the current market reality, given that African textile mills cannot in general produce yarns or fabric in sufficient variety and quantity to meet the needs of African apparel producers or the requirements of developed country retailers;

ix. Low flows of US investments into the region: poor investment flow in EAC has affected the trade flow between the two parties as U.S. investment in EAC could play a critical role in opening up market opportunities.

x. Lack of direct flights to the US: For products such as cut flowers and apparel, African producers benefit from regular, direct flights to Europe, which allow for fast delivery. In the context of EAC there is no direct air and sea transportation to the U.S.

xi. Narrow range of exportable products: Although AGOA allows duty free and largely quota free market access to the U.S. market for as many as 1,835 beneficiary products in addition to the over 4,600 GSP products, tariffs on products excluded from AGOA - especially on agricultural goods, remain high. The AGOA lists excludes some of the key products of export interests of the region. Certain agricultural products of export interest to EAC are excluded from AGOA while others are subject to the tariff rate quota (TRQ). Indeed, some SSA exports to the U.S. market, such as sugar, tobacco, meat, and dairy products, continue to be subject to tariff rate quotas (TRQs) limiting export volumes eligible for duty-free treatment. For example, SSA countries producing sugar are eligible for duty-free treatment under U.S. raw sugar import quotas, but only under low-volume quotas granted to specific countries.

xii. Limited availability of affordable trade finance services especially for the SMEs and rural farmers. Access to credit and other financial services is still limited due to high interest rates and collateral requirements.

xiii. Limited information to stakeholders about AGOA: Many stakeholders, both within the Government, private sector and civil society are not well informed about AGOA. In addition there is limited access to appropriate market information and business contacts needed by African manufacturers and producers to effectively respond to specific market demands. Also, producers lack knowledge of consumer tastes and preferences, and other marketing and international trade practices including standards and packaging. Even when they have such information they have limited technical capacity to evaluate it, plan and develop strategies that can enable them to position themselves and trade competitively in a multifaceted market such as that of the US.

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xiv. Inadequate networking mechanism between US and EAC business community in relation to AGOA opportunities:

xv. Unrestrained competition from well-established and globally competitive, and in some cases, subsidized producers of textiles and apparel particularly following the January 1, 2005, elimination of quotas previously maintained by members of the World Trade Organization (WTO);

xvi. Lack of regional AGOA policy and implementation strategy and low levels of AGOA mainstreaming within EAC Partner States.

3.0 AFRICAN GROWTH OPPORTUNITY ACT'S FUTURE

3.1 Reciprocity market access

It has been recognised that AGOA has transformed the way the United States and Africa interact on trade and economic issues. The U.S. total trade with sub-Saharan Africa has grown more than 250% under AGOA, from $28.2 billion in 2001 to $72.3 billion in 2012. While petroleum products still account for the largest portion of U.S. imports from Africa under AGOA, non-oil AGOA trade totalled $4.8 billion in 2012, more than triple the amount in 2001. Sectors with sizeable increases during this period included vehicles and parts ($2.0 billion in 2012 compared to $289 million in 2001), apparel ($815 million in 2012; $359 million in 2001), and fruits and nuts ($121 million in 2012; $29.4 million in 2001).

However, AGOA is due to expire in 2015 and there are concerns whether the initiative would be re-authorized in time to avoid trade disruptions. The US government has committed to a "seamless" renewal of AGOA before it expires on Sept. 30, 2015. The U.S. has also indicated that modifications would be needed to reflect the changes in the global economic situation since the program was created in 2000.

AGOA currently is a unilateral market access preference granted by the US to SSA countries. The U.S. under the new AGOA is contemplating integrating the principle of reciprocity as envisaged in the AGOA Act. The advantage of reciprocal market access arrangement is that both parties negotiate and agree the terms of trade as equal partners such as Rules of Origin, eligibility criteria among others.

According a study titled "The African Growth and Opportunity Act: An Empirical Analysis of the Possibilities Post – 2015, it provides an analysis of US-Africa trade under five categories of post 2015 scenarios. These scenarios look at trade and income implications as follows; (i) not extending AGOA beyond 2015; (ii) expanded product eligibility for AGOA; (iii) revisions to the currently eligible countries; (iv) a restructuring of AGOA to resemble the EPA of the EU; and (v) the effects that a possible EU-US FTA could have on AGOA or on an EPA- like situation, with an additional scenario examining how a continental FTA would play into such an integrated trade environment.

The results *inter alia* indicate, first that should AGOA not be extended and current AGOA-eligible countries revert back to the US GSPs trade losses would be disproportionally be distributed across the continent due to variations in AGOA eligible products that are exported by different countries. The results further show that EPA-like agreements could result in large losses in tariff revenue for African countries but also demonstrate the importance of regional integration because there is a higher increase in intra-African trade when EPAs are in place with the CFTA instead of the currently proposed FTAs. The findings of the study suggest certain recommendations including extending AGOA beyond 2015: Without an extension, there will be decline in African exports, economic diversification and employment for many AGOA eligible countries.

One of the key objectives of AGOA is to encourage regional integration. The level of intra African trade currently stands at about 10% compared to other regions such as Europe at 56% and Asia at 23.3 %. There is need for deliberate efforts to deepen regional integration in Africa in order to boost economic growth. The African Union Heads of State are committed to achieving a continental FTA by 2017. This will promote intra-regional Africa trade and strengthen regional value chains. It is important for AGOA to promote regional integration efforts by SSA and therefore any discussions on possible FTA between EAC and U.S. should consider this.

The US is currently involved in trade negotiations with Europe and a dozen Asia-Pacific countries while on the other hand the EAC Partner States are negotiating EPA with the EU. The desire to conclude EPAs by SSA countries is driven by pressure to avoid the impact of trade disruption that would be created in case the current preferences are withdrawn in line with the EU deadline of concluding EPAs by September 2014. There is need for detailed analysis and review of the outcome of the ongoing EPA negotiations to inform and determine SSA countries readiness to negotiate a FTA with the US.

The Third Country Fabric Provision under AGOA allows AGOA beneficiary countries to use yarn and fabrics from any country. This is a key element responsible for the success of the AGOA apparel industry. It has also enabled African exporters remain competitive in the US market despite competition from other competitive producers and especially after the expiry of the WTO Multi Fibre Agreement. However, this provision has been subjected to renewal every two or three years which creates investment uncertainty in the sector. It should be noted that the Third Country Fabric Provision is responsible for the 95% of the apparel and textile products exports under AGOA.

The current AGOA only covers market access and does not have a development component to support SSA countries efforts to implement programmes and policies to take advantage of the initiatives and hence the low utilisation rate. Ear marking substantial development resources could help SSA countries invest in infrastructure and capacity building.

The current WTO waiver is due to expire in September 2015. Once the AGOA Act is extended SSA will need to work closely with the US in seeking for the waiver at the WTO. There is a possibility that SSA countries will be expected to give concessions in other areas of negotiations to other WTO members including the US.

3.2 –EAC- U. S. PARTNERSHIP

On 16th July 2008 the EAC Partner States and the United States signed a Trade and Investment Framework Agreement (TIFA) in Washington D.C. In June 2011, the U.S. expressed interest to negotiate a Trade and Investment Partnership Agreement with the EAC, following which the EAC Council in September 2011 expressed willingness to engage with the U.S. on the said Partnership.

Further, during the margins of the AGOA Forum held in Washington D.C. on 14th June 2012, the EAC Ministers responsible for Trade matters and the United States Trade Representative (USTR) met and issued a joint statement that resolved to upscale the TIFA to a new Trade and Investment Partnership.
The new Trade and Investment Partnership under negotiations comprise the following: (i) a regional investment treaty; (ii) a trade facilitation agreement; (iii) continued trade capacity building assistance; and (iv) commercial dialogue between the EAC and U.S. private sectors.

In addition, on the margins of the 2013 AGOA Forum, the ministerial meeting between the EAC and U.S. agreed to: (i) launch formal negotiations on a trade facilitation agreement; (ii) add to their Trade and Investment Partnership new elements focused on sanitary and phytosanitary measures and technical barriers to trade; (iii) transform the U.S. Agency for International Development's East Africa Trade Hub into a U.S.-East Africa Trade and Investment Center to expand U.S. regional trade programs, spur private investment, and scale up business-to-business and association-to-association partnerships; (iv) form a new partnership between the U.S. and TradeMark East Africa, an organization dedicated to supporting greater regional integration by breaking down barriers at the border and facilitating trade; and (iv) continue to work toward an investment treaty.

The current EAC-US TIP discussions do not include market access issues however there is limited discussions on capacity building towards supporting the EAC Partner States take advantage of AGOA mainly through the existing East African Trade Hub due to be upgraded to a Trade and Investment Centre. The EAC Partner States may wish to review the possible timing of initiating discussions on market access under the EAC – US TIP in consultation with other AGOA beneficiary countries. From the data above, the fact is that EAC is not performing very well under the AGOA program. This is the result of many challenges that impede the implementation of AGOA initiative.

4.0 EAC POSITION ON POST 2015 AGOA PROGRAM

During the 2013 AGOA Forum, the United States committed to work for the seamless authorization of AGOA beyond 2015. Both the U.S. and SSA agree in principle that AGOA should be re-authorized in a timely manner for a long-enough period of time that benefits all strategic stakeholders.

The objective of this paper is therefore; to take a proactive common position for the EAC in the design and delivery of the new trade initiative in order to advocate for a more robust and transformative commercial engagement between the EAC and the USA after the current AGOA has realized full term in 2015.

In this regard, the EAC is formulating a common position on enhancing EAC-U.S. relationship under a new post 2015 AGOA program. The position takes into account the performance so far and the challenges faced while implementing the AGOA program, the on-going negotiations on the EAC – U.S. Trade and Investment Partnership Agreement, as well as other negotiations with EAC like the EPA with the European Union, the EAC-COMESA-SADC Tripartite framework agreement and the WTO Negotiations.

The EAC position on enhancing EAC-U.S. trade and Investment relationship under the new post 2015 AGOA program is captured in the matrix below :

EAC Position on enhancing EAC-U.S. Trade and Investment relationship under a new post 2015 AGOA Program

N/O	ISSUE	EAC POSITION
1	The current AGOA legislation expires in September, 30th 2015	The Congress to re-authorize AGOA for at least 15 years by 2014 in an integrated and all-inclusive approach so as to guarantee the predictability and certainty required for long-term investment and economic growth both in the U.S. and across the African continent, based on mutually reinforcing U.S.-Africa relations.
2	AGOA is unpredictable and unilateral program, which lacks sustainability and can be terminated at the discretion of the US Government	In the long-run EAC Partner States to : i. negotiate a predictable and sustainable Free Trade Agreement with the US; and ii. review the possible timing of initiating FTA negotiations in consultation with other AGOA beneficiary countries
3	The expiry of the 3rd Country Fabric Provision in 2015:AGOA's third country fabric provision allows beneficiaries countries to use yarn and fabric from any country, and this has been a key factor for the success of the apparel industry in Africa	Congress to make the Third Country Fabric Rule of the textile and apparel coterminous with the life of AGOA
4	Country eligibility requirements	Congress to review eligibility criteria and ensure that non-trade concerns are not included
5	High transaction costs due to inadequate well-developed infrastructure, appropriate in-formation and communication technology, post-harvest handling facilities, cold chain facilities, power, irrigation, water and sanitation, poor road and railway networks	Lobby the US to facilitate infrastructure development which links productive areas
6	Stringent Sanitary and Phytosanitary (SPS) measures	The US should: i. provide technical assistance and capacity building to African producers to enable them meet US sanitary and phytosanitary standards on food safety, animal and plant health i. fast track the Pest Risk Analysis (PRA) approval process for products of export interest to

		EAC
7	Stringent Rules of origin	Congress should: i. make the AGOA Rules of Origin less restrictive, allowing EAC to have the required flexibility to exploit their comparative advantage; ii. Revisit the AGOA rules of origin for canned tuna by allowing AGOA eligible countries to export canned tuna duty free as long as the tuna is processed and canned in their country or in their territorial waters. iii. Consider to allow a sourcing of a third country raw tuna for production of canned tuna to be exported under the AGOA regime. iv. Consider the current 35% value addition requirement to be reduced to 10%; v. Facilitate the entry of AGOA eligible countries into the global production chain by modifying the AGOA rules of origin.
8	Low flows of US investments into the EAC	The U.S. Government (Executive and Congress) should provide incentives to U.S. investors in EAC
9	Lack of direct flights to the US	The US should work in close collaboration with the EAC Partner States to establish direct flights to reduce the transport costs and reduce damage of perishable products
10	Narrow range of exportable products	The Congress should expand the AGOA list of eligible products to include all agricultural products
11	Limited availability of affordable trade finance services especially for the SMEs and rural farmers	The US should support EAC Partner States in establishing a fund to enhance access to trade finance
12	Limited information to stakeholders about AGOA	EAC to create awareness about AGOA
13	Inadequate networking mechanism between US and EAC business community in relation to AGOA opportunities	The EAC and US should strengthen the existing collaborating mechanism in support of the private sector

14	Unrestrained competition from well-established and globally competitive, and in some cases, subsidized producers of textiles and apparel particularly following the January 1, 2005, elimination of quotas previously maintained by members of the World Trade Organization (WTO)	EAC to negotiate at the WTO and lobby the US to exclusively retain the current AGOA benefits
15	Lack of regional AGOA policy and implementation strategy; and low levels of AGOA mainstreaming within EAC Partner States	The EAC Partner States to develop a regional policy and implementation strategy

~~The objective of this paper is therefore; to take a proactive common position for the EAC in the design and delivery of the new trade initiative in order to advocate for a more robust and transformative commercial engagement between the EAC and the USA after the current AGOA has realized full term in 2015.~~