

AFRICAN GROWTH AND OPPORTUNITY ACT

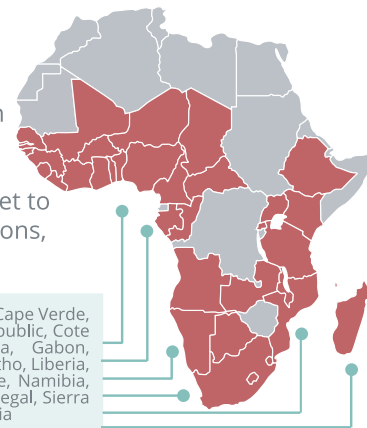
AGOA



Spotlight on the AGOA eligibility criteria, annual and out-of-cycle reviews, and related legal provisions

WHAT IS AGOA ?

The *African Growth and Opportunity Act (AGOA)* forms a part of United States' trade legislation. AGOA was signed into law in May 2000 under President Bill Clinton as **Public Law 106 (200)**. The legislation grants special market access in the form of duty-free entry to qualifying **sub-Saharan African** countries. The legislation also provides a framework for other US support to beneficiary countries. While initially set to expire in September 2008, the legislation has been extended on a number of occasions, most recently in 2015, for a period of 10 years (now to **Sept 2025**).



Eligibility status JANUARY 2019

Angola, Benin, Botswana, Burkina Faso, Cameroon, Cape Verde, Chad, Central African Republic, Comoros, Congo Republic, Cote d'Ivoire, Djibouti, Eswatini (Swaziland), Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Sierra Leone, South Africa, Tanzania, Togo, Uganda, Zambia

WHO IS ELIGIBLE?

With some exceptions, AGOA eligibility is open to countries listed in a statutorily created list of sub-Saharan African countries. Since AGOA builds on and enhances preferences available under the *US Generalized System of Preferences (GSP)*, AGOA eligibility requires that a country is already a GSP beneficiary country. In order to be considered for AGOA beneficiary status, an eligible country must meet - on an ongoing basis - the eligibility criteria of AGOA. While AGOA is a non-reciprocal preference scheme of the US, it is not unconditional. When countries no longer meet AGOA's eligibility criteria, their AGOA preferences are suspended.

AGOA eligibility



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WHAT ARE THE COUNTRY ELIBILITY CRITERIA?

The AGOA legislation requires that an annual determination is made by the US president regarding a country's AGOA beneficiary status. Two different albeit related legislated sets of criteria are used in considering a country's eligibility: these are contained in the AGOA legislation as well as in the US Trade Act of 1974 (which sets out the eligibility requirements relating to the US GSP programme).

SECTION 104 OF AGOA (19 U.S.C. 3703)

A country must have established or be making continual progress towards establishing:

- ⊙ A market-based economy that protects private property rights, incorporates an open rules-based trading system, and minimizes government interference in the economy
- ⊙ The rule of law, political pluralism, and the right to due process
- ⊙ The elimination of barriers to United States trade and investment, including through the protection of intellectual property, resolution of bilateral trade disputes, provision of national treatment to create an environment conducive to domestic and foreign investment
- ⊙ Economic policies to reduce poverty, expand infrastructure, increase the availability of healthcare, promote private enterprise
- ⊙ Systems to combat corruption and bribery, protection of internationally recognized worker rights including right to bargain collectively, minimum age limits for the employment of children
- ⊙ A country must not engage in activities that undermine US national security or foreign policy interests
- ⊙ A country must not engage in gross violations of internationally recognized human rights or provide support for acts of international terrorism

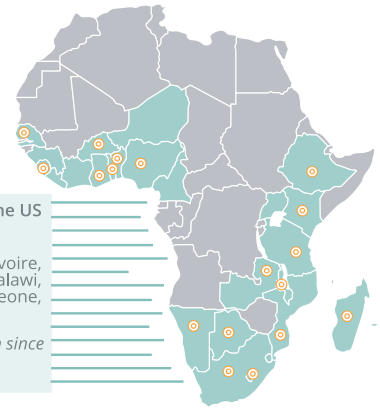
SECTION 502 OF THE TRADE ACT OF 1974, OR GSP (19 U.S.C. 2462)

The eligibility criteria contained in the US Trade Act are more comprehensive than those contained in the AGOA legislation and consist of a range of positive ("what a country must do") and negative ("what a country must not do") standards, factors and criteria. These include:

- ⊙ Economic factors, such as per capita GNP, living standards, economic development
- ⊙ Assurances provided to the US that the country will provide equitable and reasonable access to its market
- ⊙ The extent to which a country provides protection for intellectual property rights, reduces or eliminates trade barriers and trade distorting policies, and reduced barriers to trade in services affords its workers internationally recognized worker rights
- ⊙ A country must not have nationalized or expropriated ownership or control of property, including patents, trademarks, or copyrights, owned by a United States citizen or company, unless there has been adequate and prompt compensation and good faith negotiations
- ⊙ Where notwithstanding the above a country's eligibility would be in the national (US) economic interest, its eligibility status can nevertheless be granted

WHAT ARE THE ELIGIBILITY CRITERIA TO EXPORT TEXTILES AND APPAREL?

The AGOA legislation distinguishes between general goods on the one hand and textiles and apparel on the other, for which special eligibility criteria are in place. To be eligible for textile and apparel preferences, an AGOA beneficiary country must implement an apparel visa system which allows administration, monitoring and enforcement of the Rules of Origin provisions for this sector, and the various special categories under which such goods may enter the US duty-free.



Eligibility status JANUARY 2019

- Category 9 provisions: Countries denoted by a special mark on the map alongside are eligible for preferential treatment for folklore articles, handloomed / handmade articles, and ethnic printed fabrics

The following AGOA beneficiaries are authorized to export apparel to the US under AGOA preference:

Benin, Botswana, Burkina Faso, Cameroon, Cape Verde, Chad, Cote d'Ivoire, Eswatini (Swaziland), Ghana, Guinea, Kenya, Lesotho, Liberia, Ethiopia, Malawi, Mauritius, Mozambique, Namibia, Madagascar, Nigeria, Senegal, Sierra Leone, South Africa, Tanzania, Togo, Uganda, Zambia

The Gambia, Niger and Mali have not renewed their apparel visa authorization since having their AGOA beneficiary status restored; Rwanda's AGOA apparel preferences were suspended effective 31 July 2018

CAN COUNTRIES LOSE THEIR AGOA BENEFICIARY STATUS?

AGOA preferences are linked to countries remaining compliant with the AGOA eligibility criteria. For example, when a country maintains barriers against US trade and investment, or does not respect standards on human rights, or arbitrarily expropriates assets owed by US citizens or corporations, then the country risks losing its AGOA beneficiary status. A number of AGOA beneficiaries have over the years lost their preference status for reasons that include the above (see overview of criteria elsewhere); some have regained their status once becoming compliant again. Recent examples are Madagascar (lost 2009 restored June 2014); Eswatini / Swaziland (lost 2014 restored December 2017); Central African Republic (lost 2004 restored end 2016). Countries that have lost their AGOA beneficiary status and are currently suspended include Mauritania (effective 1 January 2019), Burundi (1 January 2016), South Sudan (1 January 2015), DR Congo (1 January 2011).

- Effective 31 July 2018, Rwanda lost AGOA preferences for its apparel sector following an out-of-cycle review relating to compliance with the AGOA eligibility criteria.

ANNUAL AND OUT-OF-CYCLE ELIGIBILITY REVIEWS

ANNUAL REVIEWS

Ongoing monitoring and annual review of all AGOA beneficiary countries' compliance with the eligibility criteria set out in the legislation. This monitoring function is coordinated by the Office of the US Trade Representative (USTR). Countries found not to be compliant with AGOA's eligibility criteria may have their preferential status revoked.

OUT-OF-CYCLE REVIEWS

The extension of AGOA in 2015 - as part of the Trade Preferences Extension Act (TPEA) - included new provisions relating to a petition process whereby any interested person would be able to file a petition with the USTR to trigger an out-of-cycle review (OOCR) of a country's compliance with AGOA's eligibility criteria. These provisions meant that eligibility would no longer be adjudicated (only) annually but can take place at any time of the year - and with potential sanctions also possible during the year following such a review and notification period.

Petition for review

Any interested party may petition the USTR for an out-of cycle review, citing the grounds for possible non-compliance by an AGOA beneficiary country.

Action following petition

Petitions are vetted by the AGOA Implementation Sub-Committee, which will decide whether there are exceptional circumstances warranting the OOCR.

Publication of petition

Congress is notified of any petitions. The USTR then publishes in the official Federal Register details of the review process and invites submissions.

Procedural notification

Submissions are reviewed and any determination made by the President is first communicated to Congress.

Public hearings

Public hearings, where oral submissions can be made, can form part of the review process and complement any written submissions.

Public inspection

The USTR publishes submissions received pursuant to the review on the www.regulations.gov website. Business confidential information is redacted.

Possible outcomes and consequences

Where the review finds that the AGOA beneficiary country no longer meets the requirements of the AGOA eligibility criteria, the US (President) has the option of (a) terminating the AGOA beneficiary status of a country, or to (b) withdraw, (c) suspend or (d) limit the preferences with respect to articles exported by that country to the US preferentially.

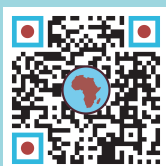
Prior to withdrawing or amending preferences, a notice period of 60 days must be given to the country.

Under the previous AGOA legislation this more tailored approach was not possible. The legislation now gives much greater power to 'interested parties' to petition for an out-of-cycle review, but also allows the US to effect changes to issues of non-compliance without necessarily having to suspend the country from AGOA beneficiary status as a whole.

For example, Rwanda recently had its AGOA preferences for apparel exports suspended following an out-of-cycle review of Kenya, Tanzania and Rwanda's AGOA status (involving the countries' policies on the importation of second-hand clothing).

South Africa was subject to a compulsory out-of-cycle review in 2015 relating to the country's policies on the importation of chicken, beef and pork products. This issue was resolved without a proposed suspension of South Africa's AGOA access for its agricultural products being implemented.

AGOA eligibility criteria - US Code -



www.AGOA.info

GSP eligibility criteria - US Code -



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AGOA Out-of-Cycle Reviews



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Acknowledgements

This Infographic has been created by the Trade Law Centre (tralac). The AGOA.info web portal forms part of tralac's offerings.

Eckart Naumann | TRALAC 11/2018

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