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).

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.

WHAT ARE THE COUNTRY ELIGIBILITY 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 (19U.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

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.

<table>
<thead>
<tr>
<th>Eligibility status</th>
<th>JANUARY 2019</th>
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<tbody>
<tr>
<td>Category G provisions:</td>
<td>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.</td>
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<tr>
<td>The following AGOA beneficiaries are authorized to export apparel to the US under AGOA preference:</td>
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<tr>
<td>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</td>
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<tr>
<td>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</td>
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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

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.

**ANNUAL REVIEWS**

- **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.

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

- **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 (b) suspend, (c) suspend or (d) limit the preferences with respect to articles exported by that country to the US preferentially.

- **Publication of petition**
  - Congress is notified of any petitions. The US Treasury publishes in the Federal Register details of the review process and invites submissions.

**OUT-OF-CYCLE REVIEWS**

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

- **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.

- **Publication**
  - 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 mean 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.

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