Kenya - United States FTA
FROM AGOA TOWARDS A BILATERAL FREE TRADE AREA

Following a meeting between Kenya President Uhuru Kenyatta and United States President Donald Trump at the White House, plans to initiate negotiations towards a bilateral Free Trade Area were announced on 6 February 2020. No Sub-Saharan African country has yet concluded a FTA with the United States; the 2006 U.S.-Morocco FTA is currently the only such agreement between an African country and the United States.

BACKGROUND: AGOA 2000–2025

- The African Growth and Opportunity Act (AGOA) forms part of United States legislation enacted by the U.S. Congress in May 2000 under former President Bill Clinton. This represented a new trade and investment policy towards Sub-Saharan Africa, and resulting in a deeper and more meaningful economic and political relationship.
- AGOA is non-reciprocal: it offers qualifying products made in eligible African ‘beneficiary’ countries preferential, duty-free access to the U.S. market. Kenya became an AGOA beneficiary at the time of AGOA’s inception and was also one of the first countries eligible to export apparel under separate apparel provisions.
- Kenya has been a leading beneficiary of AGOA preferences, and was one of the first African countries to export under the programme.
- AGOA builds on and extends preferences available under the US Generalized System of Preferences (GSP), *inter alia* by significantly expanding the list of qualifying products (including to sensitive categories such as textiles and apparel), by removing the competitive need limitations (CNL) which potentially capped preferences when U.S. imports exceeded a certain threshold, and by providing longer-term preferences that are not subject to the same periodic expiry and renewal requirements of the GSP.

Kenya’s current US market access under AGOA: Breakdown of U.S. tariff lines / preference program

Until AGOA expires, Kenya is still able to enjoy duty-free access to the U.S. for 97% of possible tariff lines.
- 37% of all tariff lines are currently duty-free to WTO member States (Most-Favoured Nation principle)
- 3% of all tariff lines attract U.S. import duties when produced and exported by Kenya to the US
- 60% of all tariff lines benefit from AGOA / GSP duty-free access. This includes approximately 1,500 tariff lines ordinarily reserved for LDC countries under the GSP scheme. Without AGOA, Kenya - as a non-LDC - would not qualify for preferences for these products but would in tariff lines that have full GSP status, provided the GSP programme is active. The GSP requires periodic reauthorization

RECENT TIMELINES: TOWARDS A KENYA-U.S. FREE TRADE AREA:

- 2018
  - August: Kenya President Kenyatta pays a State visit to U.S.
  - Formation of Bilateral Strategic Dialogue to meet biannually
- 2019
  - Formation of Trade and Investment Working Group (TIWG)
  - MEets in April and October 2019 focusing on trade related themes
- 2020
  - February: Second State visit by Kenya President Kenyatta to the U.S.
  - U.S. President Trump announces intention to initiate trade negotiations with Kenya
  - March: USTR Lighthizer formally notifies the U.S. Congress
  - July: FTA negotiations between the parties formally commence

MAY-JUNE 2020: U.S. AND KENYA PUBLISH NEGOTIATING PRINCIPLES AND OBJECTIVES
- May 2020: United States publishes ‘Summary of specific negotiating objectives’
- June 2020: Kenya publishes ‘Negotiating principles, objectives and scope’
TOWARDS A BILATERAL FREE TRADE AREA

What is a FTA, and what is covered?

A Free Trade Area, or Free Trade Agreement, is a legal pact between two or more countries that typically removes or significantly reduces impediments to the flow of goods and services between the partner countries. For this purpose, modern FTAs go beyond the mere reduction of tariffs on traded goods, and also address trade in services, investment, technical barriers to trade (non-tariff barriers), dispute resolution, customs administration and cooperation, sanitary/phytosanitary standards, and other regulatory disciplines. The parties to the Kenya-U.S. FTA have confirmed that they intend negotiating a comprehensive agreement between themselves. At this stage the negotiations are between Kenya and the US, although by virtue of the fact that Kenya is a member of the East African Customs Union (and any FTA will have implications for the remaining EAC Members), other member countries could join the negotiations.

What are the negotiating principles?

Both the United States and Kenya have published specific negotiating objectives ahead of the formal start to FTA negotiations in July 2020. While there is a high degree of correlation in the thematic areas (a combined summary of issues raised is provided alongside), the specific objectives and dispute resolutions often differ. What is clear is that a wide range of subjects is set to be addressed in the negotiations, with the end goal a comprehensive FTA. The respective documents can be downloaded from AGOA.info at the following web address: www.AGOA.info/bilaterals/KenyaUSA

UNITED STATES’ TRADE IN GOODS WITH KENYA SINCE THE START OF AGOA IN 2000

United States exports to Kenya since 2000 | $ million

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Top 5 exports from Kenya to the U.S. | 2015-2019*

- Apparel
- Agricultural products
- Food and kindred
- Minerals and ores
- Chemicals

$1,894m 100% under AGOA
$158m 100% under AGOA
$128m 0% under AGOA
$40m 0.1% under AGOA

Top 5 imports by Kenya from the U.S. | 2015-2019*

- Transportation equipment
- Chemicals
- Agricultural products
- Computer and electronic products
- Machinery

$1,050m
$251m
$191m
$188m
$171m

KENYA’S exports to the United States by programme since 2000 | $ million

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How did Kenya’s exports enter the U.S. during 2019?

- $667m: Value of Kenya’s goods exports to the U.S.
- $518m: Kenya’s exports under AGOA/GSP preferences
- NO duties paid
- $0.5m: Duties paid on dutiable items

Source: Extracted from USITC Database database. Totals may not always perfectly correspond due to rounding.

Acknowledgements

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Eckart Naumann | TRALAC 11/2020

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www.AGOA.info
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