# 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 seperate apparel provisions.
- **Kenya** has been a leading beneficiary of AGOA preferences, and was one of the first African countries to export under the programme.

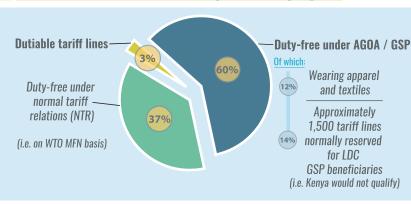


• **AGOA** builds on and extends preferences available under the US **Generalized System of Preferences (GSP)**, *inter alia* by significantly expanding the list of qualifying products (including to sensitive categories such as textiles and apparel), by removing the competitive need limitations (CNL) 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



Current market preferences for Kenya's exports to the U.S. are non-reciprocal, and unilateral



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:

August: Kenya President
Kenyatta pays a State visit to U.S.
Formation of Bilateral
Strategic Dialogue to meet biannually

- 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

# Pormation of Trade and Investment Working Group (TIWG) Meets in April and October 2019 focusing on trade related themes

#### MAY - JUNE 2020: U.S. AND KENYA PUBLISH NEGOTIATING PRINCIPLES AND OBJECTVES

- 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

**Technical Barriers to Trade** 

National treatment of conformity assessment bodies and mutual recognition; application of WTO TBT decisions; to build on US-EAC Cooperation Agreement

**NEGOTIATING** 

**PRINCIPLES** 

Trade in goods Elimination of tariffs and non-tariff barriers

Intellectual Property

Reduction of IP barriers; effective

IP protection: cooperation

and capacity building

**Environment** 

Enforceable environmental

obligations: multilateral collaboration

**SOEs** 

Commercial principles vs.

asymmetric treatment; recognition of important role that SOEs play

Services Commitments on digital trade; open and fair conditions for services trade; special and differential treatment

Trade Remedies **Recognition of WTO** trade remedy provisions

**Legal and Transparency** reater transparancy aroun regulations: enforcement:

> **SMEs** Co-operation on SME issues of Cn-

Deeper cooperation; science-based adoption of standards

SPS

**Competition Policy** 

Rules around anti-competitive business conduct; competition law enforcement

AD, CVD and safeguard laws

combating corruption

Lahour Cooperation **ILO** standards

mutual interest

## What are the negotiating principles?

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

sanitary/phytosanitary standards, and other regulatory disciplines.

The parties to the **Kenya-U.S. FTA** have confirmed that they intend

stage the negotiations are between Kenya and the US, although by

Union (and any FTA will have implications for the remaining EAC

Members), other member countries could join the negotiations.

negotiating a comprehensive agreement between themselves. At this

virtue of the fact that Kenya is a member of the East African Customs

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,

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 approaches often differ. What is clear is that a wide range of subjects are 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

adoption of WTO trade facilitation disciplines Government procurement

Dispute Settlement Mutual opportunities; commitments Efficient and transparent dispute settlement mechanisms

**Customs matters** 

Rules of origin; customs valuation;

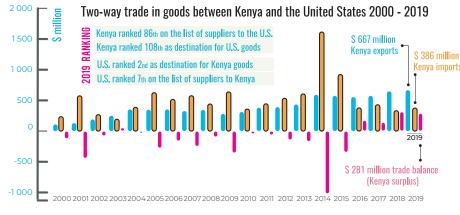
**Economic and Technical Cooperation** 

assymmetry

Support development of export-focused value chain

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





Follow updates on the US-Kenya FTA negotiations and related news

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 preference

NO duties paid

\$149m Kenya's exports without preferences \$0.5m Duties paid on

dutiable items

KENYA's exports to the United States by programme since 2000 $   $	\$ million

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
TOTAL Kenya exports to U.S.	109	129	189	249	352	348	353	326	344	280	311	381	390	433	591	573	553	572	645	667
Exports under AGOA	0	55	124	181	280	272	265	250	252	205	221	288	288	337	417	428	391	402	467	512
Exports under GSP	4	4	5	4	7	6	8	5	3	3	5	4	5	6	6	6	5	5	4	6
No preferences claimed	105	70	60	65	65	69	80	71	87	72	86	88	97	91	168	139	157	164	173	149

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

United States exports to Kenya since 2000 | \$ million 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2015 2016 2017 2018 2019 TOTAL U.S. exports to Kenya

#### TOP 5 EXPORTS FROM KENYA TO THE U.S. | 2015-2019\*

### TOP 5 IMPORTS BY KENYA FROM THE U.S. I









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

Acknowledgements