June 23, 2022

Via: www.regulations.gov

William Shpiece, Chair
Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

RE: 2023 AGOA Eligibility Review; Comments
Docket No. USTR-2022-0004

Dear Mr. Shpiece:

The E-Merchants Trade Council, Inc. (EMTC) appreciates the opportunity to submit comments on the eligibility of sub-Saharan Africa countries to receive benefits under the African Growth and Opportunity Act, which is part of the Office of the U.S. Trade Representative's annual review as published at 87 Fed. Reg. 28856 on May 11, 2022.

EMTC was formed in July 2021 to represent the interests of the e-commerce industry by creating a global community of micro, small and medium size enterprise (MSMEs) e-sellers, marketplace platforms, and service providers to resolve trade, tax and transportation challenges. EMTC's advocacy mission is to support national and international policies that simplify cross-border transactions of physical and digital goods. EMTC facilitates dialogue among the E-Merchant worldwide community and global regulators.

We hope the Committee finds EMTC's comments particularly relevant.

1. **Policy Objectives: What is the goal of strategic trade with sub-Saharan Africa countries?**
    a. **Counter Chinese influence in AGOA markets**
    b. **Support AfCTA to grow ecommerce opportunities for African SME in AGOA to increase standards of living**
    c. **Support trade facilitation with and within Africa for US SMEs to sell quality US products**

Since its enactment in 2000, the African Growth and Opportunity Act (AGOA) has been at the core of U.S. economic policy and commercial engagement with Africa. Through AGOA, the U.S.

1655 North Fort Myer Drive Suite 700
Arlington, VA 22209
(703) 574-0000
www.emtc.org

Congress seeks to increase U.S. trade and investment with the region, promote sustainable economic growth through trade, and encourage the rule of law and market-oriented reforms

In contrast, the significant impact of China's engagement and investment in the sub-Saharan countries has been widely reported. The Belt and Road Initiative (BRI) is China's infrastructure development plan to invest in nearly 70 countries and organizations worldwide as a centerpiece of China's foreign policy. It is a grand strategy to deliver infrastructure connectivity and strategic prowess across the developing world. Africa is the most strategic region in China's Trillion-Dollar BRI. China is Africa's largest partner with revenues expected to reach $440 billion by 2025.[1]

China has four strategic interests in Africa.[2] It seeks access to natural resources, particularly oil and gas, to guarantee supply for its industrial sector. China views Africa as an export market investment opportunity for labor intensive industries as it transitions its own economic activities. Sino-African relations expand China's influence with African support for a "One China" policy. China seeks stability in sub-Saharan Africa to protect its investments. Africa has welcomed the investments in infrastructure and economic growth that benefits their communities.

EMTC proposes that the Biden Administration and Congress consider that AGOA, a U.S. import program is expanded to include benefits for exports and combines the best elements of trade liberalization and national security. EMTC envisions an economic and security agreement that prioritizes:

- Market access for all industry sectors in all AGOA countries
- Full implementation of the WTO Trade Facilitation Agreement for small-medium enterprises
- Export control regime and security agreement
- Digital trade
- Supply chain resilience

2. Market access for all industry sectors in all AGOA countries

a. Create online access to identify AGOA opportunities

In order to assist AGOA beneficiary states make progress toward a market-based economy, EMTC believes that American and African businesses can benefit more from AGOA if more opportunities were made available online, whether it be consumer products offered online e-commerce marketplace platforms, government procurement opportunities tenders through online means, and similar methods to expand MSME participation.

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[1] See McKinsey & Company report, Dance of the Lions and Dragons: the Africa-China Relationship at: https://www.africa.com/africa-china-relationship/

[2] See China in Africa: Implications of a Deepening Relationship at: https://www.rand.org/pubs/research_briefs/RB9760.html.

b. Develop trust through accountability and certification

EMTC understands that regulators have developed regulations focused on risk management in a number of areas to verify parties to a transaction, supply chain security, product safety, and other health and safety measures which often result in pre-clearance requirements. EMTC proposes that AGOA beneficiary countries explore adopting international standards to facilitate cross-border trade, reduction of compliance costs, and create trust between the government, traders, suppliers and consumers.

c. Support the growth of SME through ecommerce

EMTC strongly urges the Biden Administration to prioritize market access for all industry sectors in an expanded AGOA program that allows and encourages U.S. companies to import and export in all sub-Sahara countries in 2023. The Centers of Excellence and Expertise and Small Business Administration should create online access for SMEs to identify and interact digitally for opportunities in the AGOA region to reduce dependence on the current limited number of lower cost sourcing countries. Market access requires the development of trust through accountability in governance of the supply chain.

3. Full implementation of the WTO Trade Facilitation Agreement for small-medium enterprises

EMTC notes that the WTO Trade Facilitation Agreement has been in force for five (5) years. EMTC suggests that preferential financing or other trade benefits be contingent upon specific implementation goals.

4. Export control regime and security agreement

EMTC recognizes that Congress made significant progress in national security legislation with passage of the John S. McCain National Defense Authorization Act, P.L. 115-232 (August 13, 2018) by enacting the Foreign Investment Risk Review Modernization Act of 2018 (132 Stat. 2173) and Export Control Reform (132 Stat. 2208) as part of the same regime to work in concert with each other. EMTC believes that more AGOA countries should be enticed to become military allies of the United States with all the benefits that accrue for purposes of foreign direct investment in the United States and export controls for technology to AGOA members.

5. Digital trade

a. De minimis increase

EMTC believes that an expanded AGOA program should address both the cross-border shipment of physical goods ordered online (e-commerce) and treatment of digital goods (e.g., cross-border digital transmission, data collection, data flows, data localization rules, etc.).

For e-commerce, EMTC strongly believes that prioritizing increasing the *de minimis* threshold for low-value shipments will go a long way to increase MSME participation in global trade, especially as e-seller exporters. Most of the countries in the AGOA have a *de minimis* level between $0 and

$200 whereas the United States *de minimis* threshold is $800. The United States was successful in getting Canada and Mexico to increase their *de minimis* in the U.S.-Mexico-Canada Agreement (USMCA).

Title 19 U.S.C. § 1321 on Administrative Exemptions has been part of the customs statute since the Tariff Act of 1930. Specifically, the *de minimis* threshold under 19 U.S.C. § 1321(a)(2)(C) for articles free of duty "in any other case" was initially set at $1 and periodically raised by Congress – first, to $5 in 1978, and $200 in 1993 as part of the Customs Modernization Act, Title IV of NAFTA.[3] Congress increased the *de minimis* to $800 recently in the Trade Facilitation and Trade Enforcement Act of 2015, P.L. 114-125, 130 Stat. 223. As these amendments demonstrate, Congress has raised the *de minimis* every few decades taking into account the erosion of purchasing power as a result of inflation. EMTC believes this level for *de minimis* is appropriate given reports of inflation at over 6% for 2021 and in excess of 7.5% year-to-date. Congress should commit support for the current U.S. *de minimis level* and stress for near reciprocity in treatment of low value shipments in the Indo-Pacific countries within a limited phased implementation period.

We recognize that Congress has plenary authority to set trade policy and tax rates:

> The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States

U.S. Const. art. I, § 8, cl. 1. However, EMTC is alarmed by the possibility of Congress revisiting *de minimis* and lowering the threshold under 19 U.S.C. § 1321(a)(2)(C) as such policy instability makes it very difficult for companies to plan when they have organized their business operations based on the $800 threshold level. It is precisely because Congress has only increased the *de minimis* threshold infrequently every few decades that makes the possibility of a change after only five (5) years from passage of TFTEA in 2016 greatly concerning to the trade community, particularly e-commerce marketplace platforms, e-sellers and companies that provide trade and transportation services to e-commerce companies.

Since the passage of TFTEA in 2016, the trade community faced the prospect of lowering the *de minimis* threshold under 19 U.S.C. § 1321(a)(2)(C) twice. First, during the negotiation of the USMCA in 2019, the Administration negotiated to raise the *de minimis* threshold for imports to Mexico (to $117) and Canada (to $150), but included a footnote:

> Notwithstanding the amounts set out under this subparagraph, a Party may impose a reciprocal amount that is lower for shipments from another Party if the amount provided for under that other Party's law is lower than that of the Party.

[3] See list of legislative amendments for 19 U.S.C. § 1321 at https://uscode.house.gov/view.xhtml?path=/prelim@title19/chapter4&edition=prelim.

USMCA Ch. 7 Customs Administration and Trade Facilitation, Article 7.8.1(f) Express Shipments, footnote 3 at 7-7.[4] As a result of the trade community's advocacy efforts, Congress wrote a letter to the U.S. Trade Representative stating:

> We strongly oppose any effort by the Executive Branch to lower the current $800 *de minimis* threshold through USMCA implementing bill, including any amendment to 19 U.S.C. 1321 that would grant the Executive Branch additional authority to decrease or eliminate the threshold.
>
> The U.S. *de minimis* threshold is a policy recently set by Congress, which raised the threshold from $200 in 2016. The current *de minimis* threshold still enjoys wide bipartisan support in Congress and throughout the manufacturing, retail, logistics, and e-commerce landscapes. In our view, it is neither necessary, appropriate, nor desirable to change this policy in U.S. law as part of the implementation of USMCA's requirements. In fact, we consider that such an effort would amount to an override of Congressional authority by the Executive Branch, and thus would be entirely inappropriate.

Letter from the Congress of the United States to Ambassador Robert E. Lighthizer, U.S. Trade Representative dated October 18, 2019.[5]

6. Supply chain resilience

As Congress considers several pieces of legislation to build supply chain resilience to counteract the reliance that the United States found itself in the difficult position of relying on China for many commodities (e.g., active pharmaceutical ingredients) and products (e.g., personal protective equipment) during COVID-19, an expanded AGOA should create incentives to manufacture critical products in countries that are U.S. miliary allies if they cannot be produced in the United States. One method of achieving resilience is to jointly map supply chains among the partners in the AGOA region to identify mutually beneficial chains to ensure consistent competitively priced supplies among the partners through multi-lateral trade agreements and *de minimis* programs.

Global trade volumes have increased and evolved since 1993, and the Congress has enacted a series of laws after the attacks of September 11, 2001, designed to balance the needs of the U.S Government to collect data for supply chain security and the need to facilitate legitimate trade. See, Trade Act of 2002, P.L. 107-210, 116 Stat. 933 (August 6, 2002); the Security and Accountability for Every (SAFE) Port Act of 2006, P.L. 109-347, 120 Stat. 1884 (October 13, 2006);

[4] See https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/07_Customs_Administration_and_Trade_Facilitation.pdf

[5] See letter at: https://schweikert.house.gov/sites/schweikert.house.gov/files/2019-10-18%20de%20minimis%20threshold%20letter.%20Schweikert.%20Kind.pdf

Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, 121 Stat. 266 (August 3, 2007); and the Trade Facilitation and Trade Enforcement Act of 2015, P.L. 114-125, 130 Stat. 122 (February 24, 2016). However, none of these laws were a holistic revision of the statutory framework that has been in place since the Tariff Act of 1930.

AGOA should be a centerpiece in U.S. policy to counter the impact of China's global trade expansion in sub-Saharan Africa. To accomplish this, EMTC recommends focusing on creating a risk management framework that:

- increases supply chain visibility and access through the use of transparent digital markets;
- supports trade facilitation by simplifying cross-border transactions and clarification of data elements (country of origin calculations) given the competitive advantages this affords the U.S.
- targets risk management techniques to be introduced through entity-based risk management rather than an entry transaction-based system; and
- advocates for the use of recognized governance standards and controls (ISO, COSO) to drive accountability and interoperability in ecommerce transactions that result in broad alignment on key common issues with similar agreed upon outcomes This type of regime would allow for a better assessment of the control environment which would be more effective in verifying the integrity and resilience of the supply chain.

EMTC's recommendation is based on our experience with previous laws passed to increase visibility in the supply chain, such as the Lacy Act Amendments passed as part of the Food, Conservation, and Energy Act of 2008, P.L. 110-246, 122 Stat. 2952 (June 18, 2008) and Conflict Minerals included in the Dodd-Frank Wall Street Reform and Consumer Protection Act, 111-203, 124 Stat. 2213 (July 21, 2010). Neither of these laws achieved their policy objectives. In the case of the Lacey Act Amendments, the most significant enforcement action was the criminal enforcement agreement against Gibson Guitar Corp. with a penalty of $300,000, $50,000 payment to the National Fish and Wildlife Foundation, and civil forfeiture of $261,844 worth of Madagascar ebony. In the case of the ban on importation of Conflict Minerals from Democratic Republic of the Congo, several companies instead found that their products contain North Korean gold. See, Dozens of Firms Report N. Korea Gold in Supply Lines, Wall Street Journal (June 4, 2014); Banned North Korean gold taints U.S. products reported in MarketWatch (June 5, 2014). Any U.S. law designed to keep certain commodities out of the U.S. ultimately fails because these are sourcing issues, rather than supply chain issues.

7. Conclusion

EMTC appreciates the opportunity to comment on the Annual Review of the eligibility of the sub-Saharan countries to receive benefits of the Africa Growth and Opportunity Act (AGOA, and we are happy to discuss the ideas expressed above in more detail. The critical components to effective strategic engagement to drive regional prosperity in the AGOA Region are local accountability, regional interoperability and risk management based upon globally accepted standards. The review should not create barriers to trade by raising or creating various taxes, setting unachievable standards or commitments and expect to participate in a market of 1.15 billion people.[6] Rather, setting achievable, transparent standards and working towards alignment on key issues with agreed upon outcomes not regulations will facilitate the growth of trust among partners and therefore resiliency to threats, increased trade among the participants and exclusion of less desirable partners (e.g., PRC).

We are happy to discuss the ideas expressed above in more detail.

Sincerely,

Marianne Rowden
Chief Executive Officer

[6] See Sub-Saharan Africa Population 2022 (Demographics, Maps, Graphs) at: https://worldpopulationreview.com/continents/sub--saharan-africa-population