AGOA.info
African Growth and Opportunity Act

The United States GSP and AGOA

AN OVERVIEW FOR AFRICA-U.S. TRADERS

The **African Growth and Opportunity Act (AGOA)** forms part of United States legislation and enables qualifying products that are produced and exported from eligible Sub-Saharan African beneficiary countries to enter the U.S. duty-free.
The AGOA legislation builds on the U.S. Generalized System of Preferences (GSP), and contains a number of links to it, but also offers enhancements that provide important benefits to traders.

This Guide provides an overview of key details of both the AGOA and GSP programs, and clarifies the benefits of using AGOA when clearing goods into the U.S., rather than the GSP.

Key elements of the GSP

Background history

The U.S. GSP was authorized by the 1974 Trade Act, and entered into force at the beginning of 1975. It is one of more than 20 similar GSP programs that developed countries maintain for the benefit of developing countries, authorized under the WTO's Enabling Clause. Countries set their own conditions for their GSP: this includes product coverage, tariff preferences, and the respective *Rules of Origin*.

Country and product coverage

** as of 2021*

The U.S. GSP offers the 119* beneficiary countries duty-free entry for approximately 3,600 products ('tariff lines'). An additional 1,500 tariff lines receive duty-free preferences when produced and shipped from a *least-developed beneficiary country* (LDBC). This means that the 44 LDBCs receive GSP preference for over 5,100 products, significantly more than the number available to exports from developing countries. While most LDBCs are in Africa, numerous African countries do not fall into this group (Botswana, Cameroon, Côte d'Ivoire, Eswatini, Gabon, Ghana, Kenya, Mauritius, Namibia, Nigeria, South Africa therefore benefit only from the more limited GSP product coverage). Pooling of inputs for local origin purposes is limited to certain regional groupings.

GSP re-authorization?

The GSP is subject to periodic re-authorization by the U.S. Congress, usually in 2-3 year intervals. Of the 14 times that the GSP had to be re-authorized, on 10 occasions the GSP had lapsed prior to re-authorization, and no preferences could be claimed during that period. However, U.S. importers could still indicate GSP program eligibility on the import paperwork and obtain a retrospective claim once GSP reauthorization had been approved by Congress, albeit sometimes only months later.

Current status of the GSP

The GSP is currently lapsed (as of July 2023). The previous GSP ended on 31 December 2020, and this has become the longest period without a U.S. GSP, despite legislative efforts to renew the program (inter alia through Bills H.R. 3975, H.R. 4037, and S. 1260).

GSP reform proposals that formed part of previous legislative drafts have included changes to the eligibility criteria to include additional governance, human rights and environmental criteria.

Key elements of AGOA

Background history

AGOA was written into law in May 2000, initially covering the period to 2008, but subsequently extended by the U.S. Congress on different occasions to 2012, 2015 and 2025 respectively. AGOA builds on the GSP by offering duty-free access to the U.S. market for virtually all GSP-eligible products, but also an additional almost 1,700 tariff lines, mainly in textiles and clothing, as well as in other categories.

Country and product coverage

AGOA preferences are only available for eligible products produced in Sub-Saharan AGOA beneficiary countries. These countries must continue to fulfil the AGOA eligibility criteria. An annual review is undertaken by the U.S. to determine ongoing compliance. Currently, 35 Sub-Saharan countries have an active beneficiary status; this number fluctuates in response to the annual AGOA eligibility review. In total, around 6,700 products ('tariff lines') are AGOA eligible, which for non-LDC countries in particular represents a vast improvement over GSP product coverage. Beneficiary countries may pool inputs to fulfil the 35% local content requirement under AGOA's origin rules for general goods.

Other elements of AGOA

The AGOA legislation attaches the 'D' special program indicator (SPI) to each product falling within the scope of AGOA, alongside the various program indicators for GSP and other programs, as applicable. Apparel goods do not have the AGOA 'D' indicator but may be entered under AGOA's *wearing apparel provisions*, pertaining to the Rules of Origin categories. AGOA also does away with the competitive need limitations (CNLs), which apply to imports under the GSP and which restrict imports in specific tariff lines from specific beneficiary countries when these imports exceed 50% of total U.S. imports of that product, or a certain monetary value (2023: $210m) - this provides greater certainty to preferential trade under AGOA, without the risk of preference loss due to a CNL issue.

Current status of AGOA

AGOA remains in force until *30 September, 2025*, unless extended by Congress prior to expiry. It is currently the only U.S. preferences available to Sub-Saharan exporters, while the GSP remains expired (without 're-authorization').

Comparing preferences under GSP and AGOA

The diagrams below provide a visual overview of the duty-free preferences offered under the U.S. GSP and AGOA respectively. Since AGOA eligibility requires that a country is also a GSP beneficiary, U.S. importers can - where relevant - clear goods sourced from producers in eligible African countries under either the GSP (SPI code A, A*, A+) or AGOA (SPI code D), provided that a product qualifies under each of the respective schemes. During periods where the GSP is expired, as has been the case since 1 January 2021 (Status: July 2023), goods cleared under AGOA obtain immediate duty-free entry, whereas the same goods cleared under GSP would (based on previous re-authorizations) only qualify for a retroactive preference claim.

Given the uncertainty about if, and when, the GSP will be re-authorized by the U.S. Congress, and the cost implications of not receiving preferential entry at the time of import, it is advantageous to clear goods under the AGOA program indicator whenever possible. During 2021-2022, almost $1.5 billion worth of goods sourced from AGOA beneficiary countries were cleared under GSP, when these goods could have obtained duty-free clearance under AGOA.

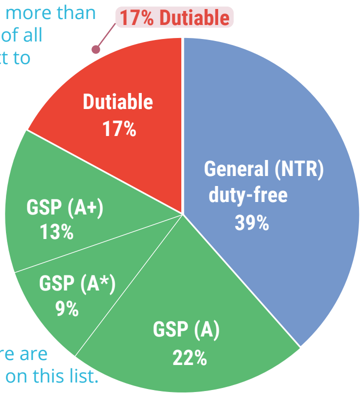
GSP preference coverage

Note: Percentages relate to total U.S. tariff lines

The U.S. GSP removes duties on more than 5,100 tariff lines. However, 17% of all tariff lines continue to be subject to standard U.S. import duties.

The U.S. GSP contains three categories of GSP, with different program indicators.

- **GSP A+** applies to products that are duty-free only when produced in and imported from a ***lesser developed beneficiary country*** (LDBC).
- **GSP A*** excludes some GSP beneficiary countries, but there are currently no African countries on this list.
- **GSP A** applies to products that are duty-free for all GSP beneficiary countries.

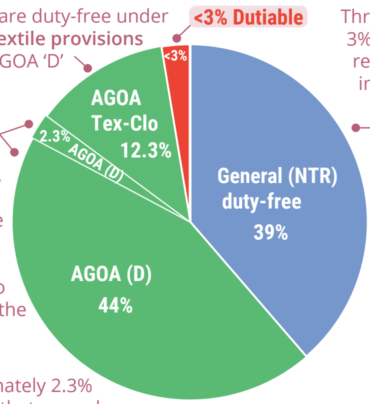


AGOA preference coverage

Textiles and clothing are duty-free under **AGOA** subject to the **textile provisions** (they do not use the AGOA 'D' program indicator).

AGOA assigns the **'D'** program indicator to 46.3% of all tariff lines, removing U.S. import duties when goods are imported from an AGOA beneficiary country, and subject to the products meeting the local content criteria.

This includes approximately 2.3% (of total product lines) that are only AGOA eligible, but not GSP eligible.



Through AGOA, less than 3% of total tariff lines remain subject to U.S. import duties.

Approximately 39% of tariff lines in the U.S. tariff schedule have 0% duties when imported into the U.S. under **normal tariff relations** (NTR). This extends to all African countries. Standard NTR tariffs apply to goods that do not fall within the coverage of a preference scheme.

US-Africa trade: Should traders use GSP or AGOA when clearing goods into the U.S. ?

AGOA beneficiary countries also qualify under the GSP. U.S. importers sourcing from AGOA-eligible countries can choose to clear goods through U.S. customs either under the GSP or AGOA programs, provided that the goods qualify under both regimes. This applies to approximately 5,100 products (tariff lines), and represents the overlap between AGOA and GSP product coverage.

An additional benefit relates to Merchandise Processing Fees (MPF), a U.S. Customs charge applied to most formal entries: these are waived by U.S. Customs on goods from least-developed beneficiaries under AGOA (and GSP, when active), as well as on AGOA textiles and apparel entered under the special tariff code HTS9819.

• AGOA offers greater product coverage for preferences

Textile and clothing products (>1,700 tariff lines) qualify for AGOA preferences, with only approximately a dozen textile tariff lines being GSP eligible, and a small number being generally duty-free under NTR. This sector represents the bulk of the preferential market access that African countries have under AGOA, but not under the GSP. An additional +- 270 general goods qualify under AGOA, but not under the GSP. These include certain vegetables, citrus and citrus juice, luggage, footwear, cutlery, and watches.

• Risk of product graduation under GSP Competitive Need Limitations

AGOA also provides the advantage of removing the competitive need limitations (CNLs) on trade under AGOA preference, as alluded to on the previous page. This means that traders do not risk goods being excluded from preferential treatment when GSP trade in such tariff lines exceeds CNL percentage or value thresholds in a given year.

• GSP is subject to more frequent re-authorization and is currently expired (since 2021)

The most compelling reason why traders should use AGOA - rather than GSP - is that the GSP is subject to more frequent re-authorization by the U.S. Congress, and the program is currently expired (status: July 2023). GSP preferences have therefore - since 1 January 2021 - been unavailable to traders. U.S. importers sourcing goods from AGOA beneficiary countries are unaffected since virtually all GSP goods are also AGOA eligible, and provided that the AGOA program indicator is listed at the time that goods are imported into the U.S. If GSP is used (while expired), any preference claim is deferred until such time that the GSP is re-authorized. AGOA preferences will only expire on 30 September 2025, unless the program is extended by the U.S. Congress before that date.

• For AGOA 'developing countries', preference coverage is almost twice that offered under the GSP

GSP product coverage for goods made in AGOA beneficiaries that are considered developing rather than lesser-developed countries (a group that currently comprises 11 countries including Ivory Coast, ghana, Kenya, Nigeria and South Africa) is far more limited than for LDBCs, with little more than half (+- 3,500) of the product coverage offered under GSP, compared to AGOA (+-6,700).

• AGOA offers a competitive advantage over U.S. imports from GSP beneficiaries

AGOA's broader product coverage offers additional value and certainty to traders; during periods where the U.S. GSP is without Congressional re-authorization, AGOA not only provides uninterrupted duty-free preferences to virtually all GSP products (as well as many others), but also provides African exporters with a major competitive advantage compared to GSP beneficiaries elsewhere.

Look up your product's AGOA and GSP status on:

▸ AGOA.info: **www.AGOA.info**

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AGOA.info African Growth and Opportunity Act

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