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Proposal on an early AGOA renewal alongside options to enhance the legislation and broaden its future impact

By Eckart Naumann

This proposal recommends an early renewal of the AGOA legislation and offers several options in support of enhancements to the legislation, to make it more impactful and supportive of achieving higher AGOA preference utilization rates.

1. Summary of recommendations

The summarized list of recommendations below is followed by a more detailed version and elaboration.

- a. Renew AGOA timeously, early in 2024, and prior to the election cycle potentially impacts on legislative processes and bi-partisan support for this legislation.
- b. AGOA preferences should be made permanent for Sub-Saharan African beneficiaries classified as LDCs, at virtually no 'cost' to the U.S., given the extremely low share of U.S. imports sourced from Sub-Saharan African LDCs under AGOA (2022: 0.05% of U.S. imports) and to provide greater long-term certainty, not unlike the United States' Caribbean Basin Economic Recovery Act (CBERA) for Caribbean countries which was made permanent in 1990.
- c. Support African continental economic integration efforts through enhanced cumulation provisions (Rules of Origin) that allow up to 15% (of the 35% local content requirement) to be sourced from non-AGOA AfCFTA member states that have ratified the AfCFTA agreement, and without subjecting such non-AGOA AfCFTA countries to additional eligibility review processes.

- d. Extend AGOA's cumulation provisions to materials originating in countries with which the U.S. has concluded a Free Trade Agreement, subject to a 15% threshold.
- e. Broaden and simplify the wearing apparel provisions to include all AGOA beneficiaries without the need for a special apparel visa system, and likewise extend preferences for textiles of chapters 50-60, 63 to all AGOA beneficiaries.
- f. Replace the textile visa / certificate of origin with a system of self-certification for low value shipments, below a certain threshold, as well as for any textile exports by locally approved/registered exporters (customs).
- g. Abolish the differentiation between LDCs and non-LDCs for purposes of the textiles and apparel provisions given that productive capacities lie primarily with *'lesser developed beneficiary countries'*.
- h. Abolish the quantitative sub-limits (quotas) on apparel utilizing third country fabrics and integrate these into the overall 7% quota on apparel goods; remove the administrative processes and restrictions relating to certain handloomed, folklore and traditional fabrics (the so-called Category 9 provisions) since these have become redundant through the extension of preferences to textiles following the 'AGOA IV' amendments.
- i. Review the eligibility criteria and associated processes by conducting eligibility reviews on a triennial basis (rather than annual), decouple the GSP eligibility criteria from AGOA to avoid unintended impacts from a future GSP revamp, and more explicitly link consequences of confirmed eligibility breaches to the transgression, to reduce the impact on unrelated and uninvolved stakeholders.
- j. Maintain the AGOA name in future legislative extensions, given its 23-year history, established leverage and extensive U.S. brand value and recognition across Africa.

2. Background and context

On 9 May 2000, the United States under the Clinton Administration signed the African Growth and Opportunity Act (AGOA) into law, amid strong bipartisan support during its legislative passage through the 106th Congress. It was the first legislation of its kind aimed at deepening the economic, political and trade relationship between the United States and Sub-Saharan Africa. AGOA also represented a clear shift in U.S. policy from aid to trade, creating new economic opportunities for African and U.S. businesses and investors. While AGOA covers much more than trade, at its heart the legislation extends duty-free access for Sub-Saharan African countries to the U.S. market, provided they fulfil the Act's eligibility criteria, a pre-condition for gaining AGOA beneficiary status.

Approximately 6,700 tariff lines in the U.S. tariff schedule were appended with the AGOA special program indicator (SPI), permitting U.S. importers to claim duty-free entry on the importation of such goods, if produced in Sub-Saharan African beneficiary countries and subject to fulfilling the relevant rules of origin (RoO) provisions. This represents approximately 60% of the U.S. tariff schedule, with most of the remaining trade already duty-free under normal trade relations. The legislation contained a built-in sunset clause that would initially see these preferences expire in September 2008 (with special textile RoO concessions 4 years earlier); however, Congress agreed to extend the legislation first to 2012, then to 2015, and again to September 2025.

At the recently concluded U.S.-Sub-Saharan Africa Trade and Cooperation Forum (AGOA Forum), African countries have unanimously called for a timely renewal of the AGOA legislation. AGOA provides important opportunities to Sub-Saharan African producers and exporters, and while it is widely accepted that AGOA has not lived up to all its expectations, it has played a meaningful and often critical role in providing economic opportunity, development momentum, and upliftment to several sectors in African countries, including some of the poorest countries on the continent. At the same time, preferential access to African made products is providing U.S. importers, producers and consumers with additional sourcing options, competitiveness, and opportunity. Every trade transaction under AGOA benefits businesses, consumers, and workers, both in Africa and in the U.S.

African countries have argued that a timely AGOA renewal, alongside certain improvements to the legislation, will provide economic certainty to traders and investors, preserve and create jobs, and further deepen the relationship between Africa and the U.S. at a critical point in history. At the same time, a timely renewal of AGOA enjoys the strong support of influential members of Congress, including

the leadership of the House Ways and Means and Senate Finance committees¹, U.S. industry and the Biden Administration.

This Trade Brief makes several proposals in support of a timely renewal of the AGOA legislation that includes various legislative enhancements. These are summarized in the preceding section. Additional commentary on each of the proposals is provided in Section 3 that follows.

3. Recommendations and motivation

3.1 Renew AGOA early in 2024

With less than two years to the current expiry on September 30, 2025, the little time left is creating uncertainty amongst businesses, traders, and investors². By some accounts, U.S. buyers are reviewing their sourcing from Africa because of policy uncertainty around the future U.S.-Africa preference regime. Businesses in African countries will consider the time left when contemplating strategies for exporting to the U.S. or expanding productive capacity that relies on a steady flow of orders from U.S. buyers. This is particularly prevalent in highly competitive sectors that are otherwise subject to high(er) tariff barriers into the U.S. under normal tariff relations.

Without a GSP reauthorization, the fallback without AGOA preferences would see Sub-Saharan African exporters revert to normal tariff access to the U.S., alongside that of most other countries around the world. Given other impediments – structural and geographic – this will put Africa at a huge disadvantage in the U.S. market. With the U.S. market potentially significantly less attractive, this will result in a decline in production and trade, insofar as any void left by AGOA cannot be fulfilled by other export markets and trade relationships.

In this respect, the current geo-political environment must also be considered. China and Russia are actively building economic and political influence in Africa and any policy uncertainty and business instability around AGOA's renewal alongside a deepening of the U.S.-Africa relationship will undermine the dividends that are likely to flow from an early renewal of AGOA alongside meaningful enhancements.

¹ The respective committees in Congress that deal with and pre-view trade legislation

² Private sector panel interventions at the recently concluded AGOA Forum; Private Sector Forum Readout, 3 November 2023

(a) *To reduce the harmful economic impact emanating from policy uncertainty and a potential expiry of AGOA, the legislation should be extended at the earliest possibility, either through a single extension including enhancements, or a two-step process that extends AGOA and is followed by a set of amendments to enhance the value and impact of AGOA. Such a general extension should be for a minimum of 10-15 years (while considering the next point on LDCs, which can form part of the general extension or a second round of enhancements).*

3.2 Make AGOA preferences permanent for LDCs

AGOA has been renewed on two separate occasions; first to 2015 and subsequently to 2025. The renewal period for the wearing apparel provisions has not always matched the overall renewal term, and has been extended to 2008, 2012, 2015 and 2025 respectively. This offers low-income countries special rules of origin provisions and has helped contribute to basic industrial activity and exports. While AGOA has had a very positive impact on several African countries, and several industries, it has not achieved the broad level of impact across the African continent that had been anticipated. The share of global imports into the United States from AGOA beneficiary countries was 1.5% in 2001 and declined to 0.93% in 2022. AGOA LDC countries contributed only 0.15%, in 2022, to global U.S. imports. While certain countries are no longer AGOA beneficiaries in 2022, the share of U.S. sourcing from Sub-Saharan Africa has declined over this period.

U.S. imports under AGOA *preference* accounted for 0.32% of total U.S. imports in 2022 (or roughly one third of total U.S. imports from AGOA beneficiaries), while the relevant share sourced from Sub-Saharan African LDCs accounted for a mere 0.05% of the total³.

By making the AGOA preference scheme permanent for **Sub-Saharan African LDC beneficiaries**, subject to compliance with AGOA's mandatory eligibility criteria, this would help create a more conducive environment to long term investment in, and sourcing from, AGOA beneficiary countries, and signal the U.S.' long-term commitment towards the African continent particularly towards its poorest countries. It would represent virtually no opportunity cost to the U.S., while reducing countries' reliance on the GSP scheme for LDCs and acting as an incentive for economic upgrading.

³ U.S. imports from AGOA beneficiaries that are classified as LDCs, as a share of total U.S. imports, using USITC trade data.

By way of comparable precedent, the U.S. maintains a preferential and unilateral trade regime for Caribbean countries. The 1983 Caribbean Basin Economic Recovery Act (CBERA)⁴, offers trade preferences to LDC countries in the Caribbean area, and an amendment in 1990 expanded the program and made it permanent. There are 17 CBERA beneficiary countries of which 8 are also beneficiaries of a more enhanced U.S.' Caribbean Basin Trade Partnership Act (CBTPA), which currently expires in 2030.

(a) Extend AGOA preferences on a permanent basis to Sub-Saharan African countries that are recognized LDCs, subject to compliance with AGOA's eligibility criteria.

3.3 Support continental integration through enhanced cumulation provisions

The AGOA cumulation provisions differ from the U.S. GSP cumulation provisions in that they are not restricted to pre-defined regional country groups but apply to all AGOA beneficiary countries and former beneficiary countries (insofar as they graduate from AGOA status by entering into a free trade agreement with the U.S.). The principle of cumulation allows the minimum threshold for originating content, required to confer origin status under a preferential trade scheme, to be made up through contributions from more than one country (in effect, cumulating partners are seen as one country for purposes of meeting minimum local content thresholds). This reduces the burden on producers in individual countries, and incentivizes the development of regional, cross-border trade and value chains. Cumulation has always been an integral part of the AGOA provisions.

The U.S. has on several occasions expressed support for Africa's continental integration initiatives. At the 2019 AGOA Forum in Abidjan, Côte d'Ivoire, the U.S. and African Union issued a joint statement⁵ concerning the development of the AfCFTA. In December 2022, the U.S. and the AfCFTA Secretariat signed a MoU, concerning investment and trade⁶.

AGOA is limited to U.S. imports from eligible countries of Sub-Saharan Africa, and currently counts 35 countries with active beneficiary status (from January 2024, possibly 32⁷). The AfCFTA covers the entire continent and aims to enhance intra-Africa trade and value chains.

⁴ Caribbean Basin Economic Recovery Act of 1983, P.L. 98-67

⁵ <https://agoa.info/images/documents/15642/joint-statement-between-the-us-and-the-african-union-concerning-the-development-of-the-afcfta.pdf>

⁶ <https://ustr.gov/sites/default/files/2022-12/United%20States%20AfCFTA%20Secretariat%20MOU%20December%2014%202022.pdf>

⁷ See <https://agoa.info/news/article/16349-notice-to-terminate-agoa-preferences-for-uganda-gabon-niger-and-the-central-african-republic.html>

An updated AGOA can play a meaningful role in support of continental integration, while at the same time also supporting AGOA preference utilization. AGOA can complement the AfCFTA by providing for **cumulation of origin with materials produced in non-AGOA AfCFTA countries**. This should be subject to certain upper limits, in line with international norms around determining the place of origin under rules of origin provisions, such as the place where the last substantial transformation took place, where the most value was added, and for activities to go beyond simple operations.

The current AGOA rules require 35% of a product's appraised value at the U.S. port of entry to comprise materials and direct processing from one or more AGOA beneficiary countries, subject to any non-originating inputs used and counted as originating content having first undergone a double transformation. Up to 15% (of the 35%) may be contributed by inputs that are of U.S. origin. By allowing content originating in non-AGOA AfCFTA beneficiaries to count as AGOA content, this would potentially enable AGOA beneficiaries to utilise AfCFTA preferences in obtaining inputs rather than sourcing from outside of the continent, if required inputs are not available locally. Such provisions would be one of the clearest and most direct ways of giving effect to the U.S. partnership and support for the AfCFTA process and continental integration. Specifically, the AGOA enhancement should consider the following:

(a) While there is no limit to any non-originating inputs from non-AGOA AfCFTA States, for purposes of meeting the minimum 35% rules of origin threshold, up to 15% (of the 35%) may be from AfCFTA member states that have ratified the agreement (currently some non-AGOA states have not ratified). Given the relatively low upper limits for such cumulation provisions, non-AGOA AfCFTA members should not be subject to additional review processes, as this merely undermines the cumulation provisions by introducing unnecessary complexities and uncertainty.

3.4 Allow extended cumulation with preferential trade partners of the United States

It is further recommended that cumulation can be further enhanced without any risk to the U.S. by allowing a form of **extended cumulation** with certain countries outside of the continent, being those with which the U.S. has a free trade agreement (FTA) and for goods that qualify for duty-free access to the U.S. market if shipped directly to the U.S. from such preferential trade partners. The U.S. is currently party to 20 FTAs⁸. Such an arrangement would not undermine existing arrangements and would not

⁸ United States Trade Representative: <https://ustr.gov/trade-agreements/free-trade-agreements>

result in new opportunities for transshipment. This concept has been introduced to the European Union's GSP scheme, and a similar facility exists in preferential trade agreements, such as the Economic Partnership Agreements (EPAs), whereby materials that are subject to duty-free access (into the EU) under MFN (irrespective of FTA status) may be used for cumulation purposes and be considered as originating content for purposes of meeting any rules of origin thresholds.

(a) AGOA's cumulation provisions should be extended to imported materials from countries with which the U.S. has an FTA, to be counted as originating when used in the manufacture of a product in an AGOA beneficiary country, provided that such imported materials qualify for duty-free access to the U.S. if shipped directly.

3.5 Simplify and broaden the 'wearing apparel' provisions to include all AGOA beneficiaries

AGOA does not automatically extend preferences to textile and apparel categories and requires countries to first implement a special textile visa system that is able to track the movement of imported inputs and final exports from AGOA beneficiaries. The system also requires a special certificate of origin, to be obtained from local customs authorities or their appointed agents. This system is administratively burdensome on traders as well as the responsible customs authorities and was introduced to manage possible risk around transshipment given that the rules of origin for apparel exported by LDC beneficiaries were groundbreaking and progressive at the time (2000). Since then, other trade regimes have followed suit, and such rules of origin are now standard practice in the EU GSP as well as trade agreements. In 2005, the WTO quota regime for textiles (Multi-Fiber Agreement) also came to an end, further normalizing international trade in this industry and allowing greater volumes of direct shipments to the US from previously restricted Asian locations.

Furthermore, as currently the only AGOA beneficiary country not considered a "*lesser developed beneficiary developing country*", these progressive apparel rules of origin do not apply to South Africa, whose exporters are subject to a triple transformation requirement for apparel. This is even though South Africa's apparel manufacturing sector is small compared with several other AGOA beneficiaries and operates off a much higher cost base, making it less suitable for commodity-type clothing production. The broad absence amongst AGOA beneficiaries of a competitive textile (yarns and fabrics) manufacturing base means that South African exporters have relatively few opportunities to be AGOA eligible by meeting the triple transformation origin rules (apparel made from African fabric made from

African or U.S. yarn). Furthermore, non-LDCs (South Africa) are excluded from tariff preferences for textiles of chapters 50-60 and 63, as this provision is restricted to LDC beneficiaries.

The administrative provisions underling AGOA's wearing apparel regime are outdated. While the majority (23) of current AGOA beneficiaries have implemented an apparel visa regime, there are several countries that have not, meaning that exporters in those countries may not utilise AGOA benefits for textiles and apparel exports. AGOA can be improved in several ways:

- (a) Abolish the special wearing apparel provisions to allow producers in all AGOA beneficiary countries to export textiles and apparel under AGOA preference.*
- (b) Abolish the textile restrictions (for goods of Chapter 50-60, 63) pertaining to non-LDC countries, as currently set out in the special provision of Chapter 98 (under subheading HTS 9819.11.33 of subchapter XIX) and extend this AGOA coverage to all AGOA beneficiaries.*
- (c) Abolish the differentiation between LDC and non-LDC beneficiaries⁹, as these are entirely counter to where the relevant productive capacities within this sector lie.*
- (d) Abolish the quantitative restriction (sub-cap) on apparel being imported into the U.S. under the LDC textile provisions, currently 3.5% of U.S. textile imports, in favour of the general cap of 7% of U.S. textile imports¹⁰.*
- (e) Only textiles and apparel require a certificate of origin; this administrative overhead should be replaced by a system of self-certification (for low value shipments as well as for all exporters authorized by local customs authorities, subject to a customs cooperation agreement between CBP and national authorities), in order to reduce the outdated administrative overhead on traders (risk mitigation can be done more efficiently through risk-based assessments and through a registered / approved exporter system).*
- (f) The AGOA provisions apply to certain handloomed, folklore and traditional fabrics (the so-called Category 9 provisions), albeit only based on an elaborate application process. These provisions predate the extension of textile preferences (for goods falling within chapters 50-60, 63) under*

⁹ See subchapter XIX of Chapter 98, U.S. Note 2 (d)

¹⁰ See subchapter XIX of Chapter 98, U.S. Note 2 (b)

the “AGOA IV” amendments, and have in effect become redundant. These provisions should be abolished to allow all beneficiaries to export such goods under AGOA.

3.6 Review the eligibility criteria

AGOA eligible countries are currently subject to an annual review process against the eligibility criteria of the AGOA legislation and the 1974 Trade Act (GSP provisions). No review process has been conducted against the GSP criteria since 2020 due to the GSP authorization having lapsed¹¹. In October 2017, a new triennial process was announced by the USTR for assessing GSP beneficiary country eligibility. The AGOA eligibility criteria should only be those as set out in the AGOA legislation.

The annual process creates uncertainty for traders and investors, and clearly also represents a significant administrative overhead for the U.S.. By aligning the routine AGOA review process with the process undertaken in other schemes (triennial), this will have a positive impact on AGOA beneficiaries, not least by reducing uncertainty. The current AGOA legislation contains a provision for an out-of-cycle review, which means that clear breaches against the AGOA eligibility criteria can be addressed through such a process, without exposing the U.S. to the risk of clearly ineligible beneficiary countries continuing to enjoy AGOA preference status.

The current AGOA eligibility criteria embody U.S. values and contain well-intentioned standards and incentives for AGOA beneficiaries, given the non-reciprocal context of these preferences. However, the eligibility review process can result in very blunt outcomes, where African exporters and workers alongside U.S. importers and consumers are being punished, effectively for the sins of their governments. A suspension of AGOA preferences to a country for certain breaches of the criteria can have the exact opposite effect to the underlying objectives of AGOA, and impact entirely unrelated stakeholders.

For example, human rights abuses within the overall responsibility of the national government in a conflict zone can result in some of the most vulnerable workers and ultimate beneficiaries of AGOA opportunities (female workers in apparel manufacturing businesses) losing their jobs due to the country losing AGOA beneficiary status, often with little incentive remaining to remedy the original cause of the eligibility transgression. While the AGOA eligibility criteria already provide for a partial suspension of

¹¹ Congressional Research Service: Generalized System of Preferences (GSP): Overview and Issues for Congress (Updated November 22, 2023)

preferences in certain situations, there should be a greater focus on shielding unrelated stakeholders, and that there are more direct and effective consequences and accountability for those parties responsible for breaches with the criteria.

- (a) Conduct routine AGOA eligibility reviews on a triennial basis rather than the current 12-month period.*
- (b) Decouple GSP eligibility criteria from AGOA since these already largely overlap with AGOA's own eligibility criteria; doing so reduces the risk of countries becoming ineligible for AGOA preferences due to future - as yet unknown - changes and additional eligibility criteria within the broader GSP program¹² that African countries may be unable to comply with in the short to medium term.*
- (c) Nuance any consequences of established breaches of the AGOA eligibility criteria more directly to the established transgression(s), to reduce the impact on unrelated and uninvolved stakeholders. The current AGOA criteria already provide for a sector-based approach to a suspension of preferences rather than for instance whole-country suspension, but this is often insufficient when linking transgressions to AGOA-related consequences.*

3.7 Preserve the name / keep the brand intact

Over the past 23 years, AGOA has become synonymous with U.S.-Africa trade and the U.S.-Africa relationship more broadly in the trade and business community, in civil society and in political circles. AGOA beneficiary status is desirable, and much weight is attached to it by countries that are exporting to the U.S.. Losing AGOA beneficiary status is impactful and often galvanizes private sector and civil society actors to contribute towards – through pressure or otherwise – a rectification of issues that underlie the eligibility breaches. The U.S. has invested heavily in the AGOA “brand”, particularly through USAID, in providing development support to many African countries.

The ‘AGOA’ name/acronym carries weight and is widely known and recognized across Africa, and globally. Equally, it provides the U.S. with a certain amount of leverage and soft power in Africa, given that it contributes to Sub-Saharan African exporters facing virtually no tariff-based barriers into the

¹² The U.S. GSP expired at the end of 2020 and is yet to be re-authorized by the U.S. Congress. While there is general bipartisan interest in a renewal, some Members of Congress are proposing changes by adding additional eligibility criteria such as on the environment (enforcement of environmental laws and international agreements), digital trade, good governance and so forth. See *2023 Congressional Research Service: Generalized System of Preferences (GSP): Overview and Issues for Congress* (Updated November 22, 2023)

world's largest consumer market. It is the named legislation that has obtained waivers at the WTO for exemption from most favoured nation and non-discrimination principles, under Articles I and XIII of the General Agreement on Tariffs and Trade (GATT).

(a) The name and brand of AGOA should be unaffected by any renewal legislation, even where the existing legislation is modified to accommodate changes and enhancements.