AGOA at 10: Reflections on US-Africa trade with a focus on SACU countries

October 2010

tralac Working Paper 05/2010

Eckart Naumann
tralac Associate
eckart@naumann.co.za

Table of Contents

Table of Contents 2

List of Tables and Figures 3

Introductory comments 4

1. AGOA – the first decade 5

1.1 Early beginnings 5

1.2 Countries eligible for AGOA preferences 6

1.3 Product coverage 7

1.4 Overview of the rules of origin for general goods 8

1.5 Rules of origin and special provisions relating to apparel 8

1.6 Changes to the AGOA legislation 10

2. Trade under AGOA preferences: a review of the first decade 13

2.1 Profile of trade between sub-Saharan Africa and the United States 13

2.2 Sectoral breakdown of exports 17

2.3 Profile: The clothing sector 19

2.4 Profile: The automotive sector 22

2.5 Profile: The fruit and fruit juice sector 24

3. Under the microscope: AGOA coverage of SACU trade with the United States 26

3.1 SACU exports to the US 26

3.2 US exports to SACU 30

4. A changing policy environment – recent legislative developments in the United States 33

4.1 Brief overview of US lawmaking process 33

4.2 The 'New Partnership for Trade Development Act of 2009' – implication for AGOA beneficiaries 35

4.3 Some concerns about H.R. 4101 37

List of Tables and Figures

Figure 1: *Total US imports by preference programme (2009)* 13
Figure 2: *Total US imports by non-reciprocal preference programme (2000-2009)* 14
Figure 3: *Trade flows between AGOA beneficiary countries and the USA* 15
Figure 4: *Top 20 exporters to the US and share of AGOA eligible exports (2009)* 16
Figure 5: *Sectoral composition of exports 2009 (excluding energy-related goods).* 18
Figure 6: *Exports of clothing from AGOA countries* 21
Figure 7: *Exports of motor vehicles and parts from AGOA countries* 23
Figure 8: *Exports of fruit and fruit juice from AGOA countries* 24
Figure 9: *SACU's exports to the US* 26
Figure 10: *Breakdown of country contribution to total SACU exports to US (2009)* 27
Figure 11: *Breakdown of country contribution to total SACU exports to US (2009)* 30
Figure 12: *Comparison of US clothing imports from selected LDC sources* 39

Table 1. *2002 legislative changes to AGOA (AGOA II)* 10
Table 2. *2004 legislative changes to AGOA (AGOA III)* 11
Table 3. *2006 legislative changes to AGOA (AGOA IV)* 12
Table 4. *Key AGOA exports in selected product categories* 19
Table 5. *Clothing exports under AGOA by preference category* 20
Table 6. *Aggregated SACU Member State exports and share of preference utilisation* ...27
Table 7: *Leading exports by Chapter from SACU to USA (2009)* 28
Table 8: *Leading exports by product from SACU to USA (2009)* 29
Table 9: *Leading exports by Chapter from USA to SACU (2009)* 31
Table 10: *Leading exports by product from US to SACU (2009)* 32

AGOA at 10 – Reflections on US-Africa trade with a focus on SACU countries

Introductory comments

The African Growth and Opportunity Act (AGOA), a part of US legislation, has formed the basis for preferential US-African trade since the end of 2000. However, AGOA is about more than just trade, an aspect that is often overlooked. In essence AGOA is a policy framework that covers trade, the development of trade capacity (for example through the African Global Competitiveness Initiative), general development assistance, investment through bodies such as the Millennium Challenge Corporation (MCC) and the Overseas Private Investment Corporation (OPIC), healthcare assistance, security-related cooperation and so forth. Technical assistance has also been provided through four regional trade hubs created under AGOA: in Gaborone (Botswana), Accra (Ghana), Nairobi (Kenya) and in Dakar (Senegal). Trade remains an important focal point, however: since inception, US policy has favoured mainly an export-led growth approach role in assisting Africa's development. A slight change in emphasis was expressed by US Secretary of State Hilary Clinton and other officials when addressing the 9th AGOA Forum in Nairobi in 2009, where the importance of regional trade and the removal of regional trade barriers were repeatedly highlighted. This stance was reinforced during Secretary Clinton's address at the 10th AGOA Forum held recently in Washington.

Since AGOA's inception, exports from eligible countries have grown significantly and many successes were recorded; however, it also became clear that despite the Act's generous preferences, gains were often concentrated in a small number of sectors, and that some of the beneficiary countries are in fact not exporting goods to the US at all. Nevertheless, for some countries AGOA preferences have played an important role in their economic wellbeing in recent years.

It must be recognised that the AGOA legislation is a unilateral US trade programme, without a formal bilateral consultation process or independent dispute settlement mechanism. This means that changes can be made to the legislation only at the behest of US policy makers, a situation that creates long-term uncertainty and risk and undermines investment in export capacity, especially in industries not considered mobile or 'footloose'. The legislation is unique in that it provided the impetus for a significant paradigm shift and interest towards Africa, but also in the sense that it garnered uniquely strong bi-partisan support in its original and subsequent legislative passage.

Midway through 2003, the countries of the Southern African Customs Union (SACU) began negotiations with the US for a Free Trade Area (FTA). These were intended to be concluded within 18 months, but were postponed indefinitely a year later as a result of widely divergent views on the scale and scope of the proposed agreement.

In July 2008, SACU and the US signed a Trade, Investment, and Development Cooperative Agreement (TIDCA)[1] whose stated objective was to 'promote an attractive investment climate and to expand and diversify trade between SACU and the United States'. The TIDCA established a platform for bilateral consultations on a range of trade issues, including trade facilitation, technical barriers to trade, and trade and investment promotion, but also to act as a stepping stone for a future SACU-US FTA. This remained a longer term objective for both negotiating parties, and new signals are emerging that this issue may soon be revisited more

[1] Available at http://www.sacu.int/docs/tidca/agreement.pdf.

formally. In the meantime, South African officials have been reported as favouring an extension of AGOA, and for South Africa's continued participation and eligibility under AGOA ('South Africa seeks...' 2010).

For now, there seems to be some consolidation in US policy on preferential trade. For example, new legislation[2] was recently introduced into the law-making process for further consideration (it has been referred to the House of Representatives Committee on Ways and Means where it remains for now), which proposes an extension of AGOA to 2019 (and beyond) subject to conditions. This legislation also contains aspects that could be a threat to Africa's exports to the US. Included is the proposed extension of preferences to other least developed countries, which could translate into low-cost producers of garments (for example Bangladesh, Cambodia, Sri Lanka) further outcompeting African countries in the US market. These countries' individual clothing exports to the US already far exceed those of sub-Saharan Africa, as is shown later in this paper. The proposed legislation also considers a new UN definition for 'least developed countries', which could see a number of current beneficiaries being migrated out of their AGOA beneficiary status.

Given the non-reciprocal and unilateral nature of AGOA, these and other risks and uncertainties could have a negative impact on the business and trading environment in current beneficiary countries, including some SACU member states. Namibia and Botswana, for example, are currently considered *de facto* lesser developed beneficiaries under the AGOA legislation which gains them special textile privileges relating to favourable Rules of Origin (RoO). Under the proposed legislative changes, their continued eligibility for preferences is in jeopardy, as is South Africa's. A reciprocal trade agreement would, however, remove some of this uncertainty, and depending on the scale and scope of what it contains, would create new opportunities for bilateral trade and investment.

This paper provides an overview of the current AGOA legislation and tracks legislative amendments over its first decade. This is followed by an analysis of African exports to the US, with a more detailed focus on three sample sectors that benefit from AGOA and which are of relevance to SACU (the automotive sector, the clothing manufacturing sector and the fruit and fruit juice sector). A review of trade between SACU member states and the US (bi-directional) reveals that most SACU exports enter the US duty-free (mostly under AGOA, but also in other duty-free categories), whereas SACU imports from the US are still to a significant extent subject to tariff barriers. The paper concludes by reviewing the proposed legislative amendments that are currently being considered by the US Congress, some of which are likely to have a significant impact on current recipients of AGOA preferences.

1. AGOA – the first decade

1.1 Early beginnings

The African Growth and Opportunity Act (AGOA) forms part of United States trade legislation and offers non-reciprocal trade preferences to qualifying countries from Sub-Saharan Africa. The Act therefore provides qualifying African countries with duty-free access to one of the largest markets in the world. It was signed into law in May 2000 by former US president Bill Clinton, initially covering the period to September 2008. Subsequent amendments to the

[2] Bill H.R. 4101 /New Partnership for Trade Development Act of 2009'. More details available at the following link: http://www.agoa.info/index.php?view=about&story=agoaV.

legislation resulted in the Act's date of expiry being moved back on various occasions, while also dealing with a range of smaller changes to the text. From the outset, this legislation has enjoyed bi-partisan support in the US Congress and Senate.

Eligibility for preferences under AGOA is limited to those countries that have been specially designated by the US as beneficiaries. This list is based on a range of predetermined criteria with references to human rights, democratic institutions and so forth, and is amended from time to time; over the years countries have gained (or lost) eligibility as a result of various factors.

AGOA builds on the US Generalised System of Preferences (GSP) by offering duty-free and (apart from textile articles) quota-free benefits to over 7,000 tariff lines at the HS8-digit level. AGOA's longer time frame means that it is not subject to the same renewal pattern as the GSP, hence providing traders with a somewhat more secure and predictable trading environment. AGOA's product coverage includes all items covered by the GSP, as well as a further roughly 2,000 product lines included specifically as part of this legislation. This includes articles which by law remain excluded from consideration for normal GSP treatment.

In 2004, then President George Bush extended the Act by seven years to 2015, while also changing the expiry date of special provisions (involving favourable RoO) relating to garments from 2004 to 2007. Two years later, this was changed again, this time to 2012.[3] Other amendments over the years have included clarifications of the apparel provisions with respect to knit-to-shape items as well as in relation to certain cut fabric, and the redesignation of Namibia and Botswana as 'lesser developed' beneficiary countries for purposes of qualifying for special privileges.

During 2006, further changes to the key textile provisions were introduced with a view to obliging apparel manufacturers to utilise local denim fabric, although these provisions were again repealed in 2009.

1.2 Countries eligible for AGOA preferences

Countries that are eligible for AGOA preferences are listed in Section 107 of the original AGOA legislation, as amended from time to time. 34 Sub-Saharan African countries were originally included in the list of beneficiaries, although this number currently stands at 41 countries. In the meantime, Swaziland, The Gambia, Comoros, Liberia, Togo, Democratic Republic of Congo, Burundi and Burkina Faso and others were added, Mauritania lost and regained eligibility, while countries such as Côte d'Ivoire, the Central African Republic, Eritrea and most recently Madagascar, Niger, Guinea[4] were suspended.

Although country eligibility requires beneficiaries to be (a) located in Sub-Saharan Africa and (b) GSP eligible, AGOA status is ultimately determined by the US President and lawmakers based on a set of requirements many of which require a fairly subjective assessment. AGOA eligibility requirements are contained in Section 104 of the Act; a summarised list of requirements is provided below. Where a country is found not to be making continual progress where relevant towards achieving these objectives, the President of the United States would terminate a country's further eligibility from benefits under the Act.

---

[3] Proposed legislative amendments currently being considered would further extend the clothing provisions to 2015.

[4] The suspension of Madagascar, Niger and Guinea was announced by President Obama on 23 December 2009.

To be designated a beneficiary country, it must have established or be in the process of establishing:

- a market based economy incorporating a rules based trading system
- (respect for) the rule of law, political pluralism and access to fair legal process
- the elimination of barriers to US trade and investment, incorporating the protection of intellectual property, resolution of bilateral trade and investment disputes
- economic policies conducive to development
- a system to combat corruption based on the relevant international convention
- protection of internationally recognised worker rights
- a country must not engage in activities that undermine United States security interests
- a country does not engage in gross violations of internationally recognised human rights

1.3 Product coverage

AGOA provides duty-free and quota-free treatment to goods covered by the US Generalised System of Preferences (GSP), as well as a range of general products plus a few hundred clothing tariff lines specifically included as part of this legislation. The GSP contains approximately 4,800 tariff lines at the HS8 digit level, including approximately 1,400 tariff lines reserved for exports from least developed beneficiary countries. Added to this are 1,835 products added by the AGOA legislation, which together with the clothing sector tariff lines bring the total number of items covered by AGOA to more than 7,000.

For AGOA beneficiary countries, some of the benefits relate to the fact that the time frame for GSP coverage is generally much shorter than that of AGOA and requires more frequent authorisation by Congress, which in turn may cause greater uncertainty for investors and traders. The current GSP period of validity extends to 31 December 2010. Unlike the GSP, however, the AGOA legislation also does not generally differentiate between developing and least developed beneficiary countries;[5] this means that the 4,800 tariff lines of the GSP and 1,835 added under AGOA apply equally to all beneficiaries.

AGOA also removes the competitive need limitation (CNL) applicable to products that enter the US under its GSP. The CNL translates into a ceiling on imports from GSP beneficiary countries when imports of a specific product from one source either exceed a certain percentage of total imports of that product into the US (50%), or when a certain value of imports is exceeded (in 2010, this threshold was $145million)[6]. Although a waiver is sometimes granted on application to specific products, the general CNL waiver for AGOA beneficiaries is certainly a positive attribute of the legislation.

Of the more than 2,000 product tariff lines that received duty-free access to the US market under AGOA, many are of export interest to African countries. While the inclusion of long-term preferences under AGOA for GSP products is of significant importance, the most important marginal benefit relates to product categories that did not previously receive preferences when shipped from Sub-Saharan African countries. Foremost, the clothing sector

[5] The exception to this general rule is the treatment of clothing exported from least-developed beneficiary countries, which is subject to different rules of origin.
[6] Source: Coalition for GSP (at www.tradepartnership.com).

has seen the most widespread uptake of preferences, with a significant number of countries exporting under the programme. For some countries, benefits extended to this sector have in effect become a lifeline, ensuring the growth and preservation of significant employment opportunities and investment. A detailed analysis of uptake of preferences in this sector as a result of AGOA follows later.

Other notable product categories eligible for AGOA benefits include a large range of agricultural products, various automotive components, wine, chemicals, tobacco products, petroleum oil, footwear, glassware, steel products, watches and so forth.[7] However, despite the wide product coverage, many gaps in coverage remain, even within product categories.

1.4 Overview of the rules of origin for general goods

Rules of Origin (RoO) form a critical part of any preferential trade area, whether reciprocal (preferential trade agreement between two or more countries with reciprocal market opening) or non-reciprocal (such as AGOA or the GSP). RoO are the 'fine-print' of any such agreement: they set out the local processing requirements for products to be eligible for preferential market access. In other words, RoO specify the extent to which a product must be the growth or manufacture of the beneficiary (exporting) country, so as to ensure that benefits are allocated to the intended recipients and not to third countries that simply (trans)ship their goods through the customs territory of a preference-receiving AGOA beneficiary country.

Different methods for determining the origin of goods exist, with the US GSP (and AGOA) RoO based on a derivative of the 'local value added' methodology. Different rules apply to apparel products, described in the next section. Specifically, the AGOA RoO require that for a good to be considered the ‘growth, product or manufacture’ of the exporting country at least 35% of the good's direct cost or value of materials, including the ‘direct costs of processing’, must be from local sources.

The RoO also permit full regional cumulation amongst beneficiary countries and limited bilateral cumulation with the US. Cumulation is a means of jointly meeting the local content requirements: regional cumulation means that two or more AGOA beneficiaries may together meet the 35% requirement, while the bilateral cumulation facility permits up to 15% of the 35% (as appraised at the US port of entry) to be US materials. US customs generally appraises merchandise at the full value of the transaction, including packaging, selling commission, royalty and licensing fees incurred by the buyer, free assistance provided to the buyer as part of the transaction, the cost of labour, machinery costs, and research and development (R&D) expenditure. Insurance and freight charges are generally excluded from the content appraisal.

1.5 Rules of origin and special provisions relating to apparel

While general goods are subject to the 35% local content rule, a special set of requirements is in place for the apparel sector. Textile and clothing trade generally, and associated tariff and RoO regulations, is often considered sensitive and this is no exception under US trade rules. Nevertheless, under the AGOA legislation a very favourable and flexible RoO regime was put

[7] A list of non-GSP AGOA products is available at the following web address: http://www.agoa.info/index.php?view=about&story=product_lines.

in place, which has resulted in the revival of international apparel trade in a number of African countries covered by this Act.

AGOA contains special 'wearing apparel' provisions which set out the conditions under which clothing made in beneficiary African countries qualify for preferential market access to the US market. The most prominent amongst these provisions is a RoO requirement applicable only to 'least developed beneficiary countries' plus Botswana, Namibia and (more recently) Mauritius, which are permitted to utilise non-originating fabrics in the production of qualifying garments.

Due to widespread sensitivities around preferences for textile and clothing trade generally (as well as around AGOA's wearing apparel measures), only beneficiary countries that have implemented a number of special measures including a so-called apparel visa system – to the satisfaction of US authorities – are allowed to export apparel under the Act. AGOA's wearing apparel measures are set out in Section 113 of the legislation. These can be summarised as follows:

- countries must have implemented a visa system to prevent the unlawful transhipment of covered textile and clothing articles and the use of counterfeit documentation relating to such shipments
- US Customs Service verification teams must be given sufficient access (by a country) to be able to investigate cases of transhipment through that country
- at the request of the US Customs Service countries must provide statistical details of imports and exports of textiles and clothing articles, as well as any documents establishing the country of origin (including information on the place of manufacture, number and identification of machines used, place of production
- countries must agree to compel producers and exporters of textile and clothing articles covered under AGOA to maintain complete records of inputs used in the production of textiles and clothing for at least two years

The RoO under AGOA's wearing apparel provisions are product-specific (a so-called ‘specific processing’, or technical requirement) and include a number of different categories. Most notable is the RoO that permits lesser-developed beneficiary countries to utilise third-country fabric inputs without losing AGOA eligibility. This allows exports to source competitively priced fabrics from abroad, with the making up (locally) of the garment sufficient to confer local origin status. This provision was also extended to Namibia and Botswana as part of legislative changes undertaken in 2002, the result of which was known collectively as ‘AGOA II’. Mauritius was later also classified as a country eligible to export qualifying clothing made from third-country fabrics.

Originally this provision was scheduled to expire at the end of September 2004, its intention having been to help kick-start clothing sector exports under the Act and provide incentives for the development of upstream textile capacity in anticipation of stricter RoO after 2004. Owing to the stand-out success of rapidly-growing clothing exports from lesser developed countries, further amendments to the legislation first extended the third country fabric provisions to 2007, and later to 2012, with proposed legislation currently on the table that would extend this further to 2015.

Countries not defined as *lesser developed*, notably South Africa, Gabon and the Seychelles, are not able to utilise AGOA's third country fabric provisions. For these countries, much stricter

RoO apply: apart from the local making up of the garment, producers must utilise local fabric which in turn must be made from US or African yarn. In effect, this equates to a triple transformation requirement compared to the single transformation requirement that the remaining AGOA beneficiaries are subject to.

While the bulk of clothing trade under AGOA takes place within the two RoO categories mentioned above, there are in fact ten preferential categories in total. Clothing is usually recorded within Chapters 62 and 63 of the Harmonised Tariff System (HTS) nomenclature, although preferential clothing trade under AGOA is categorised separately in special categories of Chapter 98 of the US tariff code. These are further discussed in Chapter 2.3.

1.6 Changes to the AGOA legislation

Subsequent to the original promulgation of the AGOA legislation in 2000, a number of changes were made both in substance as well as with respect to its date of expiry.

In 2002, then President George Bush signed into law a number of amendments known collectively as AGOA II and contained in the Trade Act of 2002 (Trade Act of 2002). These changes deal mainly with certain textile provisions and interpretations and special privileges for Botswana and Namibia.

Table 1. 2002 legislative changes to AGOA (AGOA II)

Category	Original AGOA Legislation	AGOA II
Knit-to-Shape	The term "fabric" interpreted by US Customs as excluding components that are 'knit-to-shape' (i.e. components that take their shape in the knitting process, rather than being cut from a bolt of cloth).	Knit-to-shape apparel qualifies for AGOA benefits.
Merino sweaters		Technical correction to include Merino sweaters
Lesser Developed Countries	Duty-free treatment for apparel articles assembled in less developed countries in sub-Saharan Africa, regardless of origin of fabric.	LDC apparel eligible for duty-free treatment regardless of origin of fabric and regardless of origin of yarn.
Botswana and Namibia	Not treated as less developed countries because per capita GNP in 1998 exceeded $1 500.	Specially designated as less developed countries.
Hybrid Cutting	Under US Customs interpretation, cutting of fabric must occur either in US or AGOA countries, but not both.	Hybrid cutting (i.e. cutting that occurs both in US and in AGOA countries) does not render fabric ineligible.
Quota for qualifying apparel imports	Percentages increase annually through 1 October 2007	Applicable percentages doubled.

Source: http://www.agoa.info/index.php?view=about&story=amend_agoa

In 2004, further changes were made to the AGOA legislation. These became collectively known as AGOA III and were signed into law on July 12, 2004 as part of the AGOA Acceleration Act of 2004. These changes were based on Bill H.R. 4103[8], after similar legislation (H.R 3572 and S. 1900[9]) was previously introduced in late 2003. S.1900 and H.R. 3572 were largely comparable with regard to most AGOA-related provisions, with a few differences relating to the final expiry date (H.R. 3572 proposed 2020), removal of statutory exclusions relating to certain agricultural products (H.R. 3572), continuation of the LDC provisions (and selective phase-out) relating to third-country fabrics and so forth. Overall, S. 1900 was somewhat bolder with respect to liberalising trade and investment, compared with H.R. 4103.

Table 2. 2004 legislative changes to AGOA (AGOA III)

Category	Changes under AGOA Acceleration Act of 2004
Time scale	Extends AGOA programme from 2008 to 2015
	Extends wearing apparel provisions (third-country fabrics by lesser developed countries) by 3 years to 2007
Quotas	Quotas for apparel to remain fixed in year 1 & 2, 50% reduction in year 3
Textiles	Permits use of collars, cuffs, waistbands, etc. to be sourced from third countries without product losing eligibility under AGOA
	Increases clothing category *de minimis* (value tolerance) levels from 7% to 10%
	Allows sourcing of qualifying fabrics from third countries that have concluded free trade agreement with the US (cumulation)
	Expands 'folklore/traditional items' product coverage to include certain machine-made ethnic printed fabric
Mauritius	Extends the third-country fabric provisions to Mauritius later in 2004 under the Miscellaneous Trade and Technical Corrections Act of 2004, subject to a quota of 5% (approximately 27 million SMEs) of the LDC quota. These benefits were of a temporary nature, although Mauritius was later included as a beneficiary under Public Law 110-436.

Source: http://www.agoa.info/download.php?file=106

In 2006, a new round of legislative changes was enacted which became known as AGOA IV and were signed into law on 20 December 2006 as part of the African Investment Incentive Act of 2006. The most important – and pressing – amendment related to what is known as the 'third country fabric' rule, which led to this provision being extended by a further five years to 2012. Set to expire by the end of September 2007 under AGOA III, there were deep concerns among African clothing exporters and US importers, that these countries would soon no longer be able to source fabric from third countries without losing their eligibility status under the Act. This would have serious consequences for some African countries, a number of which depend on clothing exports as a key contributor to their economy. This round of changes was the most controversial overall, as it exposed clear differences among legislators and various affected stakeholders on whether further extending these benefits would ultimately meet the original objective of enabling African countries to develop or reinvigorate their own upstream textile (fabric and yarn) industries.

[8] A bill originating in the House of Representatives is designated by the letters H.R. which it retains throughout its parliamentary passage.

[9] A bill originating in the Senate is designated by the letter S.

Ultimately some compromises had to be reached, and the legislative changes also signalled an increasing resistance by US lawmakers to routine extensions of the third-country fabric rules. One of the changes that took place, although in keeping with some of the original objectives of AGOA, relates to the introduction of special rules for fabric and yarns that are deemed to be produced in commercial quantities in qualifying African countries. The United States International Trade Commission (USITC) was tasked with determining on an annual basis the aggregate quantity of fabrics and yarns available. Exporters from qualifying countries were compelled, on an annual basis, to source and utilise the annual determination of such fabrics and yarns for processing into qualifying exports under AGOA. Failure to utilise these (local and regional) inputs would jeopardise the future eligibility of downstream clothing products under the Act. Denim fabric became the first such input to be deemed to be available in commercial quantities: an annual determination of 30 million square meter equivalents (SMEs) was initially included by the legislation. However, these provisions were later found to be unworkable and repealed on 16 October 2008 (Public Law 110-436). At the same time, Mauritius was formally added (alongside Botswana and Namibia) as a beneficiary country under the special wearing apparel provisions relating to the utilisation of third-country fabrics.

Table 3. 2006 legislative changes to AGOA (AGOA IV)

Category	Changes under Africa Investment Incentive Act of 2006
Textiles	Textile and clothing preferences are extended to 2015, while the third-country fabric provision was extended by five years from 2007 to 2012
	Introduces 'abundant supply' provisions, tasking the USITC to make annual determinations of commercially available inputs in designated Sub-Saharan African beneficiary countries. Where input materials are determined to be not available in commercial quantities on the basis of fraud, preferences for articles using such inputs may be removed
	Denim fabric deemed available in commercial quantities; 30 million SMEs considered to be available in abundant supply in first annual period (this provision later repealed)
	Provides for the removal of privileges

Source: http://www.agoa.gov/agoa_legislation/HR%206111%20-%20Title%20VI.pdf

A number of further changes are currently being considered by the US Congress (as part of Bill H.R. 4101). These are discussed in Chapter 4.

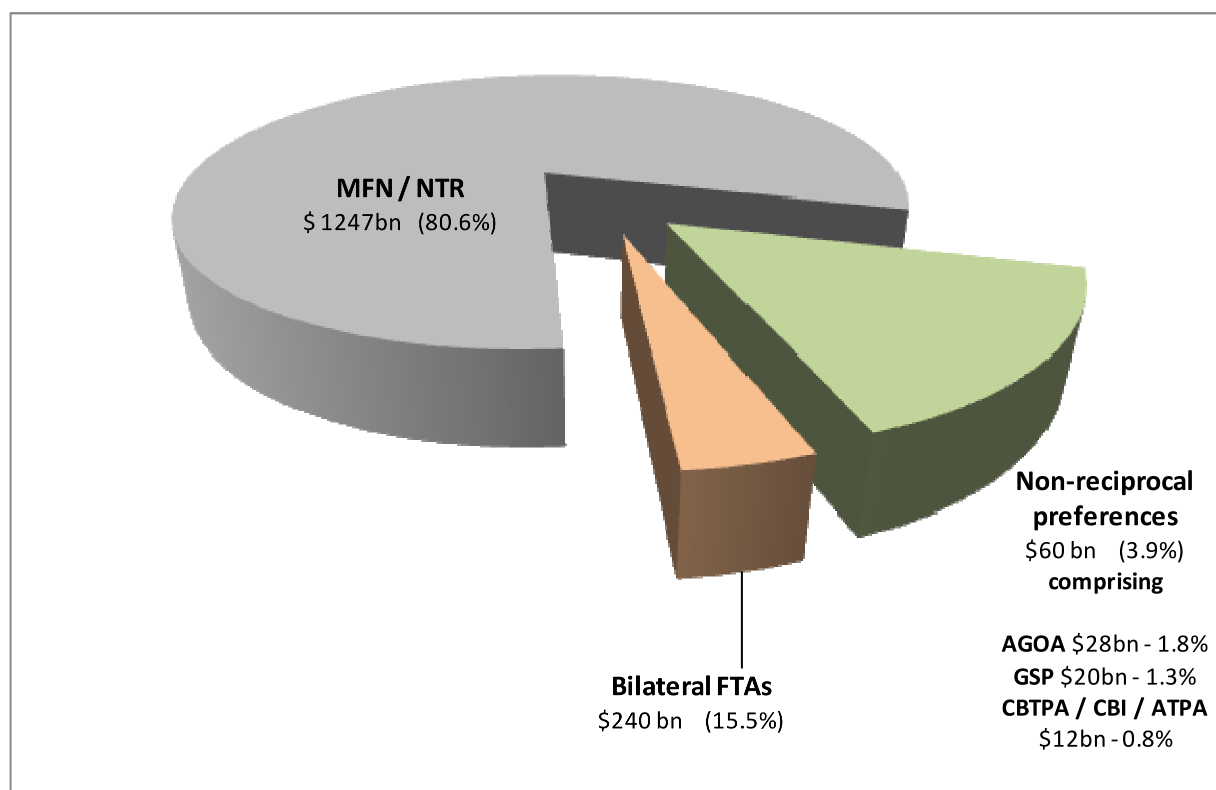
2. Trade under AGOA preferences: a review of the first decade

2.1 Profile of trade between sub-Saharan Africa and the United States

At the outset of this overview of SSA-US trade, it is useful to place AGOA and preference programs generally in some context. The most recent data (2009), although arguably not the most representative year given the global financial crisis and its impact on trade, shows that over 80% of total US imports ($1,247bn out of $1,547bn) was classified under normal tariff relations (NTR[10]) and hence unaffected by any preferential arrangements. Bilateral FTAs (such as Chile-US and Australia-US) account for $240bn worth of US imports in 2009, equivalent to 15.5% of total imports.

Non-reciprocal imports, considered to be imports under preference regimes such as the GSP and AGOA, accounts for $60bn out of the total, or 3.9%. AGOA accounts for the largest share of imports under non-reciprocal trade programmes ($28bn or 1.8% of total US imports), followed by GSP imports ($20bn or 1.3%). The CBTPA (Caribbean Basin Trade and Partnership Act), CBI (Caribbean Basin Initiative) and ATPA (Andean Trade Preference Act) together accounted for $12bn (0.8%) of total US imports. While trade under AGOA accounts for the largest share of non-preferential imports in value terms, this should also be seen in the context of the large share of oil imports included therein.

Figure 1: Total US imports by preference programme (2009)

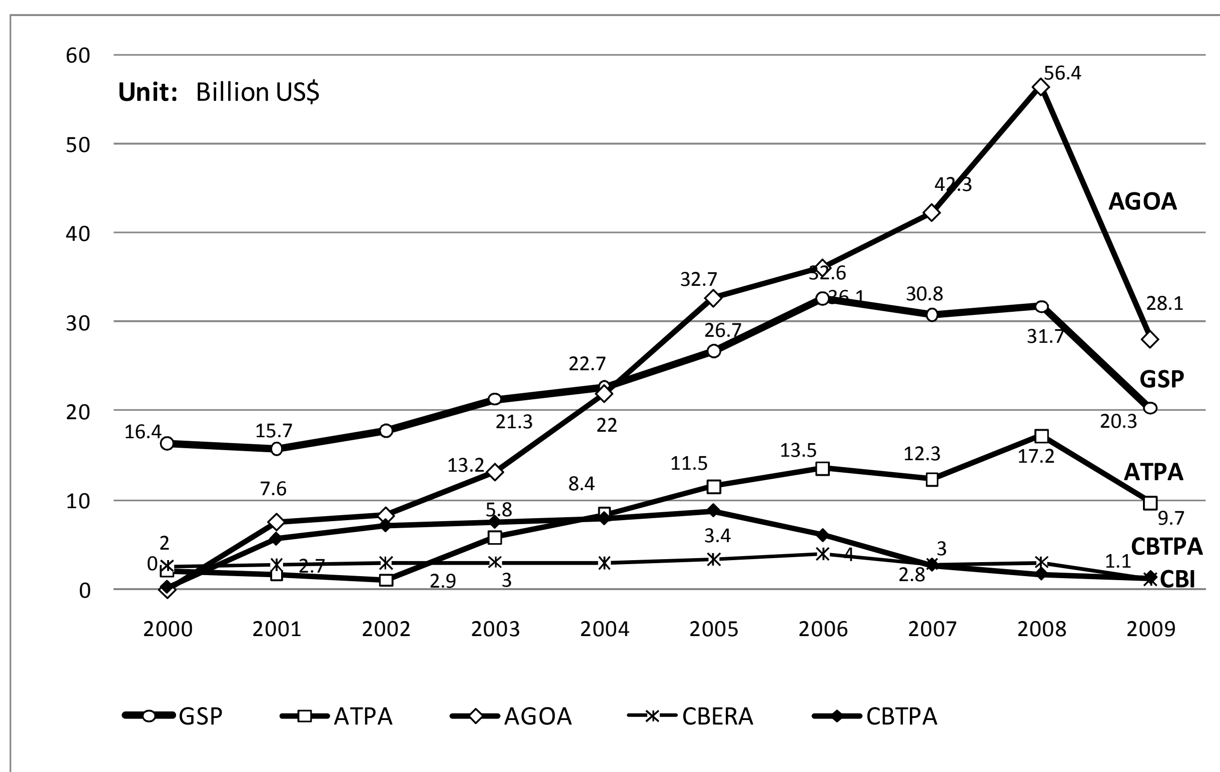


Source: Data extracted from US Department of Commerce / US International Trade Commission database

[10] The US uses this term to describe non-discriminatory trade, in lieu of the WTO term "most favoured nation".

Figure 2 shows how imports under AGOA have grown relatively faster than any other US non-preferential trade programme. Again, this relatively large share needs to be viewed in the context of the inclusion of oil under AGOA. Nevertheless, trade between the US and sub-Saharan African countries belonging to the AGOA group has grown significantly and since 2004 has exceeded total US imports under GSP. Some of this may be the result of substitution: AGOA extended duty-free access to existing GSP products plus approximately 2,000 additional tariff lines.

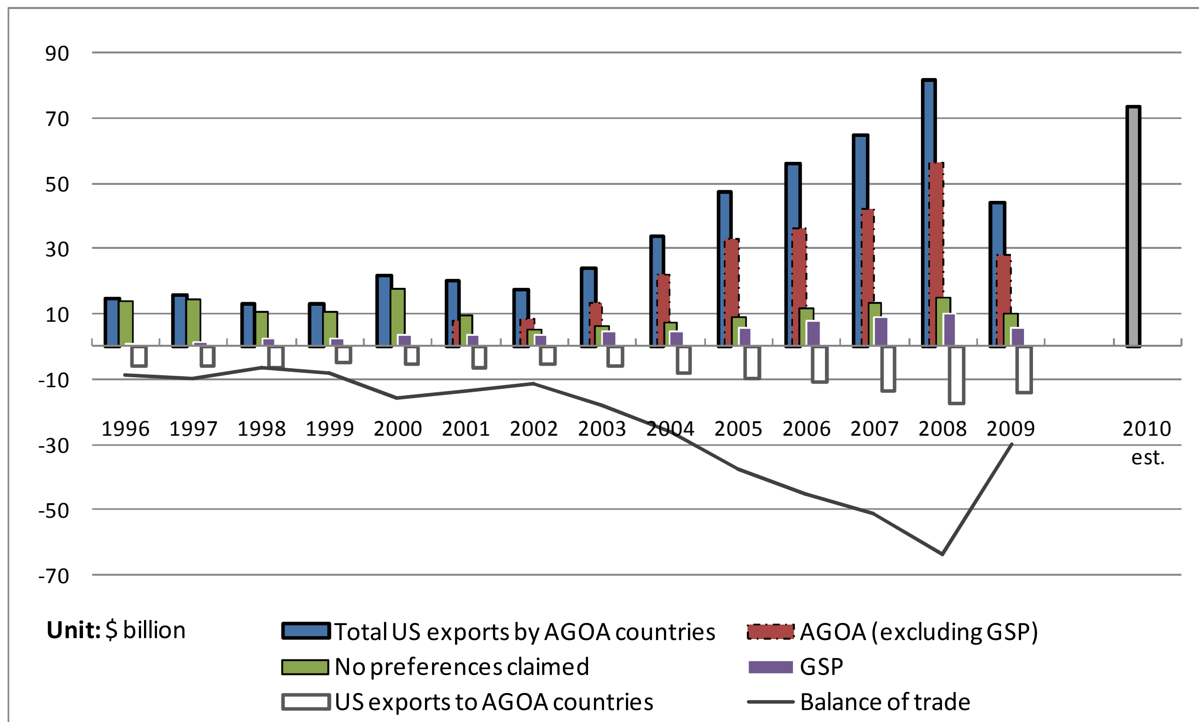
Figure 2: Total US imports by non-reciprocal preference programme (2000-2009)



Source: Congressional Research Service (2010)

In the period 2000 (the last year prior to AGOA) to 2008, aggregate exports from AGOA beneficiary countries to the US increased by 277% to $81.4 billion, while over the same period US exports to AGOA beneficiaries grew from $5.6bn to $14.4bn, representing an overall increase of 215%. The trade balance increased threefold in this time, in favour of the African group. Using more recent data to 2009, the increase in AGOA countries' exports to the US since 2000 is far more modest at 110%, and the increase in US exports 130%. The impact of the global financial crisis on 2009 trade has been severe, and there are many encouraging signs that 2010 will show a partial rebound to 2008 trade levels. Based on 67% year-on-year growth in AGOA countries' US exports for the first six months of 2010, it could be reasonably estimated that full-year exports may have recovered significantly and be valued at almost $75bn for the year.

Figure 3: Trade flows between AGOA beneficiary countries and the USA



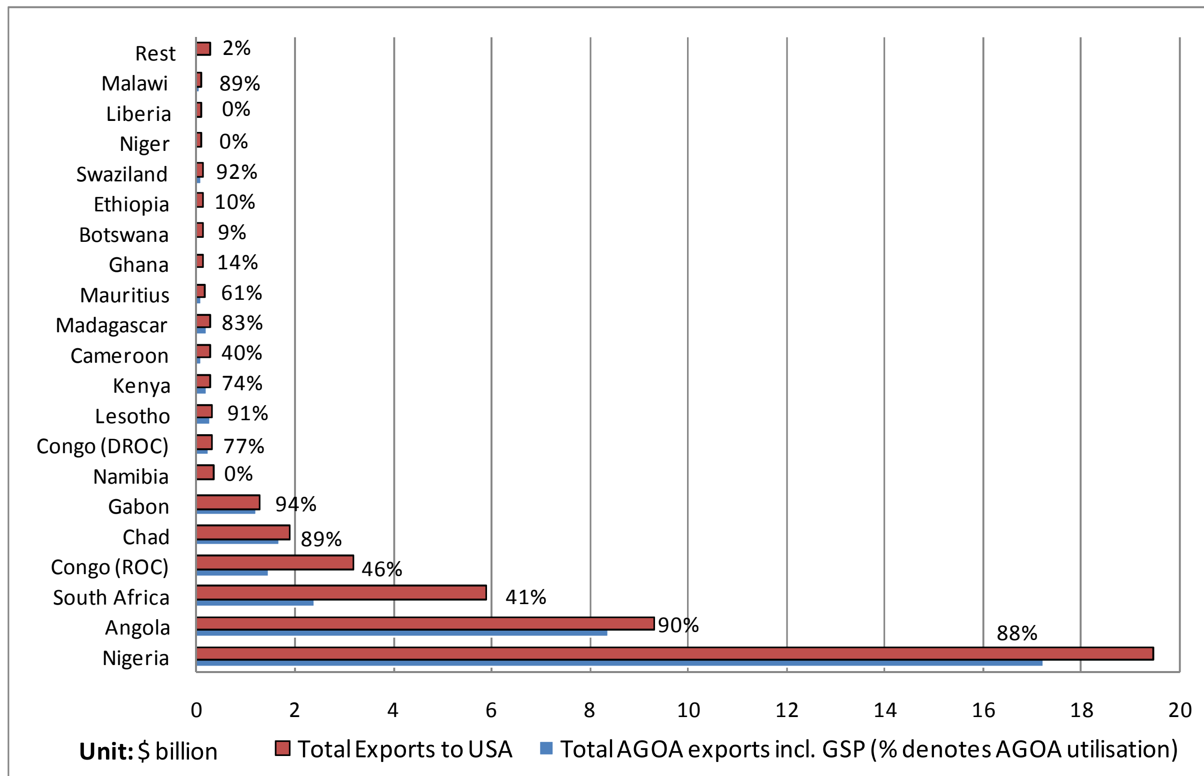
Source: Data extracted from US Department of Commerce / US International Trade Commission database

Energy-related exports (oil and gas[11]) account for a large part of AGOA countries' exports to the US, and inflate the figures provided above. Over the past three years, the share of energy-related exports as a percentage of total exports from AGOA beneficiaries has ranged between 80-83%, and since these products are mostly eligible for AGOA benefits, they likewise account for a very large share of AGOA exports, ranging from 90-93% in the years 2007–2009. The current Most Favoured Nation (MFN) tariff that the US imposes on crude oil imports (of HTS 27090020) is 10.5c/barrel. It can be argued that this category is not at all dependent on AGOA preferences, and a more realistic impression of eligible exports is gained by removing the impact of energy-related trade under the programme.

During the period under review (notwithstanding the *caveat* relating to oil exports), preferential trade under AGOA grew rapidly since 2001 when $7.6bn (out of $20.2bn) qualified for AGOA preferences. In 2008, AGOA exports peaked at $66bn (out of $81bn), before receding $34bn in 2009, although for 2010 AGOA exports are likely to move close to 2008 levels again, as they recover from the difficult trading conditions experienced in 2009. The trade surplus with the US in favour of AGOA beneficiaries peaked at $63.7bn in 2008, although this was reduced by more than half during 2009.

[11] Primarily HTS 270900 (crude oil from bituminous minerals) and HTS 271019 (oil, not light, from bituminous minerals not elsewhere specified).

Figure 4: Top 20 exporters to the US and share of AGOA eligible exports (2009)



Source: Data extracted from US Department of Commerce / US International Trade Commission database

Nigeria (AGOA utilisation: 88% of country exports) and Angola (utilisation: 90%) are the leading exporters to the US, and by extension account for the largest share of AGOA eligible trade. Angola only gained AGOA eligibility in December 2003, and trade data from 2004 onwards strongly reflects this contribution. As a percentage of total exports both countries' US-bound exports consist almost exclusively of energy-related goods (oil, gas and some related by-products). However, some smaller volumes of non-energy exports were also recorded and compared to many other AGOA beneficiaries, these exports are sizeable when considered on their own. In the case of Nigeria, during 2009, apart from oil exports it also exported $43mn (2008: $34mn) worth of cocoa beans to the US, $3mn of cashew nuts (2008: same), animal feed ingredients (2009: $2mn; 2008: $8mn), shrimps and prawns (2009: $1mn; 2008: same) as well as small quantities of sheep skins, spices, cocoa paste, handbags and so forth.

Following Angola's inclusion South Africa[12] has remained the third largest aggregate value of exports to the US, and under AGOA. In contrast to Nigeria and Angola in particular, but also to every other AGOA beneficiary, its exports have been relatively diversified, and also include many manufactured and high value-added products. In 2009, 90% of South Africa's US-bound exports qualified for AGOA preferences.

Other countries in the list of leading exporters to the US (Figure 2) include Lesotho, Kenya, Madagascar, Mauritius and Swaziland, whose main export category entails clothing exported under AGOA's special apparel provisions. Since these permit exporters to make up garments from imported cloth, they have provided exporters with flexibility in terms of their sourcing requirements and this enhanced their competitiveness in the US market. Clothing sector exports

[12] More analysis on South Africa's trade performance under AGOA is included in Chapter 3.

are discussed in more detail further down. Of the 20 leading exporters whose US exports are listed in Figure 2, all but Liberia and Malawi recorded exports to the US of $100mn or more in 2009. The top six countries each exported goods (for both *total* exports and *AGOA* exports respectively) valued at more than $1bn each during 2009.

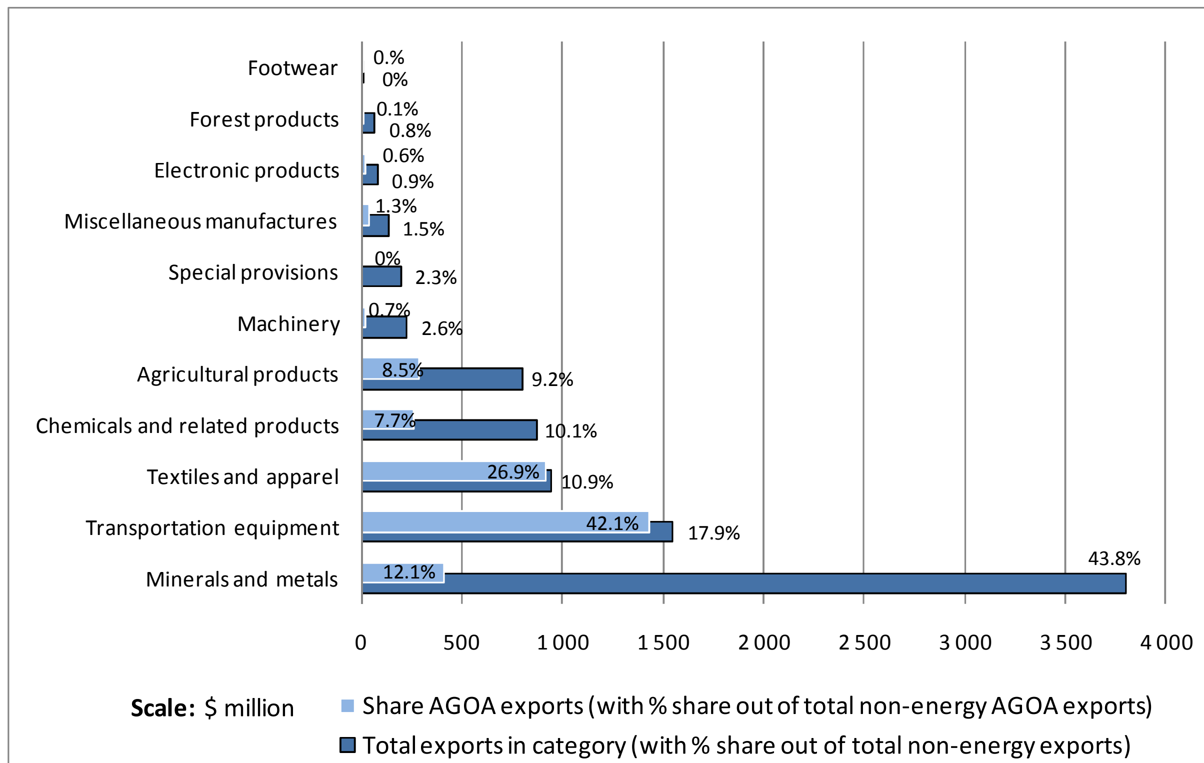
2.2 Sectoral breakdown of exports

During 2009, exports in the energy-related category were the dominant export category by value at $35.3bn, of which 86% qualified for AGOA preferences. Included in this figure is a 13% contribution by categories that previously qualified for (GSP) preference prior to the enactment of AGOA, and can therefore not be considered 'new' benefits. Figure 3 provides a sectoral breakdown of 2009 exports to the US from AGOA-eligible countries (energy-related exports have been left out above as their value of exports is almost 10 times greater than the second-largest export category and would heavily distorted the graph).

Minerals and metals form the second-largest category in terms of exports (43% of non-energy exports to the US), yet make up only 12.1% of all non-energy AGOA exports. The primary reason for this lies in the fact that the respective main export categories within this section (unwrought platinum, various categories of diamonds) have MFN duties of 0% and therefore no preferences are claimed. The main AGOA exports are aluminium alloy (3% MFN rate), ferromanganese (1.5% MFN), ferrochromium (1.9% MFN) and ferrosilicon manganese (3.9% MFN). Most of these were previously available as GSP benefits.

The transportation sector comprises primarily motor vehicles and parts, and is one of the success stories under AGOA albeit mainly for South African-based exporters. Exports in this sector account for 17.9% of total non-energy exports, with a large share of goods shipped under AGOA preference (93% in 2009, almost all of which comprised categories not previously eligible under the GSP). Transportation sector exports benefiting under AGOA account for 42% of total non-energy AGOA exports, and were worth almost $1.5bn in 2009. Further details are provided in the transportation sector analysis further down.

Figure 5: Sectoral composition of exports 2009 (excluding energy-related goods). Percentages exclude energy-related goods.



Source: Data extracted from US Department of Commerce / US International Trade Commission database

To many AGOA beneficiary countries, the textile and clothing sector is of critical importance in terms of exports, employment, investment and general economic upgrading. At least eight of the top 20 exporters in 2009 were countries whose capacity to export to the US has been largely confined to clothing trade. Textiles *per se* are not included in the AGOA legislation, and are generally limited to certain traditional fabrics. Most trade comprises made-up garments produced locally from imported fabric. Clothing exports accounted for 17.9% of non-energy exports in 2009 and had a 26.9% share of total non-energy AGOA exports. The sector accounts for the largest utilisation levels of AGOA benefits of any sector.

Smaller export categories include agricultural products (9.2% share of total exports, 8.5% of AGOA exports, where AGOA utilisation is 36%), machinery (2.6% and 0.7% respectively, with 10% AGOA utilisation), miscellaneous manufactures (1.5% and 0.1%, 33% AGOA utilisation) forest products (0.8% and 0.1%, with 5% AGOA utilisation) and footwear (less than 1% of total non-energy exports, but with AGOA utilisation of 40%).

Table 4. Key AGOA exports in selected product categories

(*comprising only products not previously eligible for GSP benefits*)

Sector	HTS Code	Product	AGOA exports in 2009
Energy-related	27090020 27090010	Crude oil >25 deg. API) Crude oil <25 deg. API)	$ 23,395mn $ 1,550mn
Minerals and metals	72021150	Ferromanganese	$87mn
Transportation equipment	87032300 87032400	Motor vehicles (1500cc-3000cc) Motor vehicles (>3000cc)	$ 1,310mn $ 53mn
Textiles and apparel	62046240 62034240 61102020	Women's trousers, not knitted Men's trousers, not knitted Sweaters	$ 191mn $ 118mn $ 111mn
Chemicals and related	38237060	Industrial fatty alcohols	$ 38mn
Agricultural products	08051000 08052000 24012085 22042150	Oranges, fresh or dried Mandarins ('naartjies' in South Africa) Tobacco, partly processed Wine <14% alcohol, containers <2 l	$ 31mn $ 7mn $ 25mn $ 23mn

Source: Data extracted from US Department of Commerce / US International Trade Commission database

2.3 Profile: The clothing production sector

Much of the economic and political focus of AGOA has invariably been on the clothing sector. There are a number of reasons for this, which include but are not limited to the fact that (a) clothing manufacture is a fairly basic secondary economic activity and widely distributed in Africa, (b) it presents significant opportunities for economic upgrading as many developing countries move away from an almost exclusive focus on natural resources and agriculture, (c) it represents a very favourable investment cost to employment creation ratio, while (d) under AGOA the Rules of Origin for most beneficiary countries are extremely favourable, considering also that import duties for trade under normal tariff relations are generally high.

As outlined earlier, textiles and clothing are subject to a special dispensation under AGOA. Textiles are largely excluded from preferential access, but limited coverage is provided to so-called traditional fabrics. Duty-free clothing trade must fall into one of almost a dozen special categories devised under AGOA (see table further below), with the two most important ones being 'apparel from foreign fabric made in a lesser developed country' and 'apparel from regional fabric from US or African yarn'. The former is open only to countries that have fulfilled special 'apparel visa' requirements to assist in the monitoring and traceability of sourcing, production and trade. It forms by far the bulk of AGOA-eligible exports in the textile and clothing category: in 2009, almost 90% of clothing exports from AGOA-eligible countries were shipped under this category, which requires only a single transformation (from fabric to garment) locally. A further 5% consists of clothing made from local or regional yarn (using African or US fabric), which translates into a triple-stage processing requirement. Main exporters in this category are Mauritius and South Africa.

Table 5. Clothing exports under AGOA by preference category

	HTS Code	2007	2008	2009
Total clothing exports		$ 1,292mn	$ 1,151mn	$921mn
- Total clothing exports under AGOA		$ 1,266mn	$1,137mn	$914mn
- Clothing from foreign fabric made in a lesser developed country	9819.11.12	$ 1,104mn	$985mn	$818mn
- Clothing from regional fabric from US or African yarn	9819.11.09	$81.4mn	$58.2mn	$44.5mn
- Clothing from fabric or yarn in short supply	9819.11.21	$ 39mn	$ 35mn	$30mn
- Clothing from fabric or yarn not available in the US in commercial quantities	9819.11.24	$24mn	$26.6mn	$19.4mn
- Cashmere sweaters, knit-to-shape	9819.11.15	$2.1mn	$4.2mn	$2mn
- Clothing made from fabric deemed to be available in abundant supply *	9819.15.10	$12.4mn	$26.2mn	-
* *category scrapped during 2008*				

Source: US Office for Textiles and Apparel (OTEXA)

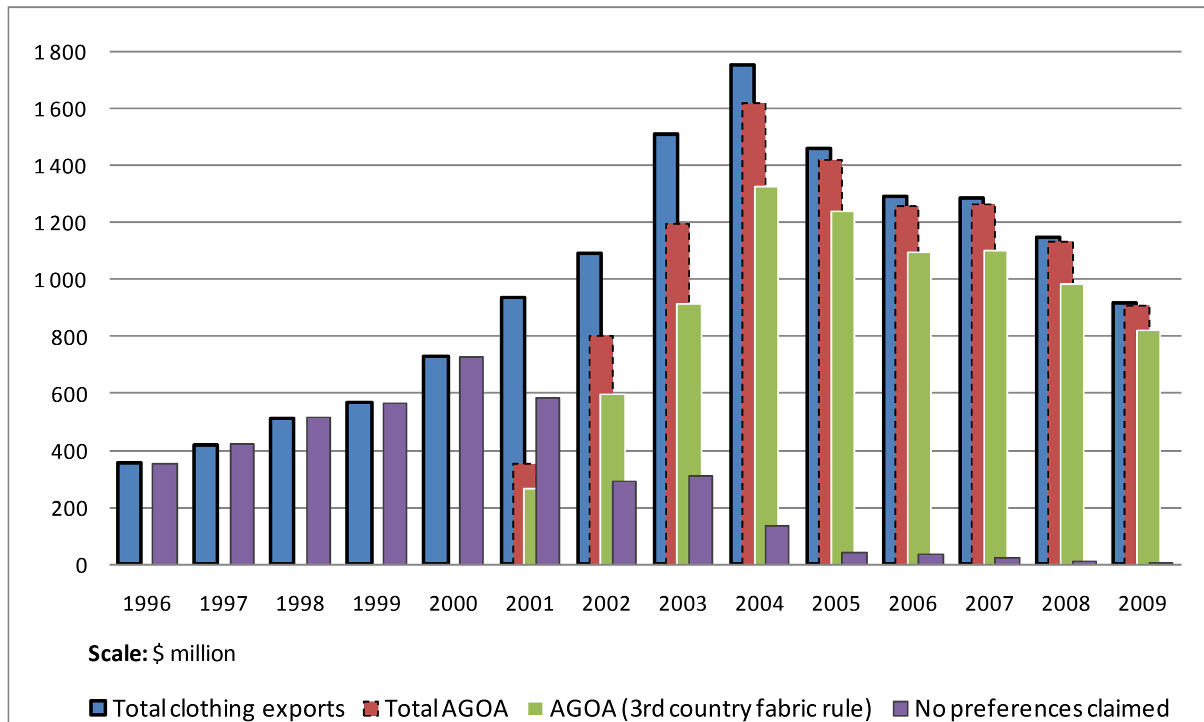
The period 1996–2009 illustrates mixed fortunes for African clothing exports to the US. In the period to 2000 (the year in which AGOA was enacted), there was a steady increase in exports to the US, rising to $729mn in 2000. Mauritius and Kenya were the first two beneficiary countries who were declared eligible to export clothing under the Act (date of declaration 18 January 2001), followed shortly afterwards by Madagascar (6 March 2001) and South Africa (7 March 2001). Madagascar, a major exporter of clothing, has since been suspended from AGOA (end 2009)[13].

During the period 2001–2004, the total value of beneficiary countries' clothing exports increased rapidly, rising to $1.75bn in 2004. Of this figure, $1.6bn qualified for duty-free access under AGOA. A large proportion – approximately 82% of AGOA clothing trade – was shipped under the third-country fabric provisions. Almost all US-bound exports were shipped within this category to countries such as Lesotho, Swaziland, Kenya and Madagascar. Were it not for very favourable origin requirements, much of this trade is unlikely to have taken place at all. Figure 4 below also demonstrates that AGOA-eligible trade (‘total AGOA’) grew much faster in the 2001–2004 period than total clothing exports, and consequently the share of qualifying exports as a proportion of total exports rose from 38% in 2001 to 92% in 2004.

The observed trade pattern can to a large extent be linked to global developments in the textile and clothing sector at that time – especially with respect to the phasing-out of quotas under the WTO Agreement on Textiles and Clothing (ATC). Up until the end of 2004, global textile trade was still restricted in many categories, and consequently importers in the US (and others) were compelled to source textiles and clothing from non-restricted countries. African suppliers remained until that point a particularly attractive proposition, especially given the favourable origin requirements which from a buyers' perspective (a) allowed specification of style of fabric to be used and (b) enabled African clothing manufacturers (as ‘price takers’) situated in AGOA-eligible countries to source fabric from the most competitive global locations and thus remain competitive in the export market.

[13] Source: http://www.agoa.info/index.php?view=about&story=country_eligibility.

Figure 6: Exports of clothing from AGOA countries



Source: Data extracted from US Department of Commerce / US International Trade Commission database

For the period 2005–2009, the trend of previous years is reversed and clothing exports to the US declined. The cumulative decrease from 2004 to 2009 was 48% in aggregate and 44% for clothing exports entering the US under preference. within the preferential trade categories, exports utilising third-country fabrics declined by 38% while those using local fabric made from US and African yarn (South Africa, Mauritius) declined by 77%. Although caution should be exercised in the interpretation of this data, as 2009 is not necessarily a representative year in that trade and general economic activity was suppressed as a result of the impact of the global financial crisis, preliminary data for the first six months of 2010 reveal further declines in this sector. Overall year-on-year data to June 2010 shows that exports of clothing under AGOA are down 35%, although much of this is due to the fact that Madagascar – a major beneficiary under the legislation – was suspended from AGOA at the end of 2009. If Madagascar is removed from the comparative analysis, AGOA exports are still lower by 15%. From the trade data a few key points emerge:

- The period 2001–2004 saw a rapid increase in clothing exports as a result of AGOA
- this trend was reversed from 2005 onwards
- this decline coincided with the opening of markets after the removal of quotas in line with requirements of the ATC, and a consolidation of supply sources by US buyers
- the share of clothing exports under AGOA as a proportion of total clothing exports has increased significantly, while exports without preference have fallen away almost entirely
- there has been a convergence between the value of trade in clothing made from third country fabrics (developing country beneficiaries) and aggregate clothing exports, indicating an almost complete reliance over the past few years on the preferences offered by AGOA.

Under the current dispensation, AGOA will expire in 2015 with the 'wearing apparel provisions' relating to the use of third-country fabrics set to end in September 2012. Based on the current trade profile which indicates that only 5% of AGOA trade is not dependent on third-country fabrics, the post-2012 period will likely see most clothing trade under AGOA fall away. This would have serious negative consequences for those countries currently utilising this feature, as, with the exception of South Africa (whose clothing exports under the Act have fallen to $10mn in 2009 from $126mn in 2003!), most other countries that export very little else to the US. In this context, it is worthwhile noting that even the European Union (EU) which for decades strongly resisted the notion of (only) single transformation as a origin requirement has undergone this paradigm shift and now offers a similarly liberal local transformation rule in the context of its recently concluded Economic Partnership Agreements (EPAs) with African, Caribbean and Pacific (ACP) countries. Since AGOA's inception, the special apparel provisions have twice been extended prior to expiry (first from 2004 to 2007, and then to 2012) and it is therefore conceivable that the US will not allow this provision to expire altogether in 2012. Recent legislative developments, including the proposed extension of the third-country fabric rule to 2015, are discussed further in Section 3.

2.4 Profile: The automotive sector

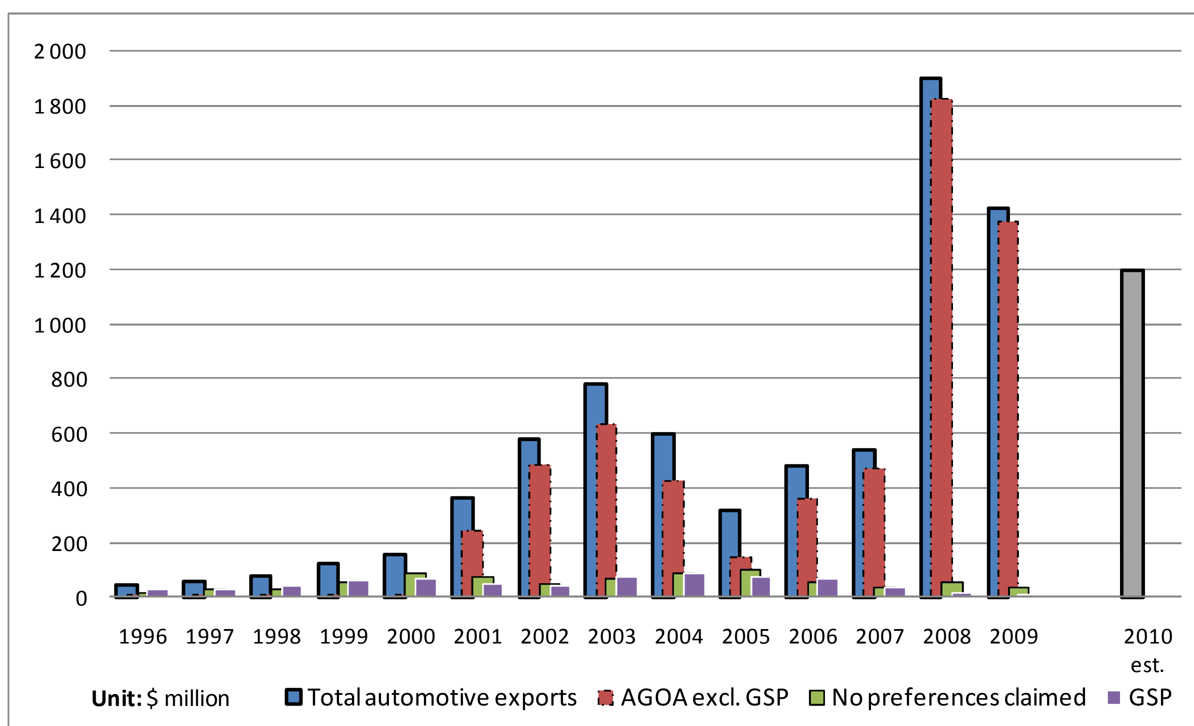
Motor vehicles and parts have become major beneficiaries of the AGOA legislation, although most of the benefits accrue to exporters based in South Africa where much of the continent's vehicle production sector is located. In 2009, this sector accounted for the largest share of non-energy trade (42.1%) under AGOA and a 17.9% share of total non-energy exports shipped from AGOA countries in that year. However, these figures do not translate into a similarly large share of preference receipts, since motor vehicles are subject to relatively low US import duties (2.5%) compared to others such as the clothing sector, where the leading product categories traded under AGOA in 2009 are subject to over 16% MFN duty.

The automotive sector exports almost immediately recorded significant increases following AGOA's inception, and peaked in 2008 with $1.9bn worth of vehicles and parts exported to the US. All of these exports are attributed to South Africa. As can be seen in Figure 5, sector exports receded significantly in the 2004–2005 period, before rebounding in 2008. A likely cause for this may have been the significant appreciation of the South African currency against the dollar at that time. All other things being equal, a South African produced motor vehicle was up to 40% less competitive on exchange rate alone in the 2004/2005 period than it would have been in 2002 when exports were initially growing rapidly. This factor makes the large growth in exports during 2008 all the more remarkable, as the local currency was closer to 2004 levels than the weaknesses it had previously experienced in 2002.

A large share of automotive exports shipped to the US qualifies for AGOA benefits: for example, in the year immediately preceding AGOA (2000), the share of preferential (GSP) automotive sector exports was 44%. By 2003, exports had grown more than fourfold and AGOA-eligible trade was 91% (including 9.4% under GSP) of total sector trade. In 2008, 97% of total sector exports qualified under AGOA while only 0.9% took place within product categories that already qualified for GSP preferences prior to AGOA. Exports in 2009 were approximately 25% lower than in 2008, and are *estimated* to drop a further 15% in 2010 based on the year-on-year figures for the first half of 2010.

Although the margin of preference (being the difference between the MFN tariff and preferential trade at 0%) is only 2.5% for motor vehicles, this nevertheless remains a significant factor. For example, on a $40,000 sedan the duty saving (at 2.5% MFN tariff) is approximately $1,000, which might be sufficient to cover transportation costs from South Africa to the US. Although outside the scope of this report, it is worth remembering that in producer-driven value chains (the motor vehicle industry being a fairly typical example), production, location and price decisions rest predominantly with producers rather than buyers (the clothing industry being a typical example of a buyer-driven value chain). In that context, it is likely that AGOA preferences have played a role in deciding on South Africa as a production and export base for certain motor vehicles for the US. In 2009 South African motor vehicles (1,500cc-3,000cc) accounted for 3.2% (2008: 2.9%) of total US imports within that category, significantly ahead of countries like the United Kingdom, Italy, Sweden and France. A recent news item announced that Ford Motor Company had decided on South Africa as one of its new global production bases for a new model pick-up utility vehicle (‘Ford Ranger truck’ 2010). However, a far more important factor contributing to South Africa's success with automotive exports is the country's motor industry development programme which provides incentives to local manufacturers.

Figure 7: Exports of motor vehicles and parts from AGOA countries



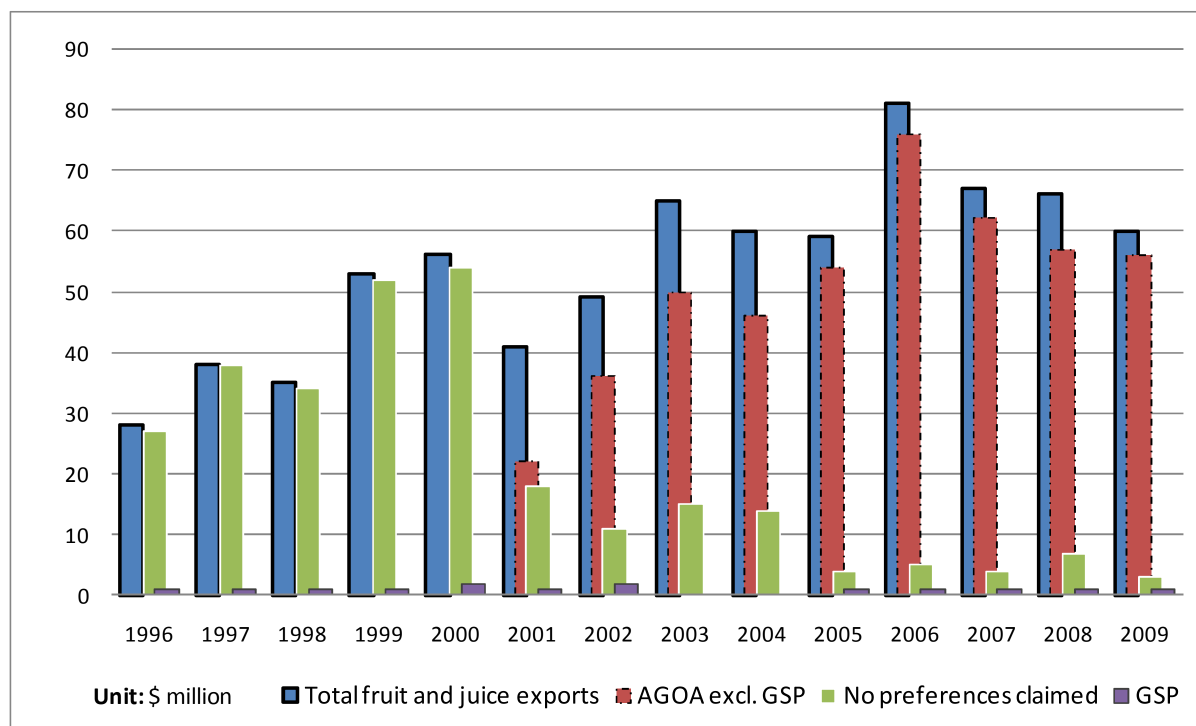
Source: Data extracted from US Department of Commerce / US International Trade Commission database

2.5 Profile: The fruit and fruit juice sector

Fruit and fruit juice[14] are the largest agricultural product categories exported to the US from AGOA beneficiaries. Trade within this sub-category alone was worth $60mn in 2009, having reached a peak in 2008 when $81mn worth of fruit and fruit juice was exported to the US. Figure 6 provides an overview of the sector's export performance since 1996; the data reveals that while there was steady growth in exports in the period 1996 to 2006 (including a decline in 2001, the first full year of AGOA), exports have declined slightly since then and are now at similar levels to 2000, the year of AGOA's inception. One of the key developments in the trade performance of this sector is that apart from steady growth in exports, non-preferential trade has largely been replaced by preferential trade.

In other words, AGOA has assisted exporters to be more competitive in the US market, and has helped grow trade volumes. The two most important product categories within this group are oranges (HTS 08051000) and mandarins (HTS08052000), which both gained eligibility for preferential treatment as a result of AGOA and have since then accounted for most trade in this sector (2009: 63%). Oranges are subject to a normal (MFN) tariff of 1.9c/kg, and with AGOA removing this, South Africa as a beneficiary country has become the leading foreign supplier of oranges to the US market, followed by Australia. South Africa's share of total US imports in this category has at times in the past decade exceeded 50%, although in 2009 this has reduced to 33%.

Figure 8: Exports of fruit and fruit juice from AGOA countries



Source: Data extracted from US Department of Commerce / US International Trade Commission database

[14] For the purposes of this analysis, the data analysis is based on HTS0803-HTS0810 (various fruit) and HTS 2009 (fruit juice).

In 2009, a little over 90% of AGOA-eligible exports from this category came from South Africa, and in order of importance consisted of fresh oranges, mandarins, raisins, pears and quinces with very small amounts of grapes and other fruit. The only other meaningful contribution to the total was from Kenya, which recorded approximately $4mn worth of pineapple juice exports under AGOA during 2009. Minor exports under AGOA were also recorded by Ghana, Swaziland and Uganda. Only $3mn worth of exports in this category were not shipped under preference. Minor exporters also include Mauritius, Cameroon, Mozambique, Nigeria Cameroon, Burkina Faso, Sierra Leone and Namibia.

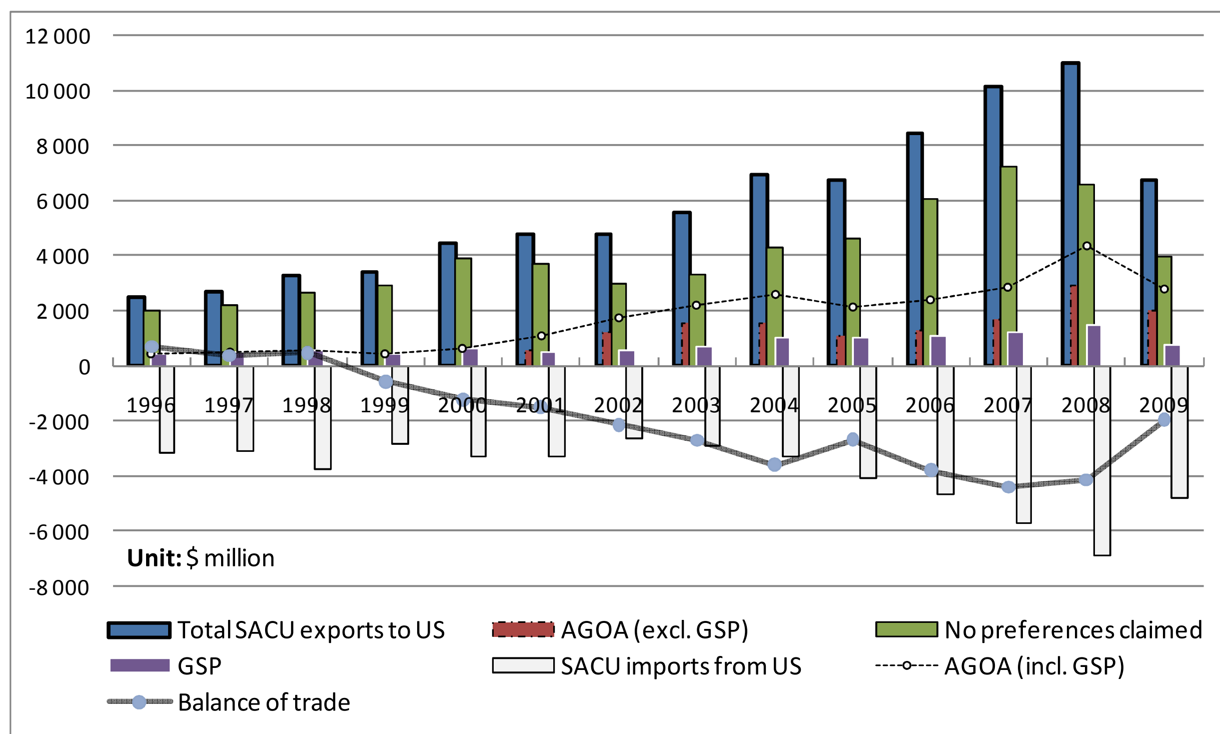
3. Under the microscope: AGOA coverage of SACU's trade with the US

3.1 SACU exports to the US

SACU's exports to the US have grown steadily over the past 15 years, and by 1998 had increased almost fourfold to $11bn before dropping sharply to $6.7bn in the following year during the global financial crisis. Exports under GSP grew slightly over this period, while combined AGOA/GSP exports accounted for an increasing share of total SACU exports since 2000. Over the 1996–2009 period the proportion of exports not claiming any preferences fell from 82% to 59%, with a large proportion of non-preferential exports taking place in categories that are already subject to 0% MFN rates. In short: very few current exports from SACU to the US are subject to import duties.

Over the same period, US exports to SACU countries grew from $3.1bn in 1996 to $6.9bn in 2008, and then declined to $4.8bn in 2009. Aggregate two-way trade was worth $5.6bn in 1996, $17.8bn in 2008 before contracting to $11.5bn in 2009. Midway through 2010, year-on-year exports had recovered by 27% over the previous year, while imports from the US had increased by less than 1% over the same period. Apart from the years 1996–1998, SACU has maintained a trade surplus with the US, growing from $0.7bn in 1999 to $4.1bn in 2008, before receding to $2bn in 2009.

Figure 9: SACU's exports to the US



Source: Data extracted from US Department of Commerce / US International Trade Commission database

During 2009, most of SACU's US-bound exports by value (87%) originated in South Africa, 5% in Namibia, 4% in Lesotho and 2% in each of Botswana and Swaziland (see Figure 8).

Only 41% of SACU's aggregate exports qualified for AGOA preferences. Of these, a quarter comprised product categories that fall under the US GSP. Just below 60% of aggregate trade took place without claiming any preferences; most of these were already subject to a US MFN tariff of 0% which represented no further tariff-related burden on exporters.

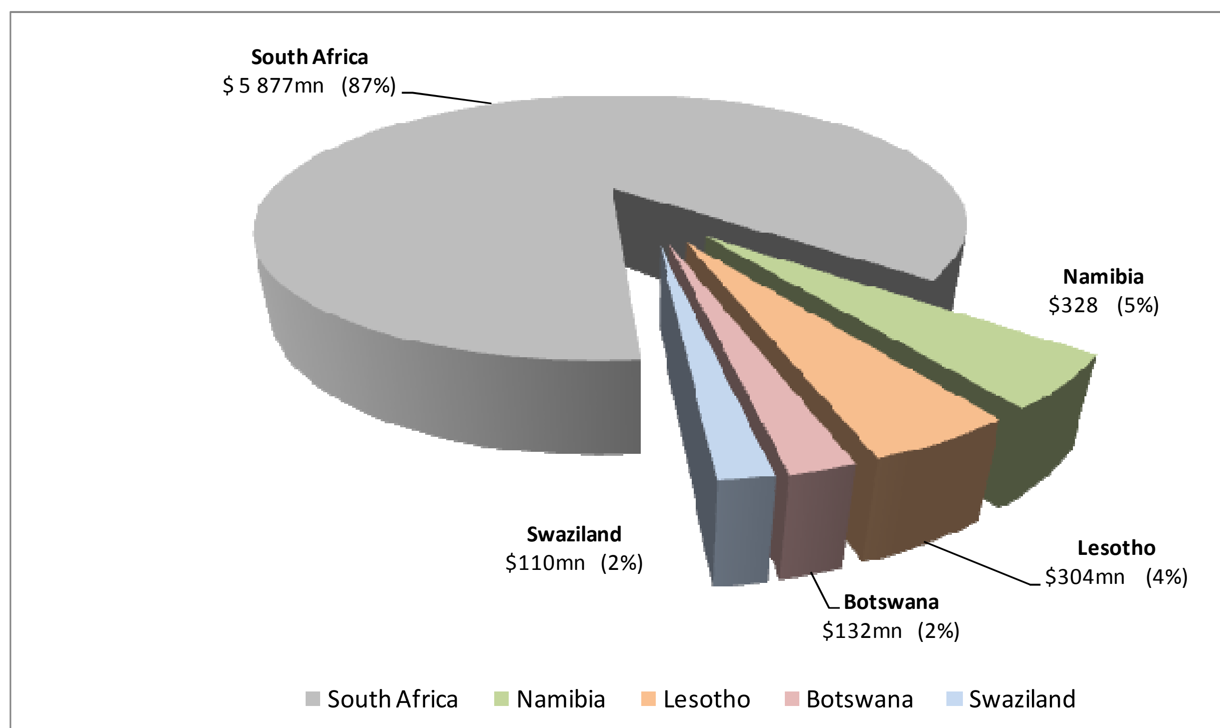
While these aggregate figures provide a useful general indication and broadly match those of South Africa's US exports (considering the country's large share of the total), they are not representative of individual SACU Member States. Table 6 shows individual preference utilisation rates during 2009:

Table 6. Aggregated SACU Member State exports and share of preference utilisation

Country	Total SACU exports to US 2009	% Preferential	% Non-preferential	% of SACU exports to US	Total US exports to SACU
Lesotho	$304mn	91%	9%	4%	$17mn
Swaziland	$110mn	92%	8%	2%	$15mn
Namibia	$328mn	0.5%	99.5%	5%	$202mn
Botswana	$132mn	9%	91%	2%	$93mn
South Africa	$5,877mn	41%	59%	87%	$4,461mn
BLNS	$873mn	45%	55%	13%	$327mn
SACU total	$6,750mn	41.4%	58.6%	100%	$4,787mn

Source: Data extracted from US Department of Commerce / US International Trade Commission database

Figure 10: Breakdown of country contribution to total SACU exports to US (2009)



Source: Data extracted from US Department of Commerce / US International Trade Commission database

However, aggregate regional trade hides much of the important detail. Although AGOA has played a role in each SACU country's trade with the US (Namibia had largely fallen away by 2009, but had exported to the US under AGOA previously), the Act's relative importance differs with 'compliance' ratios ranging from over 92% (Lesotho) to 0.5% (Namibia). Country-specific trade with the US is analysed further down.

Among the leading products, motor vehicle and parts formed the single largest export category by HS chapter during 2009, with South Africa accounting for almost all trade. The sector is also an important beneficiary of AGOA preferences with a MFN tariff (and hence preference margin) of 2.5%. Precious and semi-precious stones closely follow motor vehicle exports as the second-largest category of exports; the difference is that no import duty is levied by the US, as the MFN tariff is already 0%. Machinery and appliances are the next-largest manufacturing export category, and as with motor vehicles, South Africa accounts for virtually all exports to the US. Catalytic converters fall into this group (84xx), although they could probably be considered as part of 'motor vehicles and parts' for this analysis. In 2009, South Africa was the second largest foreign supplier of catalytic converters to the US market (after Mexico, and ahead of countries like Canada, the UK, Germany and Japan). Although included in the GSP list of products, this category has a 0% MFN rate.

Due to favourable RoO, articles of clothing (Chapters 61 and 62) individually fall within the top 10 export categories by chapter. Taken together, clothing forms the fourth largest export category with almost $400mn worth of exports from SACU during 2009. Lesotho (74%) and Swaziland (22%) account for most US-bound exports in Chapter 61 and similarly in Chapter 62 (Lesotho: 70%, Swaziland 28%). Namibia previously exported a sizeable amount of clothing (albeit originating within one company), although these largely dried up following this company's closure early in 2008. South Africa was also previously a clothing exporter to the US market, despite facing much stricter (triple transformation) origin requirements under AGOA, although these have also contracted severely (inter alia as a result of a recovery in the exchange rate of the local currency against the US dollar) .

Table 7. Leading exports by chapter from SACU to US (2009)

HTS Ch.	Description	2009 exports	Major regional exporters
87	Motor vehicles and parts	$ 1,444mn	SA (99%)
71	Precious and semi-precious metals, stones, and articles thereof	$ 1,377mn	SA (92%)
26	Ores, slag and ash	$530mn	Namibia (52%), SA (48%)
72	Iron and steel	$ 353mn	South Africa (99%)
84	Machinery and mechanical appliances, parts	$ 270mn	SA (99%)
61	Articles of clothing, knitted or crocheted	$ 235mn	Lesotho (74%), Swaziland (22%)
29	Organic chemicals	$ 195mn	SA (99%)
28	Inorganic chemicals, organic or inorganic compounds	$ 176mn	SA (99%)
76	Aluminium and articles thereof	$176mn	SA (99%)
62	Articles of clothing, not knitted or crocheted	$160mn	Lesotho (70%), Swaziland (28%)
98	Special classification provisions	$78mn	SA (99%)
08	Edible fruit and nuts	$60mn	SA (99%)
85	Electrical machinery and equipment	$59mn	SA (92%), Swaziland (8%)
22	Beverages, spirits and vinegar	$59mn	SA (99%)
38	Miscellaneous chemical products	$51mn	SA (99%)

Source: Extracted from US Department of Commerce / US International Trade Commission database

Apart from exports in Chapter 26 (ores, slag and ash), where Namibia and South Africa account for SACU's exports to the US, in all other major product categories apart from clothing South Africa accounts for virtually all US-bound exports.

The following table records the 20 leading exports from SACU by product (disaggregated at the HS8-digit level), and indicates the import tariff classification for each product. The data reveals that each of these products is eligible for duty-free access to the US market. By far the single largest export is ordinary passenger motor vehicles (1,500cc-3,000cc engine size), and AGOA plays an important role here by removing the 2.5% MFN duty. This product also did not previously qualify under the US GSP and can thus be considered a major beneficiary of these preferences. Most of the other products in the top 10 already benefit from 0% MFN access; this means that irrespective of AGOA (or the GSP), by value most of SACU's products currently shipped to the US are done so free of import duty.

In terms of preference margins as a result of AGOA, apart from motor vehicles (2.5% preference), ferromanganese (1.5% preference) and particularly clothing (16.6% preference) are the largest direct beneficiaries. GSP beneficiaries could be included too, as AGOA extends benefits in these categories more broadly by not subjecting them to the periodic GSP extension and related legislative process. Also, as indicated previously, AGOA removes the competitive needs limitations, where products can be migrated out of the GSP when a particular country's exports exceed a certain threshold, unless a special waiver has been granted. Such CNLs generally relate to individual countries and can disrupt a country's exports to the US, particularly if the preference margin is high.

Table 8. Leading exports by product from SACU to USA (2009)

HTS Code	Description	2009 exports	MFN tariff	AGOA/ GSP / MFN
87032300	Motor vehicles with engine size 1,500cc-3,000cc	$1,321mn	2.5%	GSP/AGOA
71101100	Platinum, unwrought or in powder form	$ 786mn	0%	MFN
71023900	Nonindustrial diamonds	$ 652mn	0%	MFN
71103100	Rhodium, unwrought or in powder form	$ 345mn	0%	MFN
26121000	Uranium ores and concentrates	$ 276mn	0%	MFN
71023100	Nonindustrial diamonds	$175mn	0%	MFN
71102100	Palladium, unwrought or in powder form	$166mn	0%	MFN
29012950	Unsaturated acyclic hydrocarbons	$117mn	0%	MFN
26209950	Slag containing >40% titanium	$ 115mn	0%	MFN
76061230	Aluminium alloy	$ 97mn	3%	GSP
72024100	Ferrochromium	$96mn	1.9%	GSP
84213940	Catalytic converters	$96mn	0%	GSP
72021150	Ferromanganese	$89mn	1.5%	GSP/AGOA
71189000	Coins	$76mn	0%	GSP
76011060	Aluminium (unwrought)	$76mn	0%	GSP
62034240	Men's or boys' trousers and shorts,	$75mn	16.6%	AGOA
98010010	US goods returned, not advanced in value	$73mn	0%	n/a
61102020	Sweaters, pullovers, knitted or crocheted	$69mn	16.5%	AGOA
72023000	Ferrosilicon manganese	$60mn	3.9%	GSP
28046910	Silicon	$59mn	5.3%	GSP

Source: Extracted from US Department of Commerce / US International Trade Commission database

3.2 US exports to SACU

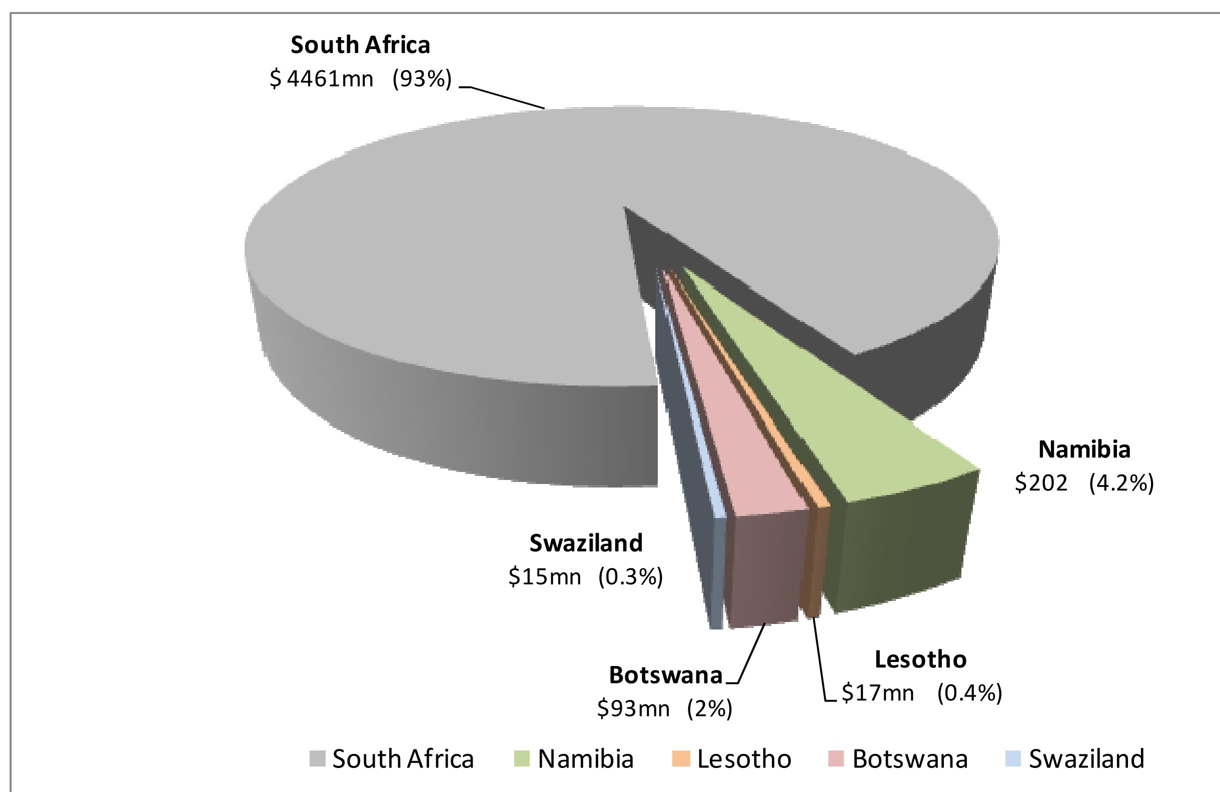
As indicated earlier, SACU enjoys a sizeable trade surplus with the US and has done so for the past decade. Each country individually also exports more to the US than it imports from it. Although 2009 was a difficult trading year – particularly for exports to the US – early indications are that both aggregate trade and the SACU trade surplus will increase in the full year 2010.

The profile of trade between SACU and the US differs sharply, however. Whereas SACU's exports are on the whole based on raw materials (minerals and metals as well as precious stones) – South Africa's motor vehicle trade and the Lesotho and Swaziland's clothing exports being notable exceptions – imports from the US are generally much more heavily concentrated in manufactured goods. Key import categories are shown further below.

Within the region, South Africa is by far the largest importer of goods from the US and accounted for 93% of imports during 2009. These were worth almost $4.5bn, resulting in a trade surplus of $1.4bn. South Africa's share of SACU imports from the US is also larger than its share of exports (93% vs. 87%). Namibia is the next largest importer (4.2%), with a similar share of exports while still maintaining a trade surplus. Botswana's imports from the US (2% of SACU) are the third largest, and it is the only other significant importer.

Lesotho and Swaziland have each recorded very low imports from the US and together account for 0.7% of SACU-wide imports from the US. Both countries are significant producers and exporters of clothing under AGOA.

Figure 11: Breakdown of country contribution to total SACU exports to US (2009)



Source: Extracted from US Department of Commerce / US International Trade Commission database

Items from Chapter 84 (machinery and mechanical appliances and parts) are SACU's largest category of imports from the US, and were worth almost twice those of the next largest, namely Chapter 87 (motor vehicles and parts). Most Chapter 84 imports were imported by South Africa (93%), while a small share went to Namibia (6%). Although it forms the largest import category, only two sub-categories fall into the top 15 imports (next table): this is due to the fact that imports within this chapter were diverse and took place in many sub-categories. These included parts for cranes, bulldozers and grading equipment (HS 843149), parts for handling/loading equipment (HS 843139), boring or sinking machinery (HS 843041), cranes (HS 842649), agricultural spraying equipment (HS 842481), mechanical front-end shovel loaders (HS 842951) and so forth. Most of these products attract no import duty when imported into the SACU area.

SACU's next largest import category comprises Chapter 87 goods (motor vehicles and parts). Although Chapter 87 also forms the largest export category from the region, the type of product traded differs. Whereas SACU (South Africa) exports predominantly passenger motor vehicles from this chapter, SACU (South Africa) imports from the US mainly utility vehicles – dump trucks and tractors, and some quantities of larger-engine motor vehicle, as well as motor vehicle parts. Other high-end imports from the US were in Chapter 85 (electrical machinery) and Chapter 88 (aircraft and parts), with South Africa again accounting for most imports, with a small share going to Namibia and Botswana respectively. Other major categories were Chapter 90 (medical, photographic, optical instruments), oil, chemicals, pharmaceuticals and articles of plastic. Only in the following categories was South Africa's share of regional imports from the US lower than 90%: oil and gas (Chapter 27), certain unclassified/special classification categories (98), precious stones (71) and pharmaceutical products (30).

Table 9. Leading exports by Chapter from USA to SACU (2009)

HTS Ch.	Description	2009 exports	Major regional importers
84	Machinery and mechanical appliances, parts	$1,008mn	SA (93%), Namibia (6%)
87	Motor vehicles and parts	$525mn	SA (95%), Namibia (4%)
85	Electrical machinery and equipment	$512mn	SA (91%), Botswana (8%)
88	Aircraft and parts	$ 343mn	SA (96%), Botswana (3%)
90	Optical, photographic, cinematographic equipment, medical instruments	$ 314mn	SA (97%), Namibia (2%)
27	Oil, gas and fuel	$ 313mn	SA (86%), Namibia (14%)
98	Special classification provisions	$ 274mn	SA (79%), Botswana (10%), Namibia (10%)
38	Miscellaneous chemical products	$ 129mn	SA (99%), Swaziland (1%)
29	Organic chemicals	$128mn	SA (100%)
39	Plastics and articles thereof	$125mn	SA (99%), Namibia (1%)
71	Precious and semi precious metals, stones, and articles thereof	$103mn	SA (83%), Namibia (17%)
30	Pharmaceutical products	$93mn	SA (82%), Lesotho (17%)
40	Rubber and articles thereof	$73mn	SA (98%), Namibia (1%)
33	Essential oils, cosmetics, perfumery	$65mn	SA (97%), Swaziland (2%)
95	Toys, games and sports equipment	$50mn	SA (100%)

Source: Extracted from US Department of Commerce / US International Trade Commission database

Unlike SACU's exports to the US, which are virtually all duty-free (either due to 0% MFN rates in the US, or through preferences under GSP/AGOA), a number of leading US exports to

SACU attract import duties. For example, motor vehicles and related categories are subject to relatively high duties ranging from 5% to 27% and are a reflection on South Africa's manufacturing interest and protective industrial policy in this sector. Notably significant imports to SACU take place in Chapter 27 categories that are still subject to 27% import duty. Most of these are destined for the South African market, and in addition to value-added tax (VAT) of 14% means that these products are effectively subject to a 41% trade barrier, apart from the usual logistics involved in shipping trans-Atlantic to South Africa. Vehicles used in construction and related disciplines, including tractors, are however zero-rated, as are medical instruments and medicines, and various categories under the electrical equipment and parts category (Chapter 85).

Table 10. Leading exports by product from US to SACU (2009)

HTS Code	Description	2009 exports	SACU tariff*
880000**	Aircraft and parts thereof	$334mn	0%
988000	Special provisions / low value shipments	$252mn	-
843149	Parts for cranes, bulldozers, grading equipment (excluding radiators)	$149mn	0%
870410	Motor vehicles ("dump trucks")	$137mn	10%
271019	Petroleum oils and oils (not light)	$82mn	11c/l
271312	Petroleum coke, calcined	$73mn	0%
901890	Medical instruments and parts thereof	$63mn	0%
870120	Road tractors	$58mn	20%
870899	Parts and accessories for motor vehicles, nesoi	$54mn	5-20%
851762	Switchboards, routers, voice and data reception equipment	$53mn	0%
270799	Oils and products of coal tar distillation processes (mainly carbon black feedstock)	$52mn	11c/l
870190	Tractors, nesoi	$49mn	5%
270112	Bitumous coal	$47mn	0%
843139	Parts for handling/loading machinery	$47mn	0%
870324	Motor vehicles with engine size >3,000cc	$45mn	27%
870130	Track laying tractors	$42mn	0%
870333	Motor vehicles, diesel, with engine size > 2,500cc	$39mn	27%
850300	Parts of electric motors, generators, converters	$38mn	5-15%
854470	Insulated optical fibre cables	$36mn	15%
300490	Medicines, in measured doses (excluding vaccines)	$36mn	0%

* As the tariff is often distinguished at the HS8-digit level of disaggregation, the relevant tariff provided is based on closer scrutiny of actual trade flows within the 6-digit category listed

* * *While the statistical database shows "880000", the description matches that of aircraft under 8802xx and it is assumed for purposes of this overview that 880220, 880230 and 880240 (covering aircraft – not helicopters – of all weight categories) are applicable*

Source: Extracted from US Department of Commerce / US International Trade Commission database

Based purely on current trade flows, it would thus appear that the SACU region benefits from largely duty-free access to the US market, either through existing 0% MFN rates or the preferences extended under the US GSP and AGOA. At this point it is worth recalling that AGOA essentially extends the US GSP by providing duty-free access for GSP products without the periodic renewals of the underlying programme, and also builds on the GSP's product coverage through the removal of duties on more than 2,000 additional tariff lines (including made-up clothing). SACU's current trade profile does not mean that other product

categories (not included under AGOA or already duty-free) would not also enjoy greater competitiveness in the US market were it not for the presence of US import duties in those categories.

4. A changing policy environment – recent legislative developments in the US

4.1 Brief overview of US lawmaking process

The original AGOA legislation was signed into law in 2000 by former President Bill Clinton, having enjoyed strong bipartisan support which ensured its passage through the US Congress at the time. The legislation and work behind the scenes had, however, started years previously, and represented the US first formal preferential trade dispensation for the benefit of Sub-Saharan African countries.

Subsequent to the original AGOA legislation, a number of amendments were passed by Congress, mainly to extend AGOA benefits, but also to make technical amendments and clarifications to certain sections where these had previously been incorrectly interpreted by US customs (or at least in a manner that was contrary to the original objectives of the legislation). These periodic amendments highlight the fact that the AGOA legislation does not form part of a bilateral trade pact but simply remains a part of US legislation, therefore any changes are subject to a cumbersome legislative process and remain the prerogative of US lawmakers. For this reason, most amendments and extensions thus far have represented commitments that continued to be time-bound, necessitating positive intervention at regular intervals to avoid their expiry. Although a number of legislative amendments have been passed over the years (the major changes were known as AGOA I-IV respectively), various other changes failed one of the stages of the US lawmaking process. For example, certain modifications to AGOA's textile provisions relating to Mauritius (to effect change to the RoO that would extend certain third-country fabric benefits to exporters located there) were initially defeated (and thus delayed) as they had been packaged within a much broader collection of legislative changes which were not all agreeable to Congress.

Currently, the US is seeking to somewhat rationalise its preferential trade regime in terms of the market access that it grants to least-developed countries. In particular, new laws are being considered that would extend improved preferences to countries such as Bangladesh and Cambodia – countries that some Sub-Saharan African countries compete with for market share in the US, particularly in the clothing sector. Although these changes could – if they are passed – have significant negative impacts on some AGOA beneficiaries, there is concern that African countries do not appear to be actively following and understanding how these issues affect local producers and exporters, and are for the most part not engaging with their US counterparts to record their concerns, directly or indirectly, for example through lobby groups and the like.

This section provides a broad overview of the US lawmaking process and the complexities of passing new legislation or technical amendments to existing legislation.

Laws are usually – but not necessarily – signed into law by the US president. The exception to this is when the president rejects (vetoes) proposed legislation, but is then voted on again by both sections of Congress and is passed by a two-thirds majority in both. In essence, Congress is the collective term for the entire legislature. It is referred to by its historical number and session – for example, the AGOA legislation was passed by the 106th Congress (6 January 1999 to 15 December 2000) during its second Session (24 January 2000 to 15 December 2000).

Congress is bicameral and consists of two chambers – the Senate and the House of Representatives. The former has 100 members (two from each state), while the latter has 435 members (one from each district). Elected members of the House of Representatives serve two years at a time, while members of the Senate serve six years at a time. Other technical and nuanced differences between the two chambers are beyond the scope of this paper.

Congress is responsible for proposing legislation, which can be introduced in either chamber. Bills introduced in the House are annotated by an 'H.R.' number while those that originate in the Senate are preceded by an 'S'. Initially, a new bill is assigned to a specialist sub-committee (for example, the House Committee on Ways and Means deals with revenue-related legislation, including trade agreements), which may call experts to testify on the content of the bill. Regional secretariats, employers associations and other interested stakeholders are given the opportunity to make submissions and representations (in person) at this stage. At the end of this process, the bill is either put aside (a process termed 'tabling') or released back to the House for a vote (termed 'reporting it out'). The Committee may recommend passing of the bill, and may make amendments to its content prior to subjecting it to a vote. Once passed by a simple majority, the bill is forwarded to the Senate for consideration.

Once tabled in the Senate, a similar process to that in the House takes place. One of 16 standing committees is tasked with initial scrutiny of the bill, which in turn releases it to the floor for a vote, or tables it (rejects it). Again, a simple majority is required to pass the Senate. Since changes to the text may have been made at this stage, the bill is presented to a so-called conference committee which scrutinises the two versions and attempts to iron out any differences, even if minor. Once consolidated, the text passes back to each house for final approval, prior to being presented to the President for signature. The President then has 10 days to sign proposed legislation into law. If he does nothing, it automatically becomes law (an exception to this is if Congress adjourns for good prior to the 10-day period for consideration having expired – this is called a 'pocket veto').

Should the President veto the proposed legislation, it is sent back to Congress, which can either undertake amendments to the bill in line with the President's wishes, or can take a revote, which if passed in both chambers by a two-thirds majority then still becomes law.

Between the two chambers, far more bills are initiated in the House of Representatives than in the Senate. Considering the complexities involved in passing legislation, it is of little surprise that only a very small share complete the passage through Congress and are written into law: in 2000, the year of AGOA's inception, over 4,000 bills were introduced, yet only 9.65% of these were enacted as public laws. In 2009, more than 9,000 bills were introduced in both chambers together, yet only 119 of these (1.3% of those introduced) were passed. Most bills never make it beyond the Committee stages. This probably demonstrates why changes to the AGOA legislation – especially technical changes or extensions – must first undergo a lengthy process and may fail at any stage throughout their passage through Congress. Very little legislation 'fails' as a result of a presidential veto: between 2000 and 2009 only 17 bills were vetoed of which seven vetoes were subsequently overridden by Congress.[15] During the same time, more than 2,200 public laws were enacted.

[15] See: Congress by the Numbers, 111th Congress, 2nd Session.1999-2010. TheCapitol.Net, Inc. [Online]. Available: http://www.thecapitol.net/FAQ/cong_numbers.html.

4.2 The 'New Partnership for Trade Development Act of 2009' – implication for AGOA beneficiaries

On 18 November 2009, Representative James McDermott proposed legislation known as the 'New Partnership for Trade Development Act of 2009', categorised formally as Bill H.R 4101. McDermott had also been closely involved in designing the original AGOA legislation and promoting it in Congress. As of October 2010[16], Bill H.R. 4101 had been referred to the House Committee on Ways and Means, although deliberations and witness testimony are ongoing and the proposed legislation has not yet been reported. If the House Committee provides a favourable report (with or without amendments), the legislation will be voted on by the House of Representatives (and the Senate), before being offered to the President for signature.

H.R. 4101 seeks to reform US preferential trade programmes that offer duty-free market access to all least-developed countries. This includes the GSP and AGOA, which is the focus of this section. Key points to the proposed legislation include the eventual termination of benefits to current AGOA beneficiary countries whose income exceeds a new UN-determined threshold (which would graduate a significant number of beneficiary countries and disqualify them after 2015), an extension of the third-country fabric rule from 2012 to 2015, and an extension of favourable RoO for textiles to countries such as Bangladesh and Cambodia, the latter which is likely to have a significant negative impact on African textile exporters to the US.

The Senate will shortly also considering its own version of a trade preference reform package. This process is spearheaded to a large extent by Senators Chuck Grassley (Republican – Iowa) and Max Baucus (Democrat – Montana). Sen. Baucus is the Chairman of the Senate Finance Committee while Sen. Grassley is the Ranking Member[17], and for some time they have worked on US trade policy reform. In March 2010, the Committee held hearings on the subject – the third in as many years – and in his opening remarks Sen. Grassley emphasised the following points:

- a preference programme should have firm graduation provisions (also note this issue in the discussion on H.R. 4101 below)
- preferences should (no longer) be extended to countries that are at an advanced stage of development
- eligibility criteria should be clear and transparent, with more emphasis on human rights standards
- Rules of Origin should be appropriate to encourage trade and development in least-developed countries
- unilateral preferences (by the US) should be reconsidered where they start impeding on 'meaningful reciprocal market access concessions in the Doha negotiations'.

Although a Senate version was to have been introduced as early as August 2010, a number of outstanding issues means that this had still not materialised at the time of writing (October 2010). While there are indications that it will be finalised before year-end, Bill H.R 4101's future direction is less certain since one of its main advocates, Senator Grassley, will move from the Senate Finance Committee (dealing with trade legislation) to the Senate Judiciary Committee in 2011.[18]

---

[16] See http://www.govtrack.us/congress/bill.xpd?bill=h111-4101.
[17] A Ranking Member is the second most senior person from the majority political party in a legislative committee.
[18] *Perscom. on the Senate version with Victor Mroczka, Hughes Hubbard and Reed LLP, USA*

Since the House version of this trade reform is already available, the specifics are analysed in greater detail below. It remains uncertain, however, whether the proposed legislation as it stands will be put to vote in the House of Representatives, where in any case successful passage is not assured. Politics may well play a deciding role, especially if as is widely expected opposition Republicans gain control of the House and progress on certain legislation becomes stifled. Nevertheless, this section aims to highlight the fact that changes to non-reciprocal US preferences – with some serious implications for certain AGOA beneficiaries – are likely.

Extension of preferences to 2015 and beyond: under the current dispensation, AGOA preferences would cease by the end of 2015, unless there is a successful conclusion of the WTO Doha Development Agenda round of negotiations by the end of that year. If that is the case, AGOA's preferences are extended by a further four years up to the end of 2019 for all eligible countries.

After 2019, preferences will cease for countries that are not considered to be least developed (as of 31 March 2019) according to the relevant threshold determined by the Economic and Social Council of the United Nations. For countries that meet this requirement, preferences are extended for five-year periods at a time, starting on 1 January 2020. For successive periods thereafter, eligibility will be re-determined at the start of each period.

These changed eligibility conditions will have the likely impact – should preferences be extended beyond 2015 pursuant to fulfilment of the Doha criteria mentioned above – that a number of current beneficiaries will lose their AGOA status. These include Mauritius, South Africa, Nigeria, Namibia, Botswana, Swaziland, Ghana, Seychelles and others. Realistically, disqualifying countries that are not considered *least developed* under the UN definition will mean that most current AGOA exports will vanish.

Eligibility criteria extended to other countries: H.R. 4101 makes provision to extend AGOA-like benefits to other countries that are considered least developed as per the UN definition. This would apply to countries from the date of enactment of the proposed legislation: until the end of 2014, other least developed countries may qualify provided they meet the UN LDC threshold as at 31 March 2009. For the following five years to 2019, the threshold is applied on 31 March 2014.

'Other countries' are, however, subject to an integration process that places a quantitative limitation on the volume of (textile) exports that may be exported to the US under this preferential arrangement. If a qualifying LDC outside of Sub-Saharan Africa country is considered to be a 'significant supplier' of clothing to the US market – measured in terms of its share of total clothing imports into the US from all sources (the threshold being 2% in any given year) – then clothing exports from that country under the Act are limited. This quantitative restriction is based on 2007 clothing exports to the US from the respective countries, and the preference limit in subsequent years is set at 50% of the volume of 2007 exports (to the US).

In other words, a country is not limited to a certain volume of exports *per se*, but a significant supplier would face some limitations on the preferences that can be claimed. Under certain circumstances, the 50% cap mentioned above may be adjusted upwards in annual 10% increments if more than half of the country's US exports in the preceding year consist of yarns or fabrics (or clothing made from such yarns and fabrics) that originate in AGOA/LDC beneficiaries or other preferential trade partners of the US. The intention of this provision is

ostensibly to encourage regional economic integration and for more of the production chain to be internalised within beneficiaries of US trade agreements.

Criteria for country continued eligibility: Bill H.R 4101also makes provision for a revision of the eligibility criteria, which in the AGOA legislation are relatively opaque. Other than providing a range of principles (respect for the rule of law, a market based economy incorporating a rules-based trading system, a system to combat corruption, etc.)[19], the initial and annual determinations around the eligibility of countries do not follow clear and transparent criteria and are ultimately undertaken by the US President. In future, it is proposed, the eligibility criteria will based on 'clear and consistent benchmarks' that are published in the Federal Register of the US, and the 'President shall also implement procedures to ensure that the analysis and decision making behind any such determination is transparent to the public'.[20]

New RoO for textiles and clothing for non-AGOA LDCs: New RoO are envisaged for LDCs (Bangladesh, Cambodia, etc.) under the proposed legislation, which would in effect introduce local processing criteria that are equivalent to the highly preferential rules contained in the current AGOA legislation. Bill H.R 4101reaffirms the general 35% (local) cost of materials principle which is the same as the general RoO found under AGOA, but makes specific provision for textile and clothing articles, where it deems the (imported) value of materials to be of local origin provided the cutting and assembly of the garment takes place locally.[21] That way, the 35% rule is readily met as the cost of materials and processing almost always exceeds this threshold.

> *SEC. 6(a)(2)(B)*
> *(i) with respect to a textile or apparel article, the cost or value of materials produced in a beneficiary developing country includes the full value of any material, regardless of the origin of the material, if the material is both cut (or knit to shape) and sewn or otherwise assembled into such article in one or more beneficiary developing countries.*

4.3 Some concerns about H.R. 4101

While the New Partnership for Trade Development Act of 2009 contains a number of positive aspects overall, there are various issues that should cause serious concern among AGOA beneficiaries. First and foremost among these concerns is the fact that a significant number of current beneficiaries – likely to account for the bulk of trade under the programme at present – are likely to lose their eligibility status as a result of not meeting the UN-defined threshold for least-developed countries. As listed earlier, this would probably include South Africa, Mauritius, Kenya, Ghana, Botswana, Namibia, Swaziland and others. Some of the above-mentioned countries are completely reliant on AGOA for preferential access to the US market, and without these or similar preferences many products would simply no longer be competitive in the US. Migrating countries out of a preferential dispensation is not new: The Cape Verde was removed from the list of 'least developed beneficiary countries' from 1 December 2010,[22] while others (such as Taiwan, Korea and Singapore) have previously been removed from the list of GSP-eligible countries altogether. Even AGOA recipients classified as LDCs are likely

---

[19] See Section 1 – 'Countries eligible for AGOA preferences'.
[20] Bill H.R. 4101, Sec. 5 (b), available at http://www.govtrack.us/data/us/bills.text/111/h/h4101ih.pdf.
[21] Bill H.R. 4101, Sec. 6(a)(2) (B)(i), available at http://www.govtrack.us/data/us/bills.text/111/h/h4101ih.pdf
[22] See: 'GSP, ATPA/ATPDEA extended' (2010).

to lose out, as a similar scale of benefits would be extended to other countries. This would dilute their preferences.

Clothing exporters have arguably been the greatest beneficiaries under AGOA, mainly as a result of the waiver on high import duties normally applicable to this industry (clothing ranks as one of the largest export categories under the programme), but also due to the fact that clothing exports are well spread out within the group of AGOA beneficiaries – more so than any other product. Given the competitive nature of this sector globally, and the fact that it is labour intensive, preferences granted to this sector have also had a range of important knock-on effects among clothing-producing beneficiary countries.

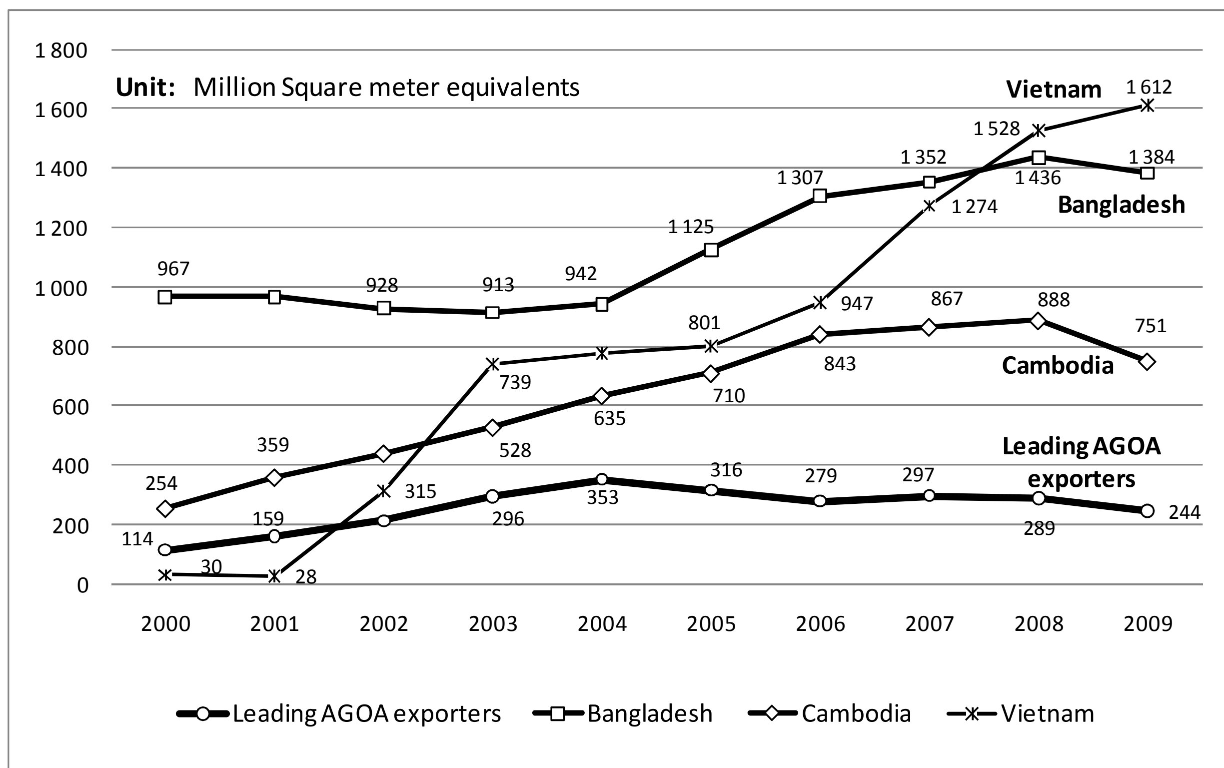
With the proposed expansion of benefits to other LDCs, under similar conditions (notwithstanding certain quantitative restrictions contained in the proposed legislation), there is a concern that countries that are already competitive suppliers to the US market will obtain additional benefits at the expense of African exporters under AGOA. The post-2005 period has already seen substantial consolidation in the global textile and clothing market, with large international buyers reducing the number of countries from which they source, and hence the share of imports into large markets (EU, US) from certain countries increasing. This trend is likely to be exacerbated by H.R. 4101, as it allows US importers to source from textile powerhouses such as Bangladesh and Cambodia with few if any restrictions: the origin requirements would allow local producers in these countries to use imported fabric, and for this fabric to be considered as part of local value-added and hence for them to easily meet the applicable local processing requirements.

The graph below tracks clothing imports into the US from AGOA countries (in aggregate), from Bangladesh, Cambodia and Vietnam. It provides some scale to US imports under AGOA and from other countries that would directly benefit from the proposed legislation, and shows how AGOA trade has in fact declined recently while clothing exports to the US from other countries have remained stable or continue to grow steadily in spite of high import duties. Providing additional preferences will likely see further growth in exports from these countries and a contraction of African exports. Even with a quantitative restriction on preferential imports from other LDCs – set at 50% of 2007 textile import levels from each respective country – this would still equate to more than the combined clothing exports under AGOA from the leading exporters in Sub-Saharan Africa (leading exporter data below combined Mauritius, Kenya, Swaziland, Madagascar and Lesotho). Data is by volume in square meter equivalents.

A further concern relates to the time horizon envisaged by this legislation. The proposed extension to the end of 2015 in fact covers virtually the same time horizon as the current AGOA legislation (which is set to expire at the end of September 2015), although the third-country fabric provisions (Rules of Origin) would now also be extended from 2012 to 2015. However, beyond this any further extension (in five-year increments) is initially conditional on a successful conclusion of the Doha Round trade negotiations, a prospect which remains uncertain. Should there be a successful extension, further AGOA benefits would also only apply to countries classified as least developed under a UN benchmark, rather than through the current system or one that is developed by the proposed legislation. The loss of eligibility for many of the larger exporters under AGOA could lead to a fragmentation of some regional production chains. Currently, full cumulation is possible but fewer 'participants' would mean that regional sourcing opportunities under AGOA could be undermined.

As it will not be clear for some time yet whether the ‘successful outcome’ to the Doha Round as referred to by H.R. 4101 will in fact materialise, this will create uncertainty among producers in Africa, and likewise among retailers and producers in the US. Production and sourcing decisions are often taken well in advance, and business requires a predictable and stable trading environment (including clarity on preferences where applicable) to operate in. For AGOA benefits to be more sustainable, it is necessary that a more permanent dispensation be put in place that would allow longer-term planning, but would also provide better prospects for Sub-Saharan African exporters to participate in global trade.

Figure 12: Comparison of US clothing imports from selected LDC sources



Source: US Office for Textiles and Apparel (OTEXA)

On textile benefits, the proposed legislation also does not address the current situation whereby only some countries have access to third-country fabrics for further processing, while others (those whose per capita income exceeds a certain threshold) are in effect bound by a triple-stage local processing requirement (clothing made from local fabric made from African or US yarn). A strong case could be made for the removal of this distinction between lesser developed and more developed beneficiaries. The trade data has shown that access to competitive international sources of fabric and yarn is integral to successfully competing in the clothing export market: South Africa, despite being the ‘richest’ country among AGOA beneficiaries and having a more advanced local textile pipeline compared to most others, is unable to compete in the US market under the current dispensation. It remains a fallacy that the presence of some local textile production coupled with onerous RoO will provide sufficient incentive to become a competitive player in the export market.

Apart from the obvious threats posed to AGOA exporters by H.R. 4101, it does not address some of the inherent weaknesses of the existing legislation, for example the many gaps in product coverage. While a significant number of products are included – more than 7,000 tariff lines at the HS8 level – there are many that are currently not on the list and which could enhance AGOA beneficiaries' scope of preferences in the US market.

Bibliography

AGOA.info (2010) Ford Ranger truck production could move to SA thanks to AGOA. 2010. *AGOA News*. 3 September. [Online]. Available: http://www.agoa.info/index.php?view=.&story=news&subtext=1332.

Congressional Research Service (2010). Trade Preferences: Economic Issues and Policy Options, USA.

US Customs and Border Protection (2010). GSP, ATPA/ATPDEA extended through December 31, 2010 and GSP eligibility changes with respect to Maldives, Trinidad and Tobago, and Cape Verde. *CPB.gov*. 1 April. [Online]. Available: http://www.cbp.gov/xp/cgov/trade/trade_programs/international_agreements/special_trade_programs/atpa/spi_expire.xml.

Perscom. Victor Mroczka, Hughes Hubbard & Reed LLP, USA.

South Africa seeks to maintain AGOA benefits. 2010. *AGOA. info. AGOA News*. 1 August. [Online]. Available: http://www.agoa.info/index.php?view=.&story=news&subtext=1303.

United States Congress (2002). Trade Act of 2002. Public Law 107-210, 107th Congress.