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An overview of AGOA's performance, beneficiaries, renewal provisions and the status of South Africa

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1. About AGOA

1.1 Background and country eligibility

The African Growth and Opportunity Act (AGOA), a piece of United States legislation, was signed into law by the then President of the United States (US) Bill Clinton on 18 May 2000. AGOA became formally recognised under Public Law 106-200[1]. The legislation follows years of debate around a new approach towards trade and economic engagement with Africa; the AGOA legislation was first introduced on 2 February 1999 to the House of Representatives in Congress as Bill H.R. 434[2] by a (Republican) Congressman from Illinois, Philip Crane. Crane was a member of the influential House Ways and Means Committee, later becoming its deputy chairperson.

The Senate and House of Representatives, in a reflection of bipartisan support for greater trade privileges for African countries, had earlier passed a harmonised version of the legislation, and which went to the President earlier in May of 2000 for signature. It is worth noting that most US legislation must pass muster in both "chambers" of the US Congress, namely the House of Representatives and the Senate, and within these chambers the respective Committees dealing with the legislation, as applicable. In the House of Representatives, the Ways and Means Committee deals with trade legislation whereas in the Senate, the Finance Committee does the same.

AGOA marked a significant and fundamental shift in US policy towards, and engagement with, African countries. Whereas previously US relations with Africa were largely influenced by Cold War and related prerogatives, and support for African countries at the time focused less on trade and economic development but more perhaps on emergency relief, poverty alleviation and other mostly ad-hoc measures, AGOA re-aligned this relationship towards one of greater trade and economic development by offering – unprecedented in terms of scale – preferential market access. The AGOA legislation was also non-reciprocal, meaning that it seemed to require little in return from the African beneficiary States apart from compliance with a set of eligibility criteria drawn up by the US. A more nuanced view however would be that AGOA was a mechanism that also intended and ultimately brought about greater US economic and political influence in Africa, and in fact would deepen a more bilateral relationship in this regard.

[1] '106' denotes the 106th sitting of Congress and '200' the law's unique number within that Congress.
[2] Major Congressional actions on the initial AGOA legislation can be viewed in the Congressional record: www.congress.gov/bill/106th-congress/house-bill/434/actions

AGOA built on pre-existing US preferences for African and other countries, and specifically the US Generalised System of Preferences (GSP), which provides developing countries with duty-free or duty-reduced access to the US market for (at the time) around 4,600, now approximately 5,000 qualifying tariff lines. The GSP however goes beyond being available only for Sub-Saharan African countries but has global application. Further, it is subject to periodic renewal by the US Congress (and as history shows, is sometimes allowed to lapse for years at a time for reasons that are primarily political in nature and largely unrelated to the GSP itself[3]), whereas AGOA would have a much longer period of duration. Nevertheless, AGOA remains non-reciprocal and the adjudication on whether the Act's qualifying criteria are being met on a continued basis remains the prerogative of the US alone.

In this respect, the legislation entrusts the President with determining which countries should benefit from the legislation. Eligibility is potentially open to Sub-Saharan African GSP beneficiaries and an annual review would determine whether individual countries no longer meet the underlying qualifying conditions and would then have their beneficiary status withdrawn. Numerous African countries have suffered this fate, *inter alia* the Democratic Republic of Congo, and more recently The Gambia and South Sudan. Some countries lost, and subsequently regained eligibility, like Mali, Guinea-Bissau and Madagascar[4].

AGOA's qualifying criteria for countries are based on a number of key themes: economic, political/ security and human rights. Economic criteria include the fact that a country must have established, or make progress towards establishing, a market-based economy, the rule of law and the elimination of trade barriers. The political and security criteria include systems to combat corruption, not supporting terrorism and not engaging in activities that undermine US security, while the human rights criteria include the protection of worker rights, and not engaging in any gross human rights violations.

There are in fact two sets of eligibility criteria against which a country's continued eligibility for AGOA preferences are measured: Section 104 of the AGOA legislation (which lists the criteria outlined above) and Section 502 of the United States Trade Act of 1974, which sets out the eligibility criteria for the GSP. As mentioned earlier, GSP eligibility is a requirement for AGOA eligibility. Section 502 contains various criteria, some similar to Section 104 of AGOA, and include references to a country's per capita gross national product, living standards, the level of economic development and so forth.

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[3] Most recently, the US GSP lapsed during 2013 and was renewed in June 2015 under the Trade Preferences Extension Act of 2015, Title II – along with the latest AGOA renewal. GSP preferences may be claimed retroactively by importers for the time period that the GSP had lapsed.
[4] A current list of eligible countries is available at http://agoa.info/about-agoa/country-eligibility.html

When AGOA was originally signed into law in 2000, 34 countries were deemed to be eligible. This list later grew to more than 40; currently (August 2015) 39 countries meet the AGOA qualification criteria.

With AGOA often considered at a more superficial level as simply being a non-reciprocal trade preference program, it is also the framework legislation to ensure more targeted authorisations of technical assistance and capacity building programs in Africa. Key amongst these are the USAID Trade Hubs located in Botswana, Kenya and in Ghana. Other initiatives referred to and harnessed by the AGOA legislation include the Export-Import Bank (EXIM), which provides finance and loan guarantees, albeit that its continued future is currently unclear (it is still referenced in the 2015 AGOA renewal legislation yet its current mandate expired at the end of June 2015), as well as Overseas Private Investment Corporation (OPIC). The AGOA legislation also established an Assistant US Trade Representative for Africa, to enhance cooperation and advisory capacity between the USTR and those that are engaged in trade between Africa and the US.

1.2 Product eligibility

Product eligibility under AGOA, while extensive, nevertheless only covers a finite number of products. Eligibility is based on the list of GSP eligible products, and builds on this. GSP on its own currently covers approximately 5,000 product tariff lines (at the HS 8 digit level), which are also deemed "AGOA eligible products" albeit without the associated GSP renewal criteria. Furthermore, whereas the GSP distinguishes between products that are eligible in the case of least-developed countries only, or those with limited country eligibility, AGOA includes all of these within its product coverage. The GSP also contains additional criteria for certain product categories, for example competitive need limitations (CNL), which are waived under AGOA. In addition, the AGOA legislation has added around 2,000 further tariff lines to the list of eligible products, including some that were traditionally considered to be highly sensitive (such as apparel). Included is a broad range of both agricultural and industrial products. In total, therefore, AGOA's product coverage extends to approximately 7,000 tariff lines.

While products eligible for benefits under the combined GSP/AGOA product coverage represent a substantial portion of traded goods between African countries and the US, the real net benefits of the AGOA legislation lie in (a) the *additional* product categories to which AGOA extended preferences (i.e. beyond what was previously available under the GSP), and (b) the enhanced certainty and predictability of having extensive product coverage without some of the limitations (and periodic GSP renewal issues) that are associated with the standard GSP program *per se.* The sector where the impact has been the greatest, and is felt by the largest number of countries, is the apparel manufacturing sector. It has not only gained, for the first time, preferential status (where this was not possible under the GSP), but has done so on the basis of high preference margins (the difference between preferential access and normal tariff rates), highly advantageous Rules of Origin (RoO) under AGOA's so-called third country fabric provisions (TCFP), and good levels of competitiveness.

1.3 Rules of Origin and special provisions for apparel exports

Preferential Rules of Origin (RoO) are a necessary requirement to identify products that are the growth and manufacture of the exporting country and which is a beneficiary under a preferential trade regime. RoO specify a set of conditions, or minimum local processing requirements, that must be fulfilled before preferential market access can be obtained. The primary purpose of these rules is to avoid the transhipment of goods, whereby goods produced in a non-beneficiary country are simply re-routed via the beneficiary country in order to (unduly) claim preference status.

AGOA's RoO are based on a percentage-based methodology for all qualifying products apart from certain textiles and clothing. Essentially, the key requirement for qualification (provided that a product is included as eligible for preferences) is that at least 35% of a product's cost of production – based on its total appraised value at the US port of entry – must be a "growth, product or manufacture" of one or more AGOA beneficiary countries. Inherent in this requirement is that it embraces the concept of cumulation, whereby one or more AGOA beneficiary countries may jointly meet the RoO requirements. Materials from third countries (non-AGOA beneficiaries) may also be used and incorporated, provided that the underlying proviso remains whereby the cost of local or regional materials and processing activities exceeds the 35% threshold. By way of a derogation from this cumulation rule, up to 15% of the 35% local content threshold may consist of US-originating parts and materials.

Whereas the 35% rule applies to all products under AGOA, there are two key exceptions: textiles and apparel. Textiles, while generally excluded from AGOA, may be exported under AGOA when they are considered as traditional or folklore fabrics. A special clearance (by the beneficiary country) must be obtained first for these so-called "Category 9" articles[5].

[5] See further details at: www.agoa.info/toolkit/industry-sectors/textiles-category-9-articles.html

For many countries, the apparel provisions are the most valuable of all under the AGOA legislation. AGOA provides duty-free access for all apparel, under favourable RoO. These allow producers of apparel in beneficiary countries to source their fabric inputs from any source globally, and not limited to other AGOA beneficiaries. The third country fabric provisions thus open the door to competitive upstream linkages with producers of fabric, and downstream linkages with US retailers and brand owners. At the height of apparel exports under AGOA, in 2004, export trade was valued at almost $1.5 billion.

These rules only apply to countries classified as having recorded per capita GNP of less than $1,500 in 1998, plus Namibia, Botswana and Mauritius. Consequently, South Africa does not qualify for this provision and is subject to a far more stringent RoO regime, requiring that qualifying apparel must be made from locally made fabric (or sourced from another AGOA beneficiary) which in turn must have been produced from African or US yarn.

While the apparel provisions are subject to an annual quota, based on total US imports of apparel, the threshold is too high to be of any effect and has not constrained exports in any way.

2. Africa's export performance since the inception of AGOA

AGOA has seen mixed results in terms of trade, and in some quarters has not lived up fully to expectations. Nevertheless, it remains a cornerstone of Africa's access to the US market and tens of thousands of jobs as well as billions of dollars in export trade depend directly on the preferences that it provides to beneficiary countries.

A purely numbers-based aggregate analysis of exports shows that combined trade between AGOA beneficiary countries and the US has less than doubled in the 15-year period 2000-2014. This however conceals other key facts:

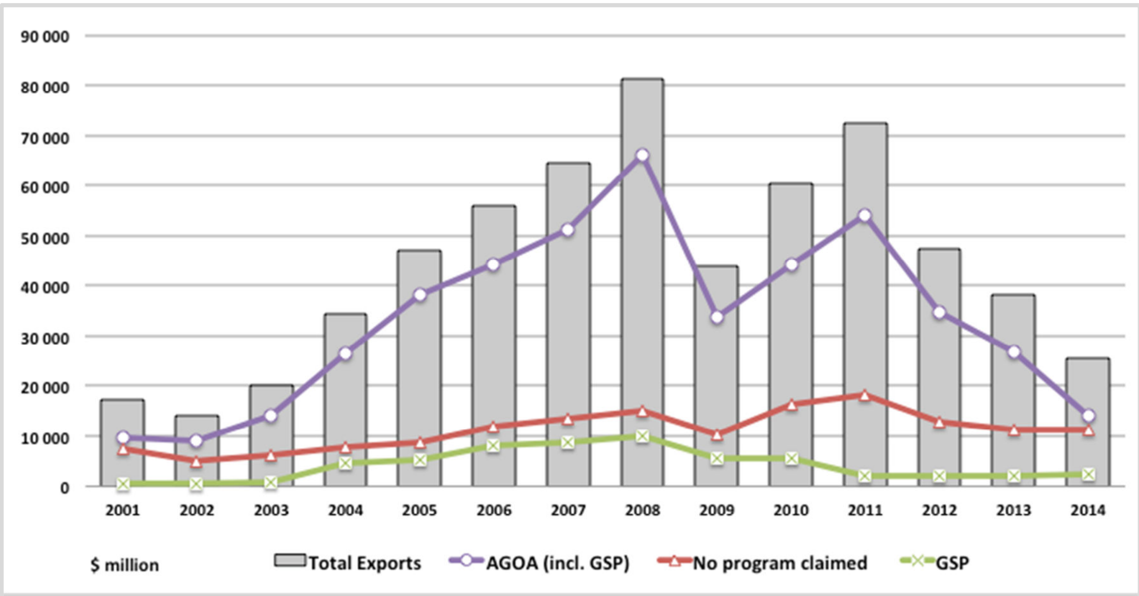
- Combined US trade with African 'AGOA countries' was valued at $28 billion in 2000, the year that AGOA was first signed into law (US imports: $22 billion; US exports: $6 billion). In that year, AGOA beneficiaries recorded a significant trade surplus with the US.
- AGOA countries have consistently recorded a trade surplus with the United States, with exports outweighing imports from the US more than 5-fold in 2006 (AGOA exports: $57 billion, imports by AGOA countries $ 11 billion).

- However, AGOA countries' substantial trade surplus over the US has shrunk considerably since 2011 ($52 billion) and was down to its lowest level ever in 2014 ($2 billion). While AGOA beneficiaries enjoy preferential access to the US market, US exports to the same group takes place under normal tariff conditions.

- Bilateral trade peaked in 2008 at $100 billion, the year before the global financial crisis had its greatest impact on the US economy. By 2011, trade had mostly recovered but since then, has been on a downward trend. The clue, as will be shown in greater detail later, lies with oil exports and associated oil prices.

- Oil and energy-related exports have historically accounted for the majority of US imports from AGOA beneficiary countries (combined AGOA / non-AGOA). In 2014, this percentage for the first time dipped below 50% (49%). In the period 2005-2011 it accounted for approximately 80% of exports, and a much higher share of AGOA exports (for the purposes of this broad statistic, oil and energy-related exports are grouped as those from HS Chapter 27[6]). Relative to AGOA exports, energy-related exports consistently account for a share greater than 90% of total exports under the programme (the most recent period, 2014, being a notable exception). The sizable impact of energy-related trade thus provides a distorted overall trade picture.

Fig. 1. Breakdown of exports to the US from AGOA beneficiary countries by major preference scheme 2001 – 2014[7]



Source: Extracted from USITC Dataweb

[6] Chapter 27: Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes

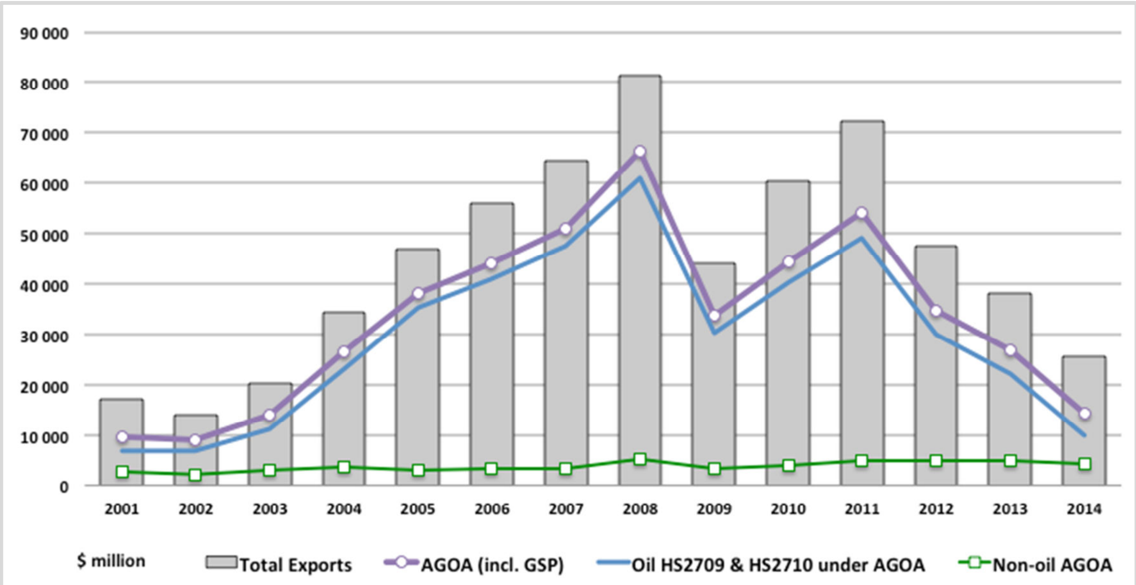
[7] Note: Data takes into account trade flows only from countries that were eligible for AGOA in each respective year. This means that the pool of countries whose data is used changes from year to year.

The peak in 2008, followed by the steep decline in 2009, is symbolic of the global financial crisis over that period. It resulted in a marked decline in US imports, *inter alia* from Africa, particularly in oil imports but also more generally across the board. Subsequent years show that as the US economy recovered from this shock, so did its aggregate imports from Africa.

The rise and subsequent fall in aggregate AGOA exports can to a very large extent thus be explained by movements in the price of oil and trade in oil products, a key commodity whose inclusion under AGOA (and the magnitude of its trade relative to other goods) means that it has an extraordinarily significant impact on these numbers. While oil demand and movements in the price of oil – the US sources oil from AGOA beneficiaries such as Angola, Nigeria and Chad – have a marked impact on the value of AGOA trade, they add little value to AGOA preferences *per se* and are little more than a reflection perhaps of the general pulse and state of health of the global economy – combined with oil industry supply dynamics – and that of the US in particular.

The contribution of oil exports to the AGOA aggregate is demonstrated clearly in the following graph. Whereas non-oil AGOA exports have remained broadly stable over the period 2001-2014, oil trade has fluctuated significantly and aggregate AGOA exports from beneficiary countries reflect this. In fact, the non-oil AGOA exports as a share of total AGOA exports is at its highest ever in 2014.

Fig. 2. Aggregate and AGOA exports to the US from AGOA beneficiary countries showing impact of oil exports 2001– 2014[8] ($ million)



Source: Extracted from USITC Dataweb

[8] Note: Data takes into account trade flows only from countries that were eligible for AGOA in each respective year. This means that the pool of countries whose data is used changes from year to year. Oil exports (HS2709 and HS2710) are only included insofar that they claimed AGOA preferences; some oil exports entered the US under normal tariff relations.

A review of AGOA's 'performance' thus needs to look, from a trade numbers perspective, at the non-oil AGOA data. Here, both in absolute and percentage terms, it can be shown that there has been significant growth in terms of AGOA-eligible exports to the US over this period. As is the case elsewhere, the specific choice of baseline and end year weighs heavily on the percentages.

Between 2001 and 2014, AGOA exports increased by $1.6 billion, from $2.8 billion to $4.4 billion, a nominal percentage increase over the period of 55% in $ terms. Over the period 2001 to 2011, where AGOA exports from countries eligible at the time exceeded $5 billion for only the second time overall (the other being 2008), the increase is almost $2.2 billion or 76%. Since 2011, AGOA exports have declined somewhat, from $5 billion to $4.4 billion in 2014.

Table 1. AGOA trade 2001 – 2014

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
AGOA incl. GSP	9,7	9,0	14,1	26,6	38,1	44,2	51,1	66,3	33,7	44,3	54,0	34,7	26,9	14,3
AGOA: Oil	6,8	6,8	11,2	23,1	35,2	41,1	47,7	61,2	30,3	40,2	49,0	29,9	22,0	9,9
AGOA: Non-Oil	**2,8**	**2,2**	**2,9**	**3,5**	**2,9**	**3,2**	**3,4**	**5,1**	**3,4**	**4,1**	**5,0**	**4,8**	**4,9**	**4,4**
No preferences	7,6	5,1	6,1	7,8	8,8	11,8	13,5	15,2	10,2	16,2	18,4	12,8	11,3	11,3

Source: Extracted from USITC Dataweb

The trade data since 2001 thus reveals that AGOA – without counting oil – has certainly had a positive impact on the export performance of its African beneficiary countries. However, this component of trade remains small when considering that many of the world's fastest growing countries over the past decade are in Africa, and are AGOA beneficiaries, yet AGOA's non-oil exports have failed to even double in the period of review.

More pertinently, while AGOA has provided Africa with a platform for increasing its exports to the US, it seems to have fallen short of having the broad, major impact that was hoped for at the outset. Given the changing nature of the balance of trade between the US and African beneficiaries – from a sizable surplus in the early years to a far more balanced situation now (the balance of trade, while still in favour of AGOA beneficiaries, is now $2 billion (2014) compared to $52 billion just three years previously (2011)).

It is worth noting that while these aggregates include oil exports from AGOA countries, if one excludes these, the US suddenly enjoys a trade surplus with AGOA beneficiaries that represents a factor of 5. AGOA non-oil exports in 2014 were $4.4 billion, against imports from the US (mostly of processed and manufactured goods) of $ 24 billion. But as with all data, caution is advised since aggregates provide little detail of the nature of these trade flows (just as oil may distort African exports, so could high-value capital goods such as aircraft distort the import side).

2.1 Non-oil exports under AGOA: the key components

Non-oil AGOA exports peaked in 2008, and then declined significantly in 2009, along with other exports, given the financial crisis and general economic and trade slowdown during this period. Exports from AGOA-eligible countries, to the US, recovered soon after to similar levels, but have declined slightly since 2011. Part of this decline, in US$ terms, may involve the relative strength of the dollar against other currencies as a contributing factor, but given the concentration of trade flows in a fairly small number of goods sectors, is also very likely to be based simply on industry-specific trade dynamics.

Table 2. AGOA non-oil trade 2001 – 2014

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
AGOA: Non-Oil	**2,8**	**2,2**	**2,9**	**3,5**	**2,9**	**3,2**	**3,4**	**5,1**	**3,4**	**4,1**	**5,0**	**4,8**	**4,9**	**4,4**

Source: Extracted from USITC Dataweb

Of a combined $14,3 billion in AGOA exports during 2014, the value of non-oil exports has fluctuated between $2.8 in 2001 (the first year of AGOA's enactment, albeit that the apparel provisions – a key contributor to AGOA trade – were still in limited effect during that year) and $4,4 billion in 2014. The make-up and key contributions towards this total, on a sector-by-sector basis, are set out below at the HTS 2-digit 'chapter' level, with the leading 20 categories listed.

The table again reminds about the large impact that oil and gas exports have on the total value of AGOA exports. These are included in the table merely for completeness; the total AGOA exports excluding oil and gas is shown in the last line, and represents a relatively small portion of the aggregate.

The data also distinguishes between so-called "AGOA excluding GSP", "GSP" and "combined AGOA" exports during 2014. As indicated earlier, AGOA is based on the US GSP programme and in effect combines preferences under the GSP with additional preferences that were added by the AGOA legislation; since the GSP component is not subject to the standard GSP renewal constraints requiring periodic re-authorisation by the US Congress, AGOA encompasses both categories of products in terms of trade preferences for AGOA eligible countries (AGOA also removes other limitations associated with the GSP). Nevertheless, the 'real', incremental benefit of AGOA could be considered to lie with those products that were not otherwise eligible under the US GSP program.

Table 3. Top 20 exports under AGOA by Chapter (Year: 2014; rounded to $ million)

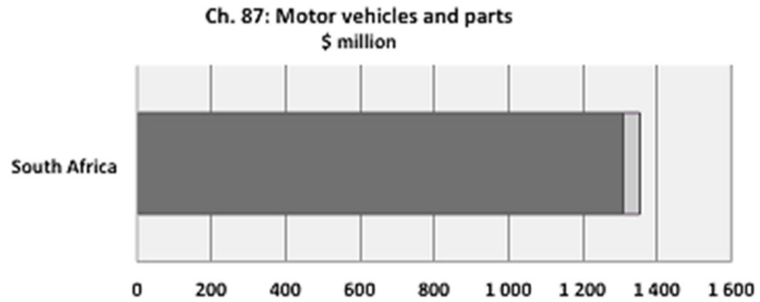
HS Chapter	Description	AGOA excl. GSP	GSP	Combined	Percentage of non-oil exports (AGOA incl. GSP)
27	Mineral fuels and oils	9 012	845	9 857	-
87	Motor vehicles and parts	1 307	46	1 353	30,8%
72	Iron and steel	186	538	724	16,5%
62	Apparel, not knitted or crocheted	518	0	518	11,8%
61	Apparel, not knitted or crocheted	468	0	468	10,7%
76	Aluminium and articles thereof	0	179	179	4,1%
28	Inorganic chemicals	0	177	177	4,0%
8	Edible fruit and nuts	137	2	139	3,2%
29	Organic chemicals	0	132	132	3,0%
84	Machinery, appliances and parts	0	86	86	2,0%
18	Cocoa and cocoa preparations	0	85	85	1,9%
22	Beverages, spirits and vinegar	52	10	62	1,4%
17	Sugar and sugar confectionary	0	55	55	1,3%
24	Tobacco and tobacco products	48	0	48	1,1%
38	Miscellaneous chemical products	46	2	48	1,1%
71	Natural pearls, precious stones & metals, jewellery	0	48	48	1,1%
20	Preparations of fruit and vegetables	27	2	29	0,7%
85	Electrical machinery and parts	0	26	26	0,6%
81	Base metals nesoi	25	0	25	0,6%
64	Footwear etc.	20	0	20	0,5%
	Rest	28	143	171	3,9%
	Total	**11 874**	**2 376**	**14 250**	-
	Total (excluding Chapter 27)	**2 862**	**1 531**	**4 393**	100,0%

Source: Extracted from USITC Dataweb

Motor vehicles, apparel, iron and steel, fruit and nuts, and beverages and spirits represent the five leading export sectors in terms of AGOA whereby preferences utilised are primarily those added by the AGOA legislation. However, apart from the apparel sector, trade in these leading non-oil AGOA sectors is not widely distributed, and is concentrated primarily in exports from South Africa.

2.2 Motor vehicles

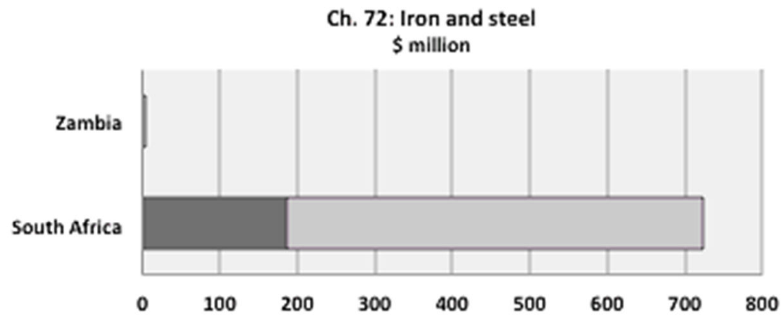
Motor vehicle exports are clearly by far the most dominant contributor to non-oil AGOA exports, accounting for 31% of the total. In 2014, South Africa was the only exporter in commercial volumes of Chapter 87 articles under AGOA (the very negligible exports from other AGOA beneficiaries did not claim (or qualify) for AGOA preferences). 94% of this total comprised motor vehicles, the rest being made up of motor vehicle parts, trailers and commercial vehicles.



	South Africa
AGOA excl. GSP	1 307
GSP	46

2.3 Iron and steel products

Iron and steel products of Chapter 72 were the second largest AGOA export category in 2014, accounting for 16.5% of all non-oil AGOA exports. Unlike motor vehicle exports, where most trade takes place in duty-free categories added by the AGOA legislation, the majority of iron and steel exports takes place in GSP categories, having duty free status under that program. South Africa accounts for more than 99% of AGOA exports in this category, with a negligible contribution from Zambia.



	South Africa	Zambia
AGOA excl. GSP	186	
GSP	537	1

2.4 Clothing / apparel

Made-up clothing is classified under HS Chapter 61 (apparel, not knitted or crocheted) and HS Chapter 62 (apparel, knitted or crocheted). For purposes of this analysis, while being listed separately in the earlier Table 3, the data of the two chapters is combined hereunder.

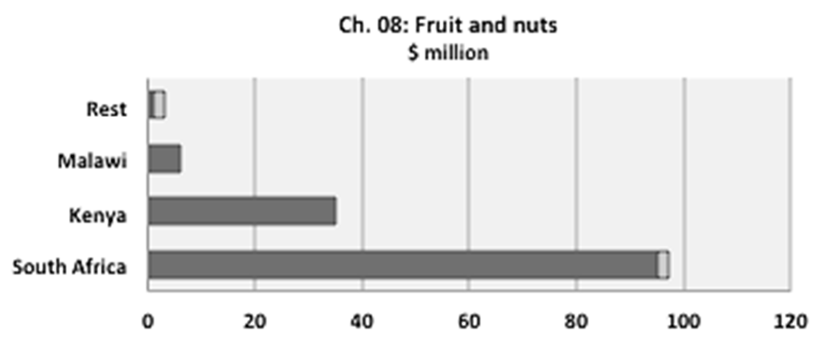
Similar value AGOA exports within Chapter 61 ($468 million) and 62 ($568 million) took place in 2014, accounting for a combined 22.5% of all non-oil AGOA exports in that year. This makes apparel the second largest beneficiary in nominal terms under AGOA, second only to motor vehicle exports. Further details on the apparel sector provisions and related trade flows are provided in Section 3.

2.5 Edible fruits and nuts

Edible fruit and nuts (Chapter 8) is the 5th largest non-oil export sector in categories not previously eligible for GSP benefits, therefore representing an important recipient of AGOA trade preferences. South Africa is the largest exporter under Chapter 8, accounting for over 70% of AGOA trade in this sector.

Within Chapter 8, nuts make up 57% of exports, shared equally between Kenya and South Africa, and a smaller contribution from Malawi, as well as minor contributions from Mozambique, Rwanda and Cameroon. The remaining exports are mostly citrus (mainly oranges from South Africa), as well as grapes (also from South Africa).

In the citrus sector, South Africa has – largely with the help of AGOA – carved out a strong position in the US market and is its largest foreign supplier of oranges after Chile. South Africa exported twice as many oranges by value (in 2014) to the US compared to Mexico. AGOA removes the US 1.9c/kg MFN duty on oranges, which given the nature of the product represents a significant advantage to exporters under AGOA. Very strong year-on-year growth over the first six months of 2015 provide a further indication of AGOA's value to exporters within this sector, especially given the SPS compliance challenges the sector has faced in the European market in recent years.

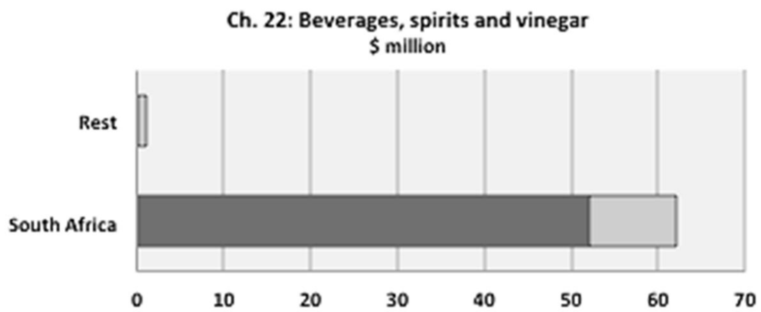


	South Africa	Kenya	Malawi	Rest
AGOA excl. GSP	95	35	6	1
GSP	2			2

2.6 Beverages, spirits and vinegar

Beverages, spirits and vinegar are combined under Chapter 22, with $ 62 million in AGOA exports during 2014, mostly within the non-GSP categories. 99% of all AGOA trade within this category originates in South Africa, with very small contributions from Cameroon, Nigeria, Ghana and Ethiopia.

South Africa's category exports comprise mostly wine, accounting for around 85% of AGOA trade in this Chapter. Its AGOA status means that US importers are not required to pay the standard US 6.3c / liter duty on imports when sourced from eligible countries. The reminder comprises mainly undenatured ethyl alcohol (known more commonly as methylated spirits). This product, which is used for non-beverage purposes, normally attracts a 2.5% MFN duty when imported into the US; South Africa's exports in 2014 were valued at $ 19 million.



	South Africa	Rest
AGOA excl. GSP	52	
GSP	10	1

3. AGOA and the textile apparel sector

The textile sector represents AGOA's most notable success story for three key reasons. Firstly, it has emerged as the second largest non-oil beneficiary in terms of non-oil exports, exceeded only by motor vehicle exports (where 2014 trade was valued at almost $1 billion) while for some countries these AGOA exports quickly became their largest manufacturing export; secondly, apparel exports are the most diversified with the largest number of countries utilising the AGOA benefits compared to other sectors (in 2014, 10 countries exceeded $1 million in exports each) and thirdly, AGOA applies special Rules of Origin (RoO) to apparel exports which allows countries to harness the power of the US market while still being able to source textile inputs from the most competitive suppliers globally (the TCFP mentioned earlier).

AGOA's apparel provision are slightly distinct from the remaining provisions, in that the RoO applicable to qualifying goods are distinct from other products, and eligibility is additionally subject to strict monitoring by US authorities, beginning with a so-called apparel 'visa system' that countries must put in place and adhere to or risk losing apparel preferences. This visa system prescribes special customs procedures and monitoring systems, in order to reduce the possibility of these flexible origin provisions around the manufacture of apparel being abused for example through transhipment and use of counterfeit goods.

The special RoO dispensation for apparel is not without its critics. The intention of the original AGOA legislation was to provide flexible RoO merely as an interim measure, to help induce manufacturers in qualifying African countries to gear up towards utilising local or regional fabric. These provisions were intended to provide a 4-year window, and the thinking was that manufacturers of fabric would invest in local manufacturing facilities pending the demand that would soon emanate from apparel producers wishing to remain compliant with these (future) rules that would necessitate the use of locally made fabric.

However, the much hoped-for and (in some quarters) anticipated investment largely stayed away, with few exceptions, and it was also the realisation and practical confirmation that global value chain dynamics – which in a buyer-driven value chains gives most of the power to retailers, brand owners and design houses – ultimately dictated that a future successful uptake of AGOA preferences would require an extension of these flexible RoO.

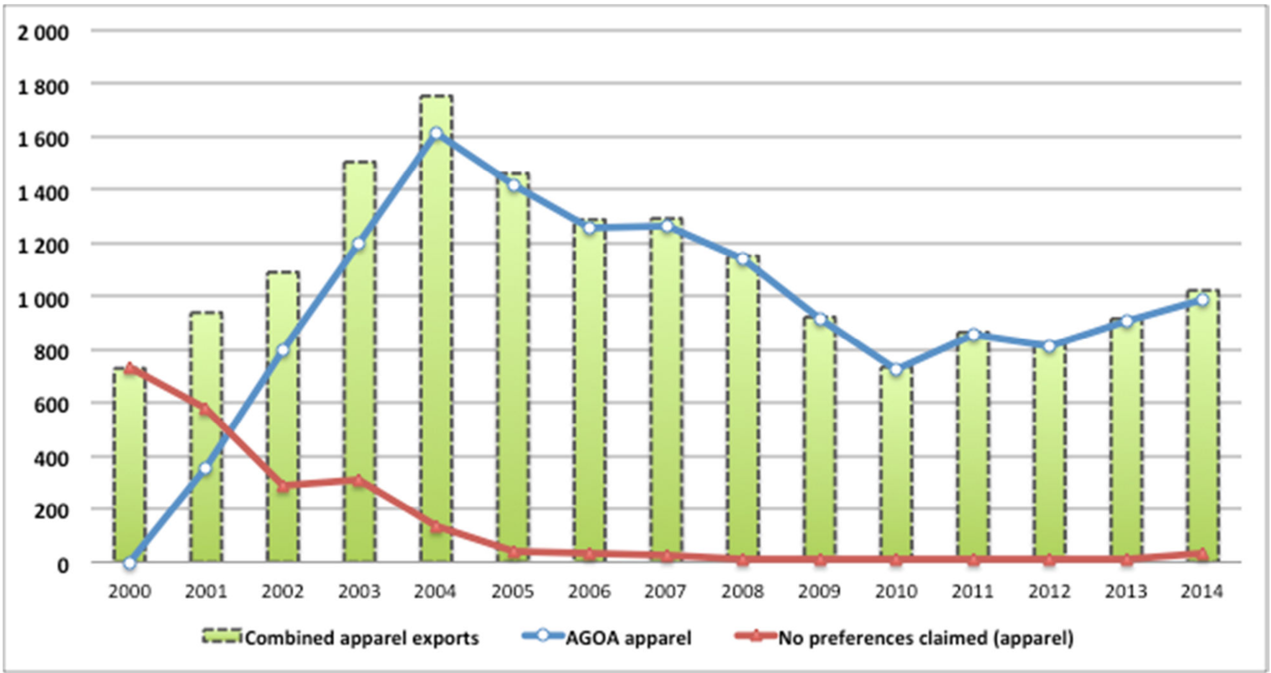
Virtually all apparel trade takes place within the specially designated classification category HTS 9819.11.12, the tariff code assigned to apparel articles "*assembled in a lesser developed country from third country fabric*". The US Congress has, on three occasions, agreed to extend what became known as the third country fabric provisions (TCFP), first to 2008, then 2012, and finally to 2015 when AGOA was set to expire. As discussed later, the new AGOA renewal legislation now extends these by 10 years to 2025, effectively making them a permanent feature of the legislation.

Unlike the other major export categories, where South Africa dominates the uptake of preferences, AGOA apparel exports were shipped from 13 countries during 2014 (Swaziland, the fourth largest apparel exporter under AGOA, has since been suspended). South Africa lies in eight position and accounted for a mere 0.5% of total apparel exports under AGOA last year. The main reason for this relatively poor performance lies mainly in the fact that South Africa is subject to different RoO compared to the other countries: its exporters are not allowed to source fabric from third countries, but must utilise local or regional fabric (from other AGOA beneficiaries) made from African or US yarn. The flexible sourcing rules around the TCFP are only applicable to countries designated as "less developed" and to Botswana, Namibia and Mauritius.

Kenya, Lesotho, Mauritius, Swaziland and Tanzania were the five leading apparel exporters under AGOA during 2014, accounting for a combined 96% of apparel exports under AGOA.

Looking at aggregate AGOA apparel trade, it is evident that qualifying exports grew rapidly up until 2004, then declined, stabilised, declined further in 2009 and 2010, and have since then once again been on an upward trajectory. There are a number of factors that have impacted on these trade flows, but in order to explain the bigger picture, a few key points are worth picking out.

Fig. 3. Apparel exports since inception of AGOA (2000 – 2014)



Source: Extracted from USITC Dataweb

The period 2000-2004: AGOA began in 2000, but it was not until mid-way through 2001 that the majority of significant apparel producing countries had complied with the required apparel visa system[9] to be granted access for apparel from Chapters 61 & 62. This period also represents the final few years of international quotas on apparel under the Multifibre Agreement (which became the self-terminating WTO Agreement on Textiles and Clothing or ATC); these were formally phased out by the start of 2005. Apparel quotas, maintained for decades by the United States and other large

[9] See list of eligibility and dates [Online] http://agoa.info/about-agoa/country-eligibility.html

economies against key producers, such as China, resulted in an increasing value proposition for US buyers sourcing from Africa. In effect, African countries were able to take advantage of some of the excess demand from US buyers, and allowed US buyers likewise to spread their sourcing risk by purchasing garments from non-traditional markets.

While Lesotho was the early forerunner in terms of apparel exports under AGOA, South Africa was likewise a leading apparel exporter at the time – despite the far stricter RoO it faces – and its exports (worth more than $100 annually in 2003-2004) were in the same broad ballpark as exporters like Kenya, Madagascar, Mauritius and Swaziland (see graphic in next Section). One of the reasons for South Africa's ability to compete despite being restricted to locally made fabric (made of African yarn) under the RoO provisions was the devaluation of its currency against the US dollar over this period – its currency subsequently appreciated strongly all but destroying the sector's international competitiveness (other domestic industry factors also played a role).

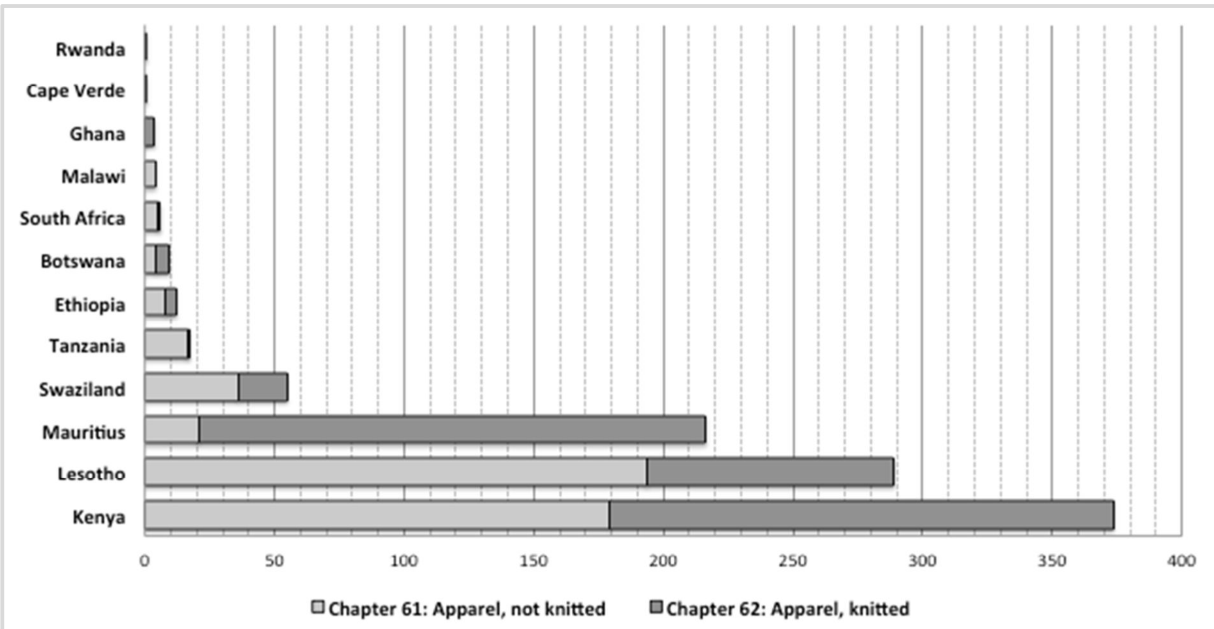
The period 2005-2007: The phasing out of quotas in line with the ATC saw a realignment of sourcing towards China and other large Asian producers. However, this realignment was tempered by emergency measures taken by the United States, Europe and others, to stem the (actual and expected) surge in imports from previously quota-constrained source countries. New, albeit temporary, measures were put in place by the United States whereby certain quotas were either re-instituted and where the growth in imports of apparel from these countries was severely restricted. This carried significant business and planning risk for US buyers, and preserved the desirability of sourcing from Africa – albeit in somewhat lower volumes.

The period 2008-2010: This period saw heavy declines in AGOA apparel exports for two key reasons: newly temporarily re-instituted quotas were once again reduced or removed altogether (by the USA and other countries), providing US buyers with near-unfettered access to the most competitive producer markets globally, including those that were previously quota-constrained. AGOA countries' margin of preference was thus significantly eroded; however, some preference remained and US buyers continued to source from Africa because of the overall value proposition. It is worth repeating that AGOA imports were duty-free, some African producers were internationally competitive, while still carrying the advantage in turn of being able to utilise competitively priced fabric inputs sourced under advantageous and flexible RoO conditions in line with buyer demands and specifications.

Over the same period, the global financial crisis had a serious impact on US business and associated demand, and as a consequence imports were significantly lower across most import categories. Another, key reason for the decline in 2010 lies with the fact that Madagascar, which during the period 2003-2009 was the second largest apparel exporter under AGOA, had its AGOA status withdrawn at the end of 2009 as a results of violations of the Act's eligibility requirements (Madagascar experienced a *coup d'etat* early in 2009, and had its AGOA preferences suspended on 23 December 2009). Consequently, 2010 data excludes Madagascar.

The period 2011-2014 and onwards: AGOA exports have recovered somewhat and have been on an upward trajectory. While nowhere near pre-2005 levels, 2013 apparel exports were close to 2009 levels and 2014 exports have in fact exceeded these. With Madagascar no longer AGOA eligible, the upward trajectory in AGOA apparel exports since 2010 needs to be seen within this context. While not impacting on the 2014 data yet, Madagascar regained AGOA eligibility midway through 2014 and was declared eligible for AGOA's special apparel provisions (TCFP) on 15 December 2014[10]. Early indications, based on data to mid-2015, are that 2015 apparel exports under AGOA will be to the same magnitude as 2014. Uncertainty around AGOA's renewal may have held back apparel imports from Africa, as US buyers would have started realigning their sourcing options; with this uncertainty out of the way, African exporters are well set to increase apparel exports to the United States.

Fig. 4. Breakdown of apparel exports by country under AGOA – 2014 ($ million)



Source: Extracted from USITC Dataweb

[10] Federal Register Notice: [Online] http://agoa.info/images/documents/4078/2014-29238.pdf

4. Who are the AGOA beneficiaries?

AGOA provides non-reciprocal duty and mostly quota free access to its market for approximately 7,000 tariff lines, classified at the HTS8 digit level. Access under AGOA is open to qualifying countries of Sub-Saharan Africa that have been identified as meeting AGOA's eligibility requirements, as noted earlier in this paper. Initially 34 countries met the AGOA eligibility requirements – this number has since grown and tends to fluctuate around the 40-country mark. From time to time countries have had their AGOA preferences suspended (for example Congo, DRC, South Sudan, Gambia, Swaziland, and sometimes reinstated (for example, Mali, Guinea Bissau, Madagascar). Most recently, Swaziland and the Gambia lost their AGOA eligibility, effective 1 January 2015.

By August 2015, 39 countries held AGOA status. However, not all have benefited from AGOA. The table below shows exports that (a) took place under AGOA during 2014 and were not previously or concurrently GSP eligible, thus representing a net "AGOA benefit", and (b) differentiates between combined AGOA (non-GSP) exports, AGOA oil exports and AGOA non-oil exports, per beneficiary country.

During 2014, 31 countries registered exports under AGOA. The largest exporters, by combined value, were Angola, Nigeria, South Africa, Chad and Gabon. And while some value is derived for oil trade (classified for purposes of the Table below as HTS 2709 and 2710, crude and non-crude oil respectively), it is arguable to what extent AGOA has provided real benefits to the exporters concerned. Given the overwhelming concentration of trade in these sectors, in aggregate value terms, perhaps a better overview of AGOA's beneficiaries should reflect trade values involving non-oil AGOA exports.

Table 4 in column [C], shows non-oil non-GSP AGOA exports, in descending order, for 2014. Removing AGOA oil exports thus paints an entirely different picture about which countries have benefited from AGOA – and in many cases, reveals the concentration of remaining trade within the apparel sector. A few key observations can be made, based on 2014 annual trade:

- **South Africa** clearly dominates non-oil AGOA trade (61% of total non-oil, non-GSP exports).
- **Kenya, Lesotho, Mauritius** and **Swaziland** make up the remainder of the Top-5 (non-oil, non-GSP exports).

- Each of these 4 countries export mainly apparel under AGOA – with very high concentration ratios as follows: **Kenya** (89.6%), **Lesotho** (100%), **Mauritius** (99.2%), **Swaziland** (92.9%).
- **Swaziland**, a top-five non-oil AGOA country, has since been excluded from AGOA, effective 1 January 2015, for violating AGOA's eligibility requirements. **South Africa's** continued AGOA eligibility is currently being reviewed (August 2015).
- 16 beneficiary countries under AGOA exported more than $ 1 million worth of non-GSP AGOA goods to the United States in 2014. Of these, 11 exceeded the mark with *non-oil* AGOA exports. 13 beneficiary countries exported less than $100,000 worth of non-oil, non GSP AGOA exports to the United States.
- In 2014, 88% of non-oil, non-GSP AGOA exports – when one **excludes South Africa's** share of AGOA exports – consisted of apparel (HTS Chapters 61 and 62). Virtually all of this takes advantage of the TCFP (imported fabric).

Table. 4. Leading exporters under AGOA – Year 2014, in $'000
(data relates only to non-GSP AGOA-eligible trade)

	A	B	C	D	E
	Aggregate (new) AGOA	**Oil (AGOA) HTS 2709 & 2710**	**(A-B) Non-Oil AGOA**	**AGOA apparel**	**% apparel of non-oil AGOA**
South Africa	1 750 301		1 750 301	5 214	0,3%
Kenya	417 136		417 136	373 589	89,6%
Lesotho	288 889		288 889	288 889	100,0%
Mauritius	218 173		218 173	216 398	99,2%
Swaziland*	59 076		59 076	54 853	92,9%
Malawi	57 386		57 386	4 083	7,1%
Ethiopia	35 675		35 675	11 962	33,5%
Tanzania	17 486		17 486	17 297	98,9%
Botswana	9 458		9 458	9 458	100,0%
Ghana	57 046	53 066	3 980	3 744	94,1%
Nigeria	2 798 015	2 796 457	1 558		
Mozambique	802		802		
Cote d`Ivoire	555		555		
Djibouti	411		411		
Cape Verde	333		333	117	35,1%
Rwanda	187		187	83	44,4%
Cameroon	23 005	22 939	66		
Uganda	59		59	27	45,8%
Madagascar**	42		42		

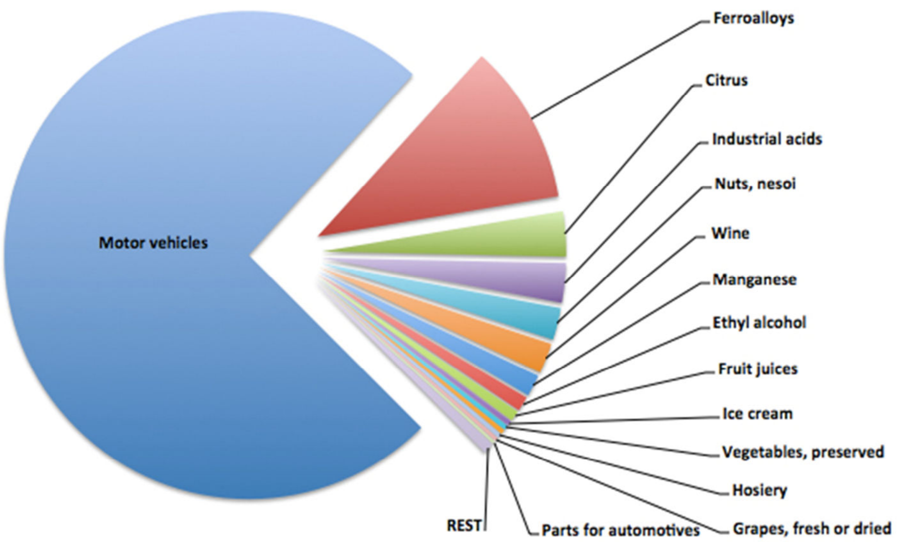
	A	B	C	D	E
	Aggregate (new) AGOA	**Oil (AGOA) HTS 2709 & 2710**	**(A-B) Non-Oil AGOA**	**AGOA apparel**	**% apparel of non-oil AGOA**
Zambia	36		36		
Senegal	24		24		
Burkina Faso	10		10		
Mali	6		6		
Togo	3		3		
Niger	2		2		
Angola	3 539 542	3 539 542	0		
Chad	1 632 682	1 632 682	0		
Gabon	607 486	607 486	0		
Congo (ROC)	360 168	360 168	0		
Aggregate	**11 873 995**	**9 012 340**	**2 861 655**	**980 567**	**34.3%**

* Swaziland lost its AGOA eligibility at the end of 2014 ** Madagascar regained general AGOA eligibility halfway through 2014, but only regained eligibility under the apparel visa provisions during December of 2014. Its sole AGOA exports in that year were palm-leaf goods.

Among the leading 10 exporters of **non-oil** and non-GSP AGOA exports during 2014, only South Africa ($1.75 billion), Kenya ($417 million), Malawi ($57 million) and Ethiopia ($36 million) have drawn benefit from trade preferences made available by AGOA ***outside*** of the apparel categories.

South Africa stands out with a very diverse, and largely industrial, export portfolio under AGOA, consisting mainly of motor vehicles (75% of total), iron and steel products (10.6%), fruit and nuts (5.4%), as well as beverages and spirits (3%), accounting for 94% of the total.

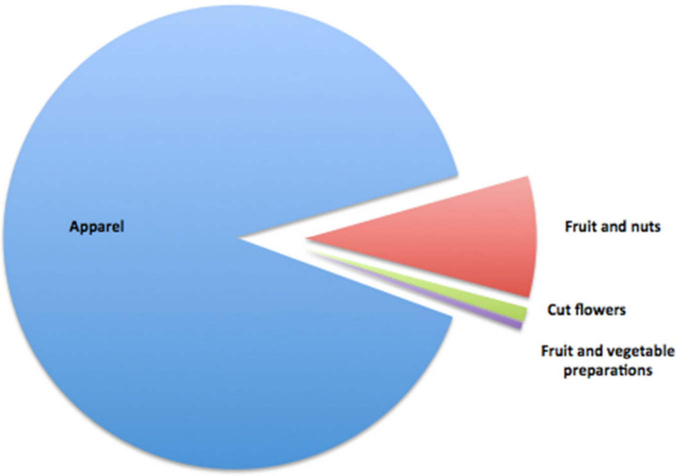
Fig. 4. South Africa's non-GSP AGOA exports in 2014



Source: Extracted from USITC Dataweb

For Kenya, its AGOA trade is concentrated primarily in the apparel sector, having emerged as the largest exporter under the Act (see more detailed apparel data further down). However, Kenya is also one of the very few beneficiary countries that successfully export goods other than apparel (or oil) to the United States under AGOA – fresh fruit and nuts (and preparations) and cut flowers are the remaining categories, together accounting for 10% of the country's AGOA trade. While Kenya's non-GSP AGOA exports were valued at $417 million in 2014, the apparel sector accounted for $373 million.

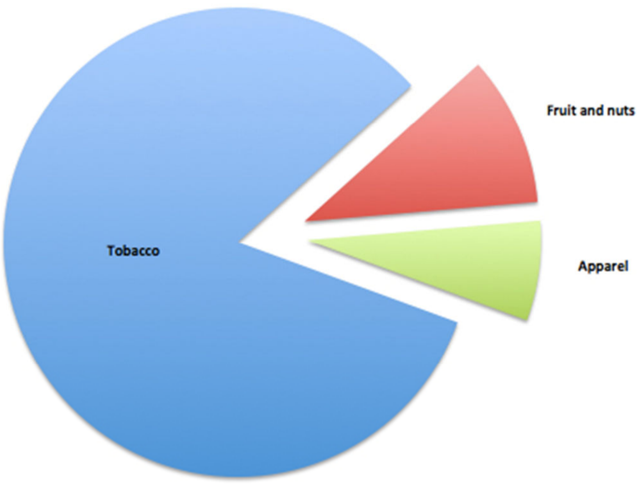
Fig. 5. Kenya's non-GSP AGOA exports in 2014



Source: Extracted from USITC Dataweb

Malawi's non-GSP AGOA exports – $57 million in 2014 – essentially consist of three products – tobacco (partly or wholly stemmed) at $48 million, nuts (mainly macademia) at $6 million and apparel ($3 million).

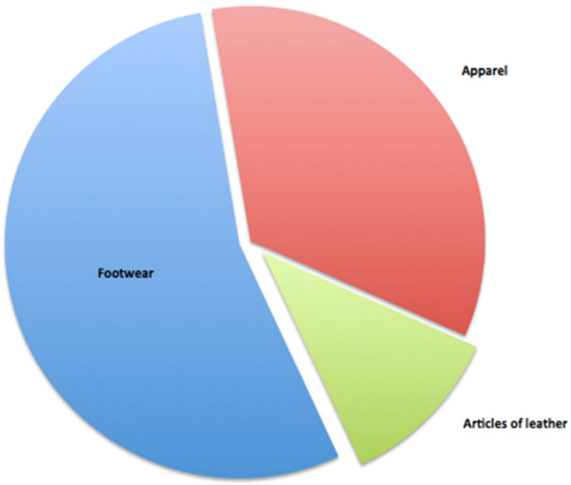
Fig. 6. Malawi's non-GSP AGOA exports in 2014



Source: Extracted from USITC Dataweb

Ethiopia's non-GSP AGOA exports were valued at $36 million in 2014 – split between three product categories: footwear ($19 million), apparel ($12 million) and articles of leather ($4 million). It is, like South Africa, one of the few non-oil exporting countries under AGOA whose exports are not dominated by apparel, but where other manufactured articles are benefiting. The country's footwear exports under AGOA are largely based on leather materials and Ethiopia is fast gaining international recognition for this. Its apparel manufacturing sector is also growing rapidly, and AGOA exports likely remain well below potential for now. Some of the large facilities currently produce under contract for the European market.

Fig. 7. Ethiopia's non-GSP AGOA exports in 2014



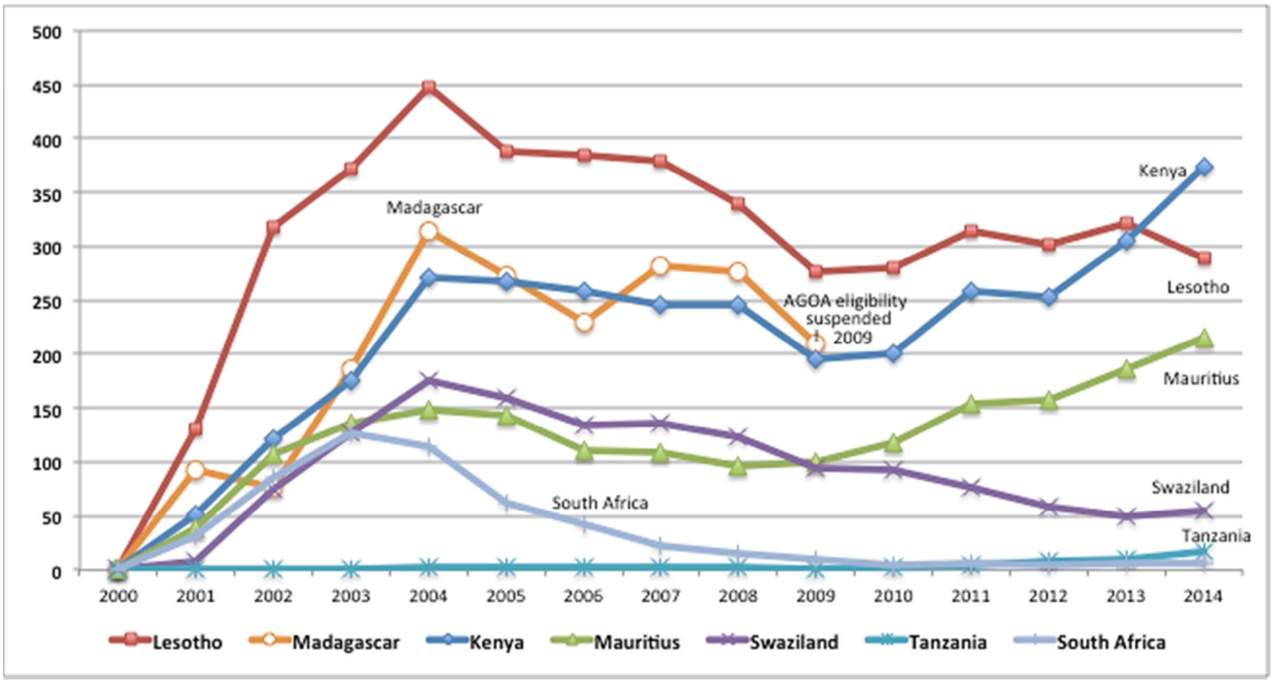
Source: Extracted from USITC Dataweb

A very small share of exports under AGOA involves cut flowers. These exports to the USA are still in their infancy but promise significant potential; the sector is currently the second largest in Africa, after neighbouring Kenya.

Apparel sector exports, as discussed in an earlier section, are often considered the most important benefit of AGOA, especially since a relatively large number of countries are benefiting. They accounted for 34% of non-oil non GSP AGOA exports in 2014 (if one removes South Africa's motor vehicles, this share of non-oil non-AGOA exports jumps to 63% share in 2014). The graph below maps the seven most important apparel exporters since AGOA's inception. Particularly notable is the performance of Lesotho, one of Africa's poorer countries and classified as a LDC – which until 2014 was the leading apparel exporter under AGOA and only recently was overtaken by Kenya whose US-bound exports have been on a significant upward trajectory in recent years and is fast becoming the leading apparel-manufacturing hub in Sub-Saharan Africa.

Fig. 8. Leading apparel exporters under AGOA 2000 – 2014

(data relates only to AGOA-eligible trade)



The graph also shows South Africa's performance – the country was one of the leading apparel exporting countries until 2003 before declining, and now only exports apparel in a small number of categories (mainly hosiery) under AGOA. Its early success can inter alia be attributed to competitiveness brought about by a major decline in the local currency against the US$, albeit these declines were fully reversed in later years. Madagascar, at the time AGOA's second-largest apparel exporter, was suspended in 2009. Likewise Swaziland, the fourth largest AGOA apparel exporter in 2014, had its status revoked at the end of that year and no longer qualifies for AGOA preferences.

5. Renewal to 2025 – what is different in the 'new' AGOA legislation?

After a very protracted albeit largely united effort in support of extending AGOA, the *Trade Preference Extension Act of 2015*[11] was signed into law by US President Barack Obama on 29 June 2015. This Act has extended the AGOA legislation by an additional ten years, from September 2015 to September 2025. It's passage through Congress formed part of a package that also included an extension of preferences for Haiti, as well as an extension of the Generalised System of Preferences (GSP) by 2.5 years to end 2017 (with retroactive application to mid-2013).

[11] The text of the legislation can be downloaded from AGOA.info at the following link: http://agoa.info/downloads/5695.html

AGOA has historically received bi-partisan support across the United States political spectrum. This is notable for various reasons, not least for the fact that US politics and law-making in Congress has, since AGOA's original inception, become increasingly fractured and probably even more partisan along political lines. Congress has thus demonstrated a relatively united view that the US engagement with Africa, with AGOA at its center, remain important for political, economic and strategic reasons. And while the extension of the AGOA legislation was the focus of intense lobbying and debate for at least the past 12-18 months, two key developments ultimately resulted in its progress through Congress to be delayed.

The first of these developments was largely political and boils down to he process of law making; delays were less about the substance of the legislation *per se* but about how it was 'packaged', that is, whether it would be presented to Congress as stand-alone legislation or together with other, possibly related (or unrelated) and sometimes contentious legislation.

In this regard, key legislation that an AGOA renewal was invariably 'tied' to, at different times, included a renewed (and somewhat restricted) fast-track authority (Trade Promotion Authority) that would allow President Obama to shepherd trade legislation through Congress albeit not without Congressional oversight, and Trade Adjustment Assistance (that would help compensate US workers losing out as a result of trade deals). Invariably, the politics around this legislation had an impact on the initial passage of AGOA, but it was later tied to the more generally agreeable Haiti preferences and GSP legislation.

The second development that held up renewal of the AGOA legislation was around what clearly was the 'elephant in the room' – the status of South Africa under a future AGOA arrangement. Key members of Congress actively lobbied against a further unconditional 'business-as-usual' inclusion of South Africa, or at least, for South Africa to be included not without it making significant concessions on certain issues that were considered troubling to the US. This included aspects of South Africa's trade policies, perceived to be unreasonably restrictive mainly with respect to US bone-in chicken imports (as well as other agricultural imports, like port and beef), and concerns around proposed restrictions by South Africa on foreign ownership and investment in its private security industry. Other concerns focused on a planned overhaul of South Africa's intellectual property laws. A last-minute provisional agreement between the respective countries' chicken industries, brokered by the US and South African governments, provided South Africa with continued inclusion under AGOA albeit subject to a full review of the country's compliance with AGOA's eligibility conditions. This review is detailed further in the next Section.

A few changes were made to the new AGOA legislation. These can be broadly referred to as changes to **AGOA's term**, to the **Rules of Origin**, aspects around the **monitoring and review of eligibility**, promotion of **the role of women in social and economic development**, the design of **AGOA utilisation strategies**, and changes to the **agricultural assistance** provisions.

5.1 A new term to expiry

The Trade Preference Extension Act of 2015 extends the AGOA legislation by ten years to September 2025 (Sec. 103). Included in this extension are the textile preferences (Section 112) – and specifically the third country fabric provisions (TCFP) for the same period of time. This represents the longest ever extension of AGOA and notably ties the apparel preferences to the overall AGOA term – thus removing uncertainty around the critical apparel provisions and allowing greater planning predictability for business stakeholders in this sector.

5.2 Rules of Origin

To date, AGOA's non-apparel RoO have required that at least 35% of the cost of materials used had to be of local (or regional) origin. Up to 15% (of the 35%) could be made up of US-originating materials. This definition has been expanded through a provision that states that the direct costs of *processing* operations performed in one or more such beneficiary countries may be included in calculating the 35% threshold (Sec. 104). The RoO therefore require a 35% threshold to be met, made up of materials and the direct cost of processing, taken together from any beneficiary Sub-Saharan or former beneficiary Sub-Saharan African country (with an up to 15% contribution by US made materials). This provision should slightly reduce the restrictiveness of the AGOA RoO.

5.3 Monitoring and review

Various new and updated legislative provisions provide for closer monitoring and scrutiny with respect to countries meeting the Act's eligibility requirements on an on-going basis (Sec 105). Key changes include the possibility of countries not only having their AGOA preferences suspended or terminated annually for non-compliance with AGOA's eligibility requirements (as before), but this can now happen at shorter notice, provided that the President gives Congress and he country concerned notice about the intention to terminate benefits along with considerations therefor, at least 60 days in advance. Notably, new provisions now also empower the US President to withdraw, suspend or limit a country's AGOA preferences (for example, by removing the duty-free status for a country on certain products only), when it is determined that such a course of action would be more beneficial a country's compliance with the eligibility requirements than would be the case with termination. Again, this would be subject to a 60-day notice period.

The new AGOA legislation also contains various provisions that provide for greater participation by the public and other affected stakeholders in a review process. The President is required to publish annually in the Federal Register a notice of review, where public comments are invited to help determine a country's continued compliance with the eligibility provisions of AGOA (Section 104) and the US Trade Act of 1974 (Section 502).

Consideration of a country's on-going AGOA eligibility also no longer has to originate with the President or the USTR but can now in effect originate with any interested person at any time, who must file a petition with the USTR directly and which will guide the President in instigating an out-of-cycle review of a country's eligibility. Congress must be notified of any such a review, and a report on a country's eligibility (regarding possible termination, suspension, or limitation of preferences) must be presented to the Finance Committee and the Ways and Means Committee of the Senate and House of Representatives respectively, along with the outcome of such a review.

5.4 Promotion of the role of women in social and economic development

The promotion of the role of women in social and economic development has become an increasingly important topic in recent years, and has resulted in programmes such as AWEP (African Women's Entrepreneurship Programme), a US outreach, education, and engagement initiative linked to AGOA and targeting African women entrepreneurs. The new AGOA legislation now makes more explicit reference to "promoting the role of women in social, political and economic development in Sub-Saharan Africa" (Sec. 106(a)10) but also explicitly refers to women's rights as part of AGOA's eligibility requirements. It also adds explicit reference to the promotion of women farmers and entrepreneurs in a later section on agricultural technical assistance (Sec. 109).

5.5 AGOA utilisation strategies

The new AGOA legislation also places a greater emphasis on strategies to help countries better utilise the preferences provided under the Act (Sec. 107). These biennial utilisation strategies will be driven by the AGOA beneficiaries themselves, in a bottom-up approach, albeit that US trade capacity building agencies (to include the regional USAID Trade Hubs) will be tasked with assisting countries in developing these. The Act also aims to specifically encourage the respective Regional Economic Communities to devise similar utilisation strategies, aimed not only at greater AGOA utilisation but also to encourage greater regional economic integration. Specifically, utilisation strategies should help: identify potential exports to the US under AGOA; identify strategic needs of the countries concerned and associated obstacles to regional economic integration; set out a strategy that will promote small business development and entrepreneurship; and eliminate obstacles to regional trade. The legislation explicitly encourages these strategies to establish plans for beneficiary countries to promote the full implementation of the WTO Agreement on Trade Facilitation.

5.6 Agricultural assistance provisions

Existing agricultural assistance provisions are modified by the new AGOA legislation, in two aspects. Previously, agricultural assistance was restricted to a lower limit of at least ten countries (with relevant potential '*to increase marketable exports of agricultural products to the United States and the greatest need for technical assistance*'), but this nominal threshold has been removed; the new legislation simply gives the Secretary of Agriculture the responsibility to identify relevant countries. Related to this, the legislation also increases the number of US agricultural extension officers tasked with assisting African countries particularly in meeting US laws and deployed to Africa from 20 to 30.

5.7 Other interventions and expressions of US trade policy objectives

Apart from these specific interventions and legislative changes, the new AGOA legislation places significant emphasis on general monitoring – not just in terms of compliance but also in terms of performance. This includes a biennial report to be submitted by the President to Congress on the trade and investment relationship between the US and Sub-Saharan African countries and the general status of implementation of these provisions. These reports must include trade performance indicators, changes in AGOA eligibility during the period under review, an updated on continued compliance with the Act's respective eligibility requirements, a summary of US trade capacity building programmes and of other initiatives related to US-African trade and investment.

The legislation also renews its focus on potential reciprocal trade agreements (between the US and African countries), and specifies similar reporting requirements albeit once every five years following an initial report within a year of enacting the legislation. These reports are required to identify Sub-Saharan African countries or regions that have expressed an interest in negotiating a trade agreement with the US[12], reviews the viability of such agreements but also sets out a plan for concluding such agreements. The US explicitly expresses the objective that it will seek to deepen trade and investment

[12] See, for example, a recent report of the EAC's expression of interest on such a bilateral pact [Online] http://agoa.info/news/article/5835-eac-push-for-long-term-trade-pact-with-us-to-replace-agoa.html

ties with countries of Sub-Saharan Africa, to include bilateral investment treaties (BITs), trade and investment framework agreements (TIFAs) as well as reciprocal agreements with individual countries. AGOA also expresses the US trade policy stance that such trade agreements would need to cover substantially all trade and that the US would continue to object to any (other) country seeking to negotiate trade agreements with beneficiary countries that do not meet the objective of covering substantially all trade.

6. The status of South Africa – an unwelcome beneficiary?

6.1 The irritants

In the run-up to the eventual renewal of AGOA to 2025, the spotlight increasingly fell onto South Africa and whether the country should continue to remain a beneficiary of AGOA preferences. This attention on South Africa, while now at highly elevated levels, was not entirely new. South Africa has, since the start of AGOA, already been treated slightly differently from other beneficiary countries, mainly by being one of the very few countries considered ineligible under AGOA's flexible RoO for apparel.

South Africa has also stood out for being the largest beneficiary of AGOA preferences when considering utilisation rates for non-oil products. Even when including oil exports, South Africa has consistently been in the top three AGOA exporters. Its export portfolio is by far the most diversified among all beneficiaries. South Africa is also by far the most industrialised of the AGOA beneficiaries. In 2014, using a narrow definition of non-oil and non-GSP AGOA exports, South African exporters accounted for 61% of exports under the programme. But while it was a major 'beneficiary' of AGOA, its exporters had also become meaningful and reliable supplier to US importers; for every trade transaction involving South Africa it is not only the exporter that benefits, but also the US importer, as the products obtained offered a better value proposition than sourcing the same products elsewhere.

South Africa was involved in a process a decade ago – alongside its customs union partners Namibia, Botswana, Swaziland and Lesotho – to potentially negotiate a bilateral, reciprocal trade agreement with the US. These negotiations ultimately failed to progress beyond their initial stage amid fundamentally different stances towards and objectives related to such an agreement; while the US essentially sought a comprehensive bilateral agreement beyond trade in goods, SACU (and South Africa in particular) was only willing to consider a far more limited goods-type agreement. SACU, through its own arrangements, is compelled to negotiate as a bloc. The lack of an outcome resulted in lingering frustration, particularly on the part of the US, and as the most developed of all the Sub-Saharan AGOA beneficiary countries South Africa's continued participation under the non-reciprocal AGOA arrangement was frequently questioned. In some quarters, the country had become a somewhat uncomfortable bedfellow with respect to the AGOA dispensation.

From South Africa's perspective, given its beneficiary status under AGOA, the net advantages of such an agreement thus appeared rather limited to it, given that the country already enjoyed extensive and non-reciprocal access to the US market under AGOA. The incentive of a long-term, more secure and likely more complete arrangement (even just in terms of product coverage alone) appeared not to outweigh what had clearly become a rather sheltered position that didn't entail opening up its own market to US-made goods (and services).

Vocal opposition to South Africa's continued inclusion under a future AGOA – at least not without conditions attached – was driven primarily by what later became known as the "chicken caucus" in the Congress. This was led by US Senators Johnny Isakson (Republican from the State of Georgia), and Chris Coons (Democrat from the State of Delaware). Georgia and Delaware both have strong agricultural interests, including in chicken farming, processing and export; South Africa meanwhile had been imposing special anti-dumping duties on US poultry exports already since shortly after the AGOA legislation was originally written into law.

The contention was that South Africa was protecting its domestic poultry sector against the impact of US bone-in chicken imports, albeit on what the US considers a highly questionable basis. In essence, South Africa imposed special punitive anti-duties because it believed that US-produced chicken was being imported into the country at below cost, thus triggering its trade response.

At the heart of the matter lay the basis on which 'cost' was being calculated – where South Africa considered a pricing system (for purposes of triggering anti-dumping action) that valued the basic cost of a chicken in totality (in other words, all parts of the chicken were in effect valued equally for purposes of calculating averages), the US considered the inherent cost structure and reference point to be linked to the specific chicken cut. Bone-in poultry or so-called 'brown' meat, like drumsticks, would have a different production cost basis to the more highly-prized 'white' meat such as chicken breast.

While the US position is essentially that the test for dumping uses a reference price point at which goods are sold for export and where this is lower than that which a comparable product is sold for domestically, South Africa has been using a hybrid 'weighted cost of production" basis; the US meanwhile contends that such a basis should only be used where there are insufficient home market sales to deliver an accurate local comparative price. And while the US does not have a lucrative domestic market for bone-in poultry meat, and consequently this part of a chicken has little inherent value attached to it, white meat attracts a price premium.

In contrast, a significantly large market for bone-in chicken meat exists in South Africa and while not guaranteed, may provide a lucrative platform for competitively priced US chicken exports. In fact, other African markets are also considered as profitable export markets for these cuts. A 2014 industry report to Congress on the state of the US chicken sector made the following remarks on the issue of South Africa: "*U.S. poultry is entitled to have the opportunity to again have market access and give South Africa consumers an option to purchase U.S. poultry that is one-third the cost of South African chicken.*"[13]

As a result of the anti-dumping duties on US chicken imports, it attracts not just a standard 37% import duty on bone-in chicken but also a special duty of R9.80 ($ 0.75) per kilogram specific duty.

A resolution to this issue was essentially deferred to industry representatives, while US policymakers threatened to lobby for South Africa's complete exclusion under a renewed AGOA, or at best to provide for only a temporary 3-year inclusion and subject to ongoing compliance monitoring. Ignoring the bigger picture national interest for now, the implied decision by the (South African) government to leave the sector to resolve this issue by itself rather than finding a broader political and economic solution to the impasse appears to have led to a much more drawn-out and far more highly publicized situation, that significantly escalated during 2015 and led to a hardening of positions between the respective interest groups, as well as the respective governments and other stakeholders. That said, tension has been simmering since shortly before even the original AGOA legislation was enacted, when South Africa first imposed these special antidumping duties.

From a South African poultry sector perspective, it needs to be borne in mind that the sector was in effect being asked to make concessions for the greater good of the country (and other export sectors such as automotive and citrus exporters), perhaps, rather than what may be in the domestic poultry sector's own interest, given the benefits it had grown accustomed to by virtue of special safeguard measures.

[13] Source: US House of Representatives (2014). State of the Chicken Industry: 2014. [Online] http://www.nationalchickencouncil.org/wp-content/uploads/2014/04/State-of-the-Poultry-Industry-2014-NCC-Bill-Roenigk.pdf

To date, the situation has not been resolved notwithstanding a recent framework agreement on poultry trade between representatives of the sector, on allowing a sizeable tariff rate quota, whereby a specific quantity of poultry (reported to be to the magnitude of 65,000 tons annually[14]) is to be allowed into South Africa without the special anti-dumping duty. There has been no agreement on the basis used by South Africa on applying anti-dumping duties on affected US exports and a quota settlement was considered a way around this issue. In other words, the merits or demerits of the issue have been placed aside for now. The US side considers a resolution to have been reached only once actual US chicken imports are effectively allowed back into South Africa under competitive conditions.

Other concerns that have been raised by South Africa around sanitary and phytosanitary (SPS) measures, however, relate to a (limited) presence of avian flu in the US, which South Africa is using as a justification for continued measures against poultry imports from the US. The US industry's stance on this is that avian flu is highly contained and limited to a small number of States, and should not trigger a blanket ban but rather more targeted restrictions, if indeed considered necessary.

While the chicken 'issue' has been the most prominent, other agricultural 'problem areas' have also been identified and are subject to similar and ongoing discussions; these include poultry and beef, also with SPS issues (such as BSE / mad cow disease with regard to beef, and a swine disease known as porcine reproductive and respiratory syndrome, or PRRS) being the basis for ongoing restrictions on their import into South Africa.

A further significant irritant, from the US perspective, has been pending South African legislation on ownership restrictions for the private security industry. This legislation has not yet (August 2015) been signed into law by South Africa's president Jacob Zuma, but has already passed parliament's muster. It proposes the limiting of foreign ownership in companies operating in this sector to 49%, which would directly impact on some US business interests and in effect require divestment, or ownership dilution, by some US companies operating in South Africa within this sector.

South Africa's motivation for the proposed private security industry bill – and associated foreign ownership limitations – has never been made entirely clear but reasons might include a perceived concern around possible national security breaches by foreigners in this sector, or perhaps other reasons around national economic empowerment policies and so on. The bill would not just affect the traditional security service providers (armed response, and so on) but broadly encompasses companies

[14] Submission by the US poultry sector (National Chicken Council and USA Poultry and Egg Export Council) during the South Africa AGOA hearings [Online] http://agoa.info/images/documents/5781/nccusapeecsareviewagoa2015.pdf

involved in the manufacture and supply of all kinds of security equipment. Notwithstanding parliament's support of the legislation, it is uncertain whether it will become a national law without significant review and amendment to some of these provisions.

Other red-flag issues that will without doubt be reflected on are laws in South Africa that are at an advanced stage of being legislated or are increasingly prominent South African government policy; these include property rights and limitation on foreign ownership of South African immovable property, and an overhaul of the country's intellectual property regime. In this regard, a key area being targeted is pharmaceutical patent legislation (published in September 2013[15] but finalisation much-delayed since) where South Africa is concerned for example about the impacts of pharmaceutical multinationals holding multiple patents on existing medicines that prolong monopolies; the proposed reforms would thus limit for example the practice of 'evergreening' and also allow cheaper generic medicines into the country more easily. Evergreening occurs when patents that are about to expire get renewed through a variety of strategies, for example following slight recipe changes or amendments to associated delivery systems of the underlying pharmaceutical product[16].

While the AGOA eligibility requirements make explicit reference to (respect for) intellectual property rights, the submission by US-based consumer advocacy organization 'Public Citizen' makes note of certain flexibilities provided by the WTO TRIPS Agreement[17], including some related to parallel importation of medicines. It also draws attention to an Executive Order 13155[18] signed by former US President Bill Clinton (one of only two signed in relation to Africa), which established that "*the United States shall not seek...the revocation or revision of an intellectual property law or policy of a beneficiary sub-Saharan African country... that regulates HIV/AIDS pharmaceuticals or medical technologies*," so long as "*the law or policy of the country...provides adequate and effective intellectual property protection consistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)*." [19]

However, as it stands, the US considers the proposed legislation (be it on intellectual property, private security industry ownership etc.) as potentially in breach AGOA's eligibility requirements, as defined

[15] A copy of the draft legislation, as gazette, is available from the government printers [Online] http://www.gpwonline.co.za/Gazettes/Gazettes/36816_4-9_TradeIndustry.pdf
[16] Also see [Online] https://en.wikipedia.org/wiki/Evergreening
[17] WTO Agreement on Trade-Related Aspects of Intellectual Property Rights [Online] https://www.wto.org/english/tratop_e/trips_e/t_agm0_e.htm
[18] Copy available [Online] http://www.gpo.gov/fdsys/pkg/FR-2000-05-12/pdf/00-12177.pdf
[19] See the submission [Online] http://agoa.info/images/documents/5791/posthearingagoacommentstoustrfinal-2.pdf

under Sec. 104(a) of the AGOA legislation[20]. Eligibility requirements that may be of relevance, both in terms of the proposed security industry legislation, and South Africa's trade policy on chicken, beef and pork imports, could potentially include the following provisions:

Sec. 104(a) ... The President is authorized to designate a sub-Saharan African country as an eligible sub-Saharan African country if the President determines that the country (1) has established, or is ***making continual progress*** *toward establishing – (A) a market based economy that protects* ***private property rights****;*

Sec. 104(a)(1)(C): the elimination of barriers to United States trade and investment, including by (i) the provision of national treatment and measures to create an environment conducive to domestic and ***foreign investment****; (ii) the protection of* ***intellectual property****; and (iii) the* ***resolution of bilateral trade and investment disputes****;*

Sec. 502(c)(5) of the 1974 Trade Act: "the President shall take into account...the extent to which a country is providing adequate and effective protection of ***intellectual property rights****."*

Sec. 104(b) furthermore requires continuing compliance with the eligibility provisions, rather than eligibility based on a once-off assessment or event.

6.2 Review of South Africa's future AGOA eligibility

Different versions of the AGOA renewal legislation were considered in the months leading to the eventual legislation that was passed by Congress and signed into law. Consideration was given to South Africa being excluded from AGOA beyond the original expiry of September 30, 2015, as well as a more restricted time-bound eligibility of three years subject to conditions. In the end, South Africa made the cut albeit subject to a special out-of-cycle review being undertaken, promptly and within 30 days of AGOA being signed into law, on the country's compliance with AGOA's eligibility requirements.

This means that South Africa's future eligibility for AGOA preferences is uncertain, and will depend on the outcome of the review and decision by the US President. It is expected that the review process will take some months to conclude, but that South Africa is must have adequately and effectively dealt

[20] Title 19 of US Code 3703(a). [Online] http://www.gpo.gov/fdsys/pkg/USCODE-2011-title19/pdf/USCODE-2011-title19-chap23.pdf

with the key irritants by end September 2015 when the original AGOA legislation was set to expire. Any decision to terminate, suspend or limit South Africa's AGOA preferences will then need to be notified both to Congress and South Africa itself, with a 60 day minimum notice period foreseen.

This special out-of-cycle review about South Africa's eligibility is unique only in the sense that, for the first time, a country is specifically referenced by name in the legislation for a special review. However, the process for such review is a general process, and is broadly defined in the new AGOA legislation. The door is also left open for other countries to likewise be subjected to a similar (out-of-cycle) review. However, to date this has not happened, with the focus being squarely on South Africa.

The out-of-cycle review of South Africa is referenced in Sec. 105 of the new AGOA legislation:

Section 105(d)(4)(A)

"(A) IN GENERAL .—The President may, at any time, initiate an out-of-cycle review of whether a beneficiary sub-Saharan African country is making continual progress in meeting the requirements described in paragraph (1). The President shall give due consideration to petitions received under paragraph (3) in determining whether to initiate an out-of-cycle review under this subparagraph.

Section 105(d)(4)(E)

(E) INITIATION OF OUT-OF-CYCLE REVIEWS FOR CERTAIN COUNTRIES.—Recognizing that concerns have been raised about the compliance with section 104(a) of the African Growth and Opportunity Act (19 U.S.C. 3703(a)) of some beneficiary sub-Saharan African countries, the President ***shall initiate an out-of-cycle review*** *under* ***subparagraph (A)*** *with respect to* ***South Africa****, the most developed of the beneficiary sub-Saharan African countries, and other beneficiary countries as appropriate, not later than 30 days after the date of the enactment of the Trade Preferences Extension Act of 2015."*

This out of cycle review was formally announced through the US Federal Register[21] on 21 July 2015, and was set for 7 August 2015 in Washington, D.C. It invited submissions, verbal and written, from any interested parties. The review also allowed post-hearing briefs to be filed up until 12 August 2015. The review set out to establish whether South Africa is in compliance of section 104(a) of the AGOA

[21] [Online] https://www.federalregister.gov/articles/2015/07/21/2015-17772/african-growth-and-opportunity-act-notice-of-initiation-of-an-out-of-cycle-review-of-south-africa

legislation but also with section 502 of the 1974 Trade Act[22]. The reference to the 1974 Trade Act relates to the eligibility requirements of US GSP beneficiaries, on which the AGOA legislation and associated eligibility conditions (and more importantly, conditions for the ineligibility of a country) are based.

6.3 Out-of-Cycle review submissions

The hearings attracted a number of submissions, both oral and written, mainly from private sector stakeholders and civil society groups. Written submissions were provided by the South African government, and by various industry representatives and interest groups. These include the US Security Industry Association (SIA), the US National Foreign Trade Council (NFTC), the American Chamber of Commerce (AMCHAM, based in South Africa), the National Association of Automobile Manufacturers of South Africa (NAAMSA) as well as the Automotive Components Industry of South Africa (NAACAM) in a joint submission, the South African Citrus Growers Association, the Manganese Metal Company of South Africa, consumer advocacy association Public Citizen, a submission by various South Africa-based NGOs and civil society groupings in the health and medical sphere, as well as US industry associations US Chicken Council (USCC) and the US Poultry and Egg Exporters Council USAPEEC (joint submission), and also from the US beef industry.

The range of submissions and inputs received bore testimony not only to the underlying subject matter but also the increasing publicity garnered primarily by the so-called chicken dispute. While there may appear outward justification of reviewing South Africa in the context of further AGOA eligibility, the argument could be made that the review process is both a means of assuaging the increasingly vociferous opposition by certain US lawmakers to the inclusion of South Africa (and to pass the legislation), as well as on opportunity to significantly ramp up pressure on South Africa to fall in line with US demands for better market access and its own commercial interests. While AGOA is ostensibly a non-reciprocal US preference programme, America's offensive interests in Africa (and particularly in South Africa) are well known. The review process may, thus, be as much an opportunity to shed some built-up frustration with South Africa and break down barriers to US commercial interests.

The submissions presented under the review process have been largely predictable in their stance, and have mostly toed the line with national, offensive industry interests. In broad terms, the submissions

[22] Relevant section of the 1974 Act [Online] http://www.gpo.gov/fdsys/pkg/USCODE-2013-title19/html/USCODE-2013-title19-chap12-subchapV-sec2462.htm

have been from the agricultural sector (mainly from the United States, but also from the South African citrus industry), from civil society organisations (mainly around intellectual property issues), from the private security industry as well as from the South African government.

The US security industry alliance is strongly opposed to the proposed ownership limitations on foreign firms operating in the South African private security industry; its objections are centred around Section 20 of the Private Security Industry Regulation Act (PSIRA) that seek to limit foreign ownership of companies (including companies that supply, manufacture, install and distribute equipment to the private security industry) to 49%. While not explicitly calling for South Africa to lose its AGOA preferences, it considers these provisions to be incompatible with the AGOA eligibility requirements, but also with South Africa's international commitments under GATS.

The US beef industry makes similar submissions in terms of AGOA, making out the case that South Africa is unreasonably blocking US beef imports (since a case of BSE was detected in the US in December 2003) without the necessary legal or scientific justification. The US chicken industry submissions have understandably been strongly worded and forthright on the matter relating to South Africa's stance on anti-dumping measures against US exports (attacking the basis and justification for these measures), setting out exactly what needs to occur now that the respective parties have agreed in principle on the first steps towards allowing US chicken exports back into South Africa under standard (free of anti-dumping duty) conditions.

The South African citrus sector is a key beneficiary of the AGOA preferences, with South African oranges and mandarins in particular finding a ready market in the US under duty-free import conditions. South Africa is the second-largest foreign supplier of oranges to the US market and understandably has much to lose should South Africa lose its preferential access. The automotive sector of South Africa also argues strongly in favour of a continuation of AGOA preferences, understandably concerned about the possible impact of losing preferential market access for its automotive exports which represent South Africa's single largest export category under AGOA.

6.4 South Africa's response

The South African response to the various matters raised in the context of the out-of-cycle review was filed as a post-hearing statement by the Department of Trade and Industry (DTI), on behalf of the Government of South Africa. In it, South Africa proclaims to meet the letter and spirit of the AGOA eligibility conditions, and addresses some of the concerns raised. Its response can broadly be classified into two parts: references to the issues raised and associated action it has undertaken, on US industry concerns with respect to issues around beef, chicken and pork, and a response referring to issues around the country's national policies in the context of intellectual property rights and the private security legislation.

In terms of its response to the specific agricultural concerns, South Africa reports that a number of concessions have been made, which will see a normalization of trade (US exports to South Africa) in some of these 'affected' sectors. It is evident, based on the dates of notifications provided to US authorities and when decisions were taken, that most of these actions are a direct result of US pressure on South Africa and the threat of a loss of AGOA preferences; or at best, that the potential loss of AGOA has acted as a key catalyst to self-assess how the country applies certain aspects of its trade policies with respect to the US and other trade partners. South Africa specifically refers to recent developments and progress in the chicken sector (including a special quota for US exports of 65,000t, agreed at a recent meeting in Paris).

South Africa's submission alludes to progress made on it recognizing the lower risk associated with avian influenza on US imports. The country is considering compartmentalizing and regionalizing chicken trade with the US in order to mitigate any risks, without resorting to what could perhaps be seen as unreasonable and somewhat draconian trade measures in blocking all chicken imports from the US including those recently agreed to. This would then entail, at most, a limited ban only (especially if there are no new outbreaks "over the next 6 weeks"), and directly related to areas identified as having recorded recent occurrences of chicken influenza.

It seems that South Africa already regionalizes chicken imports from other international sources, for example from the Netherlands[23], following outbreaks of chicken influenza there. But there is perhaps some irony in South Africa's seemingly over-protectionist stance regarding imports from the US, notwithstanding any legitimate concerns about the spread of disease and genuine SPS measures to counter these: it has for years fought about similar issues with the European Union, for example concerning its exports of ostrich (limited occurrence of avian influenza) and oranges (limited occurrence black spot disease); these were essentially not just about any threat (if any) posed by disease but also about the principle of regionalizing trade and associated risk.

[23] See a presentation by the Dutch Ministry of Economic Affairs. [Online] http://www.aphis.usda.gov/animal_health/animal_dis_spec/poultry/downloads/mtg/presentations/wed1_bruschke_control%26prevention_of_hpai_in_the_netherlands.pdf

While some progress certainly appears to have been made and has been readily acknowledged by all parties involved in the discussions, implicit in South Africa's response is that it may yet be a little while before US chicken imports will become a reality. The US, however, will likely consider the only yardstick to be the passage of actual imports into South Africa of these products. This will now have to happen in a matter of weeks to a month or two, and not years.

With respect to beef, South Africa has indicated that restrictions on imports of US beef (and others) will be removed in the context of lower BSE-related risk and a related re-assessment of the situation at hand, and the US Animal Plant Health Inspection Service (APHIS) has been formally notified of the lifting of restrictions in a letter dated 6 August 2015 (one day prior to the Out-of-Cycle Review hearings). With regard to pork, some of the current restrictions have likewise been lifted, although a number of restrictions remain in place with respect to certain cuts of (pork) meat. These undertakings appear to have been received, overall, with caution – if not skepticism – by US industry and government officials.

On the other policy-related issues raised recently – particularly on matters such as security industry and intellectual property reform – South Africa makes few if any concessions but argues that these matters remain national policy prerogatives. It makes only a fleeting mention relating to the private security industry bill and references to the intellectual property debate around medicines are similarly brief – conceding only that there have been improvements in registering new medicines and giving certain undertakings on improvements to South Africa's regulatory and enforcement environment.

In effect, South Africa's states its position to be one whose open policy environment makes provision for inputs from interested and affected stakeholders and is consultative, is broadly transparent and reflective of national needs, and thus remains government prerogative in line with the national interest. South Africa also appears to draw somewhat of a line at this point, perhaps under-estimating the US position and what is quite possibly a rapidly closing window on AGOA, instead proclaiming these policy issues not to be incompatible with AGOA's eligibility requirements while providing an undertaking that the country is open to continued engagement on these issues of concern.

6.5 Conclusion

When reflecting on AGOA one can conclude that AGOA's trade performance and impact merits two perspectives; one of (unfulfilled) potential that consequently views AGOA as a broad failure, and one of unprecedented opportunity that – while clearly under-utilised – has provided beneficiary countries with just short of $50 billion[24] of utilised non-oil duty-free market access over the period 2001-2014, and which has acted as a driver for continued adherence to various governance, human rights and economic standards.

AGOA, while generous in intent and application, also contains many gaps in coverage and one of its few weaknesses from the perspective of some beneficiary countries (when seen in the context of the relatively low utilisation rates) would include the fact that a number of so-called 'sensitive' agricultural products remain outside of AGOA coverage or remain subject to tariff rate quotas; these are often high-duty products that might otherwise be of keen interest to African countries. And while it remains tempting to simply consider this in the context of the non-reciprocal benefits extended through AGOA, the legislation's "strings attached" (especially around its extended eligibility requirements which some may argue constrain national policy space, or the more implicit political dimension underlying AGOA) means that these preferences are not simply a 'free' gift. Also, in reviewing AGOA, the fact that AGOA builds on the US' own pre-existing GSP preferences, which already gave LDC countries significant access to the US market (again, subject to eligibility criteria), provides some additional perspective.

The primary benefit thus lies mainly in the 'newly added' product categories, and as a recipient group primarily with the non-LDC beneficiaries under the programme. However, to be fair it needs recognising that AGOA has brought a much greater level of long-term certainty to Africa's preferential access to the US market, and equally to US businesses that are planning and implementing their own international sourcing strategies. This enhanced predictability of AGOA is something on which business thrives – the periodic TCFP renewals of the last decade aside – and the past experience with the US GSP and its occasional expiry or highly delayed renewal are examples of this.

As much as AGOA's inclusion of energy-related goods – primarily oil – completely distorts the overall performance picture of AGOA, rendering trends and growth statistics and fluctuations on combined AGOA exports largely meaningless, the numbers have also been somewhat distorted by South Africa's utilisation of AGOA preferences. Take South Africa out of the equation and relatively little is left of AGOA when assessing the past decade and a half: apart from apparel sector exports, and some agricultural product categories, few notable beneficiaries of AGOA remain. In 2014, South Africa's share of combined 'AGOA-classified' exports was 15%; when one removes oil exports from

[24] This is a small fraction of the oil exports that have also been exported under the AGOA legislation, but whose numbers invariably distort the overall picture.

the overall equation the country's utilisation of AGOA preferences accounts for just over 60% of total non-oil AGOA trade[25].

The risk with aggregate numbers is that the detail easily gets lost, and the successes fade out of view. For some countries, AGOA has been one of the single most important drivers of exports and its impact has been critical in a positive way – not just in terms of the dollar value of associated investments (either new investment or investment that may otherwise have been withdrawn), revenue, taxes, and in particular also on levels of employment. Lesotho is one such example, as the largest apparel exporter under AGOA over the years.

Large impacts have also been felt in Kenya, an increasingly important apparel-manufacturing hub in the region, driven by opportunities presented by AGOA, but also in other sectors such as nuts, fruit and cut flowers. Mauritius has drawn significant benefit for its own apparel sector over the years, especially since qualifying for the TCFP under an earlier amendment to the apparel provisions. Malawi has benefited from AGOA-induced tobacco and nut sales, Ethiopia is fast becoming a key producer and exporter of apparel thanks *inter alia* to AGOA, while its leather-goods manufacturing sector is a key AGOA beneficiary. Swaziland, although suspended at the start of 2015, was able to draw significant benefit for its apparel sector over the years as a result of AGOA. Tanzania, Botswana and Ghana are also beneficiaries of the legislation, albeit primarily in the apparel manufacturing sector. Nigeria, while exporting mainly oil, also shipped sheep-skins, vegetables and fruit under AGOA.

The unmistakable reality is that South Africa has been, by some margin, AGOA's largest beneficiary over the years. South Africa's automotive, steel, industrial chemical, citrus, vegetable and wine are key beneficiaries under AGOA, representing a diverse export portfolio and accounting for a large share of aggregate AGOA trade. With its relatively more developed industrial, agricultural and mining base, it is in a better position to offer competitively priced products to US buyers. For every satisfied seller in South Africa, there is also a buyer in the US that gains from its sourcing relationship with South Africa. Every trade transaction under AGOA represents a win-win outcome.

This makes the currently-underway 'Out-of-Cycle Review' of South Africa's continued AGOA eligibility all the more noteworthy. Should South Africa lose its AGOA eligibility status, or have key aspects of its preferences withdrawn, this would also severely undermine the AGOA package and risk its continued relevance overall. Another likely consequence is that this would raise Africa's overall

[25] See data presented in Table 4

risk profile in the eyes of US buyers, in terms of sourcing within a predictable and secure trade relationship. A loss of preferences is equally a loss for South Africa as it is for US stakeholders (in contrast, of course, a negotiated bilateral agreement carries with it far less such risk). And while South Africa has clearly felt the pressure emanating from this review and has revisited (and removed, in parts) some of its "AGOA irritants", there is relatively little concrete evidence of real action and implementation on the part of South Africa. Rather, the country appears to have – to some extent – have dug in and further entrenched its views and policy prerogatives in what it considers to be in the national interest especially with respect to its own policy space.

The Out-of-Cycle review has, as expected, attracted a range of submissions and has elevated the underlying issues to a far more topical and public level, with the US hauling out the stick while (still, but perhaps only just) dangling the carrot of continued AGOA preferences. This has clearly been a time for reflection for South Africa too, as it (re)considers the impacts and outcomes of some of its own trade and investment policies, which at least in some parts appear little more than blunt and barely-defensible if not somewhat hypocritical instruments to protect domestic industries from greater international competition and rules-based fair trade.

The recent 10-year extension of AGOA provides new opportunities and greater predictability over Africa's access to the US market, at least for countries that adhere to AGOA's eligibility standards. Bar any significant modification to the legislation and product coverage, and any real efforts on the part of Africa to better understand exporting value-added products to large international markets while also tackling long-standing supply side constraints – be it in production, or with respect to technical standards and export processes – there will be limited scope for re-writing the book on Africa's under-utilisation of AGOA's non-reciprocal market access preferences, and its related opportunities.

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