

A GUIDE TO THE AFRICAN GROWTH & OPPORTUNITY ACT (AGOA)

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WHAT IS AGOA?

- Unilateral trade preference program created in 2000
- Builds upon the Generalized System of Preferences (GSP), allowing the President to designate sub-Saharan African countries as eligible for additional duty-free treatment on specified articles
- The President designates countries as AGOA beneficiaries based on their performance regarding rule of law, economic freedom, property rights, and other considerations
 - Many countries have had their eligibility revoked, reinstated, etc.
- The law was amended by Congress in 2002, 2004, 2006, and 2015

WHAT ARE THE BASIC RULES OF AGOA?

- Duty-free treatment applies to any designated article that meets the basic GSP origin requirements and additional rules (*see* 19 CFR § 10.178a):
 - The article must be the growth, product, or manufacture of a beneficiary African country
 - The article must be imported directly from a beneficiary African country into the United States
 - The article must have at least 35 percent of its appraised value attributed to the operations performed in the country of export
 - However, the value of materials produced in the United States may be counted toward this requirement
 - Also, value inputs by another AGOA beneficiary may be counted toward this requirement

WHAT PRODUCTS ARE COVERED?

- The President is authorized to designate products as eligible for AGOA duty-free treatment. The President has delegated this authority to the U.S. Trade Representative (USTR)
- Before designating a product as AGOA eligible, the President must receive confirmation from the U.S. International Trade Commission (ITC) that the product is not “import sensitive” in the context of imports from African countries
- When combined with GSP, AGOA makes approximately 6,000 tariff lines duty-free (4,000 from GSP, 2,000 from AGOA)
- It is important to examine the Harmonized Tariff Schedule of the United States (HTSUS) to see if a certain product is designated for AGOA or GSP treatment

WHAT PRODUCTS ARE NOT COVERED?

- Excluded articles include watches, certain electronic products, and types of steel, footwear, handbags, luggage, and leather items
- Textile & apparel products are treated separately and require special designation for each AGOA beneficiary
- Also, tariff-rate quotas exist independent of AGOA and GSP, but restrict African countries' ability to export certain products under these programs
 - Examples include leaf tobacco, sugar, dairy products, sweetened cocoa, peanuts, certain wines, certain cheeses, and certain seafood

WHAT RECORDKEEPING RULES APPLY?

- An importer claiming duty-free AGOA treatment must maintain, for a period of five years after the date of entry, the following records:
 - Documents explaining how the importer concluded that the product qualified for AGOA
 - Documents demonstrating that the article is, in fact, the growth, product, or manufacture of an AGOA beneficiary (examples include farmers receipts and manufacturing records)
 - Shipping papers that show how the product moved from the AGOA beneficiary to the United States. If the product was shipped through a country other than an AGOA beneficiary, the importer must have documentation showing that illegal transshipment did not occur.
 - Documents showing the cost or value of the materials and how the 35 percent content requirement was satisfied
 - The importer must also be prepared to produce the required records to U.S. Customs and Border Protection (CBP) upon demand

WHAT IS REQUIRED OF THE EXPORTER?

- An exporter of a product for which AGOA treatment is claimed must prepare a certificate of origin and a commercial invoice, both of which are submitted to CBP by the importer
- The certificate of origin must be signed by the exporter or his/her authorized agent, and must be completed either in English or in the language of the country from which the product was exported
- A special certificate of origin is required for textile and apparel exports under AGOA – this certificate is more complicated than the basic certificate of origin (an AGOA textile visa is also required)
- The exporter's products must comply with all other U.S. requirements, such as regulations imposed by the Food and Drug Administration, Consumer Product Safety Commission, etc.

AGOA EXTENSION AND ENHANCEMENT

- The U.S. Congress renewed AGOA in 2015. The legislation did the following things:
 - Extended AGOA for 10 years (through 2025), including a 10-year extension of the third-country fabric provision for clothing imports
 - Promoted African regional integration by expanding the rule of origin to allow AGOA countries more flexibility to combine inputs to meet the 35 percent requirement
 - Provided greater flexibility to the President to withdraw, suspend, or limit benefits under AGOA (as opposed to complete termination from the program)
 - Outlined a path for deepening trade and investment ties by requiring the Administration to develop a long-term strategy for negotiating trade agreements with African countries

AGOA EXTENSION AND ENHANCEMENT

- What did the AGOA renewal legislation NOT do?
 - It did not add products to the program
 - It did not exempt imports of alcoholic beverages from excise taxes
 - It did not allocate funds for new trade capacity building assistance, such as SPS training
 - It did not require that the AGOA Trade Hubs be improved
 - It did not exempt AGOA imports from tariff-rate quotas
 - It did not create tax incentives for U.S. companies to invest in Africa
 - It did not adjust the public policy requirements for AGOA country eligibility (e.g., democracy, human rights)
 - It did not substantially lessen the rule of origin requirement

WHAT IS THE FUTURE OF AGOA AND U.S.-AFRICA TRADE RELATIONS?

- Is AGOA finished after 2025?
- Will African countries take better advantage of AGOA in the next ten years? What about continuing quality and SPS challenges?
- Free Trade Agreements
- Trade & Investment Framework Agreements
- Bilateral Investment Treaties

CONTACT INFORMATION

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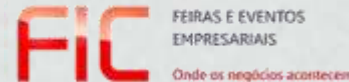
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