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AGOA III: Amendment to the African Growth and Opportunity Act

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Summary

On July 13, 2004, the "AGOA Acceleration Act of 2004" was signed by the President and became P.L.108-274. This legislation amends the African Growth and Opportunity Act (AGOA; P.L. 106-200, Title I), extending it to 2015. AGOA seeks to spur economic development and help integrate Africa into the world trading system by granting trade preferences and other benefits to Sub-Saharan African countries that meet certain criteria relating to market reform and human rights. Congress first amended AGOA in 2002 (P.L. 107-210) by increasing a cap on duty-free apparel imports and clarifying other provisions. The new AGOA amendments, referred to as "AGOA III," extends the legislation beyond its current expiration date of 2008 and otherwise amends existing AGOA provisions. For further information on AGOA, see CRS Report RL31772, *U.S. Trade and Investment Relationship with Sub- Saharan Africa: The African Growth and Opportunity Act and Beyond.* This report will be updated as needed.

Legislation to amend the African Growth and Opportunity Act of 2000 (Title I, P.L. 106-200; 19 U.S.C. 3701 *et seq*), the AGOA Acceleration Act of 2004 (H.R. 4103), was passed in the House on June 14, 2004. On June 24, 2004, the bill was passed in the Senate without amendment by unanimous consent. The President signed the bill on July 13, 2004, and it became P.L.108-274. Previously, similar legislation known as the United States-Africa Partnership Act of 2003 (S. 1900) was introduced in the Senate on November 20, 2003. The Senate Foreign Relations Committee held a hearing on this bill on March 25, 2004. Another bill amending AGOA (H.R. 3572) was introduced in the House on November 21, 2003.

Background: The African Growth and Opportunity Act

After two decades of economic stagnation and decline, some African countries began to show signs of renewed economic growth in the early 1990s. This growth was generally due to better global economic conditions and improved economic management. However, growth in Africa was also threatened by new factors, such as HIV/AIDS and

high foreign debt levels. The African Growth and Opportunity Act (AGOA) (P.L. 106-200- Title I) was enacted to encourage trade as a way to further economic growth in Sub-Saharan Africa and to help integrate the region into the world economy. AGOA provided trade preferences and other benefits to countries that were making progress in economic, legal, and human rights reforms. Currently, 37 of the 48 Sub-Saharan African countries are eligible for benefits under AGOA.

AGOA expands duty-free and quota-free access to the United States as provided under the U.S. Generalized System of Preferences (GSP).[1] GSP grants preferential access into the United States for approximately 4,600 products. AGOA extends preferential access to about 2,000 additional products by removing certain product eligibility restrictions of GSP and extends the expiration date of the preferences for beneficiary African countries from 2006 to 2008. Other than articles expressly stipulated, only articles that are determined by the United States as not import-sensitive (in the context of imports from AGOA beneficiaries) are eligible for duty-free access under AGOA.

Beyond trade preferences, AGOA directs the President to provide technical assistance and trade capacity support to AGOA beneficiary countries. Various U.S. government agencies carry out trade-related technical assistance in Sub-Saharan Africa. The U.S. Agency for International Development funds three regional trade hubs, located in Ghana, Kenya, and Botswana, that provide trade technical assistance. Such assistance includes support for improving African governments' trade policy and business development strategies; ability to participate in trade agreement negotiations; compliance with WTO policies and with U.S. phytosanitary regulations; and strategies for further benefiting from AGOA.

AGOA also provides for duty- and quota-free entry into the United States of certain apparel articles, a benefit not extended to other GSP countries. This has stimulated job growth and investment in certain countries, such as Lesotho and Kenya, and has the potential to similarly boost the economies of other countries, such as Namibia and Ghana. In order to qualify for this provision of AGOA, however, beneficiary countries must develop a U.S.-approved visa system to prevent illegal transshipments. Of the 37 AGOA-eligible countries, 25 are qualified for duty-free apparel trade (wearing-apparel qualified). These countries may also benefit from Lesser Developed Country (LDC) status. Countries that have LDC status for the purpose of AGOA, and are wearing-apparel qualified, may obtain fabric and yarn for apparel production from outside the AGOA region. As long as the apparel is assembled within the LDC country, they may export it duty-free to the United States. Some LDC AGOA beneficiaries have used this provision to jump-start their apparel industries. This provision was due to expire on September 30, 2004. The AGOA Acceleration Act extends the LDC provision to September 30, 2007, with a reduction in the cap on the allowable percentage of total U.S. apparel imports beginning in October 2006. S. 1900 would have extended it to September 30, 2008,with no reduction in the cap. Countries that are not designated as LDCs but are wearing apparel qualified must use only fabric and yarn from AGOA-eligible countries or from the United States. The only wearing apparel qualified non-LDC countries are South

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[1] The Generalized System of Preferences is a program offering trade preferences to less developed countries, including those from Sub-Saharan Africa. See CRS Report 97-389, *Generalized System of Preferences*, by William H. Cooper.

Africa and Mauritius, which are also the only AGOA countries with long-established textile sectors.

AGOA was first amended in the Trade Act of 2002 (P.L. 107-210), which doubled a pre-existing cap set on allowable duty-free apparel imports. The cap was only doubled for apparel imports that meet non-LDC rules of origin; apparel imports produced with foreign fabric were still subject to the original cap. The amendment also clarified certain apparel rules of origin, granted LDC status to Namibia and Botswana for the purposes of AGOA, and provided that U.S. workers displaced by production shifts due to AGOA could be eligible for trade adjustment assistance.

Three Years of AGOA: Successes and Challenges

U.S. duty-free imports under AGOA (excluding GSP) increased dramatically in 2003 — by about 58%, from $8.36 billion in 2002 to $13.19 billion in 2003 — after a more modest increase of about 10% in 2002.[2] However, 70% of these imports consisted of energy-related products from Nigeria. Excluding Nigeria, U.S. imports under AGOA increased 30% in 2003, to $3.84 billion, up from $2.95 billion in 2002. These imports increased by 56% in 2002, from $1.89 billion in 2001. The increase in AGOA imports in 2002 is impressive, in fact it helped offset a decline in total U.S. imports from Sub-Saharan Africa in that year, from $21 billion to $18 billion. Almost half of the increase in AGOA imports came from the textiles and apparel industry — $355.9 million in 2001, $799.7 million on 2002, and $1.197 billion in 2003. Much of the growth in AGOA-related apparel industry imports has come from the newly emerging apparel industries in Lesotho, Kenya, and Swaziland. Ghana, Botswana, Malawi, and Namibia have also begun to develop apparel industries, but growth in these countries has been less robust.

Apart from the apparent success of the emergent apparel industries in some African countries, the potential benefits from AGOA have been slowly realized. There has been little export diversification, with the exception of a few countries whose governments have actively promoted diversification. Agricultural products are a promising area for African export growth, but African producers have faced difficulties in meeting U.S. sanitary guidelines. Many countries have been slow to utilize AGOA at all. Others, such as Mali, Rwanda, and Senegal, have implemented AGOA-related projects, but have made insignificant gains thus far. In addition to lack of market access, there are substantial obstacles to increased export growth in Africa. Key impediments include insufficient domestic markets, lack of investment capital, and poor transportation and power infrastructures. Other significant challenges include low levels of health and education, protectionist trade policies in Africa, and the high cost of doing business in Africa due to corruption and inefficient government regulation. Furthermore, the apparel industry in Africa faces a large impending challenge in the dismantling of the Multifibre Arrangement quota regime in 2005, at which time it will have to compete more directly with Asian producers for the U.S. market. AGOA beneficiaries will retain their duty-free advantage, but they will lose their more significant quota-free advantage. This makes export diversification in Africa all the more vital.

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[2] See U.S. International Trade Commission dataweb at [http://dataweb.usitc.gov/].

Key Provisions in AGOA III

AGOA III extends the preference program to 2015. AGOA III supporters claim that many AGOA beneficiaries have only recently begun to realize gains as a result of AGOA, and that extending AGOA benefits now would improve the stability of the investment climate in Africa. AGOA III also provides for apparel rules of origin and product eligibility benefits; it would extend the third-country fabric rule for LDCs, and encourage foreign investment and the development of agriculture and physical infrastructures.

Extension of Lesser Developed Country Provision. One of the more controversial aspects of AGOA III was the extension of the LDC provision. If the LDC provision had not been extended, LDCs would no longer have duty-free access to the United States for apparel made from third-country fabric after September 30, 2004. Supporters of the extension claim that if the LDC provision was not extended, the apparel industry may have contracted significantly, causing a loss of many of the gains from AGOA, as apparel assembly plants were shut down. This might have occurred because all AGOA beneficiaries would need to source their fabric and yarn from within the AGOA region or from the United States in order to get duty-free access under AGOA, and the regional supply of fabric and yarn would likely be insufficient to meet the demand.[3] Sourcing materials from the United States would not be a viable option because it would entail greater costs. Some analysts argued for the LDC provision to be extended to allow more time to develop a textile milling industry to support the needs of the apparel industry in Africa, and to prevent the collapse of the emerging apparel industry.

Opponents of extending the LDC provision claim that the expiration of the LDC provision would provide an incentive for further textile milling investments in Africa. They argue that the LDC provision has slowed fabric and yarn production investment in Africa, because these materials could be imported cheaply from Asia for use in AGOA-eligible apparel with no need for costly investments. They fear that an extension of the LDC provision will provide a disincentive to textile milling investment in Africa, because the deadline will lose its credibility as investors anticipate further extensions. However, supporters of the extension argue that investment in the textile industry will continue because of its inherent profitability, despite the availability of third-country fabric. Others worry that the looser rules of origin under the LDC provision may allow companies to use Africa as a transshipment point between Asia and the United States.

The outlook for the development of a textile industry in Sub-Saharan Africa is clouded by the phase-out of the Multifibre Arrangement (MFA) quota regime in January 2005.[4] When quotas are finally eliminated, Africa will be competing more directly with Asia for the U.S. apparel and textile market, though they will remain eligible for tariff preferences. Apparel plants are particularly sensitive to price conditions as they do not require large capital investments and can easily and rapidly be shifted to areas outside Africa. Textile plants are more capital-intensive and more costly to move, and are therefore likely to remain in Africa in the long-term. Thus, it is argued that the promotion

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[3] *Impact of AGOA Extending LDC Fabric Import Privileges Beyond 2004*, Zambia Trade and Investment Enhancement Project, supported by USAID, Mar. 2003.

[4] For further coverage of the phaseout of the MFA quota regime, see CRS Report RS20889, *Textile and Apparel Quota Phaseout: Some Economic Implications*, by Bernard A. Gelb.

of vertical integration between apparel, textile, and cotton producers is necessary to keep apparel plants in Africa, along with the jobs they provide. There is agreement that increased investment in the textile industry needs to take place for vertical integration to occur; at issue is whether the extension of the LDC provision will facilitate this process.[5]

Agricultural Products. The growth of agricultural trade holds potential for improved economic growth in Africa. Most Africans rely on agricultural production for their income. It is estimated that 62% of the labor force in Africa works in agriculture, and in the poorer countries, that portion is as high as 92%.[6] By exporting to the U.S. market, African agricultural producers could receive higher prices for their goods. In order for this to occur, the United States may need to further open its market to African agricultural products, and African agricultural producers will need to meet the high standards of the U.S. market.

AGOA III seeks to improve African agricultural market access to the United States by providing assistance to African countries to enable them to meet U.S. technical agricultural standards. African agricultural producers have previously faced difficulties in meeting these standards. The AGOA Acceleration Act calls for the placement of 20 full-time personnel to at least 10 countries in Africa to provide this assistance. S.1900 would provide further market access by removing the import sensitivity test, which disallows preferential treatment under AGOA for goods that are considered to have negative consequences for import-competing products in the United States. Proponents of eliminating the import sensitivity test in AGOA argue that African imports account for such a small proportion of U.S. trade that they are likely to have a small marginal negative effect on U.S. producers, while they are likely to have a significant positive effect on African producers. Eliminating the import sensitivity test is designed to open the U.S. market to all products meeting the AGOA rules of origin, some of which are agricultural products already produced, and others which could be competitively produced in Africa. Opponents of eliminating the import sensitivity test contend that certain U.S. agricultural producers may be hurt, and it may set a precedent for preference programs with other regions. The AGOA Acceleration Act does not contain this provision.

Table 1. Selected AGOA III Provisions Compared

S. 1900	AGOA Acceleration Act (P.L. 108-274)
Extends AGOA to 2015.	Same.
Extends LDC Rule to 2008	Extends LDC Rule to 2007, with cap of allowable imports set at 2.64% of total volume of U.S. apparel imports from October 2004, 2.92% from October 2005, and phased out to 1.6% from October 2006.

[5] Joop A de Voest, *Background Information on Effects of Extending and Not Extending the September 2004 Deadline for Less Developed AGOA Qualified Countries to be Able to Import Fabric from Outside the AGOA Region and Still Be Qualified to the USA Under AGOA*, Zambia Trade and Investment Enhancement Project, supported by USAID, Mar. 2003.

[6] World Resources Institute, as cited on Nationmaster.com. See [http://www.nationmaster.com/graph-T/agr_lab_sha/AFR].

S. 1900	AGOA Acceleration Act (P.L. 108-274)
Removes the cap entirely for all apparel imports under AGOA.	Final cap of allowable apparel imports meeting yarn forward rules of origin remains at 7% (as set in AGOA II) after 2007. LDC Rule imports cap set as described above.
No similar provision.	Clarifies that apparel articles that contain fabric both from U.S. and AGOA beneficiary countries are eligible for benefits.
No similar provision.	Makes eligible previously disqualified apparel goods that contain cuffs and/or collar components from third countries.
Removes import sensitivity test requirement.	No similar provision.
Allows Congress to prohibit the President from terminating the eligibility of a specific country.	No similar provision.
Adds ethnic printed fabrics to list of eligible Category 9 folklore and handmade items.	Similar.
No similar provision.	Increases the *de minimus* level of non-AGOA originating inputs for apparel from 7% to 10%.
Removes prohibition on Overseas Private Investment Corporation (OPIC) involvement in investment in sensitive U.S. industries.	No similar provision.
Directs the Export-Import Bank to fully consider any activity that may positively affect beneficiary countries.	No similar provision.
Directs the President to assign at least 20 personnel of the Animal and Plant Health Inspection Service (APHIS) to AGOA eligible countries, to help exporters meet APHIS requirements for agricultural imports to the United States.	Similar, but does not specify that the personnel must come from APHIS.
No similar provision.	Directs the President to support infrastructure projects to assist the development of the ecotourism industry.
Directs the President to develop policies to support transportation projects in AGOA countries, to foster transportation links with the United States, and to develop information and communications technologies among beneficiary countries.	Similar.