Insight

Primer: The African Growth and Opportunity Act

LAURA COLLINS | SEPTEMBER 1, 2015

Congress recently reauthorized the African Growth and Opportunity Act (AGOA), a trade preference program for eligible sub-Saharan African (SSA) countries. AGOA is an important trade tool that the U.S. uses to spur economic development and to ensure our trade presence in a rapidly developing region.

Trade Preferences

Trade preference programs are agreements that seek to benefit developing countries by providing some of their exports duty free access to the U.S. The Generalized System of Preferences (GSP), a longstanding nonreciprocal trade preference program – first authorized by the Trade Act of 1974 – provides duty-free treatment to qualifying products from designated beneficiary countries.

Purpose

Through AGOA, the U.S. seeks to promote free markets, stimulate economic development through export-led growth, and integrate SSA into the global economy by diversifying these countries' economies and increasing the competitiveness of their exports.[1][2] It opens new markets for trade and investment and strives to create strong, strategic economic partners.

Eligibility

Countries wishing to participate in AGOA must meet the legal requirements to participate in the GSP as well as those for AGOA. By law, there are six categories that disqualify countries from participating in the GSP:

(1) other industrialized countries;

(2) communist countries;

(3) countries that collude with other countries to withhold raw materials and resources or raise the price of goods in a way that disrupts the global economy;

(4) countries that give preferential treatment to products of other developed countries in a manner that is significantly adverse to U.S. commerce;

(5) countries that have nationalized or confiscated the property of U.S. citizens, or otherwise infringed upon their property rights; and

(6) countries that provide sanctuary to any individual or group involved in terrorism, or do not support U.S. anti-

terrorism efforts.[3]

For SSA countries that meet these requirements, there are three additional AGOA-specific conditions. A country must show it:

(1) has established, or demonstrates continued progress towards establishing a market-based economy, the rule of law, political pluralism, the elimination of barriers to U.S. trade and investment, anti-corruption and anti-bribery measures and systems, the protection of internationally recognized workers' rights, and economic policies to reduce poverty, increase healthcare and educational opportunities, and promote the development of private enterprise;

(2) does not participate in activities that undermine U.S. national security or foreign policy interests; and

(3) does not commit gross human rights violations or provide support for terrorism.[4]

As of January 1, 2015, 39 SSA countries were eligible for AGOA benefits.[5]

Provisions

Trade Preference Program and Product Coverage

The central provision of AGOA grants duty-free access to the U.S. market for nearly 7,000 dutiable items, including textiles, apparel, petroleum and manufactured goods. The list of eligible products under AGOA includes the 5,000 tariff lines covered by the GSP plus an additional 1,800 items added by the AGOA legislation. Import sensitive items are not eligible for duty free treatment. Specifically, agricultural products that are subject to tariff-rate quotas are ineligible for duty-free access under both the GSP and AGOA.[6]

General Rules of Origin (Non-Textiles and Apparel)

In order to be a considered a true export of an AGOA-eligible country, Rules of Origin (RoO) are applied. These are the requirements that determine whether or not a product in question actually originated in the exporting country.[7] RoO are implemented to prevent trade deflection or transshipment, the process by which products made elsewhere are routed through a beneficiary country wherein few, if any, value-adding activities occurred.[8] When RoO are properly applied, beneficiaries and non-beneficiaries cannot exploit the trade preferences granted to beneficiary countries.

For non-textiles and apparel, AGOA grants duty-free treatment to items provided that: (1) the product is directly imported to the U.S. from an AGOA beneficiary country or passes through a second country in a sealed container that is addressed to a location in the United States and (2) at least 35 percent of the appraised value at the U.S. port of entry must be the "growth, product, or manufacture" of a beneficiary country, as defined by the sum of the "cost or value of materials produced in the beneficiary [country] plus the direct costs of processing in the country." [9][10] Additionally, up to 15 percent of the mandated 35 percent of appraised value may include the cost or value of goods produced in the United States and the cost or value of goods produced if one or more AGOA beneficiary contributes to the value-added requirement.[11][12]

Apparel and Textile Rules of Origin

For U.S. free trade agreements and most trade preference programs like the GSP, apparel and textile products are excluded from duty-free treatment because the U.S. apparel industry is deemed to be particularly import sensitive. As a result, the tariff applied to apparel and textiles is 11.4 percent and 7.9 percent, respectively, while the average tariff applied on all products is 3.5 percent.[13] AGOA, on the other hand, provides preferential treatment to certain apparel and textile products, though some are subject to caps.[14] Not all AGOA beneficiaries are eligible for this provision. An SSA country must establish a visa or tracking system to prevent transshipment of textiles and apparel products produced in non-AGOA beneficiary countries.[15] Despite the additional burden of implementing a visa system, the high tariffs applied to apparel and textiles for non-AGOA beneficiaries makes the extra effort to comply with the conditionality worth the effort for most.

There are four major components of the apparel and textile RoO:

(1) produced in one or more AGOA beneficiary countries from U.S. yarns and fabrics, without quantitative limitation;

(2) made from SSA yarns and fabrics, which are subject to a cap until 2015;

(3) produced in a designated least developed country (LDC) from third-country yarns and fabrics (see below), which is also subject to a cap; and

(4) made from yarns and fabrics not commercially produced in the United States.[16][17]

Least-Developed Countries and Third-Country Fabric

Unlike GSP, which grants broad discretion to the president when designating LDC status, AGOA defines LDCs as “a beneficiary sub-Saharan African country that had a per capita gross national product (GNP) of less than $1,500 in 1998, as measured by the International Bank for Reconstruction and Development”, which is a part of the World Bank.[18] Despite having a per capita GNP above the threshold, Botswana, Namibia, and Mauritius are explicitly granted LDC status under AGOA. As LDCs, those qualifying AGOA beneficiaries are eligible for the third-country fabric provision, which “allows U.S. apparel imports from least-developed SSA countries to qualify for duty-free treatment even if the yarns and fabrics used in the production of the apparel are imported from non-AGOA countries.”[19]

Economic Impact

Imports from AGOA nations represent a mere one percent of all imports to the U.S., and nearly 70 percent of these imports are energy-related.[20] The remaining imports are dominated by apparel, but vehicles, chemicals, and agriculture products have grown.[21] For non-energy products, the top exporting countries in 2014 were South Africa, Kenya, Lesotho, Mauritius, Swaziland, Cote d’Ivoire, and Malawi. These countries exported between $60 million to $3.1 billion, but more than half of AGOA beneficiaries exported less than $1 million.[22]

Nations that have embraced AGOA’s preferences have made positive economic strides, including job creation in industries that receive duty-free treatment. The apparel sector in particular has greatly benefited. Lesotho estimates that manufacturing employment rose from 19,000 to 45,700 between 1999 and 2011.[23] But a limited number of nations participate fully in AGOA, tamping down on its potential positive impact.

Program Future

AGOA is a starting point toward potential two-way trade agreements between the U.S. and sub-Saharan Africa. SSA is a growing region; the number of households with enough income for discretionary spending is expected to rise to 128 million by 2020.[24] Recognizing the potential growth of this region, the European Union entered an Economic Partnership Agreement with several African countries for reciprocal tariff benefits. China has recently taken notice as well and is the largest trading partner in this region.[25]

The current reauthorization runs until 2025 and encourages the U.S. Trade Representative to pursue free trade agreements with SSA countries.

[1] http://www.gao.gov/assets/670/668473.pdf, p. 1