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AGOA III: Amendment to the African Growth and Opportunity Act

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Summary

New legislation (H.R. 4103) known as the "AGOA Acceleration Act of 2004" was introduced in Congress on April 1, 2004, to amend the African Growth and Opportunity Act (AGOA) (P.L. 106-200, Title I). Similar legislation (H.R. 3572 and S. 1900), was previously introduced in Congress in November 2003. 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," would extend the legislation beyond its current expiration date of 2008 and amend existing AGOA legislation. 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.

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 benefitting 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, 22 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. Many LDC AGOA beneficiaries have used this provision to jump-start their apparel industries. This provision is set to expire on September 30, 2004; AGOA III would extend it by two years. Beyond that, H.R. 3572 would allow the President to grant an extended phase-out of the LDC provision to countries that lack sufficient domestic fabric-making capacity at the end of the two year period, if they have made efforts to develop such capacity. 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 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

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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.

apparel rules of origin, granted LDC status to Namibia and Botswana for the purposes of AGOA, and stated 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 realized slowly. 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 Agreement quota regime in 2005, when it will have to compete more directly with Asian producers for the U.S. market. This makes export diversification all the more vital.

Key Provisions in AGOA III

AGOA III would extend AGOA benefits beyond 2008. H.R. 4103, introduced by Representative William Thomas, Chairman of the House Ways and Means Committee, would extend AGOA to 2015; S. 1900, introduced by Senator Richard Lugar, Chairman of the Senate Foreign Relations Committee, would do the same; and H.R. 3572, introduced by Representative Jim McDermott, would extend it to 2020. 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

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[2] See U.S. International Trade Commission dataweb. [http://dataweb.usitc.gov/]. Accessed March 4, 2004.

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 is the extension of the LDC provision. In September 2004, LDCs will no longer have duty-free access to the United States for apparel made from third-country fabric, unless there is an extension of the LDC provision. Supporters of an extension claim that if the LDC provision is not extended, the apparel industry may contract significantly, causing a loss of many of the gains from AGOA, as apparel assembly plants are shut down. This may occur because all AGOA beneficiaries will need to source their fabric and yarn from within the AGOA region in order to get duty-free access under AGOA, and the regional supply of fabric and yarn will likely be insufficient to meet the demand.[3] It is argued that the LDC provision should be extended to allow more time to develop a textile milling industry that can support the needs of the apparel industry, and to prevent the collapse of the emerging apparel industry.

Opponents of extending the LDC provision claim that allowing the LDC provision to expire will provide an incentive for investment in textile milling in Africa. They argue that the LDC provision has slowed investment in fabric and yarn production, because these materials could be imported cheaply from Asia for use in AGOA-eligible apparel with no need for costly investments in textile production. They fear that an extension of the LDC provision will provide a disincentive to investment in textile milling in Africa, because the deadline will lose its credibility, and investors will anticipate further extensions. Supporters of an extension argue that investment in the textile industry investment will continue because of its inherent profitability, despite the availability of third-country fabric.

It can be argued that the growth of a textile industry in Sub-Saharan Africa is especially important in light of the phase-out of the Multifibre Agreement (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 do not require large capital investments and can easily and rapidly be shifted to areas outside Africa. Textile plants are more capital-intensive and thus more costly to move, and are therefore likely to remain in Africa in the long-term. A key to keeping apparel plants in Africa, along with the jobs they provide, is vertical integration, which many argue will increase the competitiveness of Africa's textile and apparel industries. It may also increase the indirect benefits of apparel production by providing a stable local market for regional cotton farmers. There is agreement that increased investment in the textile industry needs to take place for vertical integration occur; at issue is whether an extension of the LDC provision will facilitate this

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

process. Furthermore, there is general agreement that an early decision on extending the LDC provision could facilitate investment by reducing uncertainty.[5]

Agricultural Products. The growth of agricultural trade holds much 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 bills specifically call for the Secretary of Agriculture to assign 20 full-time personnel to at least 10 countries in Africa to provide this assistance. H.R. 3572 and S. 1900 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 industries in the United States. Proponents of eliminating the import sensitivity test in AGOA argue that Africa accounts for such a small proportion of U.S. trade that imports from Africa 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 that are currently produced, and others which could be competitively produced in Africa. H.R. 3572 further opens the U.S. market by extending duty-free treatment to statutorily-excluded agricultural products. It includes a "snap-back" provision to address concerns about sensitive sectors of U.S. agriculture, whereby duties will prevent import prices from falling below an established threshold.

Table 1. Selected AGOA III Provisions Compared

H.R. 3572	S. 1900	H.R. 4103
Extends AGOA to 2020.	Extends AGOA to 2015.	Extends AGOA to 2015.
Extends LDC Rule to 2008.	Similar.	Extends LDC Rule to 2007, with cap of allowable imports set at 2.3571% of apparel imports. Extension to 2008 with cap of 1.1785%.

[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. March 2003.

[6] World Resources Institute, as cited on Nationmaster.com. [http://www.nationmaster.com/graph-T/agr_lab_sha/AFR]. Accessed March 2, 2004.

H.R. 3572	**S. 1900**	**H.R. 4103**
Increases final cap on apparel article imports to 10% of volume of all U.S. apparel imports in 2014 (from 7% in 2008). LDC Rule imports remain at 3.5% final cap.	Removes the cap entirely for all apparel imports under AGOA.	Final cap does not exceed 7% (as set in AGOA II). LDC Rule cap set at 2.3571% and 1.1785%, as described above.
Removes import sensitivity test requirement.	Similar.	No such provision.
Allows President to continue LDC Rule after 2008 with a phase-out for a country that lacks sufficient domestic fabric-making capacity.	No such provision.	No such provision.
Allows Congress to prohibit the President from terminating the eligibility of a specific country.	Similar.	No such provision.
Adds ethnic printed fabrics to list of eligible Category 9 folklore and handmade items.	Similar.	Similar.
Extends duty-free treatment to previously statutorily excluded agricultural products.	No such provision.	No such provision.
Removes prohibition on Overseas Private Investment Corporation (OPIC) involvement in investment in sensitive U.S. industries.	Similar.	No such provision.
Directs the Export-Import Bank to fully consider any activity that may positively affect beneficiary countries.	Similar.	No such provision.
Allows tax deductions for contributions to Global Fund to Fight HIV/AIDS, Tuberculosis and Malaria.	No such provision.	No such provision.
Directs the President to assign at least 20 personnel of the Animal and Plant Health Inspection Service to AGOA eligible countries, to help exporters meet APHIS requirements for agricultural imports to the United States. Authorizes appropriations for this purpose.	Similar, but does not authorize appropriations.	Similar to S. 1900.