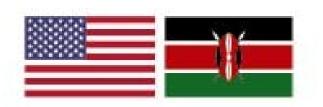
Kenya - United States FTA



FROM AGOA TOWARDS A BILATERAL FREE TRADE AREA

Following a meeting between Kenya President Uhuru Kenyatta and United States President Donald Trump at the White House, plans to initiate negotiations towards a bilateral Free Trade Area were announced on 6 February 2020. No Sub-Saharan African country has yet concluded a FTA with the United States; the 2006 U.S.-Morocco FTA is currently the only such agreement between an African country and the United States.

BACKGROUND: AGOA 2000-2025

- The African Growth and Opportunity Act (AGOA) forms part of United States legislation enacted by the U.S. Congress in May 2000 under former President Bill Clinton. This represented a new trade and investment policy towards Sub-Saharan Africa, and resulting in a deeper and more meaningful economic and political relationship.
- **AGOA** is non-reciprocal: it offers qualifying products made in eligible African 'beneficiary' countries preferential, duty-free access to the U.S. market. Kenya became an AGOA beneficiary at the time of AGOA's inception and was also one of the first countries eligible to export apparel under seperate apparel provisions.
- Kenya has been a leading beneficiary of AGOA preferences, and was one of the first African countries to export under the programme.

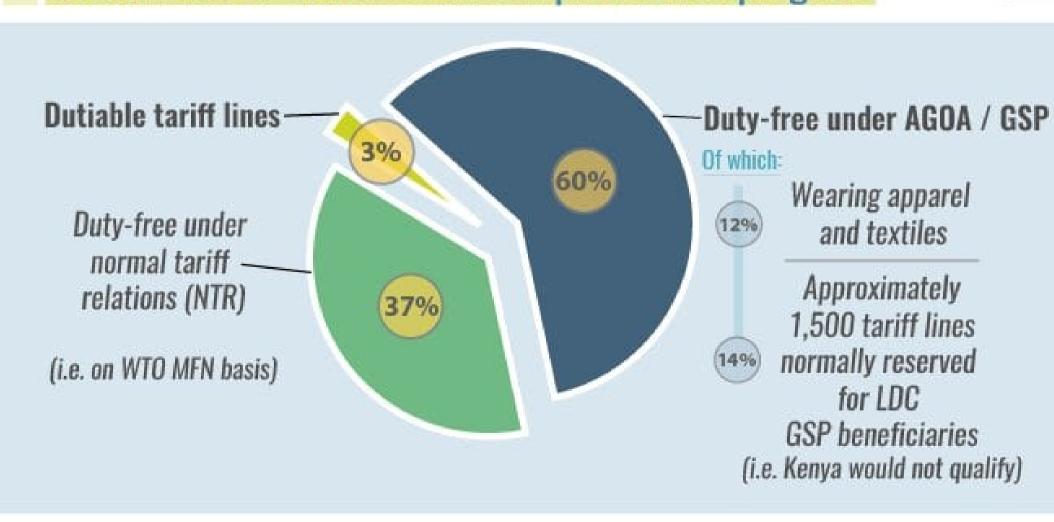


- suspended
- AGOA builds on and extends preferences available under the US Generalized System of Preferences (GSP), inter alia by significantly expanding the list of qualifying products (including to sensitive categories such as textiles and apparel), by removing the competitive need limitations (CNL) which potentially capped preferences when U.S. imports exceeded a certain threshold, and by providing longer-term preferences that are not subject to the same periodic expiry and renewal requirements of the GSP.

Kenya's current US market access under AGOA: Breakdown of U.S. tariff lines / preference program



Current market preferences for Kenya's exports to the U.S. are non-reciprocal, and unilateral



Until AGOA expires, Kenya is still able to enjoy duty-free access to the U.S. for 97% of possible tariff lines.

37% of all tariff lines are currently duty-free to WTO member States (Most-Favoured Nation principle)

3% of all tariff lines attract U.S. import duties when produced and exported by Kenya to the US

60% of all tariff lines benefit from AGOA / GSP duty-free access. This includes approximately 1,500 tariff lines ordinarily reserved for LDC countries under the GSP scheme. Without AGOA, Kenya - as a non-LDC - would not qualify for preferences for these products but would in tariff lines that have full GSP status, provided the GSP programme is active. The GSP requires periodic reauthorization

August: Kenya President Kenyatta pays a State visit to U.S.

Formation of Bilateral Strategic Dialogue to meet biannually

- February: Second State visit by Kenya President Kenyatta to the U.S.
- U.S. President Trump announces intention to initiate trade negotiations with Kenya
- March: USTR Lighthizer formally notifies the U.S. Congress
- July: FTA negotiations between the parties formally commence



- Formation of Trade and Investment Working Group (TIWG)
- Meets in April and October 2019 focusing on trade related themes
- May 2020: United States publishes 'Summary of specific negotiating objectives'
- June 2020: Kenya publishes 'Negotiating principles, objectives and scope'

TOWARDS A BILATERAL FREE TRADE AREA

Technical Barriers to Trade

National treatment of conformity assessment bodies and mutual recognition: application of WTO TBT decisions: to build on US-EAC Cooperation Agreement

Trade in goods Elimination of tariffs and What is a FTA, and what is covered? non-tariff barriers

A Free Trade Area, or Free Trade Agreement, is a legal pact between two or more countries that typically removes or significantly reduces impediments to the flow of goods and services between the partner countries. For this purpose, modern FTAs go beyond the mere reduction of tariffs on traded goods, and also address trade in services, investment, technical barriers to trade (non-tariff barriers), dispute resolution, customs administration and cooperation, sanitary/phytosanitary standards, and other regulatory disciplines. The parties to the Kenya-U.S. FTA have confirmed that they intend negotiating a comprehensive agreement between themselves. At this stage the negotiations are between Kenya and the US, although by virtue of the fact that Kenya is a member of the East African Customs Union (and any FTA will have implications for the remaining EAC Members), other member countries could join the negotiations.

Intellectual Property

Reduction of IP barriers: effective IP protection: cooperation and capacity building

Environment

Enforceable environmental obligations: multilateral collaboration

SOEs

Commercial principles vs. asymmetric treatment; recognition of important role that SOEs play

Customs matters

Rules of origin: customs valuation:

adoption of WTO trade facilitation disciplines

Dispute Settlement

Efficient and transparent

dispute settlement mechanisms

Services

US-KENYA

NEGOTIATING

PRINCIPLES

Trade Remedies Recognition of WTO Commitments on digital trade remedy provisions: trade: open and fair conditions AD, CVD and safeguard laws for services trade; special and differential treatment

Legal and Transparency Greater transparancy around regulations; enforcement; combating corruption

Labour Cooperation:

TLO standards **SMEs**

Co-operation on SME issues of mutual interest

SPS

Deeper cooperation: science-based adoption of standards

Competition Policy

Rules around anti-competitive business conduct; competition law enforcement

Mutual opportunities; commitments: assymmetry

Government procurement

Economic and Technical Cooperation Support development of export-focused value chains

What are the negotiating principles?

Both the United States and Kenya have published specific negotiating objectives ahead of the formal start to FTA negotiations in July 2020. While there is a high degree of correlation in the thematic areas (a combined summary of issues raised is provided alongside), the specific objectives and approaches often differ. What is clear is that a wide range of subjects are set to be addressed in the negotiations, with the end goal a comprehensive FTA. The respective documents can be downloaded from AGOA.info at the following web address:

www.AGOA.info/bilaterals/KenyaUSA

UNITED STATES' TRADE IN GOODS WITH KENYA SINCE THE START OF AGOA IN 2000





Follow updates on the US-Kenya FTA negotiations and related news



How did Kenya's exports enter the U.S. during 2019?

\$667m : Value of Kenya's goods exports to the U.S.

\$518m Kenya's exports under AGOA/GSP preference NO duties paid



\$0.5m Duties paid on dutiable items

KENYA's exports to the United States by programme since 2000 | S million

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
TOTAL Kenya exports to U.S.	109	129	189	249	352	348	353	326	344	280	311	381	390	433	591	573	553	572	645	667
Exports under AGOA	0	55	124	181	280	272	265	250	252	205	221	288	288	337	417	428	391	402	467	512
Exports under GSP	4	4	5	4	7	6	8	5	3	3	5	4	5	6	6	6	5	5	4	6
No preferences claimed	105	70	60	65	65	69	80	71	87	72	86	88	97	91	168	139	157	164	173	149

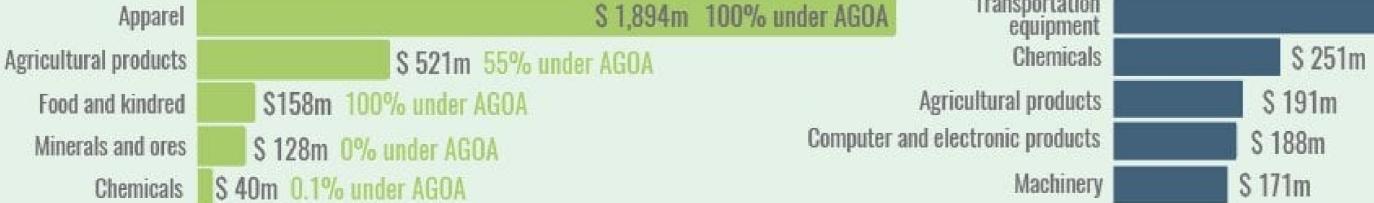
Source: Extracted from USITC Dataweb database. Totals may not always perfectly correspond due to rounding

United States exports to Kenya since 2000 | S million

2019 2018 2005 2006 2007 2008 2010 2011 2012 2013 2014 2015 2016 TOTAL U.S. exports to Kenya 235 574 193 441 604 1614 921 378 386 576 444 428 331 268 387 626 516 638 358 534

TOP 5 EXPORTS FROM KENYA TO THE U.S. | 2015-2019*

TOP 5 IMPORTS BY KENYA FROM THE U.S. | 2015-2019* Transportation \$ 1,050m equipment



"YEARS COMBINED







Acknowledgements

This Infographic has been created by the Trade Law Centre (tralac). The AGOA.info web portal forms part of tralac's offerings.