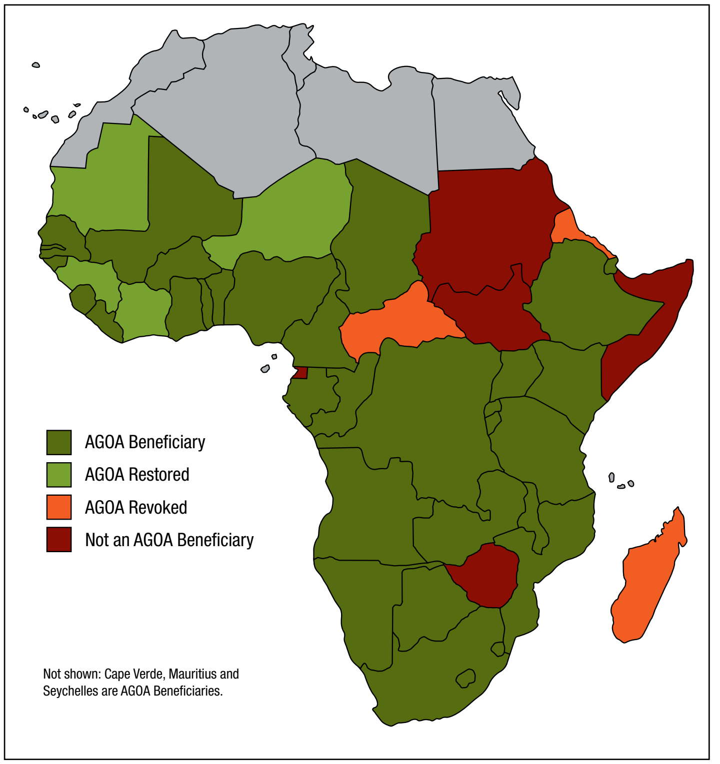
2. Understanding AGOA

Eligibility for AGOA

According to the AGOA regulations, the U.S. president designates as beneficiaries on an annual basis those countries in Sub-Saharan Africa that are eligible to receive duty-free treatment for certain articles that are "the growth, product or manufacture" of that country.[7] The legislation indicates that a country's eligibility for AGOA depends on three major requirements: (1) having established, or currently be making progress toward, a market-based economy, the rule of law, the elimination of trade barriers, economic policies that reduce poverty, systems to combat corruption, and protecting workers' rights; (2) not engaging in activities that undermine U.S. national security; and (3) not engaging in gross violations of human rights or support for terrorism. For a country to become an AGOA beneficiary, the president must determine that the country fits these criteria.

Figure 1. Map of AGOA Beneficiary Countries Currently Eligible, Restored, and Revoked, 2011



When AGOA was passed by Congress and signed into law by the president, 34 countries were designated as eligible to receive benefits under it. Currently, there are 40 beneficiary countries. The AGOA eligibility statuses of Sub-Saharan African countries as of May 2012 is shown in figure 1 and are listed in the appendix. As part of the legislation, all beneficiaries are required to undergo

[7] Vivian C. Jones, "U.S. Trade and Investment Relationship with Sub-Saharan Africa: The African Growth and Opportunity Act," Congressional Research Service, 7-5700, February 4, 2010, 12.

an annual review to determine whether they are conforming with AGOA's conditionalities.[8] Some countries have lost their AGOA eligibility due to undemocratic changes of government, such as Côte d'Ivoire in 2005, Madagascar following the coup d'état in 2009, and both Guinea and Niger in 2010. Some countries—such as Côte d'Ivoire, Guinea and Niger—have regained their eligibility following the completion of a democratic transition of governmental power. Mauritania actually lost its eligibility on two separate occasions for undemocratic transfers of power but managed to regain its eligibility both times following democratic elections. Other countries, such as Madagascar, have continued to remain ineligible for AGOA benefits because there has not been a restoration of democratic governance since the 2009 coup. However, there has been continuity in eligibility for the vast majority of AGOA-eligible countries.

Benefits of AGOA

According to Subtitle B of AGOA, benefits of AGOA include preferential duty-free treatment for certain articles under the U.S. Generalized System of Preferences (GSP). The GSP program is a unilateral trade preference arrangement that allows a wide range of products from designated developing countries (currently 129 countries) to enter the United States duty free. The GSP program currently includes more than 3,400 products, and it provides 1,400 additional product preferences for least-developed beneficiary countries (a group that includes most Sub-Saharan African countries). Combining AGOA and GSP means that nearly 6,400 products are eligible for duty-free and quota-free treatment. Certain categories of articles are deemed to be "import sensitive" under GSP and thus are ineligible. The U.S. president, in the context of AGOA and with input from the International Trade Commission, can make the determination that certain products are not import sensitive. Other categories of GSP products have import limits or ceilings to cap the number of duty-free goods entering the United States. Beneficiaries of AGOA are exempt from certain GSP limits via a waiver for "competitive need limitations."[9]

At the heart of the AGOA regulations are provisions that allow for duty-free and quota-free treatment for eligible textile and apparel products. The key element of the AGOA apparel program is the so-called third-country fabric rule of origin, which allows least-developed AGOA beneficiaries to utilize yarn and fabric from any country, such as India or China. The third-country fabric rule accounts for 95 percent of the apparel imports under AGOA. However, this provision is scheduled to expire on September 30, 2012—and this would threaten the continued viability of the more than $800 million in apparel exports from Africa to the U.S. and cause further declines in apparel exports under AGOA.

For textiles and apparel to receive duty-free and quota-free treatment, beneficiary countries must establish a visa system to prevent the unlawful transshipment of apparel produced in non-AGOA countries. The visa systems must comply with standards established by the U.S. Customs Service. Currently, 27 countries have visa systems to export apparel and textiles to the U.S. under AGOA. In practice, however, only a small group of countries with approved visa systems have succeeded in exporting significant volumes of apparel to the United States under AGOA: Botswana, Ethiopia, Ghana, Kenya, Lesotho, Madagascar, Malawi, Mauritius, South Africa, Swaziland, Tanzania and Uganda.

Under AGOA, the secretary of commerce is required to monitor AGOA imports for "surges" that would result in the possible withdrawal of duty-free treatment if imports rise beyond a certain level. This has not occurred in AGOA's lifetime.

[8] U.S. International Trade Commission, *U.S. Trade and Investment with Sub-Saharan Africa: Third Annual Report*, Investigation 332-415 (Washington: U.S. Government Printing Office, 2002), 20.
[9] Ibid., 12.

Past Revisions to AGOA

The U.S. Congress and executive branch have amended AGOA on four occasions (or five, if the third-country fabric provision is passed). In 2002, through the Trade Act of 2002, Congress doubled the cap for apparel made with third-country yarns and fabrics to 7 percent. Namibia and Botswana were also granted lesser-developed country status for the purposes of AGOA, even though their per capita income levels exceeded AGOA's limits.[10]

Congress amended AGOA a second time in July 2004, under the AGOA Acceleration Act, extending the life of the legislation from 2008 until 2015. This was done to provide more certainty to investors, importers and potential manufacturers as well as a longer lead time in which to stimulate use of the legislation. The third-country fabric provision was also extended from September 2004 to September 2007.

The AGOA Acceleration Act included a number of directives for the Executive Office in an effort to enhance the utilization of AGOA. One directive was for the Department of Agriculture to assign U.S. personnel to at least 10 AGOA beneficiary countries to help exporters comply with Sanitary and Phytosanitary Standards for exporting agricultural products to the U.S. Another directive stipulated that the government was to conduct a study of AGOA beneficiary countries to determine how U.S. technical assistance could help each country focus on potential growth sectors and how to overcome barriers to growth.

The Miscellaneous Trade and Technical Corrections Act of 2004, passed in December of that year, was intended to provide a minute retroactive technical correction to the AGOA Acceleration Act.

In December 2006, Congress passed the Africa Investment Incentive Act of 2006. This legislation extended the third-country fabric provision until 2012.

[10] For other amendments in 2002, see Jones, "U.S. Trade and Investment Relationship with Sub-Saharan Africa," 13.