AFRICAN COALITION FOR TRADE, INC.

1701 Pennsylvania Avenue, N.W., Suite 200
Washington, D.C. 20006
Telephone: 202-531-4028 **www.acttrade.org** **Email: act@his.com**

Before the Office of the U.S. Trade Representative
Docket No. USTR-2022-0008

U.S.-Kenya Strategic Trade and Investment Partnership

The African Coalition for Trade (ACT) is pleased to submit the following comments to the Office of the U.S. Trade Representative (USTR) as it considers the proposed U.S.-Kenya Strategic Trade and Investment Partnership (the Kenya Partnership).

ACT is a nonprofit association of African private sector organizations and individual companies trading with the United States under African Growth and Opportunity Act (AGOA). ACT has served as the primary spokesperson for the African private sector in the development, enactment, implementation and amendments to AGOA since its inception. ACT's members come from the private sectors in Kenya, Eswatini (formerly Swaziland), Lesotho, Madagascar, Mauritius, South Africa and Tanzania. These countries supply the vast preponderance of U.S. apparel imports under AGOA.

The Kenya Partnership Should Incorporate the AGOA Terms of Trade, Especially for Apparel

AGOA was signed into law in May 2000, offering almost all African products duty-free access to the U.S. market. AGOA was renewed most recently in 2015, running through September 30, 2025. Kenya has been one of the leading beneficiaries of AGOA, usually ranking as one of the largest exporters of non-extractive products to the United States, including in particular apparel.

Since AGOA's initial enactment, one of its policy goals has been:

> "negotiating reciprocal and mutually beneficial trade agreements, including the possibility of establishing free trade areas that serve the interests of both the United States and the countries of sub-Saharan Africa . . .. ."

19 U.S.C. 3702(4). With only three years remaining in AGOA's current authorization, the proposed Kenya Partnership provides a unique opportunity to ensure continuation of the benefits of AGOA for Kenya, while at the same time opening the Kenyan market to goods and services from the United States. Incorporating AGOA's duty-free access provisions in the Kenya Partnership will be a first step toward fulfilling Congress's policy goal of creating

mutually beneficial, reciprocal trade agreements with the AGOA beneficiaries, and would serve as a model for future similar arrangements with other AGOA beneficiaries.[1]

AGOA Has Been a Success for the United States, Kenya and the Rest of Sub-Saharan Africa

The primary policy purpose of trade preference programs like AGOA is to encourage economic development in developing countries by incentivizing private sector investment through trade preferences, typically by extending duty-free access to qualifying products imported from beneficiary countries. During the 22 years AGOA has been in effect, it has had a very positive impact on U.S.-Africa trade flows and economic development in Africa. Non-petroleum imports by the United States from the AGOA countries have shown strong growth, up 118% from $7.2 billion in 2000 to $15.7 billion in 2021.[2]

At the same time, the U.S. trade balance with the AGOA countries has also improved significantly since 2000. Focusing on non-petroleum trade, U.S. exports to the AGOA countries have improved from $5.2 billion in 2000 to a $12.9 billion in 2019, an increase of 148%. U.S. exports of goods and services to Africa could be expected to increase even more with reciprocal duty-free access that would be achieved under a free trade agreement (FTA).[3]

It has been estimated that AGOA has created several hundreds of thousands of new direct jobs and millions of indirect jobs in Africa in the apparel sectors alone. In Kenya, more than 50,000 direct jobs exist in the apparel sector thanks to AGOA, and several times that number of indirect jobs have been created in support sectors. Just as AGOA has created jobs in Africa, it has also created employment in the United States. The U.S. Department of

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[1] ACT also urges the Biden Administration to support a long-term renewal of AGOA for those beneficiary countries that are not able to negotiate reciprocal trade agreements with the United States prior to 2025. Such an extension of AGOA should be enacted well in advance of September 30, 2025, in order to avoid the contraction of trade that has preceded all previous renewals of AGOA (*See* discussion below.)

[2] In analyzing the impact of AGOA, it is useful to exclude petroleum imports because every barrel of oil imported from Africa since 2000 would have been imported even if AGOA had never been enacted. In other words, AGOA had very little impact on petroleum trade other than to reduce the cost of African petroleum products by eliminating duties that otherwise would have applied. Petroleum imports from the AGOA countries initially represented the lion's share of total imports from Africa – fully 68% of total imports in 2000. But U.S. petroleum imports from all origins fell sharply since 2000, as the United States has become more energy self-sufficient and petroleum prices had generally declined until the recent price surges. U.S. petroleum imports from Africa were down -49% by value and -75% by volume since 2000.

[3] The United States' trade balance with Africa under AGOA (excluding petroleum products) reached a $1.1 billion trade surplus in 2019, but the impact of the COVID-19 pandemic on trade pushed the trade balance back into deficit in 2020 and 2021. The U.S. non-petroleum trade deficit with the AGOA countries was -$2.9 billion in 2021. Including all products, the U.S. trade deficit with the AGOA countries improved from -$16.0 billion in 2000 to -$12.8 billion in 2021, a 20% improvement.

Commerce has reported that 154,448 U.S. jobs were supported by exports to Africa in 2020.[4] It has also been estimated that U.S. imports from Africa under AGOA have created approximately 300,000 U.S. jobs, mostly in the retail and transportation sectors.[5] Taken together, two-way trade with Africa under AGOA has created as many as 450,000 U.S. jobs. It is clear, therefore, that both the United States and Africa have benefited from AGOA through increased exports and job creation. It seems a virtual certainty that the U.S. trade balance with Kenya would improve even more if reciprocal duty-free access terms of trade were included in the Kenya Partnership.

The Apparel Sector in Kenya Is an AGOA Success Story

From several perspectives, the apparel industry is the best gauge of AGOA's success. Although petroleum and other extractive products account for a larger share of total imports from Africa, the prices for these products are highly volatile and price fluctuations can distort comparisons. In certain years, automobiles have constituted the largest non-extractive category of imports, but over AGOA's 22-year history, apparel ranks as the number one non-extractive manufactured product imported under AGOA, and Kenya has usually been the largest supplier of apparel under AGOA.

There is a consensus that AGOA has been the main cause of the overall increase of U.S. imports of apparel from Africa since 2000. Prior to AGOA's implementation there were relatively few manufacturers of export quality apparel in Africa. When the program was first enacted, U.S. imports of apparel from Africa totaled 164 million square meter equivalents (SMEs). By 2021, U.S. apparel imports from Africa had more than doubled to over 398 million SMEs. In terms of value, imports increased from $748 million in 2000 to $1.4 billion in 2021, an increase of 90%.

Kenya's apparel industry, the largest among the AGOA countries, owes its existence to AGOA. Kenya's apparel exports to the United States have increased by over 1,000% to $449 million in 2021 due to the enactment of AGOA. Kenya by itself accounts for fully one-third of total AGOA apparel exports. More than 50,000 direct jobs – most of which are held by women, who are their family's primary breadwinner – have been created in the Kenyan apparel sector thanks to AGOA's duty-free access provisions.

Due to the relative lack of vertical integration in the textile-apparel sector in Africa, AGOA's third-country apparel rule of origin, which allows apparel manufacturers in developing beneficiaries to use yarn and fabric from any origin, continues to be essential for

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[4] U.S. Department of Commerce , U.S. Jobs Supported by Exports by Destination, available online at: https://www.trade.gov/data-visualization/jobs-supported-exports-destination.

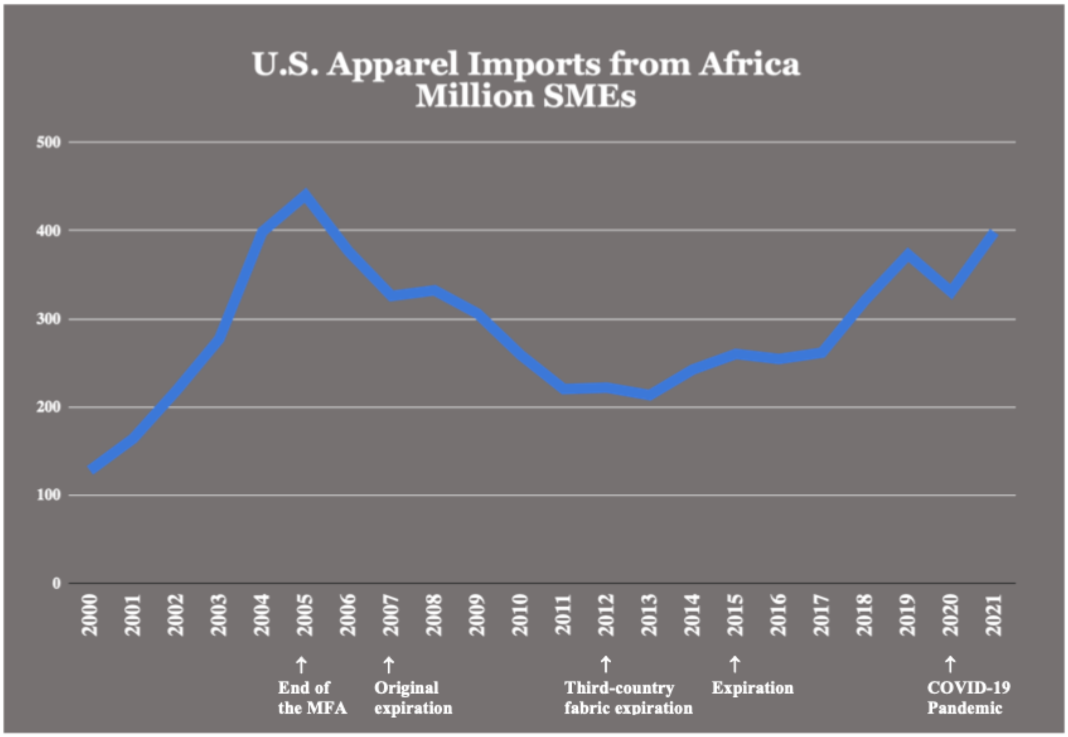
[5] In a 2012 report, the Heritage Foundation developed a methodology for estimating the number of U.S. jobs created by imports from China. Applying that methodology to imports from Africa under AGOA produces an estimate that approximately 337,000 U.S. jobs in the transportation and retail sector have been created by imports under AGOA. The Heritage Foundation report is available online at: http://www.heritage.org/trade/report/trade-freedom-how-imports-support-us-jobs

apparel manufacturers under AGOA. U.S. apparel imports under the third-country apparel provision have consistently accounted for approximately 90% of AGOA apparel trade. Accordingly, AGOA's third-country fabric provision should be incorporated in the Kenya Partnership,

Uncertainty About the Future of AGOA Will Cause Serious Harm to the Kenyan Apparel Industry

It is undeniable that AGOA was undermined until 2015 due to the unpredictability of its renewals and the extensions of the third-country fabric provision. AGOA was originally authorized only to 2007. The third-country fabric apparel rule of origin originally had a shorter tenure with expiration originally scheduled in 2004. Without certainty whether the third-country fabric provision would be extended, many U.S. apparel importing companies—that typically make their sourcing decisions 12 months or more in advance—held off orders from the AGOA countries. Eventually the third-country fabric rule of origin was extended an additional 3 years to 2007, but the uncertainty took a toll on orders. This uncertainty surrounding the third-country fabric renewal, coupled with the end of the Multi-Fiber Arrangement (MFA) in 2005, seriously damaged African exports of apparel under AGOA.

The AGOA apparel provisions were under Congressional scrutiny several more times over the life of the program. In 2006, the third-country rule was extended to 2012, and then again to 2012 in 2015. However, trade data shows that leading up to 2006 and 2012, U.S. imports of apparel from AGOA countries dipped significantly, by almost 14 percent between 2005 and 2006, and by 4 percent between 2011 and 2012 – again due to uncertainty over the terms that would govern imports under AGOA. In 2015, AGOA and the third-country apparel provision were extended through 2025. But leading up to the 2015 renewal, U.S. imports from AGOA countries declined again, from 260.2 million SMEs in 2014 to 254.4 million SMEs in 2015.



Source: OTEXA, Department of Commerce

It is clear, therefore, that the series of relatively short-term authorizations and renewals of AGOA and the third-country fabric rule of origin in fits and starts over the years handicapped investment under AGOA and prevented AGOA from accomplishing as much economic development as otherwise might have occurred. Subsequent to the 10-year extension of AGOA in 2015, U.S. apparel imports under AGOA have demonstrated consistent and steady growth, with the only exception of 2020, when the COVID-19 pandemic disrupted trade generally. Between 2015 and 2021, U.S. apparel imports under AGOA grew from 267.460 million SME to 398.315 million SME, an increase of 49%. If AGOA is extended for a comparable period beyond 2025, it is reasonable to expect similar growth in apparel exports and jobs in both Africa and the United States. Likewise, including AGOA's terms of access for apparel exports in the Kenya Partnership should ensure continued growth of Kenya's apparel exports for the foreseeable future, expanding employment opportunities and economic stability.

Effect of Loss of AGOA Beneficiary Status

From the preceding discussion, it is obvious that just the threat of the termination of the AGOA duty-free benefit has had a significant negative effect on the AGOA apparel industry. U.S. apparel imports under AGOA have declined significantly every time there was uncertainty regarding whether AGOA or the third-country fabric rule of origin would be extended.

The same pattern has been repeated when AGOA beneficiaries with significant apparel production have lost their AGOA eligibility due to noncompliance with the AGOA conditions of eligibility. Fortunately, this has happened only rarely.

Effective January 1, 2010, Madagascar was suspended from AGOA due to a nondemocratic regime change in 2009. Prior to its suspension, Madagascar had ranked as the fourth largest AGOA apparel exporter, with $211 million in apparel exports in 2009. U.S. apparel imports from Madagascar fell precipitously to virtually nothing during the course of 2010 and remained negligible until Madagascar's AGOA eligibility was reinstated in 2014. It is estimated that as many as 100,000 workers – mostly women - lost their jobs in the Madagascar apparel sector following the loss of AGOA duty-free benefits. In a remarkable recovery, by year-end 2015, Madagascar's AGOA apparel exports totaled $50 million.

Eswatini (then known as Swaziland) was suspended from AGOA effective January 1, 2015, due to failure to respect internationally recognized labor rights. U.S. apparel imports from Swaziland fell from $55 million in 2014 to negligible levels during 2015-16 and disappeared completely in 2017. Eswatini's AGOA eligibility was reinstated effective January 1, 2018, but apparel imports did not resume until 2020 and to date remain insignificant, amounting to only $2.6 million during 2021.[6]

In short, there is a strong correlation between AGOA's duty-free benefits and the level of apparel imports from Africa. When there is uncertainty over whether AGOA's beneficial terms of trade will continue, U.S. buyers reduce their orders. And when a specific country has been suspended from AGOA, there has typically been a dramatic reduction in apparel imports from that country. Similar harm to the apparel sector in Kenya can be avoided by including AGOA's duty-free terms of access for apparel trade, including the critical third-country fabric rule of origin, in the Kenya Partnership.

Conclusions

In summary, AGOA has succeeded in creating a new industry in Kenya that provides employment for 50,000 direct workers and several times that many jobs in support sectors. Since the 10-year renewal of AGOA in 2015, the Kenya apparel sector has demonstrated steady growth, which pattern is duplicated among the other AGOA apparel producing countries. The best means to ensure continuing this successful economic development is to provide stability and predictability in the terms of trade governing Kenya's apparel exports to the United States, which can be achieved by including AGOA's duty-free terms of trade for apparel in the Kenya Partnership and making them permanent. The Kenya Partnership can then serve as a model

[6] Ethiopia's AGOA eligibility was suspended effective January 1, 2022, due to human rights violations arising from the civil war in Tigray. During 2021, Ethiopia had grown to be the second largest AGOA apparel exporter, with $260 million in exports. So far during 2022, U.S. apparel imports from Ethiopia have not yet declined, presumably because apparel orders are typically placed 12 months or more in advance. It is likely, however, that apparel imports from Ethiopia will decline in the coming months.

for future arrangements with other AGOA beneficiaries, thereby fulfilling Congress' policy goal of establishing mutually beneficial reciprocal trade arrangements with Africa.

The members of ACT in the African private sector appreciate the opportunity to share their views on the Kenya Partnership with USTR. We would be happy to respond to questions.

Respectfully submitted,

Paul Ryberg
President

September 13, 2022