

**African Growth and Opportunity Act (AGOA): Program Usage, Trends, and Sectorial
Highlights**

Investigation No. 332-589

Testimony

Prof. Katrin Kuhlmann

Visiting Professor and Faculty Co-Director, Center on Inclusive Trade and Development,
Georgetown University Law Center
President and Founder, New Markets Lab

June 9, 2022

Chair and members of the Commission, thank you for inviting me to make comments with respect to the Commission's investigation on AGOA. My name is Katrin Kuhlmann, and I am a Visiting Professor and Faculty Co-Director of the Center on Inclusive Trade and Development at Georgetown University Law Center and the President and Founder of New Markets Lab (NML), a non-profit innovation lab for inclusive market law and regulation with extensive field experience in sub-Saharan Africa. I have testified before this Commission in response to similar investigations in the past, and thank you for inviting me again today to share my views on how AGOA has fared and what might be considered for its next phase. In particular, my testimony today will focus on how AGOA could be applied in a more inclusive manner and how AGOA should be reimagined in light of African regional integration efforts under the African Continental Free Trade Area (AfCFTA) Agreement, which is perhaps one of the most significant recent developments with respect to trade diversification and stronger regional markets on the continent. These goals are particularly timely in light of several other developments, including the global pandemic and issues of vaccine equity, war in Ukraine and global food security, and market impact of the patchwork of trade policies applied by the large economies with which Africa trades, including Europe and China. In light of these developments, my testimony today will focus on the unique opportunity for a deeper U.S.-African partnership, the possibility for more inclusive trade and greater alignment between AGOA and the AfCFTA.

Trends and Economic Inclusion

Since AGOA was established, its impact has varied. While some have successfully used AGOA, most countries have been unable to maximize the program's benefits, and trade diversification under the program has not been extensive. This has been due in part to gaps in AGOA's coverage, where important sectors like agriculture continue to face hurdles, non-tariff challenges (in both African markets and U.S. markets), and lack of awareness of the program, particularly among smaller enterprises. In addition, AGOA is part of a larger constellation of trade programs between the African continent and its outside partners, including the United States and EU, which creates overlapping obligations and complexity, making it difficult to assess results.

I recommend looking at AGOA's successes not only in terms of trade figures but also from the perspective of inclusive and sustainable trade and development, in line with the AfCFTA's objectives. For example, much of AGOA trade is in crude oil, which tends to be capital intensive, with fewer employment benefits or opportunities for small producers, in addition to sustainability concerns. Further, trade in minerals has produced fewer gains in terms of diversification of exports, particularly of manufactured goods,¹ and this trade has not historically been inclusive in many regards, meaning that women and other vulnerable populations have not benefitted. Trade corridors built to transport minerals out of the continent have not only failed to reach rural communities, they have perpetuated historical inequities between African nations and outside trading partners.²

¹ Souleymane Coulibaly and Woubet Kassa, "Trade Impact of the AGOA: An Aggregate Perspective", in Coulibaly, Kassa, and Zeufack, eds., *Africa in the New Trade Environment: Market Access in Troubled Times*, World Bank (2022), https://books.google.ca/books?hl=en&lr=&id=sXBnEAAQBAJ&oi=fnd&pg=PT62&dq=AGOA+recent+successes&ots=qclQA-qJV_&sig=fl2kt0OMRgPixdLnCuvSUc7lTiU#v=onepage&q=AGOA%20recent%20successes&f=false. South Africa has been somewhat of an exception and has successfully used AGOA to strengthen exports in a range of manufactured products, including machinery, metal articles, motor vehicles, and agricultural products.

² See Katrin Kuhlmann, *Africa's Development Corridors: Pathways to Food Security, Regional Economic Diversification, and Sustainable Growth*, in FILLING IN THE GAPS: CRITICAL LINKAGES IN PROMOTING AFRICAN FOOD SECURITY 10 (2012).

One of AGOA's successes has been growth in the African apparel sector, where AGOA has been instrumental in creating jobs in countries like Kenya, Lesotho, and Mauritius.³ In Lesotho alone, AGOA spurred apparel manufacturing capacity leading to tens of thousands of jobs, particularly for women.⁴ In Ethiopia, 80 percent of the apparel jobs created went to women.⁵ As I have testified in the past, in contrast to oil and minerals, apparel is an important sector for women and vulnerable communities, due to its ability to provide opportunities for workers and smaller enterprises as well.⁶

Trade under AGOA is largely driven by micro-small-and-medium-scale enterprises (MSMEs), most of whom are women and youth. Women-owned SMEs account for almost 60 per cent of Africa's GDP and create about 450 million jobs.⁷ Women entrepreneurs have benefited directly from AGOA in industries like leather, handicrafts, cashew nuts, and textiles.⁸ However, this alone does not make a sector fully inclusive. In the cashew sector, for example, despite the significant number of small farmers (estimated at 1.5 million), lack of organization in the sector limits opportunities.⁹ At NML, we did a study on the cashew sector and developed concrete

³ Brock Williams, "African Growth and Opportunity Act (AGOA): Background and Reauthorization", *Congressional Research Service*, <https://sgp.fas.org/crs/row/R43173.pdf>

⁴ Maryla Maliszewska et al., "Small African Economies in a More Uncertain Global Trade Environment: The Potential Impact of Post-AGOA Scenarios for Lesotho", *World Bank Group, Policy Research Working Paper 8861*, World Bank (2019),

<https://openknowledge.worldbank.org/bitstream/handle/10986/31743/WPS8861.pdf?sequence=4>. Overall, around 75 to 90 percent of apparel jobs have gone to impoverished women, highlighting the impact on inclusive trade.

Katrin Kuhlmann, "U.S. Preference Programs: How Well Do They Work?", Testimony before the U.S. Senate Finance Committee (May 16, 2007), <https://www.finance.senate.gov/hearings/us-preference-programs-how-well-do-they-workd>

⁵ Mamo Mihretu, "Don't Remove Ethiopia's AGOA Trade Privileges". Available at:

<https://foreignpolicy.com/2021/10/13/ethiopia-agoa-trade-biden-abi-y-dont-remove-eligibility/>

⁶ See Katrin Kuhlmann, "U.S. Preference Programs: How Well Do They Work?", Testimony before the U.S. Senate Finance Committee (May 16, 2007), <https://www.finance.senate.gov/hearings/us-preference-programs-how-well-do-they-workd> and Katrin Kuhlmann, Beyond Oil & Gas: African Growth and Opportunity Act's Benefits to Africa, Testimony before the U.S. House Subcommittee on Africa and Global Health (July 12, 2007).

⁷ United Nations, "What AfCFTA Holds for Women and Youths in 2022", *Africa Renewal* (2022), <https://www.un.org/osaa/news/what-afcfta-holds-women-and-youths-2022>

⁸ Williams Mullen, "African Growth and Opportunity Act Renewal and its Importance to African Women" (2014). Available at: <https://www.jdsupra.com/post/contentViewerEmbed.aspx?fid=0b033ab9-1041-4c83-8c46-99cbd94bd6ce>

⁹ See, New Markets Lab and TechnoServe, "Assessment of the Investment Regulatory Framework in Benin for the Development of the Cashew Industry", (2020). Benin, Mozambique, Ghana, Nigeria, Kenya, Burkina Faso, and the Ivory Coast are leading producers of cashew in the world. African Growth and Opportunity Act (AGOA), Cashew, <https://agoa.info/toolkit/industry-sectors/5117-cashew.html>.

recommendations in collaboration with TechnoServe and local partners for addressing these hurdles, and analysis like this should be linked with AGOA utilization.¹⁰

Weak support networks are a pervasive challenge for MSMEs, as are lack of government support, insufficient access to finance, and lack of awareness of how to take advantage of AGOA. Discrimination and constraints on legal rights are pressing issues as well.¹¹ Although the 2015 AGOA reauthorization made provision for strengthening the capacity of smallholder women farmers and entrepreneurs, gaps remain.

Relationship between AGOA and the AfCFTA

If AGOA represents the legacy of the U.S.-African relationship, the AfCFTA represents the African continent's vision for the future of trade and development. The AfCFTA is the largest regional trade agreement in the world in terms of area and country coverage and holds the potential to significantly contribute to trade diversification and export expansion, both between African countries and between Africa and the rest of the world.

AfCFTA parties have made progress in reaching agreement on most rules of origin, paving the way for trade to commence under agreed-upon market access schedules for goods (and services as well). This is a critical aspect of the AfCFTA's implementation and an element of the agreement that could be more carefully studied in line with market access under AGOA.

However, the AfCFTA goes beyond market access and is fundamentally a rules-based agreement, which sets it apart from unilateral preferences like AGOA. The AfCFTA Agreement provides an important foundation on non-tariff measures, including technical barriers to trade (TBT) and sanitary and phytosanitary standards (SPS), and Annex 5 on Non-Tariff Barriers (NTBs) establishes a Procedure for Co-operation in the Elimination of Non-Tariff Barriers, which will operate in tandem with the NTB Monitoring Mechanisms of the Regional Economic Communities

¹⁰ New Markets Lab and TechnoServe, "Assessment of the Investment Regulatory Framework in Benin for the Development of the Cashew Industry", (2020).

¹¹ See, e.g., Katrin Kuhlmann, Beyond Oil & Gas: African Growth and Opportunity Act's Benefits to Africa, Testimony before the U.S. House Subcommittee on Africa and Global Health (July 12, 2007).

(RECs). This foundation is just the beginning, however, and more detailed rules will be developed through protocols covering investment, competition, intellectual property, digital trade, and women and youth. As my research has shown, this modular nature of the AfCFTA will enable the continent to both address internal rules affecting trade and also to contribute to global disciplines in these important areas.¹²

The AfCFTA's objectives emphasize the importance of both sustainable and "equitable" trade, setting the stage for a deeper approach to ensuring that vulnerable communities, women, and MSMEs are not left behind. I have been working on a methodological framework for assessing the degree to which trade law is inclusive and equitable,¹³ and such a framework has considerable application in the context of existing and new rules. For example, the AfCFTA's protocol on women and youth has the potential to go beyond current approaches to gender and develop deeper commitments focused on equity, engagement, and reduction of market hurdles.¹⁴

Despite their differences, the AfCFTA and AGOA do have important points of intersection. Although AGOA is a unilateral trade preference program focused on goods market access that does not touch upon rules-based issues outside of the one-way eligibility criteria, there are opportunities for aligning AGOA with the AfCFTA. For example, such alignment could reinforce the African continent's own plans for market integration, diversification, and transformation, as included in AfCFTA National Implementation Plans.

AGOA touches upon this dimension through eligibility criteria that focus on improving rule of law, reducing corruption, addressing poverty, improving labor rights, and increasing access to health and education. Current discussions on eligibility criteria for the U.S. Generalized System of Preferences (GSP) program, the foundation on which AGOA builds, indicate that enhanced

¹² Katrin Kuhlmann & Akinyi Lisa Agutu, "The African Continental Free Trade Area: Toward A New Model for Trade and Development Law," 51 GEORGETOWN JOURNAL OF INTERNATIONAL LAW 4 (2020); *see also*, Katrin Kuhlmann 'Mapping Inclusive Law and Regulation: A Comparative Agenda for Trade and Development' forthcoming in AF. J. INT'L. ECON. L. 2nd Ed., https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3912907

¹³ Katrin Kuhlmann 'Mapping Inclusive Law and Regulation: A Comparative Agenda for Trade and Development' AFRICAN JOURNAL OF INTERNATIONAL ECONOMIC LAW 2nd Ed., <https://www.afronomicslaw.org/journal-file/mapping-inclusive-law-and-regulations-comparative-agenda-trade-and-development>

¹⁴ Katrin Kuhlmann, "Resetting the Rules on Trade and Gender: A Comparative Assessment of Gender Approaches in Regional Trade Agreements in the Context of a Possible Gender Protocol Under the African Continental Free Trade Area," (publication forthcoming, 2022), pre-publication draft available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4072822

criteria in labor, environment, and gender may be forthcoming. However, the unilateral nature of AGOA will present limitations on the degree to which these criteria can fully address challenges that currently stand in the way of a number of opportunities, particularly since AGOA applies only to one side of the equation (Africa's markets) and not the other (the U.S. market).

Non-tariff challenges are a limiting factor not just within Africa's regional markets but for AGOA as well,¹⁵ and the absence of AGOA National Strategy Plans has been an issue.¹⁶ In a number of sectors, including agriculture, non-tariff measures in destination markets are a pressing challenge,¹⁷ as are U.S. tariff rate quotas (TRQs) on certain agricultural products, such as sugar, dairy, and other products like processed cocoa. Further complicating this is the fact that Africa's trading partners maintain a patchwork of asymmetrical programs that create overlapping rules and conditions,¹⁸ including Europe's Everything But Arms (EBA) program and the reciprocal Economic Partnership Agreements (EPAs) between Europe and African regions.

Another important area of overlap between AGOA and the AfCFTA is the emphasis on regional trade. The AfCFTA is designed to unlock economic transformation and deeper regional integration, acting as a bridge among Africa's RECs, which form the "building blocs" of the AfCFTA. AGOA has also increasingly been used as a tool for regional market development, and the rules of origin and cumulation provisions address this in part but, as colleagues have argued, do not go far enough. AGOA has also been a central tool in U.S. engagement at the regional level, including through Trade and Investment Framework Agreements (TIFAs) with African RECs.

Importantly, the economic landscape in SSA has changed since AGOA was enacted in 2000, which the AfCFTA recognizes. Services are increasingly important, and the digital economy has

¹⁵ Nelipher Moyo and John Page, "AGOA and Regional Integration in Africa: A Missed Opportunity Beyond 2015", Brookings Institution (2015), https://www.brookings.edu/wp-content/uploads/2016/06/07_agoa_africa_page.pdf

¹⁶ Elizabeth Asante et al., "AGOA: Market Opportunity and Supply Capacity in Ghana", Brookings Institution (2016), https://www.brookings.edu/wp-content/uploads/2016/06/0601_improving_agoa_asante_bawakyillenuo_ahiadeke.pdf

¹⁷ Katrin Kuhlmann, Book Review of "Africa in the New Trade Environment: Market Access in Troubled Times", (on file with the author).

¹⁸ See David Luke et al., "The European Union is Undermining Prospects for a Free Trade Agreement with Africa," London School of Economics (2021), <https://blogs.lse.ac.uk/africaatlse/2021/12/14/european-union-is-undermining-prospects-for-free-trade-agreement-with-africa-epa-afcfta/>

unlocked new possibility and innovation on the continent, including for small enterprises (particularly if issues of digital inclusion can be overcome), making this a particularly important way to connect vulnerable communities, women, and MSMEs into larger markets.

Could AfCFTA Guide the Future of AGOA?

So where do we go from here? With AGOA's expiration looming in 2025, it is important to consider a path forward now. In past years, much of the focus has been on whether the United States should negotiate a reciprocal trade pact with some or all of SSA. The U.S.-Kenya Agreement was meant to be a pilot agreement in this sense, although its future remains unclear. Fragmentation remains a challenge, and broader concerns persist among African policymakers regarding the possible negative impact of more reciprocal arrangements with larger economies outside of the continent.¹⁹ The European Union's experience of transitioning unilateral preferences into Economic Partnership Agreements is also a cautionary tale, as aspects of the EPAs have been found to undermine rather than reinforce regional harmonization.²⁰

Could a new model based on market diversification, innovation, and balanced trade rules be possible? I will use my remaining time to share a few thoughts in this regard.

First, with respect to market access and regional value chains, reimagining AGOA in the context of supporting the AfCFTA would have the greatest chance of success. This could include linking AGOA implementation with AfCFTA national implementation plans, to help boost intra-African trade, create jobs, foster diversification, and ultimately increase the competitiveness of the region. This could include focus on sectors with inclusive and equitable growth potential, such as cocoa, cotton, apparel, cashew, and other sectors. These plans could also integrate important inclusive trade aspects like expanding trade opportunities for women²¹ and other vulnerable groups,

¹⁹ Akiko Yanai, "Current Issues on the African Growth and Opportunity Act (AGOA)", IDE Discussion Paper No. 661 (2017), <https://www.ide.go.jp/English/Publish/Reports/Dp/661.html>

²⁰ Katrin Kuhlmann and Mwangi Kimenyi, "Building Regional Markets: AGOA and the Economic Partnership Agreements," in *Improving AGOA: Toward a New Framework for U.S.-Commercial Engagement*, Brookings Institution (2011), https://www.brookings.edu/wp-content/uploads/2016/06/0601_improving_agoa.pdf

²¹ Nadira Bayat, 'A 'Business Unusual' Approach for Gender Equality under the AfCFTA' (2020), ECDPM GREAT INSIGHTS MAGAZINE, Vol. 9, Issue 1, 2020, available at <https://ecdpm.org/great-insights/african-continental-free-trade-area-agreement-impact/business-unusual-gender->

providing an avenue for an expanded vision of economic opportunity that goes beyond goods market access. Further, the AfCFTA's review mechanism (Art. 28), meant to be triggered every five years, could prompt periodic review and reassessment of whether AGOA goals are also being met. On the U.S. side, a reassessment of U.S. TRQ programs and perhaps a quota reallocation strategy would be in order. This impacts products such as sugar, dairy, and other products, impacting commodities and higher-value added goods like processed cocoa. In addition, it would be worthwhile to consider a deeper approach in services, perhaps drawing upon the lessons of the Services Waiver for Least Developed Countries.

Second, AGOA's implementation should align with the AfCFTA's trade rules. AGOA's track record has demonstrated that tariff reduction alone cannot be relied upon to achieve sustainable economic growth,²² making the case for an emphasis on the rules themselves. However, in the rules context, eligibility criteria have limitations, and a unilateral approach to influencing rules is often met with distrust. While I would not advocate for lower standards in areas like labor rights, human rights, or rule of law, I do think that AGOA could take a page from recent trade agreements that emphasize "cooperation" and "collaboration" on these issues. Perhaps, in doing so, the United States could look to Africa's lead on issues such as gender and youth, aligning a more detailed vision for progress in these areas once African nations have negotiated new rules-setting protocols.

Finally, bridging these two, the U.S. relationship with the African continent could benefit from a broader dialogue on important issues, including services, digital trade, and inclusive market rules. While I suspect that a new acronym would be in order for such a dialogue, it could look something like a mega-TIFA or a Cooperation Agreement that aligns with the timeline and structure with the AfCFTA. I had experience developing and engaging with a regional TIFA during my time at USTR, and they can be useful tools for exploring cooperation in a number of areas, connecting capacity building assistance with market needs, focusing on innovation and development of new sectors (these could include digital trade and green economy), and discussing common approaches on rules issues. These structures can also build towards more reciprocal arrangement over time.

[afcfta/#:~:text=A%20'business%20unusual'%20approach%20for%20gender%20equality%20within%20the%20AfCFTA&text=In%20this%20way%2C%20AfCFTA%20implementation,a%20key%20role%20to%20play.](#)

²² Solidarity Center, "Building a Strategy for Workers' Rights and Inclusive Growth – A New Vision for the African Growth and Opportunity Act (AGOA)", <https://aflcio.org/sites/default/files/2017-03/AGOA%2Bno%2Bbug.pdf>

Ultimately, it is imperative that U.S. trade policy with SSA reflect Africa's current economic realities and emerging opportunities – including the AfCFTA's goal of sustainable and equitable development. We have the opportunity to emerge from the fragmentation in global approaches as a partner that supports the success of the AfCFTA, and I hope that we can embark upon a new chapter of U.S.-African relations that creates a more collaborative, innovative, and inclusive trade partnership in the process.