AFRICAN GROWTH AND OPPORTUNITY ACT (AGOA) FREQUENTLY ASKED QUESTIONS

1. What is AGOA?

AGOA accords duty-free treatment to virtually all products exported by beneficiary sub-Saharan (SSA) countries to the United States (U.S). AGOA provides beneficiary countries with the most liberal access to the U.S market accorded to any country or region that has not negotiated a free trade agreement with the U.S. AGOA was enacted in 2000 and originally expired on 30th September, 2008 but as a result of the 13th July, 2004 signing of the AGOA Acceleration Act, AGOA was extended until 30th September 2015. In 2015, the Trade Preferences and Extension Act renewed AGOA until 30th September 2025.

The AGOA benefits are currently extended to 43 SSA countries and covers more than 1,800 tariff line items in addition to the 4,600 items enjoying duty-free status under the U.S. Generalized System of Preferences (GSP) program, another U.S duty-free preference programme extended to several other countries. Zambia qualifies for both AGOA and GSP. AGOA added to the list of duty-free products major import-sensitive items such as apparel, footwear, luggage, handbags and watches.

2. What are the main benefits available to exporters from AGOA beneficiary countries?

AGOA accords duty-free access for eligible products to the largest single market in the world. It also provides beneficiary countries with a significant competitive advantage over non-AGOA countries that must pay normal tariff rates to enter the U.S.

This is particularly true with respect to products that have high U.S. tariff rates in many instances, such as apparel, footwear and agricultural products. The program also promotes export diversification in AGOA countries through its provision of duty-free and quota-free benefits to virtually all products.
AGOA also encourages expanded regional integration and production sharing among beneficiary countries, and provides job creation and economic growth within those countries.

In addition, AGOA provides significant opportunities for companies and business organisations to build relationships with their U.S. counterparts. It also provides security for both SSA exporters and potential U.S. investors by ensuring AGOA benefits until 2025.

3. <u>What are the AGOA Eligibility Requirements?</u>

The eligibility requirements set forth in AGOA were developed by the U.S. government in consultation with African countries and constitute "best practice" policies that will help these countries to attract trade and investment. These criteria include either the establishment of, or continual progress toward establishing, a market-based economy; removal of barriers to U.S. trade and investment; establishment of rule of law; efforts to combat corruption; protection of intellectual property rights and internationally recognized worker rights and policies to reduce poverty.

In addition, countries cannot engage in activities that undermine U.S. national security or foreign policy interests; cannot engage in gross violations of internationally recognized human rights; cannot provide support for acts of international terrorism, and must have implemented their commitments to eliminate the worst forms of child labour.

Eligibility requirements can be accessed at: http://agoa.info/about-agoa/product-eligibility.html

A list of eligible products can be accessed at: http://agoa.info/about-agoa/products.html

4. <u>Who makes the determinations regarding AGOA eligibility?</u>

A U.S. government interagency panel chaired by the Office of the U.S Trade Representative reviews the eligibility of African countries for AGOA benefits annually, based on the criteria set forth in the AGOA legislation. All U.S. government agencies involved in U.S. trade policymaking take part in this process.

The panel relies on information provided by U.S. Embassies, SSA governments, U.S. government agencies and comments submitted to the U.S. government by interested parties. Interagency recommendations on eligibility are submitted to the President for final determination.

5. <u>Can a beneficiary country lose its AGOA benefits?</u>

Yes. The U.S. government annually reviews progress in each eligible country toward meeting the AGOA eligibility criteria set forth. The President must withdraw AGOA benefits from a beneficiary country if on the basis of the interagency review it is determined that the country is not making continual progress toward meeting the required eligibility criteria. However, the President may also suspend or limit benefits under AGOA if it is determined that such action would be more effective than termination. The President must also notify the U.S Congress, as well as the eligible country, at least 60 days before such action is taken.

During the lifespan of AGOA, the President has cited a variety of reasons for withdrawal or suspension of benefits, as well as for denying AGOA benefits to countries that have not yet been designated beneficiary countries. These include absence of economic reform, rule of law, human rights, foreign policy and political circumstances.

6. <u>Which products are eligible for AGOA benefits?</u>

Nearly all products exported by SSA countries to the U.S are eligible with very few exceptions, as long as they meet the AGOA rule of origin requirements and are exported directly from a beneficiary country to the U.S. The President takes into account the advice received from the U.S. International Trade Commission on the import sensitivity of products.

7. <u>How do I determine if the products I want to export to the U.S are eligible for duty-free treatment?</u>

It should be noted that the U.S. government has already eliminated the tariffs on many imports in general as a result of previously negotiated agreements.
In addition, many developing country products enter the U.S duty-free under the GSP. Under AGOA, numerous additional products are receiving duty-free treatment from the U.S. AGOA added approximately 1,800 tariff line items to the 4,600 items already entering
the U.S under GSP.

Determination of a product's AGOA or GSP eligibility can be accessed at:

http://trade.gov/agoa/eligibility/product-eligibility.asp

The link provides information on the U.S Harmonised Tariff Schedule, which is the primary basis upon which tariff classifications are determined for goods imported into the U.S. In order to search for a specific product's eligibility for AGOA or GSP, this can be done by following this link: http://hts.usitc.gov/.
It should be noted that for GSP products, the corresponding code is A; for GSP products for Lesser Developed Beneficiary Countries (LDBCs), the corresponding code is A+ while for AGOA products, the corresponding code is D. Zambia qualifies for all three.

8. What are the specific AGOA requirements concerning products exported by SSA countries to the U.S?

The products in question must have been deemed eligible for AGOA benefits by the U.S. government. They must also have been grown, produced or manufactured by a beneficiary country through more than a simple combining or packaging operation, and must be exported directly to the U.S.
The products must also meet the specific rule of origin requirements and must be accompanied by import documentation that claims AGOA benefits on the relevant shipping documents.

There are also additional requirements for specific types of products. In the case of apparel products, beneficiary countries must adopt a U.S.-government approved visa system and domestic laws and enforcement measures to prevent illegal transshipment of the apparel and use of counterfeit documents. In the case of agricultural products, they must comply with regulations established by the U.S. Agriculture Department to protect the health of the American public. In addition, beneficiary countries exporting agricultural products to the U.S will have to provide the U.S. Food and Drug Administration with advance notice of each shipment entering the U.S to permit the agency to target inspections more effectively and help ensure the safety of those products.

Exporters of Zambian agricultural products must obtain the relevant sanitary and phytosanitary (SPS) certificate from the Quarantine and Phytosanitary Service within the Zambia Agriculture Research Institute (ZARI) at Mount Makulu, Chilanga. An SPS certificate is a legal document issued by an exporting country to certify that a shipment meets U.S. plant and animal health standards, for instance to confirm that the shipment was inspected prior to export and found free of pests and diseases.

For meat and livestock exports, the Veterinary Department under the Ministry of Agriculture is responsible for the issuance of quality certificates. The exporter may also wish to refer to the U.S Department of Animal Plant Health Inspection Service (APHIS) factsheet, which gives simple guidelines on this process. This can be accessed at https://www.aphis.usda.gov/publications/plant_health/2012/fs_imp_food_ppq.pdf. For gemstones, a permit would be required from the Ministry of Mines and Mineral Development.

9. What are the AGOA rules of origin criteria for products exported by SSA countries to the U.S?

With respect to non-apparel products, the product must be the growth, product or manufacture of a beneficiary country and an AGOA country must provide at least 35 percent value added in the course of the production process. In other words, the sum of the cost of the materials produced in the AGOA beneficiary country, plus the costs of processing, must equal at least 35 percent of the product's value. Up to 15 percent of that 35 percent may be derived from U.S. parts or materials used to produce the product.

The rules of origin regarding apparel products vary with the product. As noted above, beneficiary countries must establish effective visa systems and institute required enforcement and verification procedures before any of their apparel exports to the U.S can receive AGOA benefits.

Specifically, AGOA extends duty-free and quota-free treatment to SSA apparel made from U.S. yarn and fabric and knit-to-shape sweaters made in the region from cashmere and some merino wools. AGOA also accords such benefits to SSA apparel made from yarns and fabrics not produced in commercial quantities in the U.S and to SSA products that are either hand loomed fabric, handmade goods of hand loomed fabric or folkloric items (as determined through consultations between the U.S and the exporting SSA country).

AGOA benefits are also extended to SSA apparel made from regional fabric and yarn. However, AGOA limits such imports to a fixed percentage of the aggregate square meter equivalents (SME) of all apparel articles imported into the U.S. The aggregate quantity of imports eligible for preferential treatment under these provisions is an amount not to exceed 7 percent of all apparel articles imported into the U.S. Of this overall amount, apparel imported under the Special Rule for lesser-developed countries is limited to an amount not to exceed 3.5 percent of apparel imported into the U.S in the preceding 12-month period. Apparel articles entered in excess of these quantities will be subject to otherwise applicable tariffs. The duty- free cap is not allocated among countries. It is filled on a "first-come, first-served" basis.

AGOA provides a special provision in the cap that allows beneficiary countries with an annual Gross National Product of under $1,500, referred to as "lesser developed beneficiary countries" to use fabric inputs from any country until 30th September, 2025. This is also known as the third-country fabric provision.

10. <u>What constitutes an "effective visa system" with respect to SSA apparel exports to the U.S?</u>

An effective visa system is a government-private sector process that demonstrates that the items for which AGOA benefits are claimed were actually produced in a beneficiary country or countries in accordance with the required rules of origin. The U.S. government has advised SSA countries on what the visa system should entail. This includes that each shipment be covered by an original visa stamped on an original invoice. The visa needs to contain certain information such as the date of the visa, the quantity of goods that are shipped and a country code.

Information regarding a model visa arrangement between the U.S and a beneficiary country can be accessed at:

http://web.ita.doc.gov/tacgi/eamain.nsf/cc82b01ad8149cc685256a230063887a/43d01fc7811a110285256a55004724a0

11. <u>How do I acquire an AGOA certificate of origin?</u>

To be eligible for duty free treatment under AGOA, U.S Customs require a certificate of origin and an AGOA stamp on a commercial invoice, on top of the usual import documentation. One cannot apply for AGOA certification in the US as it has to be done by the exporter in the country of origin.

For Zambian AGOA exporters, a certificate of origin is issued by the Zambia Revenue Authority (ZRA) and can be obtained from either the Customs International and Policy Office in Lusaka or the Assistant Commissioner, Customs Services in Ndola. Other relevant forms that would need to be filled out in order to accompany the shipment include a Customs CE Form 20 from ZRA, relevant permits (depending on the product), a packing list, consignment note, cargo manifest, commercial invoice, airway bill and bill of lading.

12. What happens when the shipment arrives in the U.S?

Once the shipment arrives in the U.S, the importer of record, i,e (owner, purchaser or consignee) or licensed customs broker designated by the owner, purchaser or consignee, will file entry documents for the goods with the port director at the goods' port of entry. Imported goods are not legally entered until after the shipment has arrived within the port of entry and delivery of the merchandise has been authorized by U.S Customs and Border Protection (CBP). It is the importer's responsibility to arrange for examination and release of the goods.