

tralac Newsletter



tralac Newsletter • Issue 21 • July 2020

Update on the AfCFTA

Welcome to the tralac's July 2020 newsletter. We're focusing on the African Continental Free Trade Area (AfCFTA), providing an update on progress to date, and looking at the plans to complete outstanding work so that trade under the AfCFTA regime can begin, and the **AfCFTA institutions become operational**.



The launch of the negotiations in June 2015 was followed by impressive progress; the Agreement establishing the African Continental Free Trade Area, the Protocol on Trade in Goods, the Protocol on Trade in Services and the Protocol on Dispute Settlement were concluded. Several annexes to these Protocols were also concluded. By 29 April 2019, the requisite 22 ratifications had been deposited with the African Union Commission (AUC), the designated depositary for the AfCFTA. As per the provisions in the AfCFTA, the Agreement entered into force 30 days later, on 30 May 2019. Despite the fact that the AfCFTA Agreement is in force, it **cannot be implemented**. This situation has come about as a result of the fact that ratification of the AfCFTA has taken place before the finalisation of the



negotiations. For trade in goods, tariff concessions and rules of origin, and for trade in services, specific commitments for the five priority services sectors, are not yet in place. A free trade area (FTA) needs at minimum tariff concessions covering substantially all trade, and preferential rules of origin to prevent trade deflection. These are still under negotiation, so no trade under the AfCFTA is possible yet. The aim was to have trade under the AfCFTA regime begin on 1 July 2020; this has now been moved forward to 1 January 2021.

The AfCFTA is designed to build on what has already been achieved by the regional economic communities (RECs). This is confirmed by the AfCFTA principle of the *acquis* and **Article 19 (2) of the Agreement establishing the AfCFTA**. The RECs will continue to exist and member

states of the trade regimes of the RECs (FTAs or customs unions) will continue to trade with one another on the terms of those trade arrangements. Some REC member states have yet to join the trade regimes of their RECs, and some of these FTAs or customs unions are still to be consolidated. It is not surprising that there is still a great deal of work in progress – integrating unequal partners is a complex and difficult process.

An important question is 'who will be negotiating with whom'? Tariff concessions for the AfCFTA will be negotiated by member states of the African Union that are not, together, in an existing FTA or customs union. The preferential rules of origin (RoO) of the AfCFTA will be applicable to those tariff concessions. Much progress has been made in the RoO negotiations, but there is some outstanding work related to rules for clothing and textiles, automotive products, edible oils and sugar, reflecting the interests of some member states in protecting and developing these domestic industries. This means that the **AfCFTA will create an additional free trade area** among those member states that are currently trading with each other on non-preferential



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(Most Favoured Nation – MFN) terms. We closely monitor the release of trade data by member states and study the applicable MFN tariffs. So far, 26 of the 55 African Union member states have updated their trade data for 2019 (see a summary [here](#)). Our trade data updates suggest that the AfCFTA stands to contribute meaningfully to liberalising trade, for example, between the member states of the Southern African Customs Union (SACU), and the Economic Community of West African States (ECOWAS). SACU and ECOWAS are each making a collective tariff offer in the negotiations – as customs unions they are protecting their common external tariffs. At this stage though, not all of their respective members have ratified the AfCFTA. It is also important to note that while tariff concessions are important to promote trade amongst these countries, elimination of non-tariff barriers, and reducing the transaction costs of trade between the countries in these two fairly distant sub-regions, is essential. The availability and quality of trade data are essential for trade policy making and for trade negotiations. The establishment of the African Trade Observatory (ATO) is envisaged to become the repository for trade and trade-related data for AU member states. Once fully functional, and provided that member states submit data timeously and consistently to the ATO, it will be a very important resource for the continent.

Dispute resolution is an integral component of a robust rules-based system – this is true for trade too. The AfCFTA Protocol on Dispute Settlement provides for inter-state dispute resolution, modelled on the dispute settlement system of the World Trade Organisation. This means that only State Parties (those member states that have ratified or acceded to the AfCFTA Agreement) will have standing to enforce their rights. Private parties will not have

standing, as they do in the Courts of Justice of the Common Market for East and Southern Africa (COMESA), the Economic Community of West African States (ECOWAS) and the East African Community (EAC). [This Blog](#) examines the kind of disputes that the AfCFTA Dispute Settlement Mechanism could hear.



May State Parties of the AfCFTA conclude new agreements with third parties? This issue is usually covered in trade agreements to ensure that obligations of

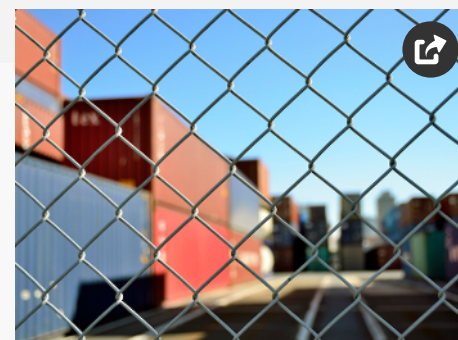


different agreements will be implemented in a consistent manner. The matter has recently featured prominently in the media with respect to the proposed FTA to be concluded by the [United States and Kenya](#). Article 4 (2) of the Protocol on Trade in Goods provides pragmatic recognition of the negotiation of trade agreements with third parties – providing that such agreements should not ‘impede or frustrate the objectives’ of the Protocol on Trade in Goods. Intra-Africa trade for 2019 accounted for 15% of Africa’s total trade. Global trade



partners will continue to be important and it can be expected that member states of the AfCFTA will pursue national development objectives through the conclusion of trade agreements. What is important is that existing obligations be complied with.

A **World Bank report** launched on 27 July concludes that most of the income gains from the AfCFTA are likely to come from the reduction of ‘red tape and simplification of customs procedures’. This resonates with a [tralac study](#) from 2015, which suggests that a 20% reduction in time in transit (time at border posts and on the road – noting that approximately 80% of intra-Africa trade is transported by road) will yield greater welfare gains than complete elimination of tariffs across the continent. The impact of non-tariff barriers such as these is well recognised, and Annex 5 of the Protocol on Trade in Goods deals with NTBs, providing for institutions for the elimination of NTBs. The important question is, ‘[Does the AfCFTA have a formula to tackle Africa’s Non-Tariff Barriers?](#)’



The AfCFTA matters for Africa’s trade and sustainable development. While there are still prohibitive tariffs on trade in specific goods between select trading partners, COVID-19 is confirming that non-tariff barriers pose even more pernicious barriers to intra-Africa trade and also erode Africa’s trade competitiveness with global trade partners. Eliminating NTBs will not only reduce the transactions cost of trade irrespective of our trade partners but will also provide positive impetus to the development of regional and continental value chains. This is essential to achieve the dynamic benefits of the AfCFTA, which include the attraction of foreign direct investment to expand and diversify Africa’s productive capacity.

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The pandemic has forced a slowdown in the negotiations; however, the processes are continuing. What the pandemic is also doing, is to prompt us to appraise where we stand in the negotiations process. What needs to be added or expedited to ensure that the AfCFTA is fit-for-purpose for a post-COVID-19 trading and economic environment to provide incentives for recovery, reconstruction and transformation of Africa's economies? Indications are that

e-commerce negotiations will be expedited – this is good news. Now it is important to look at the broader imperatives of the AfCFTA in the 21st century digital economy to ensure that what is on the negotiating agenda, will provide effective trade governance for Africa's sustainable development.

We look forward to hearing from you
The tralac Team

save the date

- tralac's **Virtual Annual Conference 2020**: 21-22 September
- tralac's **2020 Alumni Workshop**: 28-29 September

Details will be provided very soon – we hope you will join us for these events.

Relaunching tralac's Daily News

CURRENT - RELEVANT - INFORMATIVE

tralac Daily News

International, continental and national trade-related news and developments for Africa

As of Monday 3 August, tralac will be providing an updated daily news service. We will be harnessing digital technology for news aggregation to assist us to continue to bring you important international, continental and national trade-related news and developments.

Subscribe to receive daily updates [here](#).

We would like to thank Richard Humphries who has worked with us to make the tralac news service an essential

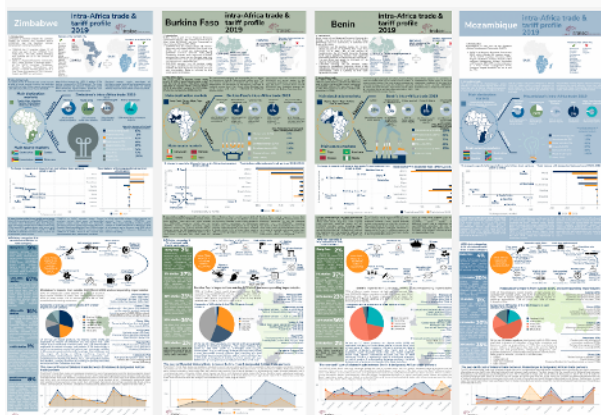
daily update on trade news. Sam Smith, who has worked with Richard, will now be our [contact person](#).

AfCFTA and related updates



Completing and Implementing the AfCFTA in difficult times | Working Paper by Gerhard Erasmus and Trudi Hartzenberg

Realising the African Continental Free Trade Area (AfCFTA) was never going to be easy. The challenges are about agreeing on a design for integrating a large number of economies at very different levels of development, the nature of the obstacles hindering intra-African trade, the prevalence of governance blockages, and the economic policy landscape to be traversed. Pushing for the early entry into force of the AfCFTA Agreement before essential aspects had been negotiated didn't help. The COVID-19 pandemic has further derailed the workplan for completing the outstanding AfCFTA negotiations. This paper discusses the steps still required to finalise the AfCFTA framework and to implement the relevant technical aspects as provided in or required by its legal instruments.



Summary of intra-Africa trade 2019

As of the end of July 2020, 26 of the 55 African countries have updated their official trade data to reflect 2019 trade figures. Intra-Africa trade for 2019 this far was valued at US\$69 billion; 5 per cent less than in 2018 (with data from 35 of the 55 African countries). Intra-Africa trade accounted for 15 per cent of Africa's total trade in 2019; the same as for 2018. Over the last 10 years, intra-Africa trade has remained low; the highest was recorded in 2015 and 2016 with 19 per cent and 20 per cent of total trade. Most intra-Africa trade is among countries which are members of the same regional economic community (REC); in particular, where the countries are members of the Free Trade Agreement (FTA) or Customs Union (CU) of the REC.

Download the [summary](#) and [view the infographics](#).



Brexit – Some Implications for Financial Services

By Dirk de Vos and Trudi Hartzenberg

The UK has been able to develop its financial services sector to the point that London has vied with New York as being the foremost financial centre in the world. A big part of the competitiveness of London as a financial centre has to do with the UK's participation, through EU membership, in the single market. With just five months remaining until the UK is no longer part of the EU, it is far from clear how it will all turn out. [Read more.](#)



COVID-19 and the gender-related economic consequences for Africa

By Gavin van der Nest

The world is struggling to cope with the economic and health consequences of the COVID-19 pandemic. However, its impact on women, and in particular the economic impact on women in sectors where they are predominantly employed, is often lost in the noise of the crisis. Such sectors include the informal sector, cross-border trade, subsectors of hospitality, healthcare, and clothing and textiles. [Read more.](#)



Do the Regional Economic Communities protect basic Human Rights?

By Gerhard Erasmus

A body of REC-based human rights law is gradually being developed through the interpretation of certain provisions in the founding REC Treaties and the meaning ascribed to "Community Law". The RECs do not have their own regional Bills of Right. This Blog discusses a recent judgment by the East African Court of Justice involving a freedom of the press dispute. [Read more.](#)



Testing Covid-19 regulations – the threshold looks low

By Dawid van Wyk

The South African Government's first response to COVID-19 was a hard lockdown. The public response to the accompanying curtailment of rights and freedoms was one of acceptance. From the onset, though, in some form or another, the Government's disaster management regulations were tested in the courts of law. [Read more.](#)



The costs of driving smoking underground

By David Christianson

It is not surprising that the total ban on cigarette sales in South Africa, under COVID-19 lockdown regulations, has generated a thriving black market. Most of the other activities which were temporarily banned have been allowed again as the lockdown has been eased. But tobacco remains outlawed. [Read more.](#)



The Looming Brexit Cliff – What it means for South Africa and for SACU

By Dirk de Vos and Trudi Hartzenberg

Even after the UK leaves, the EU as a block remains South Africa's most important trade relationship. The UK, on its own, is South Africa's second biggest export destination after China. Our exporters will need to immediately develop plans to minimise the almost certain disruptions to existing logistical arrangements. [Read more.](#)



Climate Change in times of COVID-19

By Gavin van der Nest

The response to COVID-19 serves as an example of the outcomes we will face if we continue to ignore climate change warnings and drag our feet in following a targeted and globally coordinated response to addressing climate change. This is particularly true since we live in an interconnected world and that climate change (much like COVID-19) does not respect borders. It is an issue for the world as a whole to address. [Read more.](#)



South Africa's trade data update – the May 2020 data reveals the effect of eased lockdown restrictions

By Willemien Viljoen

Since the beginning of May 2020 South Africa gradually started to ease lockdown restrictions with a consequent increase in trade. However, while exports show signs of improvements imports have remained relatively constant throughout the lockdown period, which is at significantly lower levels than imports in May 2019. [Read more.](#)



Strict lockdown regulations – medical and electronic equipment flown in and cross-border road traffic reduced by two-thirds

By Willemien Viljoen

Although South Africa's goods exports declined significantly between March and April, the ratio of maritime exports to exports by all other modes of transportation (air, road, fixed installation and rail) increased – in March 54.76 per cent of exports were by maritime transportation; in April, this increased to 61.64 per cent. [Read more.](#)

Trade-related policy responses to COVID-19



tralac is monitoring trade-related policy measures and responses to the Coronavirus (COVID-19) pandemic adopted and implemented by African countries and beyond.

We have two dedicated pages tracking national and regional responses to COVID-19 in Africa, as well as a general news, analysis and resources page. Take a look using the links below:

- ▶ [COVID-19 Country Policy Tracker](#)
- ▶ [COVID-19 Regional Policy Monitor](#)
- ▶ [COVID-19 Response: News, analysis and resources](#)

For more COVID-19 related news and other updates, [click here.](#)



South Africa's policy response to the COVID-19 pandemic

Since midnight on Thursday, 26 March 2020, South Africa has been in lockdown. The National State of Disaster has been extended until 15 August. Government has prioritised key interventions, including:

(i) Economic impact assessment and mitigation measures; (ii) Supporting health measures: essential health and PPE stocks; (iii) Food and hygiene product supply-lines: from farm to shop; (iv) Solidarity and social protection measures to assist the vulnerable; (v) Regulatory support to facilitate cooperation and keeping firms in business; (vi) Protecting consumers: action against unfair price rises; (vii) Global coordination and engagement; and (viii) Lockdown/Reopening the economy: risk adjusted approach. [Find out more.](#)



AGOA.info

African Growth and Opportunity Act

Latest #AGOA News



The US and Kenya launch negotiations on a free trade agreement. Will they succeed?



'US-Africa trade will be positively impacted by AfCFTA' - CCA



Will the US presidential elections impact South Africa's economic recovery?



Mali qualifies for AGOA benefits, USTR notifies



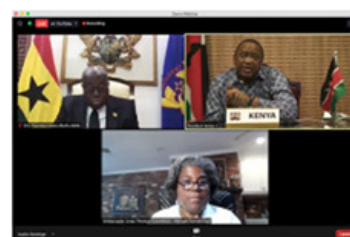
'The strategic importance of AGOA'



US, Kenya officially launch trade talks



Joint statement between the United States and Kenya on the launch of negotiations towards a FTA [incl. video]

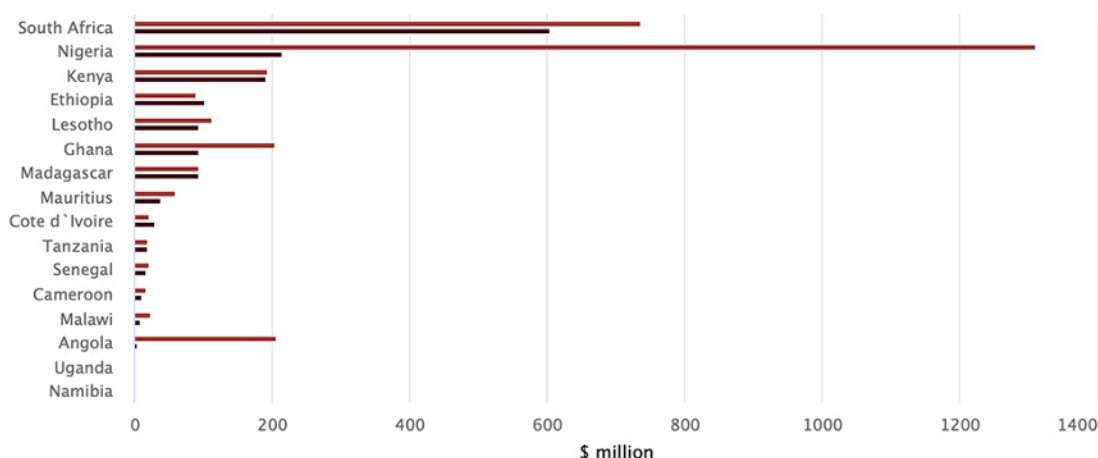


Kenya 'raring to go' on free trade deal with US, Uhuru says

Key trade stats for AGOA beneficiaries to end May 2020

Aggregate exports to US: 2020 YTD to May: **\$ 7.42 billion**
 (Share) of AGOA exports: 2020 YTD to May: **\$ 1.47 billion (represents 21% of total exports)**

Leading exporters of goods under AGOA | 2019 / 2020 ytd to end May



AGOA eligible tariff-lines (incl. GSP lines and textiles)

6,900 products

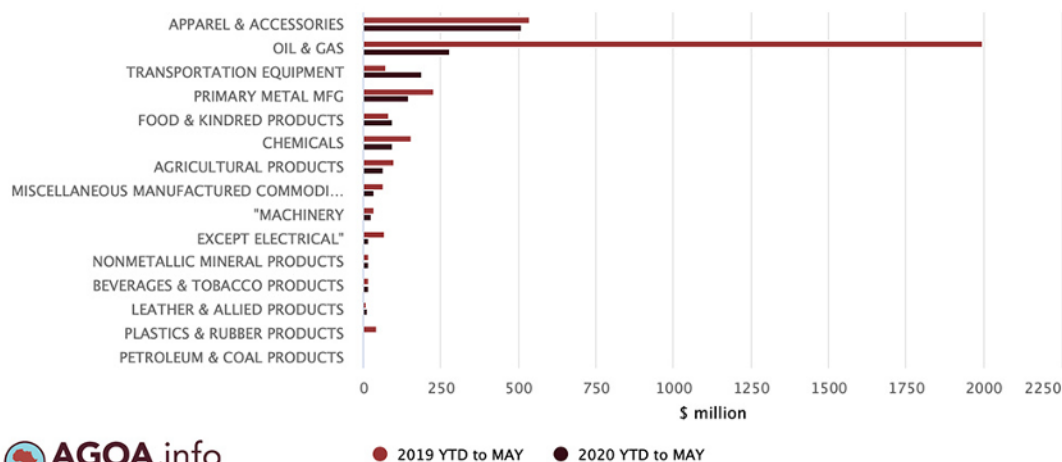
Products that have duty-free access to the United States under AGOA (subject to Rules of Origin)

Number of AGOA beneficiaries

38 Countries

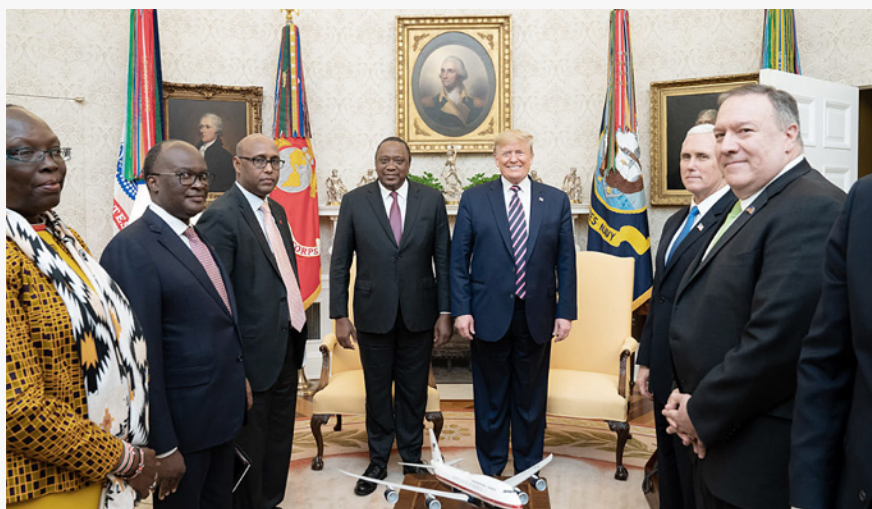
African countries that currently have AGOA beneficiary status

Leading exports under AGOA, by sector | 2019 / 2020 ytd to end May



Aggregate exports from AGOA beneficiaries to the United States are down 9.4% year-to-date to the end of May 2020, compared to the comparable previous period. The main factor for this headline decline is the much lower value of oil exports to the US from Nigeria and to a lesser extent Angola (lower demand combined with much lower oil prices). The economic impacts of the Covid-19 pandemic are also likely to continue to have an impact on exports to the US. Exports from some AGOA beneficiaries however remain stable or have grown, including from Kenya,

Ethiopia, Madagascar Côte d'Ivoire and Tanzania. In terms of **legislation**, Mali recently completed the AGOA **apparel visa requirements** and from 4 August 2020 will be able to export **apparel** using third country fabric to the United States.



Kenya – US Free Trade Agreement

On 6 February 2020, US President Trump announced that the United States intends to initiate trade agreement negotiations with the Republic of Kenya following a meeting at the White House with Kenyan President Uhuru Kenyatta. The announcement came while the US-Kenya Trade and Investment Working Group held its third meeting in Washington (see *inaugural meeting*, *second meeting*) – having been established earlier by President Trump and President Kenyatta in 2018 in order to lay the groundwork for a stronger bilateral trade relationship. On 18 March 2020, the Trump Administration, through the USTR, formally notified the US Congress in line with the Bipartisan Congressional Trade Priorities and Accountability

Act (Trade Promotion Authority) which, inter alia, subjects “trade agreements to congressional oversight and approval, consultations...”. In May and June respectively, the **United States** and **Kenya** published their negotiating principles. The negotiations started on 7 July 2020.

- ▶ Follow ongoing developments on the Kenya-US FTA on **AGOA.info** at this **link**.
- ▶ View AGOA-related **info-graphic brochures**, including on Kenya's exports to the US **here**.
- ▶ Read a recent tralac paper: *The United States-Kenya Free Trade Area (FTA): insights into the bilateral trade relationship and early progress on setting terms for an FTA*



Download: AGOA guides and info-graphics

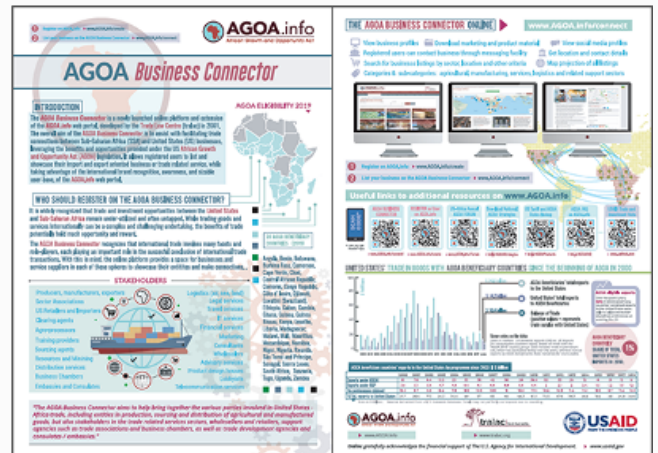
tralac has produced a number of **info-graphic type brochures** (see section on AGOA.info / Exporter Toolkit) covering a range of AGOA-related topics, including on AGOA's **legal** provisions with regard to **eligibility and annual/out of cycle reviews, rules of origin, AGOA FAQs,**

sector-focused brochures (textiles and clothing, agriculture), as well as **national** AGOA brochures relating to **Botswana, Ethiopia, Ghana, Kenya, Lesotho, Madagascar, Mauritius, Namibia, Nigeria, South Africa** and **Tanzania**.

AGOA Business Connector

The **AGOA Business Connector** is an online facility on **AGOA.info** to help enable trade and business connections between producers, exporters, importers, sourcing agents, trade-related service suppliers including trade finance, logistics and related services, support organisations (such as business chambers and exporter associations and others), both from within **sub-Saharan African AGOA beneficiary countries** and the **United States**. Registered users are also able to list their businesses or professional trade-related service on the platform, and to communicate with other listings through a messaging facility.

Download the AGOA Business Connector Brochure



About tralac

(Trade Law Centre) tralac is a public benefit organisation based in South Africa. We develop technical expertise and capacity in trade governance across Africa. We are committed to the principles of rules-based governance at the national, regional and international levels. We believe that better governance and strong institutions are essential elements for inclusive and sustainable growth. tralac's activities are anchored on three pillars:

- **Inform:** publications, daily news services, trade data updates and infographics
- **Capacitate:** training activities, internship programme, strategic partnerships and consulting
- **Empower:** policy dialogue and forums and policy dialogue contributions



About the AGOA.info website

This online information portal on the African Growth and Opportunity Act (AGOA) was originally launched at the beginning of 2002, conceptualised by Eckart Naumann and Trudi Hartzenberg and implemented through the Trade Law Center (tralac). It is aimed primarily at the Sub-Saharan African trade community, communities, and business stakeholders, but also at US private and public sector stakeholders, and specifically at industry and the business community (producers as well as actual and potential exporters), journalists and the press, policy-makers, the research and academic community, and others. Ultimately, the aim is to build knowledge, capacity and transparency on all matters pertaining to US-Africa trade, and deeper bilateral engagement on investment, policy, and general cooperation.

This site forms part of tralac's initiatives to disseminate trade law and related information to Africa and globally and is supplemented by projects that will enhance the value of this offering.

