

INVESTMENT INCENTIVES UNDER THE AGOA

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Investment Incentives Under The AGOA

In May 2000, the United States passed the Trade and Development Act of 2000 (Public Law 106-200) a unilateral trade benefit program for the Central American and Caribbean countries and sub-Saharan Africa. The sub-Saharan Africa, (SSA) provisions are known as the African Growth and Opportunity Act (AGOA). This law allows textiles and apparel and other previously exempted items to be eligible for duty-free entry into the United States provided the country meets certain eligibility criteria and the products meet specific origin criteria. On August 6, 2002, the AGOA was amended to provide additional access to certain products through the Trade Act of 2002 (Public Law 107-210). This paper will focus on apparel under the AGOA but also briefly will touch upon the non-apparel product provisions.

The 2000 and 2002 trade acts constitute the first time the United States significantly has granted trade preferences to the African region in lieu of granting aid. One of the primary objectives of the law is to bring the SSA countries into a constructive trading relationship with the United States, and ultimately establish free trade agreements. We have seen evidence of this trade progression as the United States announced on November 4, 2002 its intention to negotiate a free trade agreement (FTA) with the Southern African Customs Union (SACU)¹. Other SSA countries may be slated for FTA talks with the United States in the near future.

The AGOA also was designed to create incentives for multinational companies from other countries to invest in SSA. Investing in SSA countries' manufacturing operations either directly or through third party inputs will allow the finished products duty-free access to the U.S. market. In this globally competitive environment, combined with the depressed consumer demand in major world markets, manufacturers and exporters know that the ability to enter a market duty-free may determine the location of a manufacturing facility or source country. The benefits under the AGOA will enable a wide range of products to enter the U.S. duty free.

The AGOA has had a significant impact on trade between the U.S. and the SSA countries increasing 53 percent from an aggregate export of US\$13 billion in 1999 to US\$21 billion in 2001. The data for 2002 is not yet available. Most of the exports from SSA countries still are concentrated in the energy sector, however, the manufacturing sector is increasing, particularly the textile and apparel industry as a direct result of the AGOA. For textiles and apparel specifically, trade has increased by 98 percent from 151,766,771 square meters equivalent (sme) in 1999 to 300,784,933 sme for the year ending period November 2002.

The AGOA lists 48 SSA countries that constitute the "universe" of potential eligible countries. Of these 48, the U.S. has designated 38 countries as eligible for the general benefits. Of the 38 eligible countries (*See Annex 1*), to date, 18 have been determined as eligible for the benefits under the apparel provisions (*See Annex 2*) having satisfied specific

¹ SACU comprises South Africa, Botswana, Namibia, Swaziland and Lesotho.

U.S. customs criteria. Of the 18 apparel beneficiary countries only two are not eligible for the third country input provision.

Apparel Overview

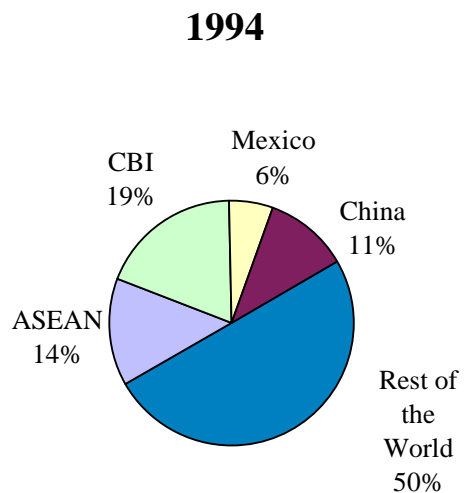
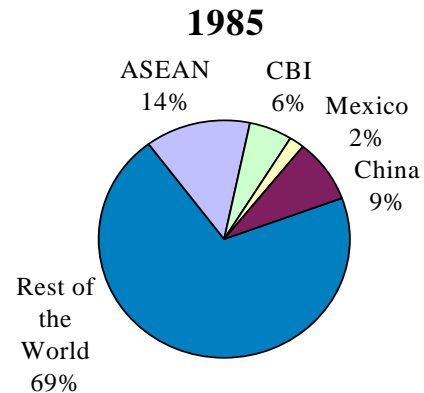
Apparel manufacturing is one of the first “non-traditional” sectors to emerge in developing nations and contribute to economic growth. As a result of the U.S. unilateral benefits, SSA countries have an opportunity to increase foreign direct investment and indirect investment. SSA countries can serve as a premier location for future apparel production, particularly in light of the removal of quantitative restrictions, or quotas, for most apparel exporting countries in 2005.

Under the auspices of the World Trade Organization (WTO) Agreement on Textiles and Clothing (ATC) quotas will be removed for all WTO members by January 1, 2005. This quota system has been a major contributing factor to the global manufacturing of apparel. U.S. import sourcing followed a pattern in which investors targeted uncontrolled (or non-quota) countries, established production, exploited the quota-free status until the U.S. took notice and imposed quotas. As quotas were implemented, investors relocated to another quota free country and the process was repeated. Thus, over 50 countries have become suppliers of textiles and apparel to the U.S.

Another other major contributing factor to global apparel production and sourcing decisions has been U.S. preferential programs. In 1985 the U.S. established a quota liberalizing program specifically for the Caribbean Basin (CBI) countries known as the Special Access Program (SAP). Under this program, apparel made from U.S. formed and cut fabric could be entered into the U.S. outside regular quota restrictions. Because of a pre-existing U.S. duty program that only assesses duties on the value added abroad when the imported good contains U.S. components, these SAP goods received a reduced duty assessment. As a result, many investors located production in the CBI countries.

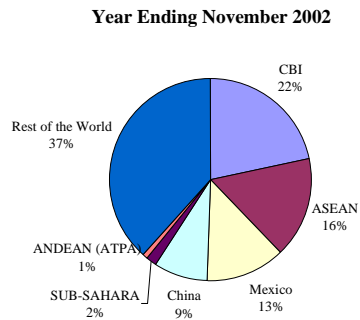
This program was quickly followed by a similar unilateral preference program for Mexico, called the Special Regime (SR). As expected, investors began locating in Mexico.

By 1994, the effects of U.S. trade policy focusing on the Western Hemisphere became more evident. As seen in the graph to the right, the CBI made up 19 percent of the U.S. apparel import market share with Mexico accounting for only 6 percent. With the beginning of the North American Free Trade Agreement



(NAFTA)² in 1994, Mexico's U.S. market share expanded.

By 2002, it is clear to see the increasing impact of unilateral U.S. policy on trade in apparel sourcing. By 2002, the CBI grew from 6 percent to 22 percent of the U.S. market in 15 years. Mexico's explosion is even more dramatic growing from 2 percent to 13 percent. These areas combine to represent 35 percent of the U.S. market share compared to China and the ASEAN countries, which combined to account for only 25 percent of the U.S. market share.



The U.S. quota system, which binds the total exports from the ASEAN countries and China, combined with the U.S. trade preference programs such as the CBI, Andean Trade Preference Act (ATPA) and NAFTA, have shifted sourcing from Asia and other countries to those countries benefiting from U.S. preference programs.

Compared to many other major importing countries, the U.S. has few preference programs. However, under the George W. Bush Administration, the United

States has launched on an unprecedented trade explosion through the negotiation of free trade agreements.³ Countries that currently enjoy duty or quota preferences for textile and apparel goods into the U.S. include: Israel under the Israel Free Trade Agreement (IFTA) in 1985, West Bank, Gaza Strip and Jordan under the expansion of the IFTA benefits in 1996, Jordan under an FTA, Caribbean Countries under the CBTPA, Romania and Macedonia under the Outward Processing program created in 1999, the ANDEAN⁴ countries under the Andean Trade Promotion and Drug Eradication Act (2002), Mexico and Canada under NAFTA, SSA under the AGOA and benefits available to U.S. insular possessions. Chile and Singapore soon may be the beneficiaries of an FTA with the U.S.

Unilateral preferential trade programs prior to the CBTPA, AGOA and ATPDEA only provided quota incentives (the Special Access Program for CBI countries, Special Regime for Mexico and Outward Processing for Macedonia and Romania). The CBTPA, AGOA and ATPDEA provide duty incentives. As quotas are removed for all WTO members in 2005, importers will begin looking for those countries in which a "duty" benefit is available. The choice for production location can sometimes turn on \$0.05, thus when quotas are removed, importers will look to those countries in which duties are eliminated. SSA countries have an opportunity to create a market for investors with the lure of duty-free access for qualifying goods into the U.S. market.

² NAFTA members include the United States, Canada and Mexico.

³ The U.S. has announced intentions to negotiate FTA with Central American countries (Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua), SACU, Morocco and Australia.

⁴ The ANDEAN countries include Colombia, Bolivia, Ecuador, and Peru.

Sub-Saharan Africa Trade

The U.S. only has recently began compiling import data for SSA as a group. Previously, statistics were limited to each individual SSA country. In 1994, only six SSA countries were considered “major shippers” of apparel products to the United States: Mauritius (49.5 million sme), Lesotho (17.9 million sme), Kenya (13.7 million sme), South Africa (13.6 million sme), Swaziland (6 million sme) and Zimbabwe (1.8 million sme). According to the most recent import data available (year ending November 2002) SSA as a whole exported 275 million sme, an increase of 28 percent over the same period in 2001. In addition, six SSA countries make the U.S. major shippers apparel import list for the period year ending November 2002: Lesotho leads with 82.8 million sme, South Africa exported 47.7 million sme, Mauritius exported 47 million sme, Kenya with 35 million sme, Swaziland (25.7 million sme), and Madagascar (23.5)

As a group, SSA countries account for just over one percent (1.6%) of total U.S. imports of apparel. Compare this figure to the 21.6 percent share of the U.S. market currently attributed to the CBI countries⁵. The CBI share of imports is the largest by regional grouping, even in excess of apparel supplied to the U.S. by China, Hong Kong, Korea and Taiwan combined which have only 20.7 percent of the U.S. market. The CBI countries have been the beneficiary of a U.S. unilateral preference program since 1985, however they did not begin getting duty benefits until 2000. From representing just 6 percent of the U.S. import market share in 1985 to over 20 percent of that market by 2002, one can see the shift in sourcing to the CBI region as a direct result of the U.S. unilateral preference program. The SSA countries must capitalize on the unilateral duty free benefits of the AGOA and begin marketing itself as an alternative apparel supplier to the U.S. particularly in light of the expiration of quotas in 2005.

AGOA Provisions

Apparel Products

Certain apparel is accorded duty and quota free access to the U.S. market for the period October 1, 2000 – September 30, 2008, provided specific conditions are met. Such apparel falls into seven basic categories:

1. Apparel Articles Assembled in Beneficiary SSA Countries from components that were cut or knit to shape in the U.S. from fabric made in the U.S. using U.S. yarns
2. Apparel Articles Cut and Assembled in the Beneficiary SSA Countries from fabric made and/or components knit to shape in the U.S. using U.S. yarn provided U.S. sewing thread is used for the assembly process
3. Apparel Articles Assembled from Regional fabrics using U.S. and/or SSA yarns or third country fabrics and yarns (with limits)
4. Apparel Articles wholly assembled or assembled from components knit to shape in the SSA without regard to the country of origin of the yarns or fabrics (for LDC counties only) subject to a limit

⁵ Data based on Year-ending November 2002. Source: U.S. Department of Commerce.

5. Sweaters made from Cashmere or Merino Wool
6. Apparel Wholly assembled from Fabrics/Yarn in short supply
7. Hand loomed, Handmade and Folklore Articles

I will discuss the basic requirements for each category listed above, examining where the fabric making, cutting, assembly, etc. must take place along with the special rules and limitations that may apply.

1. Apparel Articles Assembled in the Beneficiary SSA Countries from components that were cut or knit to shape in the U.S. from fabric made in the U.S. using U.S. yarns

Fabric:	Wholly formed in the United States from yarns wholly formed in the U.S. (includes fabrics not formed from yarn if classified under heading 5602 (felt) or 5603 (non-wovens)).
Knit to Shape:	Knit to shape in the United States from yarns wholly formed in the U.S.
Cutting:	In the United States
Assembly:	One or more beneficiary SSA countries
Findings & Trimmings:	Non-US origin findings and trimmings not exceeding 25 percent of the cost of the components in the assembled product.
Certain Interlinings:	Certain non-US origin interlinings provided their cost including the cost of non-U.S. findings or trimmings does not exceed 25 percent of the cost of the components of the assembled article. Applies only to: chest type plate, “hymo” piece, or “sleeve header” of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments.

2. Apparel articles Cut and Assembled in beneficiary SSA countries using U.S. origin sewing thread from fabric formed in the U.S. from yarns made in the U.S. or from components knit to shape in the U.S. from yarns made in the U.S. or a combination

Fabric:	Wholly formed in the United States from yarns wholly formed in the U.S. (includes fabrics not formed from yarns if classified in headings 5602 (felt) or 5603 (non-wovens)).
Knit to Shape:	Knit to shape in the United States from yarns wholly formed in the U.S.
Cutting:	In one or more SSA countries.
Assembly:	In one or more SSA countries.
Thread:	Must be formed in the United States and may <i>not</i> be included in the 25 percent exception for foreign findings and trimming.

Findings & Trimmings: Non-US origin findings and trimmings not exceeding 25 percent of the cost of the components in the assembled product. (Sewing thread shall not be treated as findings and trimmings here.)

Certain Interlinings: Certain non-US origin interlinings provided their cost including the cost of non-U.S. findings or trimmings does not exceed 25 percent of the cost of the components of the assembled article. Applies only to: chest type plate, “hymo” piece, or “sleeve header” of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments.

3. Apparel Articles Assembled from Regional and other fabric (with limits)

Fabric: Wholly formed in one or more beneficiary SSA country from yarn originating **either** in the U.S. or in one or more beneficiary SSA countries (including fabrics not formed from yarns if classified in headings 5602 (felt) or 5603 (non-wovens)).

Knit to shape: In one or more beneficiary SSA countries from yarns originating in either the U.S. or in one or more beneficiary SSA countries.

Seamless: Knit on seamless knitting machines in one or more beneficiary SSA countries from yarns originating in either the U.S. or in one or more beneficiary SSA countries.

Cutting: In one or more beneficiary SSA countries.

Assembly: In one or more beneficiary SSA countries.

Regional Cap

The U.S. has placed a limit, or cap on the amount of duty-free apparel that can be entered into the U.S. that is assembled from regional and/or fabrics from non-U.S./non-SSA countries (third country yarn or fabric). This limit is based on a percentage of the total U.S. imports for a given 12-month period. The initial percentage is 3.5 percent of the total U.S. apparel imports for the first year. This percentage is increased in equal increments over the remaining 7 years of the law until reaching 7 percent of total U.S. imports in the final year.⁶

Using this formula, which is determined each year based on the total amount of apparel imports, the limit for apparel made using SSA regional fabrics made from SSA or U.S. yarns for the period October 1, 2002 through September 30, 2003 is 735,905,928 SME. This limit has a sub-limit that is used for apparel made using third country yarns or fabrics as set forth below.

⁶ The AGOA currently is scheduled to expire September 30, 2008.

4. Apparel Articles wholly assembled or assembled from components knit to shape in the SSA without regard to the country of origin of the yarns or fabrics (for LDC countries only) subject to a limit

Yarns:	Wholly formed in any country
Fabric:	Wholly formed in any country
Knit to Shape:	In one or more beneficiary SSA countries.
Cutting:	In one or more beneficiary SSA countries.
Assembly:	In one or more beneficiary SSA countries.

Regional Cap Sub-Limit

The regional cap above has a sub-limit so that the amount of apparel entered into the U.S. under the third country provision represents approximately 50 percent of the total limit. Of the overall regional cap, only 359,399,147 SME can be entered by LDCs⁷ under the third country yarn or fabric provision.

Currently, of the 18 designated eligible countries only two (2) are not considered LDCs and thus not eligible for the third country provision: South Africa and Mauritius.

Third Country Input Expiration

It is important to note that the provisions described above for allowing third country yarns and fabrics is slated to expire September 30, 2004. Unless otherwise extended by Congress, the ability for LDCs to manufacture apparel without regard to origin of fabric or yarn is limited to this four-year period.

5. Sweaters made from Cashmere or Merino Wool

Yarn:	Wholly formed in any country
Knitting:	In one or more beneficiary SSA countries
Assembly:	In one or more beneficiary SSA countries

For cashmere sweaters, the finished garment must be in chief weight cashmere in order to be unrestricted to yarn sources.

For merino wool sweaters, the finished garment must be 50 percent or more by weight of wool measuring 21.5 microns in diameter or finer.

These sweaters are not subject to the regional cap.

⁷ LDC = Lesser Developed Country according to the AGOA definition which is a GDP of less than \$1,500 in 1998 with the exception of Namibia and Botswana, two countries with a GDP in excess of \$1,500 in 1998 but that the Congress determined should be an exception because the exports of high valued raw materials skewed the actual GSP per capita.

6. Apparel Wholly assembled from Fabrics/Yarn in short supply

A. NAFTA Short Supply

The short-supply provision (as it is known) relates to products that are considered to be in short supply in the United States. In other words, either there is currently no U.S. production of such a fabric or yarn, or the U.S. production is not sufficient to satisfy commercial needs. This concept stems from the short supply provision of the NAFTA. There are several fabrics that have already been designated as in short supply in accordance with the NAFTA and were automatically made eligible under the AGOA. These fabrics include:

- Silk;
- Linen;
- Harris Tweed;
- Cotton velveteen;
- Fine wale corduroy;
- Certain woven fabrics made with animal hairs;
- Certain lightweight, high thread count poly-cotton woven fabrics (Batiste);
- Certain lightweight high thread count broad woven fabrics used in the production of men's and boy's shirts.
- Fine count cotton knitted fabrics for certain apparel
- Quilted textile products in the piece of heading 5811.00.

Apparel made from short supply fabrics must be both **cut** (or knit-to-shape) **and sewn** or otherwise assembled in one or more beneficiary SSA country. These fabrics may originate in any country and be used in any of the 38 designated SSA countries to make apparel. The use of such non-U.S. or non-SSA fabrics is not limited to certain SSA countries, is not subject to a cap of any type, and is not limited to a four-year period as the exception to the fabric rule for lesser developed countries.

B. Newly designated AGOA Short Supply

In addition to the fabrics grandfathered under the NAFTA short supply provisions, several newly designated yarns and fabrics have been added to the AGOA list. The following list of yarns and fabrics may be used to make apparel that will still qualify for duty-free status without regard to origin:

- Cuprammonium rayon filament yarn in HTSUS 5403.39
- Rayon filament yarn in 5403.31 and 5403.32
- Blouses
- Trousers (subheadings 6203.19, 6203.22, 6204.12, 6204.22, 6204.52, 6204.62, 6211.32, 6211.42, 6217.90), Shorts (subheadings 6203.19, 6203.22, 6204.12, 6204.22, 6204.52, 6204.62, 6211.32, 6211.42, 6217.90), Skirts (subheadings 6204.12, 6204.22, 6204.52), Dresses (subheading 6204.42), Handkerchiefs (subheading 6213.20), Dressing Gowns (subheading 6208.91), Boxer Shorts (subheadings 6207.11, 6207.91, 6208.19, 6208.91), and Other Apparel

(subheadings 6201.92, 6203.22, 6203.42, 6204.12, 6204.22, 6204.62, 6211.32, and 6211.42) made using the following fabrics:

- (a) Fabrics of subheadings 5208.21, 5208.22, 5208.29, 5208.31, 5208.32, 5208.39, 5208.41, 5208.42, 5208.49, 5208.51, 5208.52 or 5208.59, of average yarn number exceeding 135 metric;
 - (b) Fabrics of subheadings 5513.11 or 5513.21, not of square construction, containing more than 70 warp ends and filling picks per square centimeter, of average yarn number exceeding 135 metric;
 - (c) Fabrics of subheadings 5210.21 or 5210.31, not of square construction, containing more than 70 warp ends and filling picks per square centimeter, of average yarn number exceeding 135 metric;
 - (d) Fabrics of subheadings 5208.22 or 5208.32, not of square construction, containing more than 75 warp ends and fillings picks per square centimeter, of average yarn number exceeding 135 metric;
 - (e)) Fabrics of subheadings 5407.81, 5407.82 or 5407.83, weighing less than 170 grams per square meter, having a dobby weave created by a dobby attachment, of average yarn number exceeding 135 metric;
 - (f) Fabrics of subheadings 5208.42 or 5208.49, not of square construction, containing more than 85 warp ends and filling picks per square centimeter, of average yarn number exceeding 85 metric, or exceeding 135 metric if the fabric is of oxford construction (a modified basket weave with a large filling yarn having no twist woven under and over two single, twisted warp yarns);
 - (g) Fabrics of subheading 5208.51, of square construction, containing more than 75 warp ends and filling picks per square centimeter, made with single yarns, of average yarn number 95 or greater metric;
 - (h) Fabrics of subheading 5208.41, of square construction, with a gingham pattern, containing more than 85 warp ends and filling picks per square centimeter, made with single yarns, of average yarn number 135 or greater metric, and characterized by a check effect produced by the variation in color of the yarns in the warp and filling;
 - (i) Fabrics of subheading 5208.41, with the warp colored with vegetable dyes, and the filling yarns white or colored with vegetable dyes, of average yarn number greater than 65 metric.
- Blouses and nightwear made from the following fabrics:
 - (a) Fabrics of subheadings 5208.21, 5208.22, 5208.29, 5208.31, 5208.32, 5208.39, 5208.41, 5208.42, 5208.49, 5208.51, 5208.52 or 5208.59, of average yarn number exceeding 135 metric;
 - (b) Fabrics of subheading 5513.11 or 5513.21, not of square construction, containing more than 70 warp ends and filling picks per square centimeter, of average yarn number exceeding 135 metric;

- (c) Fabrics of subheadings 5210.21 or 5210.31, not of square construction, containing more than 70 warp ends and filling picks per square centimeter, of average yarn number exceeding 135 metric;
- (d) Fabrics of subheadings 5208.22 or 5208.32, not of square construction, containing more than 75 warp ends and filling picks per square centimeter, of average yarn number exceeding 135 metric;
- (e) Fabrics of subheadings 5407.81, 5407.82 or 5407.83, weighing less than 170 grams per square meter, having a dobby weave created by a dobby attachment, of average yarn number exceeding 135 metric;
- (f) Fabrics of subheadings 5208.42 or 5208.49, not of square construction, containing more than 85 warp ends and filling picks per square centimeter, of average yarn number exceeding 85 metric, or exceeding 135 metric if the fabric is of oxford construction (a modified basket weave with a large filling yarn having no twist woven under and over two single, twisted warp yarns);
- (g) Fabrics of subheading 5208.51, of square construction, containing more than 75 warp ends and filling picks per square centimeter, made with single yarns, of average yarn number 95 or greater metric;
- (h) Fabrics of subheading 5208.41, of square construction, with a gingham pattern, containing more than 85 warp ends and filling picks per square centimeter, made with single yarns, of average yarn number 135 or greater metric, and characterized by a check effect produced by the variation in color of the yarns in the warp and filling;
- (i) Fabrics of subheading 5208.41, with the warp colored with vegetable dyes, and the filling yarns white or colored with vegetable dyes, of average yarn number greater than 65 metric.

7. Hand loomed, Handmade and Folklore Articles

In order for an article to be declared a hand loomed, handmade or folklore article, the U.S. will conduct bilateral consultations with the country to reach an agreement before allowing such exports. Historically, the U.S. has entered into some hand loomed, handmade or folklore agreements with other countries. These agreements set forth the names of the items at issue and describe the article. Such folklore agreements have also been the issue of disagreement. Further, a competent authority in the exporting country will be responsible for certifying that the exported products are handmade, hand loomed or folkloric items, adding another layer of enforcement and bureaucracy.

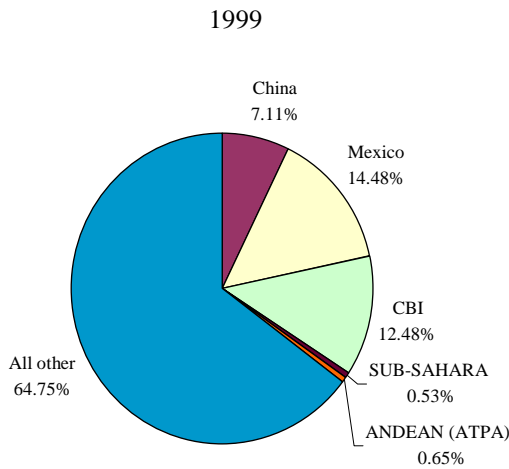
Trade Potential

The AGOA establishes an opportunity for SSA countries to offer a significant benefit to U.S. importers in the apparel sector that is shared only by a few countries. This limited competition means that the active manufacturer combined with a government that is intent on providing opportunity to its workforce can compete with countries that have an historical record of apparel manufacturing. If SSA is able to capitalize on this opportunity similar to that

achieved by the CBI countries after the special access program (SAP) was introduced in the mid-1980's, SSA can expect to become a major U.S. apparel supplier.

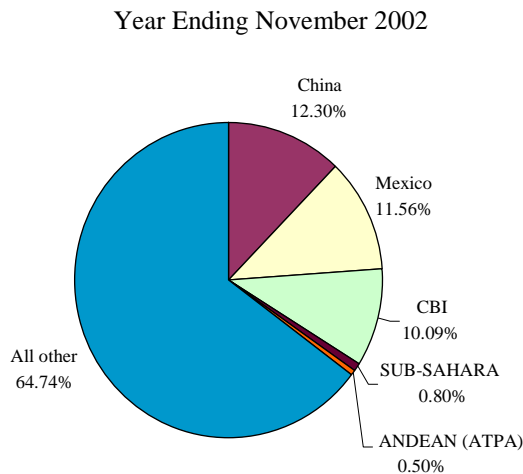
As seen in the following graph, in 1999, SSA countries combined to represent just over 0.05 percent of the total import share for textile and apparel goods exported to the United States.

Share of US Textile and Apparel Imports



The AGOA was not enacted until late 2000, thus the impact on AGOA countries is not yet readily visible. However, as seen in the graph below, in just over two years, the AGOA countries have increased their share of U.S. imports to 0.8 percent. While initially this increase may appear small, it is significant in that it constitutes the impact of only a few countries that have been eligible under the apparel benefits and in the face of a weakened U.S. and global economy compounded by U.S. terrorist strikes in 2001 and Middle East tensions.

Share of US Textile and Apparel Imports



SSA countries can expand their exports to the United States by focusing on vertical integration throughout the region. It is not necessary for each country to be vertically integrated but a comprehensive review of the region needs to be taken, focusing on those countries where it makes sense to locate spinning factories (i.e. in countries that grow cotton), then locate fabric mills in the same countries or in neighboring countries, and locate apparel factories in countries with amenable transportation and government regulations to facilitate the out flow of goods. A coordinated effort among the countries may prove more beneficial politically and economically as opposed to individual countries attempting to vertically integrate.

AGOA Extension?

As mentioned above, the third country yarn and fabric provisions for the LDC countries expire on September 30, 2004 and the overall AGOA will expire on September 30, 2008. President Bush announced on January 13, 2003 that his Administration would seek an extension of the AGOA beyond 2008. However, the question remains as to how long the overall AGOA program will be extended and whether the third country yarn and fabric provision will be extended as well. In order to seek an extension, the U.S. Congress would have to pass a bill. Given the schedule of the Congress with other pending legislative issues, it is not clear whether an AGOA extension bill would be prioritized to come before the Congress in 2003 or if such legislation would have to wait until the second year of this Congress, in 2004.

There are several domestic constituencies that strongly oppose the extension of the third country yarn and fabric allowance. In addition, South Africa and Mauritius are not in favor of such an extension because they are not considered an LDC and therefore not entitled to use third country yarns or fabrics. Some countries would like to see the exemption extended for two years while others argue that two years is not long enough. Some countries have proposed extending the third country inputs provision to only certain countries. Thus a political battle is sure to follow in Washington, DC regarding the AGOA and its possible extension.

An even worse case scenario that could affect the SSA is possible attempts by U.S. domestic concerns to further "restrict" the AGOA program. In the Trade Act of 2002, AGOA-like apparel programs for the Caribbean Basin countries and the Andean countries were restricted. In the 2002 Act, the definition of "wholly formed" for fabric included the dyeing, bleaching and any finishing operations performed on the fabric. Historically, the U.S. Customs Service has not included dyeing, bleaching and finishing as processes relating to the formation of fabric. However, due to strong political circumstances in the U.S., this provision was inserted. In addition, an elastomeric yarn provision is included in the CBTPA and ATPDEA which states that all elastomeric yarns must be made in the U.S. These provisions are more restrictive than the AGOA language.

At the same time, both the CBTPA and the ATPDEA have a more generous provision than the AGOA. Each of these programs allows for certain nylon filament yarns from Mexico, Canada and Israel to be used. In a possible AGOA extension, this nylon filament exemption should be added.

During the AGOA extension phase of legislation, forces both pro and con to the bill will surface. As the bill proceeds through Congress it should be monitored closely to ensure that

there are no additional restrictions imposed and that more liberal measures are applied. Those countries or companies interested in a new AGOA bill would be wise to invest in a DC consultant to represent their needs before Congress and the government agencies to preserve current benefits and to enhance the legislation.

Investing in AGOA

There are two alternatives for investing in AGOA countries: direct or indirect. By direct we mean money invested in the country to build either a yarn, fabric or apparel facility. By indirect, we mean sourcing either third country yarns and fabrics or findings and trimmings to the AGOA apparel sector.

Direct Investment

By far the most capital intensive and risky business is direct investment. Each SSA country must be carefully analyzed as to political stability, economic stability, work force capacity, investment incentives, transportation in country and port transportation, labor costs, electricity costs, and “related” informal exporting or business costs necessary to conduct business in the country. These factors have stifled some investment in the SSA countries.

For example, Madagascar was poised to be a strong beneficiary of the AGOA upon the program’s implementation, and it witnessed increased investment as a result. It had a relatively stable government and economy, a large work force, experience in apparel manufacturing, and able to benefit under the third country fabric/yarn provision. However, unforeseen to all, a political row between opposing factions completely shut down the country, ports and all economic activity. Those initial investors pulled out of the country and are reluctant to return. Therefore, the SSA countries that will be able to benefit the most from the AGOA are those that provide a stable and reliable investment opportunity to foreign investors.

For long term investment, yarn and fabric manufacturing will have a captive market that will yield results. The apparel sector will demand fabric production. That demand will only be limited by the availability of fabric or yarns produced either in the U.S. or in the SSA countries. It is likely that the AGOA will be extended for many years however, the third country provisions are likely to expire within a few years. Thus, long term investors should focus on yarn or fabric manufacturing, or if they secure a U.S. or SSA fabric supply (made using U.S. or SSA yarns) apparel manufacturing is a good candidate for investment.

Indirect Investment

Indirect investment in AGOA manufacturing may be short sighted and limited for two reasons: 1. the ability to use third country yarns and fabrics is limited; and 2. third country inputs are limited to 25 percent finding and trimmings.

Third country yarns and fabric usage is limited by time and by country. The provision is scheduled to expire on September 30, 2004. If it is extended, is not likely to be extended much more than two years (or until September 30, 2006). Thus, depending on the desire of the company to benefit under the AGOA in the short or long term, this may not be a practical solution. In addition, the ability to use third country yarns and fabrics is limited to specific LDCs. Two of the most attractive apparel manufacturing countries: South Africa and Mauritius, are not eligible to use third country yarns or fabrics.

Another possible use of third country inputs is in findings and trimmings. However, findings and trimmings are limited to accounting for no more than 25 percent of the total cost of the product. Findings and trimmings are defined as “including but not limited to hooks and eyes, snaps, buttons, bow buds, decorative lace trim, elastic strips (but only if they are each less than one inch in width and used in the production of brassieres), zippers (including zipper tape), labels and sewing thread – except in the case of goods cut and assembled in an SSA from U.S. wholly formed fabric that requires the use of U.S. origin sewing thread.” Further, foreign interlinings also subject to the 25 percent limit, may be used, but include only a chest type plate, hymo piece or sleeve header of woven or weft-inserted warp knit construction and of coarse animal hair or manmade filaments. Foreign yarns may be used but are limited to 7 percent of the total weight of the article. Thus it is clear that the ability to supply inputs under AGOA is very limited.

Examples of Investment

In the U.S. International Trade Commission Report⁸ on investment in the SSA, the impact of AGOA can be seen more clearly. Investment in 2001 actually declined from 2000 to 2001. This decline was due in large part to armed conflicts, political and policy uncertainty, and social problems. Despite these facts, SSA received a total of \$14.3 billion in investments, or 7.7 percent of global foreign investment flows to developing countries.

Recognizing the potential under the AGOA, several countries took action to facilitate investment and to reform programs. For example, Madagascar announced plans to reduce regulatory hurdles such as reducing waiting time for securing official approval for investment in the export processing zone and allowing the development of export processing zones on privately owned land. Senegal government expended significant energy to attract investors interested in relocating existing apparel factories to Senegal. Several other countries undertook reform in order to qualify for the apparel benefits which included modifying their Customs procedures.

While the majority of foreign investment remains in the petroleum and mining industries, the manufacturing sector investment is increasing. In the textiles and apparel sector specifically, several foreign entities invested in SSA countries.

- A Chinese company invested \$9 million in the Ivory Coast to open a new textile factory;
- Taiwanese, South African and South Korean investors were the main source of foreign exchange in Lesotho in 2001;
- Indian, Hong Kong, Chinese, Swiss and Italian companies invested in Mauritius setting up spinning mills and other apparel related factories;
- A Malaysian investor chose Namibia to establish an integrated textile and clothing complex;
- Hong Kong companies invested in an apparel factory in Rwanda;

⁸ U.S. Trade and Investment with Sub-Saharan Africa, Third Annual Report, Investigation No. 332-415, USITC publication 3552, December 2002.

- Malaysian investor located in a textile mill and garment export factory in South Africa;
- Taiwan investors set up a new denim fabric plant in Swaziland and an apparel factory;
- South African investors bought a cotton gin in Uganda to supply South African spinners with raw materials to fully exploit the AGOA.

The above examples demonstrate the variety of possible investment in and throughout SSA. The potential for benefits exists, the only obstacles however, may be the countries themselves.

Example of AGOA's Impact

As an example of how AGOA can impact a country, Lesotho has become the leading SSA apparel supplier to the U.S. In 1999, Lesotho exported only 25.8 million sme to the United States compared to South Africa, which exported 45.3 million sme. However, as of the data for year ending November 2002, Lesotho exported 82.8 million sme to the U.S. while South Africa only exported 72.2 million sme. In addition, because Lesotho is a lesser developed country, it can benefit from third country yarns and fabrics. In 2002, the regional/third country cap was only 59 percent filled. Of the 59 percent, only 9 percent represented "SSA regional" fabric. This means that 50 percent of the imports under these provisions came from LDC countries using third country yarns and fabrics. Of the 50 percent imported, Lesotho accounted for 26 percent, or exports of 81.9 million sme in apparel or nearly the entire exports from that country in 2002.

While Lesotho is an example of how a country can succeed under the AGOA it is also an example of how "at risk" a country is with regard to the program. If Lesotho does not initiate an investment plan to attract fabric manufacturing or ensure a relationship with neighboring SSA country fabric suppliers, it could face a tremendous economic problem when the third country yarns/fabrics exemption expires. Lesotho, therefore, is a potential investment site for yarn and fabric production. The goods produced in these factories are guaranteed consumption by the apparel factories that are currently located in the country and have exhibited the ability to export to the United States effectively.

Non-Apparel Products

The law states that products such as watches, electronic articles, steel articles, footwear, handbags, luggage, flat goods, work gloves and leather wearing apparel, semi-manufactured and manufactured glass products and any other article that the President determines to be import sensitive in the context of the Generalized System of Preferences (GSP) may be imported duty free if the following criteria are met:

1. The President determines that such a product is eligible after receiving advice from the International Trade Commission (ITC) that imports of such product are not sensitive in the context of imports from SSA countries;
2. The product must be the growth, product or manufacture of a SSA country by some process other than a simple combining or packaging operation or the mere dilution with water or other substance that does not materially alter the characteristics of the article;

3. A minimum of 35 percent of the value of the product is from one or more beneficiary SSA country (however, if U.S. components are used, up to 15 percent of the value of the U.S. component may count toward reaching the 35 percent requirement), and;
4. The product is imported directly from a SSA country.

In order to identify a product that is not currently eligible under GSP for export into the U.S. duty free, the first step in achieving duty-free access to the U.S. market is to submit a petition to the Office of the United States Trade Representative (USTR) requesting such eligibility. The USTR will submit the request to the ITC. The ITC will conduct a review and issue its findings. The USTR will make a recommendation to the Office of the President and the President will make the final determination based on the ITC report, but more importantly, based on political or domestic pressures. Recently, an attempt was made by U.S. pear producers to withdraw eligibility of canned pears under the AGOA. The petition alleged that U.S. domestic interests were being harmed particularly by canned pear imports from South Africa. After intervention by my firm, we were able to block the U.S. intention to move forward with revoking a benefit that had just been granted to the AGOA countries. This type of monitoring is necessary in the declining U.S. market.

Increasing Exports under AGOA

As stated previously, with the removal of quotas on WTO member countries exporting textile and apparel goods by January 1, 2005, importers will begin to look for locations that offer price benefits. The potential duty free access of apparel products to the United States under the AGOA will entice investors to the SSA countries. However, the ability to maximize the potential rests purely with the SSA countries that have the foresight to implement the progressive reforms necessary to ensure trade facilitation in the country. The potential to exploit the program to benefit individuals or the country coffers has to be resisted. The ability to export freely, (both goods and currency) to ensure national treatment to an investment will be critical. The success of AGOA rests with the SSA countries and governments and with those investors willing to work with these developing countries to bring them into the global trading environment.

The successful country/companies will ensure that their production satisfies the AGOA requirements either through vertically integrated facilities/countries or by securing relationships with input providers. Companies with experience in apparel manufacturing from other countries likely will have the advantage over locally owned companies in that they have the relationship with the US importers or with the agents who supply the U.S. retailers. SSA factories need to spend time not only focusing on investment in vertical integration operations but also in “selling” their products to the U.S. buyers.

Ethical sourcing concerns will be another significant factor in directing U.S. buying patterns. Countries that are targeted by U.S. interests or by the U.S. government as having violated human rights with impunity will not be considered viable source countries for U.S. importers. Those countries that focus on implementing the labor laws in factories will gain a reputation as a “safe haven” for U.S. importers and will witness their exports increase as a result.

Other concerns that will influence buying decisions will include problems of corruption at all levels. We have reports of some investors leaving certain countries due to the significant

level of corruption and the inability to manufacture goods with a profit. This industry does not operate on large margins. In fact, with huge U.S. retailers buying in extremely large quantities, prices are being depressed throughout the industry. Countries that implement a smooth export process with minimal “extraneous” charges related to exporting the goods will be able to benefit the most under the AGOA.

Summary

The AGOA offers a unique and in many cases untapped, opportunity to investors in SSA manufacturing. While some restrictions remain, the fact is that investment in SSA countries can take advantage of duty and quota free access for qualifying apparel into the U.S. market. While, SSA countries face an uphill battle against other apparel suppliers that have an historical record and reputation of quality imports, the removal of quotas in 2005 will force prices down. This price compression will mean that manufacturers must turn to geographic areas that provide duty benefits, and SSA is one location with this benefit. SSA governments and manufacturers will have to work together to increase investment and produce quality products. Neither manufacturers nor governments can take full advantage of the AGOA without the cooperation of the other. Those countries that work with their investors will see the benefits immediately.

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ANNEX 1

The following 38 countries have been designated as beneficiary countries under the AGOA for general benefits:

Benin	Botswana	Cape Verde	Cameroon	Central African Rep.
Chad	Republic of Congo	Democratic Rep of Congo	Djibouti	Eritrea
Ethiopia	Gabon	Gambia	Ghana	Guinea
Guinea-Bissau	Ivory Coast	Lesotho	Madagascar	Malawi
Kenya	Mauritania	Mauritius	Mozambique	Mali
Niger	Nigeria	Rwanda	Namibia	South Africa
Senegal	Seychelles	São Tomé & Príncipe	Swaziland	Tanzania
Uganda	Sierra Leone	Zambia		

ANNEX 2

To date, the following 18 countries are eligible under the AGOA to manufacture and export apparel

Botswana	Cameroon	Cape Verde
Ethiopia	Ghana	Kenya
Lesotho	Madagascar	Malawi
Mauritius	Mozambique	Namibia
Senegal	South Africa	Swaziland
Tanzania	Uganda	Zambia