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**Ministry of Industry,
Trade and Cooperatives**



AGOA 101 KENYA

How to Export Duty-Free from Kenya to the U.S. under the
African Growth and Opportunity Act (AGOA)



Competitive AGOA Exports from Kenya to the U.S.A.



DISCLAIMER: The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

Why this Guide?

The USAID East Africa Trade and Investment Hub helps East African businesses take advantage of the African Growth and Opportunity Act (AGOA). AGOA allows for duty-free export of over 6,000 products. This guide outlines the step-by-step process that Kenyan businesses should take to export to the United States of America (U.S.A.) duty-free through AGOA and gives a general overview for the export of all AGOA products from Kenya. It provides additional information on the export of four high-demand, high-value sectors, namely textiles and apparel; coffee; nuts and oil crops; and cut flowers.

Although exporting can be a challenging process, it can also be profitable for the individual or company that successfully complies with the steps. Exporters must follow two sets of requirements:

1. Kenyan laws and regulations that govern the export process, and
2. Laws and regulations that govern the destination country's imports, in this case, the U.S.A.

Regulations also vary according to the product being exported; exporters must research to ensure that their product meets the necessary requirements for export.

This guide assumes that the exporter or potential exporter has already conducted the necessary market research, and is ready to export. Before proceeding, exporters must identify the correct tariff code and its eligibility for duty-free export under AGOA. This status can be established by referring to www.agoa.info/about-agoa/products.html. Insert the product name, search for the correct tariff code, and confirm its AGOA status - denoted by the letter "D" in the AGOA indicator column. Exporters should familiarize themselves with U.S.A. industry standards and product specific regulations that may require additional documentation and procedures.

What is AGOA?

AGOA, a U.S.A. trade preference act, was enacted on May 18, 2000, as Public Law 106 of the 106th Congress. On June 29, 2015, U.S.A. President Barack Obama signed the AGOA Trade Preferences Extension Act into law, extending the AGOA legislation by a further 10 years to 2025. The legislation significantly enhances market access to the U.S.A. for qualifying sub-Saharan African countries. AGOA builds on existing U.S.A. trade programs by expanding the duty-free benefits previously available only under the Generalized System of Preferences (GSP) program, designed to promote economic growth in developing countries. AGOA, combined with GSP, provides duty-free access to the U.S.A. for approximately 6,400 tariff lines.

Kenya AGOA Country and Product Eligibility

Kenya was among the first sub-Saharan African countries to qualify for trade preferences under AGOA. Since October 2000, AGOA exports from Kenya have gradually increased, and today, Kenya is the leading apparel exporter from sub-Saharan Africa to the U.S. market under AGOA. With the extension of the AGOA legislation until 2025, Kenyan exporters have the opportunity to further expand manufacturing and production and to diversify exports to the U.S.A. Some of the benefits Kenya receives under AGOA eligibility are:

- Duty-free treatment for eligible origin products including apparel articles made in Kenya;
- Permission to use third-country fabric under the Special Rule for Apparel; and
- The ability to cumulate product value across AGOA-eligible countries.

For more information about AGOA eligible products see: <https://agoa.info/about-agoa/product-eligibility.html> and <https://agoa.info/about-agoa/products.html>

U.S.A. Buyers and Brands Sourcing from Kenya

Kohl's Department Store
PVH Corp
TCP Services Place
VF Jeanswear Inc
VF Imagewear Inc
Shah Safari Inc
One Step Up Ltd
H&M (Hennes & Mauritz AB)
Haddad Apparel
American Rhino
Briara Trading Co.
JJ's Mae Inc
Academy Ltd
MES (UK) Ltd
One Jeanswear Group

Belk International
Cost Plus World Market
Starbucks
Hawaiian Host
JB Safiliopo and Sons
Ferara international
Western Overseas Corp
Dements Candi Company
JF Braun And Sons Inc
Olam International
Royal Coffee
NJ Douek & Sons, Inc.
OLAM Specialty Coffee
Organic Products Trading Co.



Why Source from Kenya?

- ✓ AGOA's duty-free savings
- ✓ Good port access and transport links
- ✓ Stable government supportive of private sector
- ✓ Open financial system and easy access to capital
- ✓ Vibrant private sector
- ✓ A top investment destination in Africa
- ✓ Incentives from Export Processing Zones and New Special Economic Zones Law
- ✓ Educated workforce
- ✓ Competitive labor and power cuts
- ✓ Ease of doing business



The U.S.A. Market Opportunity

- ✓ AGOA's duty-free benefits
- ✓ Largest consumer market in world
- ✓ Market diversity: given size of market, only small/regional business capture is needed
- ✓ Many niche markets to absorb new products
- ✓ Multiple distribution channels
- ✓ Transparent regulatory requirements
- ✓ Strong online/direct-to-consumer market
- ✓ Perception of Africa as new frontier for business in certain sectors
- ✓ Ease of communication
- ✓ Openness of U.S.A. Consumers to goods made outside the U.S.A.
- ✓ Introduction of direct flights to USA from Kenya towards end of the year
- ✓ Quality products which meet international standards as Kenya has been exporting to EU and U.S.A. who set stringent phytosanitary and sanitary standards
- ✓ Complies to Corporate Social Responsibility in production systems

General AGOA Rules of Origin

Introduction

Rules of Origin (RoO) are the requirements which set out the working and processing that must be undertaken locally in order for a product to be considered the “economic origin” of the exporting country. The purpose of RoO is to prevent trade deflection and transshipment, whereby goods made elsewhere are merely routed through a beneficiary country (for trade preferences) with insufficient or no local value-adding activities having taken place. Key provisions are:

1. The export product must be imported directly from the AGOA-beneficiary country into the U.S.A.
2. It must be manufactured wholly from the exporting country or from one or more AGOA-beneficiary countries (these requirements can be met jointly by more than one AGOA beneficiary - this concept is called “cumulation of origin”).
3. The final product may also incorporate materials sourced from outside countries (i.e. non AGOA-beneficiaries) provided that the sum of the direct cost or value of the materials produced in one or more designated AGOA-beneficiary country(ies), plus the “direct costs of processing” undertaken in the AGOA-beneficiary country(ies), equal at least 35 percent of the product’s appraised value at the U.S. port of entry. That is: **Cost of local materials + direct cost of processing must \geq 35%**

In addition, a total of up to 15 percent of the 35 percent local content value (as appraised at the U.S. port of entry) may consist of U.S.-originating parts and materials. This concept is called “bilateral cumulation of origin”.

Nevertheless, it is important that the local processing represents a substantial percentage of the final product. The following “simple processing” criteria are considered insufficient as a benchmark for obtaining local economic origin, meaning that the local processing must go beyond the following thresholds:

- Simple combining or packaging operations, or
- Mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article

AGOA Textile and Apparel Rules of Origin (special provisions)

1. Introduction

AGOA eligible sub-Saharan African countries looking to export textile and apparel duty-free into the U.S.A. under AGOA must first be certified as having complied for the ‘Textile and Apparel’ provisions. This entails establishing adequate and effective product visa systems to prevent illegal transshipment and the use of counterfeit documentation, as well as having instituted required enforcement and verification procedures.

2. Qualifying Textile and Apparel Articles

AGOA provides duty-free and quota-free treatment for eligible apparel articles until September 30, 2025. Qualifying articles of apparel include:

- Apparel made of U.S. yarns and fabrics in AGOA-eligible country (Category 1, 2)
- Apparel made of sub-Saharan African (regional) and U.S. yarns and fabrics (Category 3,4)

- Apparel made in a designated lesser-developed country of third-country yarns and fabrics (Category 5 or third-country fabric)
- Certain cashmere and merino wool sweaters (Category 6 and 7)
- Apparel made of yarns and fabrics not produced in commercial quantities in the U.S.A. (Category 8)
- Eligible hand loomed, handmade, or folklore articles and ethnic printed fabrics (Category 9); and
- Textiles and textile articles produced entirely in a lesser-developed beneficiary country (Category 0).

3. Special Rule for Apparel Applying to Lesser-Developed AGOA Countries

Under a Special Rule for lesser-developed beneficiary countries, an additional preference in the form of duty-free access for apparel made from fabric originating anywhere in the world (third-country fabric). The Special Rule is in effect until September 30, 2025 and is subject to a cap. Textile and Textile Articles (Category 5).

AGOA amendments expanded AGOA benefits to textile articles originating entirely in one or lesser-developed beneficiary sub-Saharan African country(ies). This new provision extends preferential treatment to textile articles such as fibers, yarns, fabrics, and made-up goods (i.e., towels, sheets, blankets, floor coverings). This is incorporated into the AGOA Visa arrangement (Category 0).

4. Hand loomed/Handmade/Folklore Articles/Ethnic Printed Fabrics (Category 9)

AGOA provides duty- and quota-free benefits for hand loomed, handmade, folklore articles, or ethnic printed fabrics, made in beneficiary sub-Saharan African countries. This provision is known as “Category 9.” This extends duty-free treatment to articles that may not otherwise qualify under AGOA, as long as they are completely handmade and hand loomed and do not include any modern features such as elastic or zippers, etc.

Other Non-Textile Rules of Origin

Footwear

All footwear from the AGOA countries is duty-free, provided that it meets the rule of origin. The rule of origin for footwear under the AGOA is a change to headings 6401 through 6405 from any heading outside that group, provided there is a regional value content of not less than 35 percent of the appraised value of the product. There are no restrictions on the use of imported uppers. The 35 percent regional value content requirement can be comprised of a combination of value from AGOA countries. No more than 15 percent of the total value of the footwear can come from the U.S.A.

Non-Textile Travel Goods

All non-textile travel goods from the AGOA countries are duty-free provided that they meet the rule of origin. The rule of origin for non-textile travel goods is a change to subheading 4202.11, 4202.19-4202.21, 4202.29-4202.31, 4202.39-4202.91, or 4202.99 from any other chapter, provided there is a regional value content of not less than 35 percent of the appraised value of the product.

<http://web.ita.doc.gov/tacgi/eamain.nsf/d511529a12d016de852573930057380b/1e85488eb01fd2fd852573940049047d>

General AGOA Export Procedures for Kenya

Introduction

To be able to export products duty-free under AGOA, potential exporters must complete the following steps.

Step 1: Register business

The exporting entity must be registered. It is a statutory requirement that every business operating in Kenya is registered and/or fully incorporated. This registration is important for businesses and export-related transactions as it demonstrates the credibility and legality of the entity. The business registration process in Kenya is managed by the Attorney General's office and is accessed online through the eCitizen portal: www.ecitizen.go.ke.

The process is as follows:

i. Make an application for reservation of a name.

Upon payment of the required fee, the suggested name is subjected to a search in the Business Registry Database. Once the name passes the similarity, defensive, offensive, and desirability test, it is reserved. Reservation is valid for 30 days.

ii. Submit all the documents for business registration with applications and receipts of payment of necessary fees.

The exporter should apply for company/business registration online through the eCitizen portal (www.ecitizen.go.ke). Upon filling the requested information online and making payments, the portal generates forms which the exporter will download, sign and upload back into the system, then wait 1 - 4 days to obtain the Business Registration Certificate. They should then obtain the taxpayer registration to enable them export the goods. See a step by step guide for registering a company in Kenya: <http://kenya.eregulations.org/procedure/2/8?l=en>

Step 2: Prepare and obtain export documents

Documents and authorizations required for export transactions include:

- Commercial Invoice,
- Bill of Lading or Airway Bill,
- Export Packing List,
- Certificate of Origin (non-textile) or AGOA Textile Visa and Certificate of Origin,
- Manufacturers Certificate for AGOA visa, and
- Phytosanitary Certificate (for plants and other products)

Commercial Invoice

A commercial invoice is the bill for the products from seller to buyer. It is required for most imports into the U.S.A. The buyer needs the invoice to prove ownership and arrange payment. It may also be used for the transaction of

goods not intended for further sale, returned products, and goods intended only for temporary import, among others.

The invoice must contain the following:

- Complete name and address of the buyer or importer, seller or manufacturer, and the shipper;
- Detailed description of the products with quantities, and the Harmonized System (HS) codes of the goods;
- Total value per item;
- Country of origin, with reason for export; and
- Statement certifying that the invoice is true, and a signature.

Bill of Lading

The bill of lading is a contract between the owner of the products and the carrier. They are two types, namely:

1. A straight bill of lading, which is non-negotiable, and
2. The negotiable/shipper's order bill of lading, which can be bought, sold, or traded while goods are in transit and is used for letter-of-credit transactions. The buyer usually needs a copy of the bill of lading as proof of ownership to take possession of the goods.

For air carriers the bill of lading is known as airway bill.

Export-Packing List

An export-packing list specifies the material in individual packages and shows their net, legal, tare, and gross weights in U.S. and metric values. The export-packing list is normally attached to the outside of the package in a clearly marked waterproof envelope. It is a useful document for customs officials who use it to check consignments at inspection points.

If wood packaging is utilized, the wood must be treated in accordance with the International Standard for Phytosanitary Measures (ISPM) No 15. The exporter must therefore liaise with Kenya Plant Health Inspectorate Service (KEPHIS).

Certificate of Origin

The Certificate of Origin is a document indicating the country of origin for products being imported. It ensures that products originating in certain countries get the preferential treatment to which they are entitled. This applies to all products, except apparel which has a special stamp on the Certificate of Origin called "AGOA Apparel Visa."

A certificate of origin is usually issued by exporting countries' state agencies. It includes information such as contact information for the importer, exporter, and producer; the basis for which preferential treatment is claimed; and a description of the imported merchandise. Importers are required to have the certificate in their possession at the time of the claim and to provide it to Customs and Border Protection (CBP) officers upon request.





Examples of Product Specific Export Procedures

A. Textile and Apparel

AGOA Textile and Apparel Visa/Certificate of Origin

The AGOA Textile Visa and Certificate of Origin helps ensure that apparel and textile products made in the originating country benefit from duty-free access to the U.S.A. market. It is applicable only to textiles and apparel. The procedure for obtaining the Visa (Textile and Apparel Certificate of Origin) is outlined below:

The following documents need to be submitted through Kenya Association of Manufacturers (KAM):

1. AGOA Manufacturer's Certificate (see Annex I on how to get the certificate)
2. Filled in Certificate of Origin application form (blank forms to be collected from Rule of Origin department – Kenya Revenue Authority (KRA) - Customs Department). To get a step-by-step guide to obtaining a Certificate of Origin, visit: <http://infotradekenya.go.ke/procedure/453/65?l=en>
3. Filled in textile and apparel visa application form (blank forms to be obtained from KRA-Customs or KAM)
4. Kenya Apparels Manufacturers/Exporters (KAMEA) data sheet
5. Customs Export Entries document
6. Commercial Invoice (original)
7. Bill of Lading

KAM is mandated by KRA to conduct initial document review to ensure compliance before forwarding the documents to Customs and Border Control Department of KRA for issuance of visa stamp. Customs Services Department / KRA receives the documents from KAM and processes them for the issuance of visa stamp according to the provision of Legal Notice No. 136 of November 9, 2000. Customs and Border Control Department will again examine the following documents before issuing the visa stamp:

- Application form for visa
- Customs Export Entries
- Invoice (original)
- Bill of Lading

- Certificate of Origin

The visa stamp appears on the original invoice, and the original invoice bearing stamp must accompany the goods. **Note:** For every visa application lodged, there is a Kshs 2,000 charge payable to KAM under KAMEA. The fees are used for future sector development.

AGOA Certificate of Origin is obtained from the KRA Rules of Origin Office at a cost of \$3 by obtaining the FI47 Payment Slip and making the payment in the bank. The Form I47 and the bank receipts are then returned to the office for verification of payment and subsequent issuance of the blank certificate which are completed and filled by the exporter and subsequently endorsed by customs.

This information was provided by the Kenya Association of Manufacturers

www.kam.co.ke



B. Tea

Export Procedures for Tea

Exporting tea from Kenya follows the general export procedures as explained above. However, after fulfilling all the above requirements, the exporter must undertake the following:

1. Registration of the prospective buyer with the Tea Board of Kenya whose requirements for registration are as follows:

- Complete an application form G which is meant for buyer membership. This is then attached together with the copies of Certificate of Incorporation or Registration.
- Undertake a personal interview with the Tea Board of Kenya.
- Once successful, the applicant is duly registered as a provisional member and recommended to East Africa Tea Trade Association for registration.
- Every buyer is required by law to make monthly returns for all teas traded during the month.
- Provisional member is confirmed as full member and issued with a certificate of registration after confirmation by East Africa Tea Trade Association (EATTA).

It is important to note that registration with the Board is currently free of charge.

2. Registration with EATTA whose requirements for registration are as follows:

- Fill in the membership application form.
- Submit letters from a proposer and a seconder who are registered buyer members. These must be buyer members who have been active for at least three years. Also note that a member can propose or second up to a maximum of six new members.
- As part of bank requirements, submit a letter of recommendation from the bank. For the case of broker members, bankers guarantee is required therefore making Kenyan tea brokers guaranteed brokers.
- Familiarization with the tea trade. The prospective applicant is required to visit any tea broker in the management committee for familiarization interviews. The tea broker will thereafter append their signatures on the application form.
- Payment of entrance fee and annual subscription.
- Attach the duly completed forms, the copies of Certificate of Incorporation or Registration, Trade license and exporter or importer code number.





C. Coffee

Kenyan coffee is sold through either the Nairobi Coffee Exchange's (NCE) central auction or direct sales where a licensed grower/marketer identifies overseas buyers and exports his or her coffee directly. The Agriculture and Food Authority (AFA) Coffee Directorate is responsible for all coffee export requirements.

Coffee Dealer/Exporter/Trader's License

This license is issued by AFA Coffee Directorate. It enables the holder to export and import, roast, or package coffee. The holder of this type of license is expected to buy coffee for export from the NCE's central auction, but not from individual farmers. The following documents are required to obtain the dealers, exporters, and trader's licenses:

- A certified copy of certificate of incorporation,
- A certified copy of memorandum and articles of association,
- Proof of paid-up share capital of no less than Kshs 300,000, which indicates that the company's net worth is greater than Kshs 300,000,
- Company directors' names, national ID/passport numbers, and PIN numbers,
- Names and addresses of two business references,
- Company's tax compliance certificate from KRA,
- Compliance with statutory requirements, including – but not limited to – National Environment Management Authority certificate (where applicable), Safety & Occupational Health certificate (where applicable), and local authority business permit,
- A valid performance bond (insurance) of Kshs 1,000,000 in favor of the AFA Coffee Directorate,
- Proof of engaging the services of a AFA Coffee Directorate-registered coffee liquorer,
- Undertaking to furnish the authority with monthly returns,
- For license renewals, a clearance letter from the NCE, and
- Any other requirements that may be prescribed by the AFA Coffee Directorate.

Coffee growers can also obtain a grower market license issued by AFA Coffee Directorate, which enables individual growers to export coffee directly without going through the central auction.

For a step-by-step guide on obtaining a coffee export licence, visit: <http://infotradekenya.go.ke/procedure/76?l=en>

Authorization to Export through the Port of Mombasa

Exporters will need to apply for a coffee movement permit to transport coffee to Mombasa. The clean coffee movement permit fee is \$1. Once paid, the AFA Coffee Directorate will process the application and issue the permit within five minutes.

International Coffee Organization (ICO) Certificate of Origin

The ICO Certificate of Origin helps ensure that coffee made in the originating country benefits from duty-free access to the U.S.A. market. It is required for each consignment. To obtain a Certificate of Origin, the AFA Coffee Directorate will need to opt-in based on the validity of the trader's license. If approved, traders then apply for the ICO certificate of origin through the Kenya Electronic Single Windows System (KESWS) and deposit a pre-payment of Kshs 3,500.

1. Trader deposits an advance fee (pre-payment) - Kshs 3,500 for the initial 50 export consignments
2. AFA Coffee Directorate can add or remove a trader depending on validity of his or her licenses
3. Trader makes application for ICO Certificate of Origin through the Kenya Electronic Single Windows System (KESWS) and obtains Unique Consignment Reference No (UCR) from AFA Coffee Directorate
4. Trader makes online payment for the ICO Certificate of Origin through the KESWS site at a rate of Kshs 70 per consignment for certificates of origin. This amount is deducted from the advance fee deposited.
5. Trader submits application ICO Certificate of Origin online through KESWS to AFA Coffee Directorate: <https://kenyatradenet.go.ke/keswsoga/TraderLogin.do>
6. AFA Coffee Directorate receives the application reviews, verifies and approves the Certificate of Origin
7. Trader monitors the status online, downloads, and prints ICO Certificate of Origin

Phytosanitary Certificate from Kenya Plant Health Inspections Service

An exporter is required to obtain a Phytosanitary Certificate from KEPHIS. A Phytosanitary Certificate is a paper document or its official electronic equivalent, attesting that a consignment meets phytosanitary import requirements.

Additional Pre-clearance Documentation To Be Obtained Before Export

1. A custom entry document
2. Bill of lading

U.S.A. Market Access Requirements

To export to the U.S.A., exporters will need to provide:

- ICO certificate of origin
- Original phytosanitary certificate issued online by KEPHIS
- Pre-shipment inspection quality certificate issued by an internationally recognized inspection agencies e.g. SGS, Bureau Veritas (BV) etc
- Fumigation certificate issued by BV/SGS
- Exporters should be aware of the Office of Foreign Assets Control (OFAC) - U.S. Treasury which administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers and money laundering

For more information on the export procedures, visit: <http://infotradekenya.go.ke/>

This information was provided by the Agriculture and Food Authority - Coffee Directorate
www.agricultureauthority.go.ke/coffee-board-of-kenya





D. Nuts and Oil Crops

Agriculture and Food Authority License

Pursuant to provisions of the Crops Act 2013, an individual or business must obtain an export license from the Agriculture and Food Authority – Nuts and Oil Crops Directorate (AFA-NOCD) before being allowed to export to any country. AFA-NOCD clears all nuts and oil crops exports through the Kenya Trade Network Agency's Portal (KenTrade), commonly known as Kenya Electronic Single Window System (KESWS).

After being licensed, all exporters (and importers) of nuts and oil crops are opted into the KenTrade (KESWS) system. Once in the system, a licensed exporter can apply for an export permit whenever he or she wants to export a consignment. The application requires an invoice, packing list, and KRA entry document, as well as export levy payments where applicable. The consignment may be subject to physical verification/inspection by AFA-NOCD inspectors before clearance.

Clearance from other Kenyan Regulatory Agencies

Exporters must also be cleared by the KRA, KEPHIS, Kenya Bureau of Standards (KEBS), and the Pest Control Products Board (PCPB).

U.S.A. Market Access Requirements

The U.S.A Bioterrorism Act requires any facility that manufactures, processes, packs, or holds food, beverages, or supplements that may be consumed by humans or animals in the U.S.A. to register with the U.S.A. Food and Drug Administration (FDA). In addition to the requirements for registering as a food facility, exporters must also write and implement Food Safety Plans in compliance with the Food Safety Modernization Act (FSMA) of 2011. Although many facilities have food safety programs such as hazard analysis and critical control points (HACCP), ISO 22000, or British Retail Consortium (BRC) standards, writing and implementing an FDA Food Safety Plan is a new and different requirement.

Export Documentation

There are private firms in Kenya and the U.S.A. that support Kenyan businesses looking to export to the U.S.A. After filing registration forms and paying a fee of \$695, the firms may assist with registering businesses' facilities with the

FDA and acting as the required U.S.A. agent for FDA communications. As the U.S.A. agent, the firms provide:

- A certificate of registration issued by Registrar Corp, which confirms the facility's registration to industry;
- Registration updates within 60 days of a change in required information;
- Three free prior notice filings each year;
- Detention assistance for the release of a detained shipment;
- Mock FDA inspections;
- Assistance obtaining a Data Universal Numbering System (DUNS) number or updating an existing DUNS record; and
- FDA compliance monitoring.

This information was provided by the Agriculture and Food Authority - Horticultural Crops Directorate
www.agricultureauthority.go.ke/horticultural-crops-development-authority/



E. Cut Flowers

Step 1: Obtain a Certificate of Business Incorporation/Registration from the Registrar of Companies

This step is provided in earlier section on General AGOA Export Procedures for Kenya

Step 2: Obtain Export Permit

An export permit issued by the Horticultural Crops Directorate of AFA is required for all exporters. The export license has a fee of Kshs 5,000 for three years. Applications require:

- Copies of certificate of incorporation/registration,
- A bank account,

- Source of produce,
- Location of land and total acreage under production for growers, or written contracts with farmers for supply of produce of a certain quality and standard,
- Proof of access to packing facilities,
- An adequate knowledge of quality standards for horticultural produce on the market, and
- Documentary evidence from overseas client of a ready export business, such as an order from the client or an agreement to start business.

Export Documentation

Every consignment of horticultural products requires the following documents:

- Phytosanitary certificate issued by Kenya Plant Health Inspectorate Service, (KEPHIS) issued after inspection and compliance,
- AGOA certificate of origin,
- Commercial invoice,
- Bill of lading or air waybill, and
- Export packing list
- Export permit issued by Horticultural Crops Directorate (HCD)

U.S.A. Market Access Requirements

All cut flowers must be made available to an inspector for examination at the port of first arrival and must remain at the port of first arrival until released, or authorized further movement, by an inspector. If imported cut flowers are found to be infested with injurious plant pests or infected with diseases, an inspector can order the following: disinfection, cleaning, treatment, re-exportation, or any other actions, including destruction at the exporter's cost.

This information was provided by the Kenya Flower Council

www.kenyaflowercouncil.org

Useful Resources

UNITED STATES OF AMERICA

- East Africa Trade and Investment Hub
www.eatradehub.org/info
- AGOA
www.agoa.info
www.agoa.info/about-agoa/product-eligibility.html
- US Customs and Border Protection
www.cbp.gov
- Tralac Trade Law Centre
www.tralac.org
- United States Consumer Product Safety Commission
www.cpsc.gov
- United States International Trade Commission - Harmonized Tariff Schedule
www.hts.usitc.gov

KENYA

- State Department of Trade, Ministry of Industry Trade and Cooperatives
www.industrialization.go.ke
- Kenya Association of Manufacturers
www.kam.co.ke
- Pest Control Products Board (PCPB)
www.pcpb.or.ke
- Agriculture and Food Authority (AFA)
www.agricultureauthority.go.ke
- Horticultural Crop Directorate in AFA
www.agricultureauthority.go.ke
- Kenya Plant Health Inspectorate Services (KEPHIS)
www.kephis.org
- Tea Directorate in AFA
<https://agricultureauthority.go.ke>
- Coffee Directorate in AFA
www.agricultureauthority.go.ke
- Nut and Oil Crops Directorate in AFA
www.agricultureauthority.go.ke
- Export Promotion Council (EPC)
www.epckkenya.org

- Export Processing Zones Authority (EPZA)
www.epzakenya.com
- Kenya Trade Network Agency (KenTrade)
www.kentrade.go.ke
- Kenya Bureau of Standards
www.kebs.org
- Kenya Revenue Authority
<http://www.kra.go.ke>
- Infotradekenya
www.infotradekenya.go.ke
- Kenya Investment Facilitation Portal
www.kenya.eregulations.org/
- Kenya Export Promotion Council
<http://epckkenya.org/>
- East African Tea Trade Association
www.eatta.com/
- AFA Tea Directorate
www.teaboard.or.ke
- Kenya Tea Development Agency - Holdings Limited
www.ktdateas.com/

Annexes

Annex I:

How to get Apparel Manufacturers Certificate for AGOA

The Manufacturers Certificate for AGOA is issued bi-annually to registered manufacturers in Kenya wishing to export merchandise to the U.S.A. under AGOA.

An exporter completes the MCI/IR/I/91 and IR/CR/APP/I forms for products to export and submits an application to the Registrar of Industries in the State Department of Industries at the Ministry of Trade, Industry and Cooperatives. The forms can be obtained from the Registrar of Industries or the nearest District Industrial Development Office.

Once the relevant officer receives the application and all requirements are met, the Registrar of Industries will undertake a physical inspection of the manufacturer/exporter's premises within seven days to verify the details regarding – but not limited to – capital, equipment, labor, and inputs used, or to be used, in the production of goods for export to the U.S.A. After the verification audit exercise, the Registrar of Industries will prepare and distribute four copies of the manufacturer's certificate for AGOA. The applicant receives the original, and the Registrar retains a copy, and the remainders are provided to the Director of External Trade and to Customs. The exporter will attach copies of the manufacturer's certificate for AGOA to every application for an AGOA textile certificate of origin. Exporters will need to apply for an amendment to the certificate every time additional equipment is employed or any other changes to production are made.

The manufacturer shall make an undertaking to preserve all records relating to the production of the goods to be exported, including but not limited to, records on number of workers, actual quantity produced, work done outside (sub-contracted) and the machinery used, as per AGOA requirements. These records should be kept for a period of at least five years in order to satisfy CBP in the U.S.A. that products qualified for duty-free importation.

Annex 2: AGOA Textile Certificate of Origin

SAMPLE

REPUBLIC OF KENYA



AFRICAN GROWTH AND OPPORTUNITY ACT TEXTILE CERTIFICATE OF ORIGIN

1. Exporter Name & Address	2. Producer Name & Address
3. Importer Name & Address	4. Description of Article
5. Preference Group	6. US/African Fabric Producer Name & Address
7. US/African Yarn Producer Name & Address	8. US Thread Producer Name & Address
9. Name of handloomed, handmade or folklore article	10. Name of Preference Group H Fabric or Yarn

Preference Groups

- 1:Apparel assembled from US formed and cut fabric from US yarn [19 CFR 10.213(a)(1)]
- 2:Apparel assembled and further processed from US formed and cut fabric from US yarn [19 CFR 10.213(a)(2)]
- 3:Apparel cut and assembled from US fabric from US yarn and thread [19 CFR 10.213(a)(3)]
- 4:Apparel assembled from regional fabric from yarn originating in the US or one or more beneficiary countries [19 CFR 10.213(a)(4)]
- 5:Apparel assembled in one or more lesser developed beneficiary countries [19 CFR 10.213(a)(5)]
- 6: Sweaters knit to shape in chief weight of cashmere [19 CFR 10.213(a)(6)]
- 7: Sweaters knit to shape with 50 percent or more by weight of fine wool [19 CFR 10.213(a)(7)]
- 8:Apparel cut and assembled in one or more beneficiary countries from fabric or yarn not formed in the United States or beneficiary country (as identified in NAFTA) or as designated in commercial quantities in the United States [19 CFR 10.213(a)(8)] or (a)(9)
- 9: Handloomed, handmade or folklore articles [19 CFR 10.213(a)(9)]

I certify that the information on this document is complete and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document.

I agree to maintain and present upon request documentation necessary to support this certificate.

DECLARATION BY THE EXPORTER		CERTIFICATE OF ORIGIN It is hereby certified that the above mentioned goods are of Kenyan Origin.
11. Authorized Signature		
12. Name (Print or Type)		
13. Title		
14. Company		
15. a) Date (dd/mm/yy)	15. b) From To	
16. Telephone Number Facsimile Number		

Preparation of Certificate

The following rules will apply for purposes of completing the African Growth and Opportunity Act Textile Certificate of Origin;

1. Blocks 1 through 5 pertain only to the final article exported in the United
2. Block 1 should state the legal name and address (including country) of the exporter;
3. Block 2 should state the legal name and address (including country) of the producer. If there is more than one product, attach a list stating the legal name and address (including country) of all additional producers. If this information is confidential, it is acceptable to state "available to Customs upon request" in block 2. If the producer and the exporter are the same, state "same" in block 2;
4. Block 3 should state the legal name and address (including country) of the importer;
5. Block 4 should provide a full description of each article. The description should be sufficient to relate it to the invoice description and to the description of the article in the international Harmonized System. Include the invoice number as shown on the commercial invoice or, if the invoice number is not known, include another unique reference number such as the shipping order number;
6. In block 5, insert the letter that designates the preference group which applies to the article according to the description contained in the CFR provision cited on the certificate for that group;
7. Block 6 through 10 must be completed only when the block in question calls for information that is relevant to the preference group identified in block 5;
8. Block 6 should state the legal name and address (including country) of the fabric producer;
9. Block 7 should state the legal name and address (including country) of the yarn producer;
10. Block 8 should state the legal name and address (including country) of the fabric producer;
11. Block 9 should state the name of the folklore article or should state that the article is handloomed or handmade;
12. Block 10, which should be completed only when preference group "H" is inserted in block 5, should state the name of the fabric or yarn that is not formed in the United States or a beneficiary country or that is not available in commercial quantities in the United States;
13. Block 15a should reflect the date on which the certificate was completed and signed;
14. Block 15b should be completed if the certificate is intended to cover multiple shipments of identical articles as described in block 4 that are imported into the United States during a specified period of up to one year. The "From" date is the date on which the certificate became applicable to the article covered by the blanket certificate (this date may be prior to the date reflected in block 15a). The "To" date is the date on which the blanket period expires; and
15. The certificate may be printed and reproduced locally. If more space is needed to complete the certificate, attach a continuation sheet.

Annex 3: General Certificate of Origin (Non-Textile)

SAMPLE

1. Goods consigned from (Exporter's business name, address, country)		Reference No GENERALIZED SYSTEM OF PREFERENCES CERTIFICATE OF ORIGIN (Combined declaration and certificate) FORM A Issued in (country) See notes overleaf			
2. Goods consigned to (Consignee's name, address, country)					
3. Means of transport and route (as far as known)		4. For official use			
5. Item number	6. Marks and numbers of packages	7. Number and kind of packages, description of goods	8. Origin criterion (see Notes overleaf)	9. Gross weight or other quantity	10. Number and date of invoices
11. Certification It is hereby certified, on the basis of control carried out, that the declaration by the exporter is correct. Place and date, signature and stamp of certifying authority			12. Declaration by the exporter The undersigned hereby declares that the above details and statements are correct; that all the goods were produced in (country) and that they comply with the origin requirements specified for those goods in the Generalized System of Preferences for goods exported to (importing country) Place and date, signature of authorized signatory		

NOTES (2013)

I. Countries which accept Form A for the purposes of the Generalized System of Preferences (GSP):

Australia*	European Union:	France	Netherlands
Belarus	Austria	Germany	Poland
Canada	Belgium	Greece	Portugal
Iceland	Bulgaria	Hungary	Romania
Japan	Croatia	Ireland	Slovakia
New Zealand**	Cyprus	Italy	Slovenia
Norway	Czech Republic	Latvia	Spain
Russian Federation	Denmark	Lithuania	Sweden
Switzerland including Liechtenstein***	Estonia	Luxembourg	United Kingdom
Turkey	Finland	Malta	
United States of America****			

Full details of the conditions covering admission to the GSP in these countries are obtainable from the designated authorities in the exporting preference-receiving countries or from the customs authorities of the preference-giving countries listed above. An information note is also obtainable from the UNCTAD secretariat.

II. General conditions

To qualify for preference, products must:

- (a) fall within a description of products eligible for preference in the country of destination. The description entered on the form must be sufficiently detailed to enable the products to be identified by the customs officer examining them;
- (b) comply with the rules of origin of the country of destination. Each article in a consignment must qualify separately in its own right; and,
- (c) comply with the consignment conditions specified by the country of destination. In general, products must be consigned direct from the country of exportation to the country of destination but most preference-giving countries accept passage through intermediate countries subject to certain conditions. (For Australia, direct consignment is not necessary).

III. Entries to be made in Box 8

Preference products must either be wholly obtained in accordance with the rules of the country of destination or sufficiently worked or processed to fulfil the requirements of that country's origin rules.

- (a) Products wholly obtained: for export to all countries listed in Section I, enter the letter "P" in Box 8 (for Australia and New Zealand Box 8 may be left blank).
- (b) Products sufficiently worked or processed: for export to the countries specified below, the entry in Box 8 should be as follows:
 - (1) United States of America: for single country shipments, enter the letter "Y" in Box 8, for shipments from recognized associations of counties, enter the letter "Z", followed by the sum of the cost or value of the domestic materials and the direct cost of processing, expressed as a percentage of the ex-factory price of the exported products; (example "Y" 35% or "Z" 35%).
 - (2) Canada: for products which meet origin criteria from working or processing in more than one eligible least developed country, enter letter "G" in Box 8; otherwise "F".
 - (3) Iceland, the European Union, Japan, Norway, Switzerland including Liechtenstein, and Turkey; enter the letter "W" in Box 8 followed by the Harmonized Commodity Description and coding system (Harmonized System) heading at the 4-digit level of the exported product (example "W" 96.18).
 - (4) Russian Federation: for products which include value added in the exporting preference-receiving country, enter the letter "Y" in Box 8 followed by the value of imported materials and components expressed as a percentage of the fob price of the exported products (example "Y" 45%); for products obtained in a preference-receiving country and worked or processed in one or more other such countries, enter "Pk".
 - (5) Australia and New Zealand: completion of Box 8 is not required. It is sufficient that a declaration be properly made in Box 12.

* For Australia, the main requirement is the exporter's declaration on the normal commercial invoice. Form A, accompanied by the normal commercial invoice, is an acceptable alternative, but official certification is not required.

** Official certification is not required.

*** The Principality of Liechtenstein forms, pursuant to the Treaty of 29 March 1923, a customs union with Switzerland.

**** The United States does not require GSP Form A. A declaration setting forth all pertinent detailed information concerning the production or manufacture of the merchandise is considered sufficient only if requested by the district collector of Customs.

Annex 4: Kenya Apparel Manufacturers/Exporters (KAMEA) Data Sheet

SAMPLE

INVOICE NO. AAE/KEN/054 -17

KENYA APPARELS MANUFACTURERS/EXPORTERS (KAMEA) DATA SHEET IMPORTANT

The information on this data sheet is to be submitted only to KAM with every visa application to assist in self-policing mechanism.

Name of the
Manufacturer

Name of the
Exporter

PRODUCTION INFORMATION I

1. Purchase order no:
2. Date of receipt of purchase order:
3. Source of raw materials country: Name of supplier:
- Date of receipt of material/fabric:
5. When fabric was cut?
6. When factory started sewing the cut fabric (production)?
7. When apparel production ended including packing?
8. Export date Quantity: PCS.....Value:

DOCUMENTS TO BE ATTACHED TO THIS DATA

Copies of customs import for the raw materials
.....

MANUFACTURERS DECLARATION

I hereby declare that the information contained in these documents is complete and correct.

Full Name

Position

Signature:.....Date:

THIS INFORMATION IS FOR KAMEA DATABASE

Annex 5: Commercial Invoice

SAMPLE

COMPANY LOGO OR NAME HERE			
COMMERCIAL INVOICE			
Exporter reference no.	Importer purchase/order/reference no.		Invoice expiration date:
Exporter/Shipper (Name and Physical Address) Tel: Fax: Email:		Importer/Consignee (Name and Physical Address) Tel: Fax: Email:	
Intermediate consignee (Name, Physical Address) Tel: Fax: Email:		Buyer (If other than consignee - Name and physical address) Tel: Fax: Email:	
Notify Party (Name, Physical Address) Tel: Fax: Email:		Terms and conditions of delivery and payment (including Incoterms): • Freight (please mark): Prepaid _____ Collect _____ • Title transfer occurs at: • Payment terms:	
Marks & Numbers:	Total number of packages:	Total number of packages:	Dimenstions HxWxL (m³):
Port of loading:	Port of discharge:	Total net weight (kg):	Currency of sale:
Final destination:	BOL/AWB No.	Transportation method: Vessel/flight no:	Date of shipment: L/C No.
Complete and accurate description of the goods including item no., product description, HS/tariff classification code and country of origin		Quantity (Unit of measure)	Unit Price
• Packing costs • Freight costs • Other transportation-related costs • Handling • Insurance costs • Assists • Additional fees Duties and taxes		Grand Total	Total Price
Signature, initials, name, title & position		Date	Place

Annex 6: AGOA Declaration by Exporters

SAMPLE AGOA DECLARATION FORM							
AGOA Declaration							
I, NAME , hereby declare that the articles described below were produced or manufactured in Kenya by means of processing operations performed in that country as set forth below and were also subjected to processing operations in the other country or countries which are members of the same association of countries set forth below and incorporate materials produced in the country named above or in any other country or countries which are members of the same association of countries as set forth below:							
Name and date of invoices:	Description of articles and quantity	Processing operations performed on articles		Materials produced in a beneficiary developing country or members of the same association			Net Profit
		Description of processing operations and country of processing	Direct costs of processing operations	Description of material, production process, and country of production	Cost or value of material		
				Description of material & production process	Country of Production	Material	Cost
Date							
Address							
Signature							
Title							

Annex 7: Nuts and Oil Crops Export Guidelines for U.S.A Market

SAMPLE



AGRICULTURE AND FOOD AUTHORITY

NUTS AND OIL CROPS DIRECTORATE

KENYA NUTS AND OIL CROPS EXPORT GUIDELINES TO THE USA

1. AFA- NOCD General Export Procedure

- A. Pursuant to provisions of the Crops Act 2013, one has to be licensed by AFA-NOCD as an exporter before being allowed to export to any country
- B. AFA-NOCD clears all nuts and oil crops exports through Kenya Trade Network Agency's Portal (KENTRADE) commonly known as Kenya National Single Window
- C. After being licenced, all exporters (and importers) of nuts and oil crops are opted into Kentrade system
- D. When a licenced exporter wants to export a consignment, he/she applies for an export permit through Kentrade where he/she is required to attach an invoice, packing list and KRA entry document and pays export levy where applicable.
- E. The consignment may be subjected to physical verification/inspection by AFA-NOCD inspectors before clearance
- F. AFA-NOCD then clears the consignment for export through Kentrade if all requirements are met

2. Clearance With Other Kenyan Government Regulatory Agencies

Apart from AFA-NOCD, an exporter has got to be cleared by the following government agencies

- A. Kenya Revenue Authority
- B. Kenya Plant Health Inspectorate Service (KEPHIS),
- C. Kenya Bureau of Standards (KEBS),
- D. Pest Control Products Board

3. USA Market Access Required Documentation

The U.S. Bioterrorism Act requires any facility that manufactures, processes, packs, or holds food, beverages, or supplements that may be consumed by humans or animals in the U.S. to be registered with the U.S. Food and Drug Administration ("FDA").

In addition to the requirement to register the food facility, the Food Safety Modernization Act of 2011 ("FSMA") introduced additional food safety requirements for food facilities. Under FSMA, foreign food facilities are required to write and implement Food Safety Plans. Although many facilities have food safety programs such as HACCP, ISO 22000, or BRC, writing and implementing a FDA Food Safety Plan is a new and different requirement.

4. Export Support Documentation and Where to Get Them

There are a number of private firms both in Kenya and the USA which give assistance to those who would like to export to the US. One of such firms is Registrar Corp (www.registrarcorp.com) in the US. After registering with them at a fee (\$695) by filling registration forms, they may assist a Kenyan firm to register its facilities with FDA and act as the required U.S. Agent for FDA communications.

As the U.S. Agent, Registrar Corp will provide:

- A. Certificate of Registration issued by Registrar Corp: Provides confirmation of your facility's registration to industry
- B. Registration Updates: Registrations must be updated within 60 days of a change in required information
- C. Prior Notice: Three free Prior Notice filings each year for your exports to the USA
- D. Detention Assistance: Communication with FDA on your behalf to seek the release of a detained shipment
- E. Mock FDA Inspection: Onsite expert assistance at no charge except travel and lodging for a scheduled FDA inspection
- F. DUNS Assistance: Obtain a DUNS number or update an existing DUNS record
- G. FDA Compliance Monitoring: A unique system that continuously monitors the company's FDA compliance status.

Annex 8: Tea Buyer/Exporter/Importer Registration Form

THE TEA BOARD OF KENYA
THE TEA ACT
(Cap 343)
THE TEA (LICENSING, REGISTRATION & TRADE)
REGULATIONS, 2008

FORM G:

**APPLICATION FOR REGISTRATION/RENEWAL OF REGISTRATION OF TEA
BUYER/EXPORTER/IMPORTER**

(r.13. 17)

1. Name of applicant
2. Details of National Identity Card No./Passport No./Certificate of Incorporation No.
(attach copy)
3. If a company, list names and particulars of directors (attach copy)
4. Postal address
5. Location of business
- a) Town
- b) Street/road
- c) Name of building
- d) Telephone No.
6. Nature of business

Date: Signature:

Applicant or his duly authorized agent

(Delete as necessary)

FOR OFFICIAL USE

Received

Decision of the Tea Board of Kenya

Date:

Managing Director
The Tea Board of Kenya

For terms and conditions see overleaf

Terms and Conditions

1. A buyer or exporter who diverts tea bought at the auction to the local market shall produce evidence of duty and value added tax payment to the Kenya Revenue Authority, where due.

2. Before granting any registration, the Board shall, in respect of an application before it, satisfy itself.

(a) that the applicant is a company incorporated under the Companies Act, with such minimum share capital as the Board may prescribe; and

(b) That the applicant has the necessary management capacity to carry on tea buying/exporting and importing business for which the registration is required; and

(c) That the applicant has sufficient knowledge, experience and capacity to conduct tea buying/importing/exporting business and that the persons engaged or to be engaged in the position of Chief Executive Officer or other senior position possess sufficient knowledge, management experience and capacity.

Annex 9: Four Easy Steps to Export Your Goods to the U.S.A Duty-Free Under AGOA

4 Easy steps to exporting your goods to the U.S. duty-free under AGOA

1

Prepare Invoice

Clearly indicate details of items, quantities, and prices. Also include importer and exporter details, including tax identification number

2

Obtain Certificate of Origin (CoO)

Apply to KRA (Customs Services) for general certificate of origin using GSP form

3

Export Logistics

For list of freight forwarders: Federation of East Africa Freight Forwarders Association - <http://www.feaffa.com/>

For list of shipping companies: Shippers Council of Eastern Africa - <http://www.shipperscouncilea.org/>

4

Declaration to U.S. Customs at Port of Entry

www.cbp.gov/sites/default/files/documents/icp065_3.pdf

Note: These are general export guidelines. There are special requirements for different products, some of which are provided in this booklet.



About the USAID East Africa Trade and Investment Hub

The USAID East Africa Trade and Investment Hub works to boost trade and investment with - and within - East Africa.

The goal of the Hub is to deepen regional integration, increase the competitiveness of select regional agriculture value chains, promote two-way trade with the U.S.A. under AGOA and facilitate investment and technology that drives trade growth intra-regionally and to global markets.

Our main focus is on the East African Community countries - Burundi, Kenya, Rwanda, Tanzania and Uganda. We also provide AGOA-related support in Ethiopia, Madagascar and Mauritius.

The Hub is the one-stop shop in the East African region for businesses and national governments seeking to take advantage of AGOA. The Hub supports Ethiopia, Kenya, Madagascar, Mauritius, Rwanda, Tanzania and Uganda to increase their exports to the U.S.A. through AGOA.

By the end of the project, the Hub expects to increase non-oil exports to the U.S.A. by 40 percent. In its first three years of operation, the Hub supported \$305 million in AGOA exports to the U.S.A.

In collaboration with key institutions, the Hub develops and tailors trade-enhancing activities in specific countries and sectors, as informed by national AGOA strategies. It also identifies and works with private sector associations and companies to foster impactful trade and investment in the region.

Contact:

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P.O. Box 13403 - 00800
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 [@InvestEAfrica](https://twitter.com/InvestEAfrica)

 www.eatradehub.org/ask_an_agoa_expert

 www.facebook.com/groups/eaagoaexporter

 [East Africa Trade and Investment Hub](#)

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