International Food & Agricultural Trade Policy Council

Partnership to Cut Hunger and Poverty in Africa

IPC Policy Focus

Horticultural Exports from AGOA Countries to the U.S.: Challenges and Considerations

This policy brief was drafted by IPC Chief Executive Charlotte Hebebrand and is based on an in-depth study prepared by Rick Pasco of McLeod, Watkinson & Miller for the IPC and the PCHPA entitled, "AGOA Countries: Considerations in Exporting Horticultural Products to the United States," July 2010 (http://www.agritrade.org/Publications/documents/AGOA-HorticulturalProductImportstotheU.S..pdf). Comments from Daniel Karanja and Julie Howard from the PCHPA; Patrick Wilson, Administrator, BIG-Africa Partnerships Secretariat; Hasit Shah of the Fresh Produce Exporters Association of Kenya; and Christine St. Pierre of the IPC are gratefully acknowledged. As the topic is complex, we urge readers to consult the full paper, which includes more detailed information and also addresses tree nuts, cut flowers, nursery products, essential oils, and wines.

The African Growth and Opportunity Act (AGOA) represented a turning point in U.S.-Africa relations when it was first signed into law on May 18, 2000. Intended to diversify Africa's export production, expand trade and investment between the United States and sub-Saharan Africa, and accelerate Africa's economic growth, AGOA recognized the critical importance of trade and private sector investment as engines of economic growth in sub-Saharan Africa. By 2010, AGOA eligibility extended to 38 African countries.

Ten years on, AGOA has contributed to a significant increase in African exports to the U.S., but this export growth is heavily concentrated in oil and gas products, an expansion which would likely have occurred without AGOA preferences. U.S. imports from Africa tripled between 2000 and 2007, and the U.S. buys roughly one quarter of Africa's total exports (total value of African exports is $245 billion). Nigeria and Angola, leading oil suppliers to the U.S., accounted for 80 percent of all AGOA imports in 2008. Some countries, including Lesotho and Kenya, have successfully exported textile and apparel products to the U.S. under AGOA, but exports have declined in recent years, as African manufacturers have found it difficult to compete with other countries following the termination of the global Multi-Fibre Agreement in December 2005.

Agriculture employs two-thirds of all Africans and is increasingly identified as a key catalyst for broad-based economic development and poverty reduction on the continent. Yet the $1.2-1.4 billion worth of agricultural goods the U.S. buys from Africa each year is only a small fraction of the total U.S. imports from the continent. While the value of AGOA agricultural exports to the U.S. grew by almost 52 percent—from $508 million in 2000 to $770 million in 2009—during the first nine years following the enactment of AGOA, the Republic of South Africa and Ghana are the only two AGOA countries that rank among the top 50 countries that export food and beverage products to the U.S.[1]

This policy brief explores the reasons why agricultural exports from Africa to the U.S. are so limited, focusing on the opportunities and constraints for export of edible horticultural products–value added commodities such as fruits and vegetables–because these represent important new sources of income for many AGOA countries. In total, AGOA global horticultural exports were valued at $34.9 billion in 2008, ample evidence that these countries are successful exporters. Out of this, AGOA horticultural exports to the U.S. in 2008 amounted to $210 million, up from $113 million in 2000. While such growth is impressive in percentage terms, the absolute amount of horticultural exports to the U.S. is very limited. The paper provides an overview of both the U.S. import approval system for horticultural products and import approval requests submitted by AGOA countries and concludes with recommendations for AGOA countries and producers, U.S. policymakers and regula-

1 See August 2009 IPC-PCHPA paper "AGOA and Agriculture" for a discussion of agriculture under AGOA: http://www.agritrade.org/Publications/documents/PCHPAIPC_JointPolicyBrief_Aug3.pdf.

tors, and the international community.

The U.S. Food Import Approval System

There are a number of U.S. government agencies dealing with food imports. Here we provide only a cursory overview of some of these agencies and their functions, with a particular focus on horticultural products. The most relevant oversight functions can be divided into food safety considerations on the one hand and animal and plant health considerations on the other. When it comes to food safety, the Food and Drug Administration (FDA), an agency under the U.S. Department of Health and Human Services (HHS), is responsible for all human and animal foods except for meat and poultry, which fall under the jurisdiction of the U.S. Department of Agriculture's (USDA) Food Safety Inspection Service (FSIS). As far as plant health is concerned, both edible and non-edible horticultural products also fall under the jurisdiction of another USDA agency, the Animal and Plant Health Inspection Service (APHIS), which is responsible for keeping plant pests and diseases out of the U.S., and also handles animal health issues related to the import of live animals and animal products. Edible horticultural imports from AGOA countries therefore fall under APHIS and FDA's purview, and exporters must meet the requirements of both agencies. Processed fruit and vegetable products do not need to go through the APHIS process, as they do not pose plant health risks, but they are still subject to FDA's regulatory oversight.

APHIS

Before the U.S. permits the importation of horticultural products from any country, APHIS must complete an extensive analysis of pest and disease risks associated with those products and determine if and how those risks can be mitigated to allow for safe importation. The first step for any country seeking to export a commodity to the U.S. is a determination of whether the horticultural product is already eligible for import. If it has not been declared eligible, it must undergo the APHIS approval process, which consists of several steps. First, APHIS conducts a pest risk analysis (PRA) with input from the exporting country. Second, once a PRA is completed, APHIS examines whether, and if so, which risk mitigation measures can be put into place in order to allow the import of the product. A final step requires rulemaking: APHIS must submit a proposed rule to allow imports to the Federal Register for a 60 day public comment period, each substantial comment must be responded to and eventually a final rule is published which sets a target date to allow importation. The complete process can take 2-5 years when rulemaking is required, although in a number of cases, more time is required. As of July 2007, APHIS has offered a much welcome alternative to rulemaking: under the new notice-based process, APHIS can declare a commodity eligible for import if the risk analysis demonstrates that potential risks can be addressed by one or more of five designated phytosanitary measures. This system of publishing notices to which the public can also respond, rather than undergoing formal rulemaking, has the potential to shorten the process to 18 months.

As an agency, APHIS handles import as well as export requests and is faced with a myriad of demands on its resources. At the beginning of 2010, APHIS was considering more than 250 market access requests from more than 50 countries. These requests are in addition to numerous regulatory changes for domestic plant quarantine concerns. Given its limited resources, APHIS is capable of publishing only a certain number of regulations per year and must therefore establish a priority list. Priority appears to be given to import requests from countries that have completed Free Trade Agreements (FTAs) with the U.S., since the purpose of such agreements is to enhance mutual trade. Political pressure may also be applied on APHIS to prioritize import requests from countries of current strategic interest.

The following table outlines the status of a number, but not all, of the AGOA country import approval requests to APHIS since 2001. The far right column indicates whether the products are currently being exported to the EU.

It is important to clarify that import requests may be on hold for a variety of reasons, including weak phytosanitary capacity in exporting countries, or new pest concerns that have arisen after a request was made. A country may also abandon its request after it realizes that it does not have the resources to complete a PRA or meet the mitigation requirements once the PRA is completed, or that it may not be competitive in the U.S. market.

It is striking that many of the products pending approval by APHIS are exported to the European Union (EU). This may be explained by a different approach used by the EU to import horticultural products, as well as by the fact that some pest species may already

Status of Selected AGOA Country Fruit & Vegetable APHIS Import Requests

Country/Commodity	APHIS PRA Received	APHIS PRA & Mitigation	Country Response	Import Approval Status	APHIS Process	Export to EU
East African Region						
Kenya-Passion Fruit	March 2005			PRA under review		Yes
Uganda-Passion Fruit	May 2005			PRA under review		Yes
ECOWAS*						
Ghana-Mango	2005 or earlier			Request on hold		Yes
Senegal-Mango	2005 or earlier			Request on hold		Yes
Ghana-Papaya	December 2003			Request on hold		Yes
Ghana-Tomatoes	2003 or earlier			Request on hold		
Senegal-Tomatoes	2003 or earlier			Request on hold		Yes
Ghana						
Eggplant	December 2003	March 2006 & March 2007		Access granted October 2007 if the eggplant is irradiated; Ghana then asked if systems approach was an option	Notice	Yes
Okra	December 2003	January 2007	June 2007	Access granted October 2007	Notice	
Peppers-bell & chili	December 2003	March 2007	June 2007	Access granted October 2007 if the peppers are irradiated; Ghana then asked if systems approach was an option	Notice	Yes
Kenya						
Avocados	2005			Request on hold		Yes
Beans-green & runner	March 2005		June 2008	In rulemaking		Yes
Carrots-baby	March 2005			Access granted October 2007	Notice	
Corn-baby	March 2005			Acess granted October 2007	Notice	
Courgettes	2005			Request on hold		Yes
Eggplant	2005			Request on hold		Yes
Leeks	2005			Request on hold		
Mango	2005			Request on hold		Yes
Okra	2005			Request on hold		
Peas-shelled	March 2005	March 2006		Access granted October 2006	Rulemaking	Yes
Peas-snow & sugar	March 2005			PRA & possible mitigations ready for 2010 consultations		Yes
Peppers-chili		March 2005		PRA & possible mitigations ready for 2010 consultations		Yes
Raspberries		2005		Request on hold		
Madagascar						
Litchi	2005 or earlier			Request on hold		Yes
Namibia						
Grapes	2000 or earlier			Access granted October 2006	Rulemaking	
Senegal						
Asparagus-white	June 2001			Access granted December 2008	Notice	
Melons	2005 or earlier			Request on hold		Yes
Peppers-bell	2001			Request on hold		Yes
Strawberries	2001			Info needed to complete PRA		
South Africa^						
Blueberries		February 2007		Access granted September 2007; treatment granted through rulemaking	Notice	
Litchi				PRA under review		
Ribes-currants & gooseberries		February 2007		Access granted October 2007	Notice	
Persimmon				PRA under review		
Stone Fruit				Completed PRA and risk mitigation documents	Notice	
Uganda						
Avocados	May 2003			Request on hold		
Bananas	March 2003			Request on hold		
Plantains	March 2003			Request on hold		Yes
Pineapples	May 2003			Request on hold		
Zambia						
Beans	June 2001		None	Request on hold		Yes
Carrots-baby	June 2001	November 2005	April 2005	Access granted May 2006	Rulemaking	
Corn-baby	June 2001	June 2004	November 2004	Access granted May 2006	Rulemaking	
Courgettes-baby	June 2001	April 2005	June 2005	Access granted December 2008	Rulemaking	Yes
Squash-baby	June 2001	April 2005	June 2005	Access granted December 2008	Rulemaking	Yes
Leeks			None	Request on hold		
Onions			None	Request on hold		
Peas-sugar & snap	June 2001			Request on hold		Yes
Peppers-chili	June 2001			Request on hold		

* APHIS conducted regional PRA for Economic Community of West African States (ECOWAS)

^ South Africa had numerous import requests that are not listed in this table

Notes: 1) Import requests may be on hold because of the need for mitigation of Bactrocera invadens (Bi), which may not be feasible for the exporting country

2) APHIS notice-based treatment is available for products requiring less stringent risk mitigation

Source: USDA-APHIS-PPQ (June 2010)

be present in the EU, whereas the introduction of pests remains a great concern in key production areas in the U.S. Generally speaking, the EU does not operate a pre-approval system for horticultural imports,[2] but the EU is currently undergoing a review of its plant health regime. The EU may also consider new import restrictions in light of Bactrocera invadens (Bi) fruit fly infestation, which could jeopardize the ability of Spain to ship citrus to the U.S. The U.S. issued Federal Import Quarantine Orders in December 2008 and May 2009[3] preventing the entry of Bi, which has been found in some 33 African countries.

FDA

FDA's approach to horticultural imports differs from that of APHIS. Rather than operating a pre-approval system, it makes importers responsible for ensuring that food products are safe, sanitary and labeled according to U.S. requirements. In addition, the U.S. Bioterrorism Act requires that facilities producing, storing, or otherwise handling FDA-regulated products register with FDA and provide prior notice of incoming shipments. Although imported food products are subject to FDA inspection at U.S. ports of entry, the reality is that FDA's 500 inspectors are able to inspect less than one percent of the millions of food products that enter the U.S. each year. Yet, when problems are found, FDA has the authority to detain products–imports from AGOA countries have been detained–and maintains an import detention list. Despite a history of limited resources for scrutinizing imports, FDA is about to receive expanded authority and funding from Congress for enhanced regulation of imports.[4]

New food safety legislation is pending in Congress, and if passed, it will lead to a complete revision of FDA's oversight process and a move to a prevention-based system for fruit and vegetable imports. The potential changes are based on the recognition that FDA cannot simply weed out unsafe products at ports and that it must instead ensure that safety is built into products by relying on foreign food facilities to adopt preventative measures. Passage of such legislation containing additional mandates on imports will mean that imports of fruit and vegetables from AGOA countries will face not only plant health requirements but also additional food safety requirements, and compliance will have to be demonstrated prior to import. New FDA requirements may include export certificates, traceability systems, and foreign supplier verification programs.

Recommendations

Recommendations for AGOA Countries

Gaining import approval for horticultural products from APHIS is not an easy or quick process, and countries are well advised to do their homework ahead of time.

• Countries should undertake a market feasibility study before seeking import approval to determine whether there is demand in the U.S. for the product in question. In this regard, it is particularly important to consider whether it is commercially viable to incur air freight costs to a distant market, such as the U.S. As a middle class develops and grows in Africa and progress is made on regional integration, intra-African trade of fruit and vegetables may present better opportunities.

• They should also perform internal pest assessments in order to determine early on whether the existence of certain serious pests is likely to preclude approval to ship to the U.S. In addition, countries must dedicate sufficient resources for risk analysis to support import approval requests. APHIS may be less inclined to prioritize an import request if it already knows the country is infested with difficult-to-mitigate pests that present a significant threat to U.S. agriculture.

• AGOA countries are well advised to focus on horticultural product exports that do not pose a serious threat to plant health, i.e. the export of nursery products, or processed fruit and vegetable products for export, such as dried, prepared and preserved, canned, or frozen products. In this category, however, AGOA still maintains a few high tariffs on some processed products, and countries must be mindful of existing and future changes to FDA regulations.

• Fundamentally, AGOA countries should strengthen their phytosanitary capacity, including a solid regulatory framework, the ability to monitor and control plant pests and conduct inspections and pest risk as-

2 See June 2008 IPC Position Paper "Reconciling Food Safety with Import Facilitation Objectives: Helping Developing Country Producers Meet U.S. and EU Food Requirements Through Transatlantic Cooperation," http://www.agritrade.org/Publications/document/IPCStandardsPositionPaper.pdf.

3 http://www.aphis.usda.gov/import_export/plants/plant_imports/federal_order/downloads/BactroceraInvadesMay2009.pdf.

4 This brief focuses primarily on the APHIS process. Further work on AGOA and FDA regulations, in particular after the passage of new food safety legislation, is recommended.

sessments, and the implementation of plant health programs for production and export. Countries having the most success in obtaining import approvals are ones that have developed phytosanitary expertise and an ongoing relationship with their APHIS counterparts. AGOA countries should make every effort to retain experienced professionals and take advantage of opportunities to improve phytosanitary infrastructure on a regional basis.

• AGOA countries should pursue the negotiation of FTAs. In AGOA, Congress declared that FTAs should be negotiated, where feasible, with interested countries in order to serve as a catalyst for increasing trade and investment. This is important since FTAs generally include renewed commitments to the principles of the World Trade Organization's Sanitary and Phytosanitary (SPS) Agreement and may facilitate access to phytosanitary technical assistance. Since AGOA itself does not provide the U.S. with any additional export opportunities or U.S. agencies with additional funding, such agencies are, not surprisingly, less inclined to make related assistance to African countries a major priority. But a reciprocal FTA changes this dynamic because U.S. stakeholders know that the provision of phytosanitary assistance may also lead to new markets for U.S. exports in the long run. FTAs also serve the important purpose of attracting increased levels of related private investments.

• With regard to APHIS, AGOA countries should insist on receiving timely and clear progress reports on pending import approval requests, taking advantage of SPS provisions[5] that require APHIS to keep import applicants informed of progress and to explain the reason for any delays.

Recommendations for APHIS

Most phytosanitary measures are based on legitimate science and concerns about the introduction of diseases or pests into the U.S. Yet, APHIS–like any federal agency–is not insulated from political pressure to expedite or slow the import process for horticultural products. The historical role of APHIS is to prevent the introduction and establishment of exotic pests and diseases, although USDA as a department has become increasingly charged with expanding both agricultural export and import trade, and the latter's trade enhancement efforts arguably place APHIS in situations fraught with conflict. Aware of its lengthy import approval process, APHIS has made improvements, i.e. by moving towards a "systems approach" to risk management consisting of a number of sequential safeguards designed to progressively reduce risk to a significant level, and by moving to a notice-based import approval process.

• APHIS should expand the use of the notice-based approach. The formal rulemaking procedure is arguably the most significant choke-point for delaying specific import approvals. If more imports could be treated under the notice-based approach, approvals would likely proceed more expeditiously.

• APHIS should ensure that PRAs are carried out more expeditiously and transparently, assuming relevant information from exporting countries is available. APHIS could for example, devote more of its resources and staff to processing import approval requests. Provisions of the SPS Agreement on timeliness and transparency must also be adhered to: if some of the AGOA import approval requests have taken years to complete, it raises serious questions about whether APHIS is in compliance with such provisions. The SPS Agreement also demands that requirements for control, inspection and approval are limited to what is reasonable and necessary.

• The U.S. government should also consider providing greater consideration to import approval requests from U.S. trade preference beneficiaries, including AGOA-eligible countries. This would mean providing sufficient resources to these requests, not sacrificing safety, and would be a logical complement to the granting of trade preferences, which are intended to enhance exports from preference beneficiaries.

Recommendations for Capacity Building

Unlike other nonreciprocal trade programs, the AGOA statute calls for technical assistance to help build the capacity of sub-Saharan countries to take advantage of its trade preferences. Although U.S. assistance in the phytosanitary realm to Africa has expanded since 2000,[6] the approaches of the U.S. Agency for International Developmnet (USAID) and other agencies have been piecemeal, while APHIS is limited both by resources and its mission to protect U.S. agriculture. The benefits of AGOA remain concentrated in a few countries, and a strong focus on targeted capacity building is required if AGOA is to provide real financial benefits to all AGOA countries through expanded

5 In particular Section 1(b) of Annex C of the SPS agreement.

6 Please see the full-length paper for a description of U.S. capacity building efforts.

export markets. Exports of agricultural commodities–and horticultural products in particular–offer significant opportunities to help raise incomes and spur economic growth.

• USAID, the agency with most funds for trade capacity building, should expand efforts for improving the phytosanitary standards and risk mitigation capacity in many more AGOA countries and better coordinate its activities with USDA's APHIS and Foreign Agricultural Service (FAS). In the future, better coordinated efforts could help ensure the development of appropriate infrastructure and phytosanitary capacity to put various AGOA countries in position to export more horticultural products to the U.S. and other markets. Funding made available since 2006 allows USDA and USAID to jointly place SPS advisors in Eastern, Western and Southern Africa and is an excellent example of such improved collaboration. In addition, the recent implementation of offshore pest initiatives to identify and control key pests of economic importance to the U.S. has been very helpful and these efforts should be expanded. These efforts include developing collaborative research programs with foreign ministries of agriculture to control the pests prior to them reaching the U.S.

• The AGOA statute could provide more specifically for assistance on phytosanitary matters, as it currently contains only very general language regarding technical assistance to promote exports and greater agribusiness linkages.

• Improving inter-agency coordination and communication with AGOA countries interested in accessing the U.S. market is a key priority, given the involvement of so many U.S. agencies on matters of food safety and animal and plant health, and their often divergent approaches to addressing imports. Although there is periodic discussion of the U.S. moving towards a single food safety agency, such a development remains uncertain. In the meantime, given the involvement of so many U.S. agencies on matters of food safety, animal and plant health, and the often divergent approaches to addressing imports, emphasis must be placed on improved inter-agency coordination when it comes to communication with AGOA countries interested in accessing the U.S. market. For horticultural products in particular, USAID, APHIS, FDA and FAS should consider how they can best communicate U.S. standards and procedures and cooperate on technical assistance. Given the soon to be implemented changes in FDA regulations, and the fact that the FDA has already opened offices in Asia, Europe and Latin America and is considering opening an office in the Middle East, it should also establish an office in Africa, to explain existing and new FDA requirements to AGOA countries. Joint communication and collaboration with USDA's Africa based SPS advisers is critical.

Recommendations to the International Community

The international community can also collaborate in order to provide greater assistance to African countries interested in increasing horticultural exports.

• Countries work through the International Plant Protection Convention (IPPC) to set international phytosanitary standards, and the scope of the IPPC could be expanded to encourage further international harmonization of phytosanitary standards. Moreover, the IPPC could be charged with compiling data on plant pests, which could be made readily available to both potential exporters and importers, with the objective of speeding up the PRA process. Plant assessments and even PRAs may already have been carried out by other countries, but the information is not widely available. Such sharing of information about pests and PRAs can also be encouraged through memoranda of understanding among governments, plant protection organizations and the private sector.

• Government food safety officials of large horticultural product importers should collaborate with organizations such as the World Bank and the Food and Agriculture Organization of the United Nations (FAO) to create information and training materials that address the entire spectrum of issues that exist in developing an export market for a product. A more ambitious proposal would be for APHIS and European Commission plant health officials, as well as other large horticultural product importers, to enter into a dialogue about coordinating and streamlining plant health procedures with a view toward facilitating imports from developing countries without in any way sacrificing plant health or food safety.

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