International Journal of Scientific Research and Management (IJSRM)
||Volume||13||Issue||12||Pages||10054-10058||2025||
Website: https://ijsrm.net ISSN (e): 2321-3418
DOI: 10.18535/ijsrm/v13i12.em04

Legal Challenges Facing U.S. Companies Expanding into Nigeria under the African Growth and Opportunity Act (AGOA)

Hriday Bijlani, Kayode Oke

Independent Researcher

1. Introduction

The African Growth and Opportunity Act (AGOA), passed in 2000 as a component of the U.S. Trade and Development Act (19 U.S.C. §§ 3701-3747), has been a significant factor in determining U.S. trade policy for Sub-Saharan Africa.[1] The main goal of the act is to strengthen worldwide commercial relations by allowing certain African countries to sell their products in America without paying import duties, and at the same time, imposing the existence of economic reforms, good governance, and opening up the market.[2] Nigeria, which is the largest economy in the continent and among the main oil-producing countries, has been considered the main beneficiary of AGOA with enormous potential for investments and industrial diversification.[3] Yet, the extent of U.S. corporate engagement in Nigeria remains modest relative to other African markets such as Kenya or South Africa.[4] While AGOA provides a favorable legal framework for trade, U.S. firms face numerous barriers—including regulatory inconsistency, weak institutions, corruption, and contract enforcement challenges. This article examines these legal obstacles and proposes targeted reforms to enhance AGOA's effectiveness in advancing U.S.–Nigeria economic cooperation

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2. Overview of AGOA and Its Relevance to U.S.–Nigeria Trade

The purpose of AGOA is to facilitate economic growth and integration in Sub-Saharan Africa through unilateral trade preferences and incentives for governance reform. Under this Act, the President of the United States may designate eligible countries that meet criteria with respect to the rule of law, political pluralism, and efforts to combat corruption. Nigeria first received this designation in 2001 and since then has maintained this status. The engagement, however, has largely been limited to crude oil exports, which constitute above 90% of the volume of its AGOA-related trade.[5]

The Act, in its statutory arrangement—insofar as laid down in 19 U. S. C. §§ 3701–3747—places conditionality on trade benefits in CON form vis-à-vis human rights and economic reform standards. The 2022 U. S. Strategy Toward Sub-Saharan Africa reaffirmed AGOA's role as a partner in the creation of inclusive trade partnerships and sustainable investment.[6] However, with its expiration set for 2025, the renewal of AGOA and its notion of Contemporary trade realities, including things like digital commerce and supply-chain diversification, are still being questioned. Nigeria's strategic vantage point as an entryway to

[1] Zakaria Sorgho, 'US Suspension Policy from the African Growth and Opportunity Act (AGOA): An Estimation of the Missing Exports from Sub-Saharan Africa' (2024) 92 South African Journal of Economics 1.

[2] Bedassa Tadesse, 'The Impacts of the African Growth Opportunity Act on the Economic Performances of Sub-Saharan African Countries: A Comprehensive Review' (2024) 6 Sci 14.

[3] Romanus Osabohien, Ngozi Adeleye and Evans Osabuohien, 'African Growth and Opportunity Act and Trade Performance in Nigeria' (2021) 7 Heliyon.

[4] David Oludotun Fasanya, Hilary Ingham and Robert Read, 'Determinants of Internationalisation by Firms from Sub-Saharan Africa' (2022) 144 Journal of Business Research 951.

[5] Derick T Adu, Wenying Li and Wendiam P.M. Sawadgo, 'Trade and Development Implications of the U.S. African Growth and Opportunity Act' (2024) 57 Applied Economics 1.

[6] Makhura B. Rapanyane, 'USA Investment and Trade Relations with Sub-Saharan Africa: Special Reference to the African Growth and Opportunity Act' (2022) 17 African Journal of Business and Economic Research 183.

West African markets mandates preparedness, both legally and institutionally, to attract U. S. companies, which seek to operate under AGOA through stable and rules-based environments.[7]

3. Regulatory and Institutional Challenges in the Nigerian Legal Environment

One of the most persistent barriers facing U. S. companies in Nigeria is regulatory fragmentation and institutional inefficiency.[8] Intersecting jurisdictions of agencies ranging from the Nigerian Investment Promotion Commission (NIPC), Corporate Affairs Commission (CAC), Nigeria Customs Service (NCS) to the Standards Organization of Nigeria (SON) create room for administrative duplication and confusion. For example, investors are faced with contradictory interpretations of the rules of import documentation and local standards compliance procedures.

Also, there are such frequent flips of economic policies in the country—imposing foreign exchange restrictions, sudden import bans, inconsistent customs valuation methodologies—that set back investor confidence and preclude long-range business planning.[9] The currency interventions of the Central Bank of Nigeria (CBN) and its numerous reversals of policy have, in turn, rendered the repatriation of profits and pricing arrangements for U. S. companies a bit more complicated.

The licensing processes continue to be tedious; even with reforms by a Presidential Enabling Business Environment Council (PEBEC), delays in getting permits from regulatory bodies still occur. Institutional weakness further compounded with the limited digitalisation of public services, have rendered Nigeria incapable of fully complying with AGOA standards in terms of transparency and trade facilitation.

4. Corruption, Transparency, and Contract Enforcement Issues

While statutory regimes such as the Corrupt Practices and Other Related Offences Act (2000) and the Economic and Financial Crimes Commission Act (2004) promulgate antifraud measures, corruption remains a major worry for American investors in Nigeria. In 2023, Transparency International's Corruption Perception Index ranked Nigeria 140 of 180 countries[10], indicating an entrenched culture of bribery and rent-seeking behavior in many prominent sectors. Due to these conditions, which count as serious legal hazards for U. S. companies, they now face complications under the U. S. Foreign Corrupt Practices Act (FCPA), which forbids the bribery of foreign officials and requires companies to maintain internal compliance controls.

Public procurement practices raise questions of transparency, ever since AGOA came into force to ensure that markets operate openly and competitively[11]. Contract enforcement simply complicates the matter: Nigeria's judiciary is mired in undue delays, procedural bottlenecks, and sometimes political interference. According to World Bank Doing Business (2020) report, Nigeria took the 55th position in Enforcing Contracts, with the average duration of time for resolution being over 400 days.[12]

U.S. companies often raise concerns about corruption and lack of transparency in Nigeria's business environment, particularly through official channels like the U.S. Department of State and the Office of the United States Trade Representative (USTR) reports.[13] While specific individual company names are not often publicly listed in these reports due to confidentiality, the reports summarize their collective experiences.

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[7] Evans Kulu and Isaac Bentum-Ennin, 'African Growth and Opportunity Act (AGOA) and Exports of Sub-Saharan African Countries to the United States of America: Does Credit Matter?' (2023) 9 Heliyon 1.

[8] Godswill Osuma and others, 'Evaluating the Impact of Systemic Corruption and Political Risk on Foreign Direct Investment Inflows in Nigeria: An Analysis of Key Determinants' (2024) 5 Discover Sustainability 1.

[9] Femi-Olagundoye, Mercy and Adedokun Adetona Sikiru, 'Exchange Rate Management in Nigeria: Historical Trends and Policy Insights' (2025) IX International Journal of Research and Innovation in Social Science 88.

[10] Transparency International, 'Corruption Perceptions Index 2024' (*Transparency.org*2025) <https://www.transparency.org/en/cpi/2024> accessed 4 November 2025.

[11] Oluwabukunmi A Ogunsanya and others, 'Barriers to Sustainable Procurement in the Nigerian Construction Industry: An Exploratory Factor Analysis' (2019) 22 International Journal of Construction Management 1.

[12] World Bank, 'Doing Business - World Bank Group' (*subnational.doingbusiness.org*2020) <https://subnational.doingbusiness.org/en/data/exploretopics/enforcing-contracts/score> accessed 4 November 2025.

[13] Punch Newspaper, 'US Report Calls out Nigeria's Trade Barriers, Port Corruption' (*Punchng.com*2025) <https://punchng.com/us-report-calls-out-nigerias-trade-barriers-port-corruption/> accessed 3 November 2025.

In the past, Shell and Halliburton have faced accusations of corruption in Nigeria, particularly concerning the Halliburton scandal and the OPL 245 oil block.[14] In the Halliburton case, a joint venture that included Halliburton paid bribes to Nigerian officials between the 1990s and 2000s for contracts, an issue that was prosecuted in the US, while Nigeria made little recovery. Shell also faced a case for bribing Nigerian customs officials, which it settled out of court.[15]

The divergences in anti-corruption standards of the U. S. and Nigeria often create precarious positions for companies: They try to balance between complying with U. S. law and working with U. S. law and working with local administrative practices.

5. Trade Facilitation and Intellectual Property Challenges

Given the inefficiencies of the customs and other non-tariff barriers, Nigeria continues to be a hindrance to trade facilitation. Complex import documentation, long bureaucratic clearance processes, and inconsistent application of tariffs by port authorities increase operational costs for U. S. exporters.[16] Local content policies, particularly the Nigerian Oil and Gas Industry Content Development Act (2010), impose local participation requirements that sometimes contradict the liberal trade principles espoused by AGOA, although these are said to be for the sake of industrial development.

Equally disturbing is Nigeria's weak intellectual property (IP) regime. Various reforms have recently been initiated, the most recent being the Copyright Act (2022). However, other laws such as the Trademarks Act (CAP T13 LFN 2004) are quite outdated, and the IP enforcement capacity is very limited.[17] U. S. technology, pharmaceutical, and consumer goods companies have thereby become vulnerable to counterfeiting and piracy. Counterfeit medicines and software remain areas of concern.

Another emerging frontier is digital trade. The Nigeria Data Protection Act (2023), as the principal legal framework regulating personal data, nonetheless holds various compliance obligations that many U. S. firms find ambiguous because there has been no enforcement guidance issued. Earlier this year Meta was penalised by the Nigeria Data Protection Commission (NDPC) earlier this year, in February 2025, with a fine of $32.8 million and several corrective orders for breaches of the Nigeria Data Protection Act. The two parties have recently agreed to an out-of-court settlement.[18]

Without stronger IP protection and streamlined trade procedures, the goal of AGOA to promote competitive trade integration between the U. S. and Nigeria remains unfulfilled.

6. Bilateral Investment and Dispute Settlement Concerns

Under the 1992 U. S.-Nigeria Bilateral Investment Treaty, investor protection is provided through fair and equitable treatment, national treatment, and access to arbitration under the ICSID Convention. Ideally, this framework should increase investor confidence. It was however incapacitated by lack of enforcement.

While such institutional mechanisms as the Lagos Court of Arbitration (LCA) and the Regional Centre for International Commercial Arbitration (RCICA) have aided the burgeoning dispute resolution capacity, procedural inefficiencies and delayed enforcement continue to act as deterrents to investors. A good example has been the Enron Nigeria Power Holding Ltd. v. Nigeria, which brought to light the difficulties aggrieved investors face in seeking redress for breaches of government contracts by states. The instability in resolution in investor–state disputes, therefore, has a depreciating effect on AGOA promoting a stable market access.

7. Policy and Legal Reform Recommendations

For the full realization of AGOA in Nigeria, targeted reforms must address structural and legal deficiencies. First, harmonization is essential, since consolidating agency functions under one veritable trade policy framework will reduce bureaucratic overlap and increase transparency. Second, anti-corruption mechanisms

[14] BBC News, 'Shell and Halliburton Quizzed over Nigeria "Corruption"' *BBC News* (30 November 2010) <https://www.bbc.com/news/world-africa-11877434> accessed 4 November 2025.

[15] Ibid.

[16] Eleagu Ifeanyi Greene and Akonye Joseph Enyioma, 'Seaports Administration in Nigeria: A Study of Apapa Port Complex' (2018) 14 European Scientific Journal, ESJ 281.

[17] Afolayan Oluyinka Titilope, 'Intellectual Property Rights Protection in Nigeria' (2020) 9 International Journal of Library and Information Services 51.

[18] BusinessDay, 'Meta, NDPC Resolve $32.8m Privacy Dispute out of Court - Businessday NG' (*Businessday NG*3 November 2025) <https://businessday.ng/news/article/meta-ndpc-resolve-32-8m-privacy-dispute-out-of-court/> accessed 5 November 2025.

should be further strengthened by rigorous enforcement of the EFCC and ICPC Acts, and the adoption of open contracting data standards to ensure transparency in procurement.

Third, there must be judicial reforms aimed at efficient contract enforcement. The Arbitration and Mediation Act (2023) should be put into operation with time-bound case management rules and a time-limited mechanism for expedited enforcement of arbitral awards. Fourth, and perhaps the most important, Nigeria must update its intellectual property laws in line with TRIPS and adequately fund the Nigerian Copyright Commission.

Trade facilitation should also be given priority through customs clearance digitization and full implementation of the 2017 WTO Trade Facilitation Agreement. Lastly, the post-2025 AGOA renewal may provide an opportunity to embed mechanisms for legal capacity-building and institutional support for aspects of U. S.–Nigeria trade, which will make this trade sustainable and equitable itself.

8. Conclusion

In spite of AGOA promising to further mutual prosperity, serious legal and institutional issues confront U. S. companies operating in Nigeria. Regulatory incoherence, corruption, judicial inefficiency, and situations where intellectual property rights are not well protected all serve as detractors that lessen investor confidence and dilute the developmental intent of AGOA. Hence, what is required to realize the objectives of the Act goes beyond preferential tariffs and demands a transparent, rules-based, and legally enforceable environment. Strengthening the regulatory and judicial framework in Nigeria will not only increase the operational efficiency of AGOA but also support the broader strategic vision of the U. S. in building democratic, market-driven partnerships across Africa. Now, AGOA can be transformed from a trade preference regime into a fully operational legal and economic bridge for concrete, law-based cooperation between the U. S. and Nigeria.

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