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U.S.-Kenya FTA Negotiations

On February 6, President Trump and President Uhuru Kenyatta of Kenya announced their intent to begin free trade agreement (FTA) negotiations. If successful, it would be the first U.S. FTA with a country in sub-Saharan Africa. Congressional interest may include (1) Congress's constitutional authority to regulate foreign commerce, such as setting U.S. trade negotiating objectives, and considering FTAs through implementing legislation; (2) the FTA's potential effects on the U.S. economy, and trade and foreign policy implications; and (3) mandates in the African Growth and Opportunity Act (AGOA, P.L. 106-200, as amended), in which Congress directed the President to seek African FTA partners and granted the region tariff benefits.

Kenya is not a major U.S. trade partner in global terms, but it is one of Africa's most dynamic economies and the second-largest beneficiary of AGOA's tariff benefits, excluding crude oil. The United States views Kenya as a strategic partner in the region: the country is a major beneficiary of U.S. security and foreign assistance, and a hub for U.S. security initiatives in the region. Kenya hosts the largest U.S. diplomatic mission on the continent.

On March 17, the United States Trade Representative (USTR) notified Congress of its intent to begin negotiations with Kenya, as required under Trade Promotion Authority (TPA) at least 90 days before negotiations commence. This means talks may begin as early as mid-June under TPA rules. USTR outlined four goals for the agreement: to serve as a model for future U.S. FTAs in Africa, to contribute to regional integration efforts, to build on AGOA objectives, and to expand U.S. trade and investment ties with Africa.

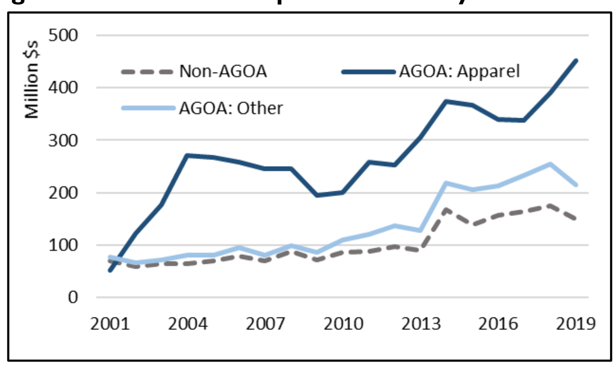
U.S.-Kenya Economic Ties

Kenya has achieved an average GDP growth rate of 5.9% over the past decade. However, it remains a lower middle-income country, with GDP per capita of just under $2,000 in 2019, and 83% of employment in the informal sector as of 2017. With almost 40% of its population of roughly 50 million under age 15, a coming surge in the labor force will present challenges and opportunities for growth prospects.

Currently, Kenya's economic relationship with the United States is concentrated in trade in goods. The U.S. Bureau of Economic Analysis does not provide official statistics on U.S.-Kenya services trade due to its low value. Nearly all bilateral investment activity is comprised of U.S. foreign direct investment (FDI) in Kenya, valued at $380 million in 2018. Majority-owned foreign affiliates of U.S. multinational firms employed 5,900 people in Kenya in 2017 (latest data available), with total sales of $1.0 billion.

Kenya is a relatively small U.S. trading partner (96th largest in 2019), but the United States is a major trading partner (5th largest) and second-largest export market for Kenya (absorbing 9% of Kenya's exports). In contrast, Kenya's largest trading partner, China, accounted for 3% of Kenya's exports in 2019 ($147 million of Kenya's reported $5.8 billion total) while supplying 21% of its reported imports ($3.6 billion of $17.1 billion). In 2019, the United States reported a goods trade deficit with Kenya, with U.S. exports of $375 million and imports of $667 million. U.S. exports were concentrated in plastics ($58 million), machinery and electrical machinery ($58 million), aircraft ($55 million), and wheat ($27 million). Imports consisted mostly of apparel ($454 million), macadamia nuts ($55 million), titanium ores ($52 million), and coffee/tea ($41 million). U.S. imports from Kenya have grown on average by more than 10% annually since 2001, when AGOA's tariff benefits took effect (**Figure 1**).

Figure 1. U.S. Goods Imports from Kenya



Source: Data from U.S. International Trade Commission.

Notes: African Growth and Opportunity Act (AGOA) figures include imports under the Generalized System of Preferences (GSP).

Tariff Rates and Other Trade Restrictions

As members of the World Trade Organization (WTO), trade between the United States and Kenya is governed by WTO commitments, including each country's most-favored nation (MFN) tariff rates—uniform rates applied to all other WTO members. The United States, however, provides unilateral preferential tariff treatment (below MFN rates) to most Kenyan exports through AGOA. AGOA is similar to the Generalized System of Preferences (GSP), but builds on GSP by providing duty-free treatment to a broader range of U.S. imports. Kenya is a member of the East African Community (EAC) customs union and shares a common external tariff schedule with the four other EAC members (Burundi, Rwanda, Tanzania, and Uganda), although it applies its own tariff rates on a limited number of products.

U.S. Tariffs. In 2019, nearly 80% of U.S. imports from Kenya entered duty-free under either AGOA or GSP, and remaining imports were largely duty-free on an MFN basis. The U.S. average effective applied tariff (total imports divided by duties) on Kenyan imports was 0.1% in 2019.

Kenya's Tariffs. According to the WTO, Kenya's average applied MFN tariff rate for all partners was 13.5% in 2018. Several top U.S. exports, such as machinery and aircraft, however, face low or zero tariffs. Kenya's agriculture sector presents the highest barriers to U.S. exports, with an average tariff of 20.3%, and relatively high tariffs on dairy (51.7%), animal products (23.1%), and cereals (22.2%).

Other Barriers. USTR's national trade barriers report notes concerns over Kenya's broad ban on genetically engineered food and feed products. It also highlights Kenya's 2019 Data Protection Act as potentially creating uncertainties for cross-border data flows. Kenya is not a member of the WTO Government Procurement Agreement, and grants exclusive preference to Kenyan companies for procurements under roughly $500,000.

Motivations for Trade Talks

For the United States, an FTA could fulfill the shared goal of Congress (as stipulated in AGOA) and the Administration to expand ties with trading partners in Africa and transitioning them to a more reciprocal framework. An FTA could also help foster economic growth in both countries and encourage Kenya's efforts to continue to improve its business environment and domestic economic reforms. Kenya's World Bank *Doing Business* score has risen from 58 to 73 since 2016. U.S. officials may also see the trade talks as a strategic tool to counter growing Chinese influence on the continent.

With AGOA set to expire in 2025, Kenya may see benefit in securing permanent preferential access to its second-largest export market. The Kenyatta administration may also see an FTA as supporting its economic agenda and signaling commitment to liberal economic policies in order to attract FDI. Kenya likely also seeks to bolster its strategic relationship with the United States, potentially boosting its position vis-à-vis regional rivals.

"… we look forward to negotiating and concluding a comprehensive, high-standard agreement with Kenya that can serve as a model … across Africa."
USTR Lighthizer, February 6, 2020

Key Issues for Bilateral FTA Talks

The significant economic development disparities between the two countries suggest possible differences in negotiating priorities. A key challenge will likely be to establish a framework for the talks that can achieve the ambitious level of commitments Congress directs the Administration to seek in FTAs. At the same time, such a framework must remain politically and economically viable in Kenya amidst domestic pressure to maintain protections for import-sensitive or nascent industries. Potentially contentious topics include the timing and extent of tariff liberalization including on agricultural goods; rules on intellectual property rights, investment, and data flows; and the level of labor and environmental protections. The Trump Administration describes the talks as an opportunity to develop a "model" FTA, but has not specified what changes from past practice this may entail. U.S. FTA talks with the South African Customs Union, which were suspended in 2006 in part due to divergent views over scope, highlight the importance of establishing clear parameters for the negotiations at the outset.

Moving Beyond AGOA

Another challenge is how to successfully transition from the current non-reciprocal bilateral trade relationship governed by AGOA and GSP. Establishing new apparel trade rules may be particularly complicated. As a lesser-developed beneficiary country (LDBC) under AGOA, Kenya qualifies for AGOA's third-country fabric rule, which allows Kenya to export apparel made with imported fabrics to the United States duty-free. In 2019, 97% of all U.S. apparel imports under AGOA were assembled in LDBCs from third-country fabrics. By contrast, U.S. FTAs typically use a more stringent "yarn forward" rule of origin, requiring local or U.S. sourcing of yarn and fabrics to qualify for duty-free treatment. Negotiators must also set rules for allowable levels of sourcing from other AGOA countries.

Relation to African Regional Trade Initiatives

Kenya's membership in the EAC and the African Continental Free Trade Area (AfCFTA)—and U.S. goals to support these regional initiatives—will also likely factor in the trade talks. Kenya's external trade policy is affected by its EAC commitments, and EAC interests may influence Kenya's negotiating positions. A U.S.-Kenya agreement could affect regional trade patterns (e.g., through rules of origin requirements) and set precedents for regional trade and investment rules. Similar issues apply regarding the AfCFTA, an Africa-wide trade agreement, originally set to to take effect this summer, but now delayed to 2021 due to COVID-19. The AfCFTA's MFN clause requires Kenya to extend tariff concessions granted to the United States to AfCFTA members on a reciprocal basis.

Timeline and Next Steps

USTR intends to pursue talks with Kenya under TPA, which sets parameters for the timeline and other conditions. TPA, currently set to expire on July 1, 2021, would allow for expedited congressional consideration of the FTA, if it makes progress toward achieving statutory negotiating objectives and the Administration satisfies TPA notification and consultation requirements. In late May, following a public comment period, USTR issued its agreement-specific negotiating objectives, as required by TPA at least 30 days before negotiations commence. The objectives suggest the Administration may seek some of the same novel provisions in the Kenya FTA as it sought in the U.S.-Mexico-Canada Agreement (USMCA). These include, among others, language on third-country agreements with "non-market economies," mechanisms to assess periodically the agreement's benefits, and the prohibition of imports produced with forced labor, regardless of origin.

Issues for Congress

A U.S.-Kenya FTA would address congressional statutory objectives and represent a milestone in U.S.-Africa trade and economic relations. As negotiations unfold, Congress may seek to consider and advise the Administration on the scope and extent of the agreement's potential commitments; how to prioritize FTA talks among other U.S. policy objectives in Africa, including responses to the COVID-19 pandemic; how to ensure the agreement and its rules of origin support regional integration efforts; and the types of support (e.g., capacity building funds) and potential flexibilities (e.g., phasing of commitments) appropriate to Kenya's level of development.

See Also: CRS In Focus IF10168, *Kenya*, by Lauren Ploch Blanchard; and CRS In Focus IF10149, *African Growth and Opportunity Act (AGOA)*, by Brock R. Williams.

Brock R. Williams, Specialist in International Trade and Finance

Lauren Ploch Blanchard, Specialist in African Affairs

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