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U.S.-Kenya FTA Negotiations

The United States and Kenya began free trade agreement (FTA) negotiations in 2020 under then-President Trump and President Uhuru Kenyatta of Kenya. Negotiations are currently on hold as the Biden Administration reviews its trade policy priorities. Some Members of Congress have pressed the Administration to proceed with the talks, but the July 1 expiration of U.S. Trade Promotion Authority (TPA), under which President Trump had notified Congress of his intent to enter into the bilateral FTA negotiations, and the planned 2022 presidential elections in Kenya may complicate the path forward. A U.S.-Kenya FTA would be the first U.S. FTA with a country in sub-Saharan Africa (SSA). Congressional interest may include (1) Congress's constitutional authority to regulate foreign commerce; (2) the FTA's potential effects on the U.S. economy, and trade and foreign policy implications; and (3) statutory mandates in the African Growth and Opportunity Act (AGOA, P.L. 106-200, as amended), which among other things directs the President to seek African FTA partners.

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.

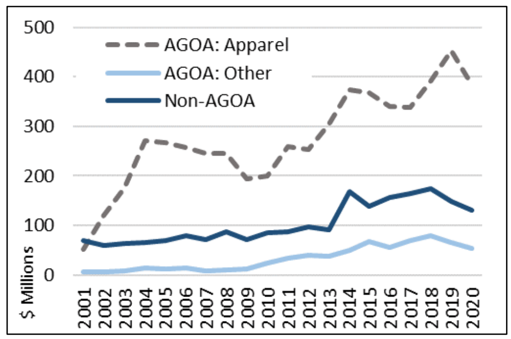
U.S.-Kenya Economic Ties

In the decade leading to the Coronavirus Disease 2019 (COVID-19) pandemic, Kenya achieved an average GDP growth rate of 5.8%. However, it remains a lower middle-income country, with GDP per capita of roughly $2,000, and more than 80% of employment in the informal sector. Given the economic vulnerability of much of the population and limited government resources, the country's 2020 economic contraction (estimated at 0.1-0.3% of GDP, and Kenya's first since the 1990s) has generated significant hardship for households and firms. A primary concern is human capital development; with almost 40% of its population of roughly 50 million under age 14, a coming surge in the labor force will present challenges and opportunities for growth prospects for Kenya.

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 $353 million in 2019. Majority-owned foreign affiliates of U.S. multinational firms employed 5,900 people in Kenya in 2018 (latest data available), with total sales of $1.0 billion.

Kenya is a relatively small U.S. trading partner (93rd largest in 2020), but the United States is a major trading partner (4th largest) and second-largest export market for Kenya (absorbing 8% of Kenya's exports). In contrast, Kenya's largest trading partner, China, accounted for 2% of Kenya's exports in 2020 ($138 million of Kenya's reported $6.0 billion total) while supplying 22% of its reported imports ($3.4 billion of $15.3 billion). In 2020, the United States reported a goods trade deficit with Kenya, with U.S. exports of $371 million and imports of $569 million. U.S. exports were concentrated in petroleum products ($58 million), aircraft ($57 million), and machinery ($52 million). Imports consisted mostly of apparel ($385 million), macadamia nuts ($42 million), and coffee ($44 million). U.S. imports from Kenya have grown by more than 10% annually (avg.) 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 other EAC members (Burundi, Rwanda, South Sudan, Tanzania, and Uganda), although it applies its own tariff rates on a limited number of products.

U.S. Tariffs. In 2020, more than 75% 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 duties divided by imports) on Kenyan imports was 0.1% in 2020.

Kenya's Tariffs. According to the WTO, Kenya's average applied MFN tariff rate for all partners was 13.4% in 2019. 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. Ongoing U.S. concerns include Kenya's broad ban on genetically engineered food and feed products. Kenya's 2019 Data Protection Act also potentially creates uncertainties for cross-border data flows. Kenya also 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 successive U.S. Administrations to expand ties with trading partners in Africa and transition to a more reciprocal trading framework. Reducing Kenyan trade barriers through an FTA could help U.S. firms maintain their competitiveness in the Kenyan market, especially with a new trade agreement between Kenya and the United Kingdom (UK) now in effect, and one with the European Union (EU) awaiting ratification, giving tariff and other advantages to UK and EU exporters. 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 from 2016 to 2020. 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 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're assessing how those negotiations [with Kenya] could fit into President Biden's broader agenda for building back better and exploring the potential to build a new trade model and structure..."
> USTR Katherine Tai, May 13, 2021

Key Issues for Bilateral FTA Talks

The significant economic development disparities between the two countries suggest possible differences in negotiating priorities. A key challenge could be to establish a framework for the talks that can achieve the ambitious level of commitments Congress traditionally directs the President to seek in FTAs, for which U.S. business stakeholders have advocated in a potential U.S.-Kenya FTA. 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. U.S. FTA talks with the South African Customs Union—the only other U.S. FTA negotiations attempted to date in SSA—were suspended in 2006 in part due to divergent views over scope, which may highlight the need to establish clear negotiating parameters for the Kenya talks at an early stage.

Moving Beyond AGOA

Another potential challenge is how to 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 2020, 98% 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 could also need to 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—are also likely to factor in potential trade talks. Kenya's EAC commitments affect its external trade policy, 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 that took effect in January 2021. 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

The Biden Administration has not clarified its position on possible resumption of the FTA negotiations. For its part, the Kenyatta government seeks a quick conclusion of the talks with the hope of achieving an agreement before the planned 2022 elections. From a congressional perspective, the expiration of U.S. TPA on July 1 creates uncertainty regarding the path forward for the trade talks. In past TPA legislation, Congress allowed for expedited consideration of trade agreement implementing legislation, if the Administration made progress toward achieving statutory negotiating objectives and satisfied TPA notification and consultation requirements during the negotiations. Some Members have urged the President to seek prompt renewal of TPA, but the Administration has not stated a position.

Issues for Congress

A U.S.-Kenya FTA would represent a milestone in U.S.-Africa trade and economic relations, but its current prospects are unclear. Congress may consider and advise the Administration on how to prioritize FTA talks with Kenya among other U.S. trade policy objectives; whether and in what form to seek renewal of TPA; the scope and extent of potential U.S.-Kenya FTA commitments to pursue; how to ensure an FTA with Kenya and its rules of origin support regional integration efforts and U.S. economic interests; and the potential types of support (e.g., trade capacity building funds) and flexibilities (e.g., phasing in of commitments) to include as 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.

Lauren Ploch Blanchard, Specialist in African Affairs

Brock R. Williams, Specialist in International Trade and Finance

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