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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. The Biden Administration has not resumed the FTA talks, but has stated its interest in deepening bilateral trade relations and sent a high-level U.S. delegation to Kenya in May 2022 to discuss trade issues. Some Members of Congress, including the chair of the Ways and Means committee, and U.S. business groups have pressed the Administration to resume and conclude the FTA. The 2015 grant of Trade Promotion Authority (TPA), under which President Trump initiated the FTA talks, expired in July 2021, potentially complicating congressional consideration of the proposed FTA.

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) directing the President to seek FTAs in Africa.

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.

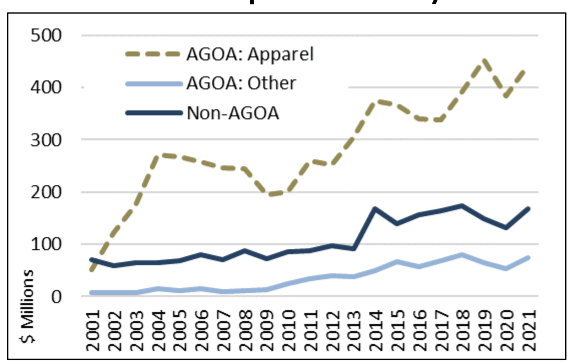
## U.S.-Kenya Economic Ties

In the decade leading to the Coronavirus Disease 2019 (COVID-19) pandemic, Kenya achieved an average GDP growth rate above 5%. 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. The economy contracted by 0.3% in 2020, Kenya's first GDP decline since the 1990s, but rebounded in 2021 with growth of 7.2% and the IMF estimates growth in 2022 of more than 5%. Despite this return to pre-pandemic levels of growth, potential long-term effects of pandemic-related setbacks in childhood education and its impact on human capital development remains a major concern. As of 2020, nearly 40% of Kenya's population of over 50 million was age 14 or younger, implying a coming surge in the labor force that presents both challenges and opportunities.

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 $339 million in 2020. Majority-owned foreign affiliates of U.S. multinational firms employed 4,600 people in Kenya in 2019 (latest data available), with total sales of $1.1 billion.

Kenya is a relatively small U.S. trading partner (92nd largest in 2021), but the United States is a major trading partner (4th largest) and third-largest export market for Kenya (absorbing 8% of Kenya's exports). In contrast, Kenya's largest trading partner, China, accounted for 3% of Kenya's exports in 2021 ($198 million of Kenya's reported $6.7 billion total) while supplying 21% of its reported imports ($4.0 billion of $19.4 billion). In 2021, the United States reported a goods trade deficit with Kenya, with U.S. exports of $551 million and imports of $685 million. U.S. exports were concentrated in petroleum products ($125 million), pharmaceutical products ($68 million), and aircraft ($59 million). Imports consisted mostly of apparel ($449 million), macadamia nuts ($51 million), and coffee ($41 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.

### 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, although it applies its own tariff rates on some products. Other EAC members are Burundi, Rwanda, South Sudan, Tanzania, Uganda, and since 2022, the Democratic Republic of the Congo (DRC).

**U.S. Tariffs.** In 2021, more than 75% of U.S. imports from Kenya entered duty-free under AGOA, 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 0.4% in 2021.

**Kenya's Tariffs.** According to the WTO, Kenya's average applied MFN tariff rate for all partners was 13.5% in 2020.

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 $450,000.

## 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, giving tariff and other advantages to UK exporters. An interim EU-Kenya trade agreement (due to delays in the ratification of an EU-EAC pact) is also under negotiation. A U.S.-Kenya FTA may 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 third-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.

## 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 2021, 99% of U.S. apparel imports from Kenya were assembled 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 Assistant USTR for Africa led a trade delegation, including officials from the Departments of State, Labor, Commerce, and Agriculture, to Kenya in early May, but made no announcements regarding resuming FTA negotiations. For its part, the Kenyatta government seeks a quick conclusion of the talks with the hope of achieving an agreement before planned August 2022 elections. From a congressional perspective, the July 2021 expiration of U.S. TPA may create challenges regarding the path forward for an FTA. 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 on its possible renewal.

## 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.

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