Congressional Research Service
Informing the legislative debate since 1914

IN FOCUS

Updated August 8, 2023

U.S.-Kenya Trade Negotiations

The United States and Kenya began free trade agreement (FTA) negotiations in 2020 under then-President Donald Trump and then-President Uhuru Kenyatta of Kenya. The Joseph R. Biden Administration did not continue the FTA talks; it instead launched the U.S.-Kenya Strategic Trade and Investment Partnership (STIP) in July 2022. STIP aims to establish "high-standard commitments" between the United States and Kenya on various nontariff trade issues—including on agriculture, anti-corruption efforts, digital trade, environmental issues, workers' rights, and trade facilitation—but not to address tariff barriers, as would a comprehensive FTA.

The Biden Administration has not indicated whether or not it will seek congressional approval for STIP. Congress nevertheless may assess the talks with regard to: 1) Congress's constitutional authority to regulate foreign commerce; 2) congressional oversight of the negotiations; 3) the agreement's potential effects on the U.S. economy, and trade and foreign policy implications; and 4) 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. Increased trade is a key U.S. bilateral priority; U.S. Trade Representative Katherine Tai led the official U.S. delegation to President William Ruto's inauguration. The U.S. government also views Kenya as a strategic partner in the region more broadly; Kenya is a major beneficiary of U.S. security and foreign assistance, acts as a hub for U.S. security initiatives in the region, and hosts the largest U.S. diplomatic mission in sub-Saharan Africa (SSA).

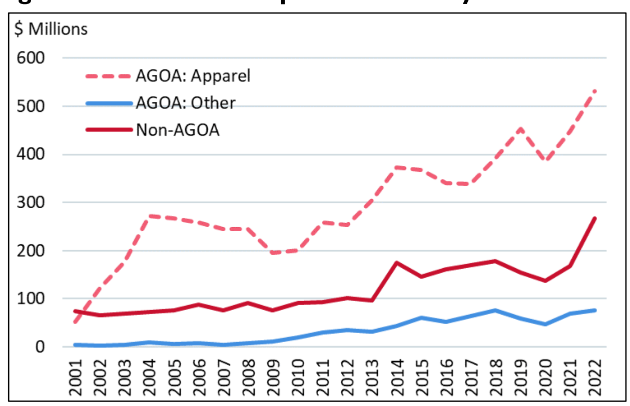
U.S.-Kenya Economic Ties

In the decade prior to the COVID-19 pandemic, Kenya achieved an average annual GDP growth rate above 5%. At the same time, it remains a lower middle-income country, with GDP per capita under $2,300, and more than 80% of employment in the informal sector. The economy contracted by 0.25% in 2020, Kenya's first GDP decline since the 1990s, but rebounded in 2021 with 7.5% growth and may grow more than 5% in 2023, the International Monetary Fund estimates. Despite a 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 remain a major concern. As of 2022, roughly 38% of Kenya's population of 57 million was age 14 or younger, suggesting a coming surge in the labor force that presents both challenges and opportunities.

Kenya's economic relationship with the United States centers on trade in goods. There also is trade in services, but official data on its value and sectoral breakouts is not available. Nearly all bilateral investment activity is from U.S. foreign direct investment in Kenya, valued at $277 million in 2022. Foreign affiliates of U.S. multinational firms employed 4,400 people in Kenya in 2020 (latest data available), with total sales of $2.1 billion.

Kenya is a relatively small trading partner for the United States (94th largest in 2022), but the United States is a major trading partner for Kenya (4th largest) and the second-largest single export market after Uganda, accounting for 9% of Kenya's exports. In contrast, Kenya's largest trading partner, China, accounted for 3% of Kenya's exports in 2022 ($232 million of Kenya's reported $7.6 billion total) and 18% of Kenya's reported imports ($3.8 billion of $21 billion). In 2022, the United States had a goods trade deficit with Kenya; U.S. exports totaled $604 million and imports $875 million. U.S. exports were concentrated in petroleum products ($198 million), aerospace and related parts ($69 million), and chemicals ($41 million). Imports consisted mostly of apparel ($544 million), fruits and nuts ($128 million), and metal ores ($60 million). U.S. imports from Kenya have grown by 10% annually, on average, since 2001, when AGOA's tariff benefits took effect (**Figure 1**).

Figure 1. U.S. Goods Imports from Kenya



Source: CRS; data from U.S. International Trade Commission.

Tariff Rates and Other Trade Restrictions

As the United States and Kenya are both members of the World Trade Organization (WTO), trade between them is governed by their WTO commitments, which include reciprocal most-favored nation (MFN) tariff rate access to all other WTO members. The United States also provides unilateral duty-free treatment to most Kenyan exports through the Generalized System of Preferences (GSP) and AGOA. AGOA builds on GSP by providing duty-free treatment to a broader range of U.S. imports. Both programs require congressional reauthorization every few years. GSP lapsed at the end of 2020 and AGOA is set to expire at the end of September 2025. AGOA countries maintain access to both programs, even though GSP authorization expired.

Kenya is a member of the East African Community (EAC) customs union and shares a common external tariff schedule with the other EAC members, though it applies its own tariff rates on some products. Other EAC members are Burundi, the Democratic Republic of the Congo (DRC), Rwanda, South Sudan, Tanzania, and Uganda. The United States signed a Trade and Investment Framework Agreement with the EAC in 2008.

U.S. Tariffs. In 2022, almost 70% of U.S. imports from Kenya entered duty-free under AGOA, and remaining imports were largely duty-free under GSP or 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 14.3% in 2022. Several top U.S. exports, such as machinery and aircraft face low or zero tariffs. Kenya's agriculture sector presents the highest barriers to U.S. exports, with an average tariff of 24.5%, and relatively high tariffs on dairy (53.1%), animal products (30%), and cereals (28.1%).

Other Barriers. The U.S. government identified certain nontariff barriers (NTBs) as ongoing concerns for U.S. businesses, including Kenya's complex import requirements for agricultural products and weak intellectual property protections. Opaque rules under Kenya's 2019 Data Protection Act also potentially create uncertainties for cross-border data flows. Additionally, Kenya is not a member of the WTO Government Procurement Agreement, and its government grants exclusive preference to Kenyan companies for procurements under roughly $450,000.

Motivations for Trade Talks

For the United States, a final STIP agreement could enhance U.S.-Kenya bilateral trade relations by addressing nontariff barriers, and it could become a model for future U.S. efforts to expand ties with trading partners in Africa. Reducing NTBs could lower costs for U.S. businesses and help U.S. firms maintain their competitiveness in the Kenyan market, especially given Kenya's new trade agreements with the United Kingdom (UK, effective since 2021) and the European Union (EU, negotiations completed in June 2023), both of which lower tariffs. A U.S.-Kenya trade agreement could 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 rose from 58 to 73 between 2016 and 2020. U.S. officials may also see the trade talks as a strategic tool to counter growing Chinese influence on the continent.

Reportedly, the Kenyan government sees the STIP as a complement to AGOA and a stepping stone for a potential comprehensive FTA in the future. Kenyan officials may also seek to bolster its strategic relationship with the United States, potentially boosting Kenya's position vis-à-vis regional rivals.

Key Issues for STIP Talks

The significant economic development disparities between the United States and Kenya may affect their respective negotiating priorities. The U.S. government may seek to negotiate commitments close to those in comprehensive FTAs it has with countries that are more developed than Kenya. Such a framework could present challenges in Kenya, where the government faces domestic pressure to maintain protections for import-sensitive or nascent industries. Potentially contentious topics include rules on intellectual property rights, investment, and data flows, as well as labor and environmental protections. STIP talks may need to establish clear negotiating parameters at an early stage to set expectations for the United States and Kenya. In 2006, U.S. FTA talks with the South African Customs Union—the only other U.S. FTA negotiations attempted to date in SSA—were suspended, due in part to divergent views over scope.

Moving Beyond Nontariff Barriers

While the STIP is not slated to address tariff barriers, some U.S. and Kenyan businesses support the inclusion of tariffs in the talks. For example, the U.S. agriculture industry asserts that Kenyan tariffs on agricultural products will continue to hinder U.S. market access even if NTBs concerns are addressed. Meanwhile, Kenyan exporters expressed interest in gaining permanent market access to the United States under a comprehensive FTA, rather than using preferential benefits provided under AGOA and GSP. Some analysts note that Kenya's benefits of entering into an FTA with the United States may not be greater than those it currently enjoys under AGOA, especially for textile and apparel products. Kenya qualifies for AGOA's third-country fabric rule, which allows Kenya the flexibility to export apparel made with imported fabrics to the United States duty-free. In 2022, 98% 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.

Relation to African Regional Trade Initiatives

Kenya's membership in the EAC and the African Continental Free Trade Area (AfCFTA), and U.S. efforts to support these regional initiatives, are also likely to factor in 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 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.

Timeline and Next Steps

The United States and Kenya held pre-negotiating discussions in February 2023 and the first negotiating rounds in April 2023. For its part, the Ruto government hopes to finalize an agreement by April 2024. USTR has not confirmed a timeline for completing negotiations.

Issues for Congress

The STIP negotiations are the only known prospectively binding trade negotiations the United States is pursuing in Africa. As it has with some of the trade initiatives the Biden Administration is pursuing in other regions, Congress may seek to engage in the process, given its historical role of authorizing and implementing trade agreements through legislation. As negotiations continue, Congress may consider whether or not to urge the Administration to consult, collaborate, and maintain transparency with Congress on STIP negotiating goals and process. Congress may also consider how STIP may 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 potentially include given Kenya's level of development.

Also see CRS In Focus IF10168, *Kenya* and CRS In Focus IF10149, *African Growth and Opportunity Act (AGOA)*.

Liana Wong, Analyst in International Trade and Finance
Lauren Ploch Blanchard, Specialist in African Affairs