

U.S.-Kenya Strategic Trade and Investment Partnership
Summary of Texts Proposed by the U.S. Side
May 2023

To date, in negotiations between the United States and Kenya under their Strategic Trade and Investment Partnership (STIP), the U.S. side has proposed texts covering the following trade areas from the U.S. negotiating goals for the STIP:

Agriculture – First Tranche

The United States tabled proposed text on agriculture that includes a broad set of provisions designed to open or expand opportunities for agricultural producers to access markets and advance food security. In particular, the text is aimed at increasing transparency and regulatory certainty for agricultural exporters and importers, as well as encouraging collaboration and innovation. The text includes a number of provisions regarding food safety, plant health and animal health protection, as well as other provisions of importance for agricultural trade, preserving the role of regulatory authorities to ensure the safety of their domestic food supplies while also facilitating trade in agricultural goods.

These provisions are intended to: improve transparency of regulatory processes and procedures; advance science-based decision-making to protect human, plant, and animal life and health; improve processes and promote cooperation regarding regulatory and administrative requirements; and facilitate agricultural trade. The text also includes provisions related to transparency in import licensing procedures for agricultural products, certification requirements, and equivalency to ensure that any requirements for importation are clearly communicated to agricultural producers. The agriculture text also contains provisions intended to promote food security, such as disciplines regarding the imposition of export restrictions.

Anticorruption

The United States tabled a proposed text on anticorruption consisting of nine articles and covering a wide range of topics. This text includes high anticorruption standards to prevent and combat bribery and other forms of corruption. It includes provisions to address priorities and initiatives of the United States.

The text recognizes the importance of preventing and combating bribery and corruption in the context of labor law implementation and enforcement, and provides for strong obligations to fight corruption related to abusive practices in the recruitment of migrant workers. With a view towards enhancing efforts to combat environmental degradation, the text also recognizes the importance of preventing and combating bribery and corruption in the context of strengthening environmental governance and enforcement. In addition to recognizing obligations under the *United Nations Convention against Corruption*, the text recognizes the importance of the successful recovery and return of the proceeds of corruption and the principles adopted at the *2017 Global Forum on Asset Recovery*.

Provisions to prevent and combat bribery include obligations to adopt or maintain measures to establish as criminal offenses the bribery of public officials, embezzlement, and money laundering. Additionally, this text includes requirements for the maintenance of books and

records to prevent the hiding of corruption, disallows the tax deductibility of bribes, requires measures for the seizure of assets derived from corruption, and permits denial of entry to foreign public officials who engaged in corruption. The text also requires the adoption of procedures to report corruption and to protect whistleblowers who report corruption, including protection for external auditors.

To promote integrity among public officials, this text requires measures for the training of public officials, transparency and accountability of public officials, and the reporting by public officials of any conflicts of interest and acts of corruption. Additionally, the text mandates procedures for the removal of public officials who are charged with or convicted of corruption, along with measures to prevent opportunities for corruption by members of the judiciary. To prevent the hiding of ill-gotten gains, the text also includes a provision requiring the maintenance of a central register for companies to report beneficial ownership information.

As combatting corruption requires the active participation of segments outside of the public sector, this text requires measures to promote the participation of enterprises, civil society, non-governmental organizations, worker organizations, and community-based organizations through public information and education programs, public awareness, and the dissemination of information concerning bribery and corruption. Additionally, the text includes a provision obligating government contractors to maintain a written code of business ethics and conduct and to exercise due diligence to prevent and detect criminal conduct. Finally, this text includes provisions to affirm effective enforcement measures.

Micro, Small, and Medium-sized Enterprises

The U.S. side has tabled proposed text for a chapter on micro, small and medium-sized enterprises (MSMEs) that highlights the smallest businesses and recognizes the fundamental role of MSMEs in maintaining the dynamism and competitiveness of the economies of the United States and Kenya and the integral role of the private sector in promoting MSME cooperation.

The text proposed by the U.S. side promotes ongoing cooperation to increase MSME trade and investment opportunities, subject to the availability of resources, through exchange of information and best practices in areas such as promoting MSME participation in international trade and improving MSME access to capital and credit, training programs, trade education, trade finance, trade missions, and trade facilitation. The text also aims to enhance cooperation among MSME support centers, promote the participation of MSMEs in digital trade, and help MSMEs adapt to changing market conditions.

The proposed text includes a focus on activities to promote MSMEs owned by underserved and underrepresented groups, including women, indigenous peoples, youth, and minorities, as well as start-ups and agricultural and rural MSMEs.

The proposed text establishes provisions promoting online, publicly accessible information resources useful for MSMEs trading, investing, or doing business in the United States and Kenya. This information may include customs regulations and procedures, technical regulations, foreign investment regulations, business registration procedures, intellectual property rights, and other information.

The proposed text also provides for a periodic MSME dialogue that is inclusive of MSMEs owned by diverse, underserved, and underrepresented groups in the United States and Kenya. Among other things, this dialogue could consider small business trade opportunities and challenges between the United States and Kenya. It is envisioned to be an important mechanism for ensuring that MSMEs in the United States and Kenya will continue to be heard and their views considered in the future.

Services Domestic Regulation

The U.S. side has tabled proposed text on development and administration of rules and procedures governing licenses or other authorizations required to supply services (sometimes referred to as “services domestic regulation”). This text builds on the outcomes agreed to by World Trade Organization (WTO) Members in December 2021 in the Joint Statement Initiative on Services Domestic Regulation.

Difficulty in obtaining licenses or other authorizations in a foreign jurisdiction can be a barrier to services exporters, particularly small companies such as professional services firms (architects, engineers, accountants, lawyers, etc.). The aim of the proposed text is to ensure that service suppliers are treated fairly and in a transparent manner when they apply for permission to operate in a given sector, and that there is a smooth flow of information between the applicant for a license and the regulator. At the same time, the proposed text does not interfere with the ability of regulators to apply domestic standards to protect important interests such as safety, health, and the environment, or to ensure worker and consumer welfare.

In striking this important balance, the proposed text requires that laws and regulations be transparent and that regulators be independent of the industry that they oversee. The proposed text further provides that regulators would inform applicants of the requirements to obtain a license in order to provide applicants a fair opportunity to demonstrate that they meet those requirements, and that regulators would decide on whether to issue a license in a reasonable period of time. The proposed text also prohibits licensing rules from discriminating on the basis of gender.

Given the complexity of supervision and regulation of the financial services sector, a special set of rules is designed to preserve the ability of regulators overseeing that sector to protect the stability of the financial system.

In recent years, there has been rapid growth in the ability to apply for licenses online, streamlining the process for both applicants and regulators. The proposed text encourages regulators to continue experimenting with new technologies to make the application process easier, especially with an eye to reducing unnecessary administrative burdens on small and medium-sized businesses.

Notably, the proposed text goes beyond the existing WTO rules by applying these high standards to all sectors in which foreign service suppliers are permitted to operate, rather than limiting the obligations to an arbitrary set of sectors covered by formal WTO commitments that become outdated and may not reflect the reality of the marketplace.