



OFFICE *of the* UNITED STATES TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT

United States-Kenya Negotiations

Summary of Specific Negotiating Objectives

May 2020

Introduction

On March 17, 2020, the Trump Administration notified Congress that the President intends to negotiate a trade agreement with the Republic of Kenya, in accordance with section 105(a)(1)(A) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (the Trade Priorities and Accountability Act). This notification was made following a February 6, 2020, meeting at the White House between President Trump and Kenyan President Uhuru Kenyatta where the two presidents agreed to pursue negotiations on a trade agreement between the United States and Kenya.

In pursuing negotiations on a trade agreement with Kenya, we are responding to Congress' support, as expressed in the African Growth and Opportunity Act (AGOA), to negotiate reciprocal and mutually beneficial trade agreements that serve the interests of both the United States and the countries of sub-Saharan Africa. Our vision is to conclude an agreement with Kenya that can serve as a model for additional agreements in Africa, leading to a network of agreements that contribute to Africa's regional integration objectives. In addition, our goal is to conclude an agreement that builds on the objectives of AGOA and will serve as an enduring foundation to expand U.S.-Africa trade and investment across the continent.

We seek to support higher-paying jobs in the United States and grow the U.S. economy by improving U.S. opportunities for trade and investment with Kenya. The current health crisis and economic challenges posed by COVID-19 underscore our desire to strengthen our economic relationship with Kenya and lay the foundations for stronger, more resilient economies to address the current and future health crises. Our specific objectives for this negotiation will comply with the specific objectives set forth by Congress in section 102 of the Trade Priorities and Accountability Act. In doing so, we aim to address both tariff and non-tariff barriers and to achieve fairer, more balanced trade. We are committed to working closely with Congress, including on matters of scope, and to following the requirements of the Trade Priorities and Accountability Act and the guidelines issued pursuant to section 104(a)(3) of the Act. Further, we recognize that effective implementation and enforcement of the commitments made by our trading partners under our trade agreements are vital to the success of those agreements, and we will seek provisions that ensure effective implementation and enforcement.

As a part of the process of formulating these objectives, on March 23, 2020, we solicited public comments by Federal Register notice regarding objectives and positions for a U.S.-Kenya trade agreement and received over 5,000 submissions.

We are committed to concluding these negotiations with timely and substantive results for U.S. consumers, businesses, farmers, ranchers, and workers, consistent with U.S. priorities and negotiating objectives established by Congress in statute. As part of this process, the Administration will update these negotiating objectives in the future, consistent with section 105(a)(1)(D) of the Trade Priorities and Accountability Act. We look forward to continuing to work with Congress as negotiations with Kenya begin, and we are committed to working with Congress closely and transparently throughout the process.



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Summary of Specific Negotiating Objectives for the Initiation of United States-Kenya Negotiations

Overall:

- Seek a mutually beneficial trade agreement that can serve as a model for additional agreements across Africa.
- Support regional integration, where appropriate.
- Build on the objectives of the African Growth and Opportunity Act, promote good governance and the rule of law.

Trade in Goods:

- Ensure fair, balanced, and reciprocal trade with Kenya.
- Increase transparency in import and export licensing procedures.
- Discipline import and export monopolies to prevent trade distortions.

Industrial Goods

- Secure comprehensive duty-free market access for U.S. industrial goods and strengthen disciplines to address non-tariff barriers that constrain U.S. exports.
- Expand market access for remanufactured goods exports by ensuring that they are not classified as used goods that are restricted or banned.
- Secure duty-free access for U.S. textile and apparel products and seek to improve competitive opportunities for exports of U.S. textile and apparel products while taking into account U.S. import sensitivities.
- Secure commitments with respect to greater regulatory compatibility to facilitate U.S. exports in key goods sectors and reduce burdens associated with unnecessary differences in regulation, including through regulatory cooperation where appropriate.

Agricultural Goods

- Secure comprehensive market access for U.S. agricultural goods in Kenya by reducing or eliminating tariffs.
- Provide reasonable adjustment periods for U.S. import-sensitive agricultural products, engaging in close consultation with Congress on such products before initiating tariff reduction negotiations.



- Eliminate practices that unfairly decrease U.S. market access opportunities or distort agricultural markets to the detriment of the United States, including:
 - Non-tariff barriers that discriminate against U.S. agricultural goods; and
 - Restrictive rules in the administration of tariff rate quotas.
- Promote greater regulatory compatibility to reduce burdens associated with unnecessary differences in regulations and standards, including through regulatory cooperation where appropriate.
- Establish specific commitments for trade in products developed through agricultural biotechnologies, including on transparency, cooperation, and managing low level presence issues, and a mechanism for exchange of information and enhanced cooperation on agricultural biotechnologies.

Sanitary and Phytosanitary Measures (SPS):

- Provide for enforceable and robust SPS obligations that build upon World Trade Organization (WTO) rights and obligations, including with respect to science-based measures, good regulatory practices, import checks, equivalence, regionalization, certification, and risk analysis, making clear that each Party can set for itself the level of protection it believes to be appropriate to protect food safety and plant and animal health in a manner consistent with its international obligations.
- Establish a mechanism to remove expeditiously unwarranted barriers that block the export of U.S. food and agricultural products in order to obtain more open, equitable, and reciprocal market access.
- Establish rules that further encourage the adoption of international standards and strengthen implementation of the obligation to base SPS measures on science if the measure is more restrictive than the applicable international standard.
- Establish new and enforceable rules to eliminate unjustified trade restrictions or unjustified commercial requirements (including unjustified labeling) that affect new technologies.
- Establish new and enforceable rules to ensure that science-based SPS measures are developed and implemented in a transparent, predictable, and non-discriminatory manner.
- Include strong provisions on transparency and public consultation that require Kenya to publish drafts of regulations, allow stakeholders in other countries to provide comments on those drafts, and require authorities to address significant issues raised by stakeholders and explain how the final measure achieves the stated objectives.
- Obtain commitment that Kenya will not foreclose export opportunities to the United States with respect to third-country export markets, including by requiring third countries to align



with non-science based restrictions and requirements or to adopt SPS measures that are not based on ascertainable risk.

- Improve communication, consultation, and cooperation between governments to share information and work together on SPS issues in a transparent manner, including on new technologies.
- Establish an active SPS Chapter Committee that will discuss, at least on annual basis, bilateral and third party SPS specific trade concerns, regulatory cooperation, and implementation of good regulatory practices.

Customs and Trade Facilitation:

- Ensure high standards for implementation of WTO agreements involving trade facilitation and customs valuation.
- Increase transparency by ensuring that all customs laws, regulations, and procedures are published on the Internet as well as designating points of contact for questions from traders.
- Ensure that, to the greatest extent possible, shipments are released immediately after determining compliance with applicable laws and regulations and provide for new disciplines on timing of release, automation, and use of guarantees.
- Provide for streamlined and expedited customs treatment for express delivery shipments, including for shipments above any de minimis threshold. Provide for simplified customs procedures for low value goods and a more reciprocal de minimis shipment value.
- Ensure that procedures facilitate e-commerce shipments and a simplified process for the return of domestic origin goods to meet the challenges disproportionately impacting small business e-commerce.
- Provide for the use of electronic customs forms, and electronic signatures and authentications to promote and facilitate small business trade.
- Ensure that Kenya administers customs penalties in an impartial and transparent manner and avoids conflicts of interest in the administration of penalties.
- Provide for automation of import, export, and transit processes, including through supply chain integration; reduced import, export, and transit forms, documents, and formalities; enhanced harmonization of customs data requirements; and advance rulings regarding the treatment that will be provided to a good at the time of importation.
- Provide for both administrative and judicial appeal of customs decisions, and provide procedures for ensuring uniformity in customs treatment of goods.



- Provide for online publication of and electronic payment of duties, taxes, fees, and charges imposed on or in connection with importation or exportation.
- Provide for the use of risk management systems for customs control and post-clearance audit procedures to ensure compliance with customs and related laws.
- Provide for disciplines on the use of customs brokers.
- Provide for disciplines on the use of reusable containers.
- Establish mutually beneficial cooperation mechanisms for the prevention of duty evasion and for combating customs offenses.
- Establish a committee for the Parties to share information and cooperate on trade priorities with a view to resolving inconsistent treatment of commercial goods.

Rules of Origin:

- Develop rules of origin that ensure that the benefits of the Agreement go to products genuinely made in the United States and Kenya.
- Ensure that the rules of origin incentivize production in the territory of the Parties.
- Establish origin procedures that streamline the certification and verification of rules of origin and that promote strong enforcement, including with respect to textiles.
- Promote origin procedures that ensure that goods that meet the rules of origin receive the Agreement's benefits.

Technical Barriers to Trade (TBT):

- Require application of decisions and recommendations adopted by the WTO TBT Committee that apply to standards, conformity assessment, transparency, and other areas.
- Include strong provisions on transparency and public consultation that require the publication of drafts of standards, technical regulations and conformity assessment procedures, allow stakeholders in other countries to provide comments on those drafts, and require authorities to address significant issues raised by stakeholders and explain how the final measure achieves the stated objectives.
- Ensure national treatment of conformity assessment bodies without conditions or limitations and encourage the use of international conformity assessment systems, including mutual recognition arrangements.
- Obtain commitments that Kenya will not foreclose export opportunities to the United States with respect to third-country export markets, including by requiring third countries to



withdraw or limit the use of any relevant standard, guide, or recommendation developed in accordance with the TBT Committee Decision.

- Establish an active TBT Chapter Committee that will discuss bilateral and third-party specific trade concerns, coordination of regional and multilateral activities, regulatory cooperation, and implementing good regulatory practices.

Good Regulatory Practices:

- Obtain commitments that can facilitate market access and promote greater compatibility between U.S. and Kenya regulations, including by:
 - Ensuring transparency and accountability in the development, implementation, and review of regulations, including by publication of proposed regulations;
 - Providing meaningful opportunities for public comment in the development of regulations;
 - Promoting the use of impact assessments and other methods of ensuring regulations are evidence-based and current, as well as avoiding unnecessary redundancies; and
 - Applying other good regulatory practices such as internal coordination mechanisms, and securing commitments to ensure transparency as well as meaningful opportunities to provide comments to expert regulatory advisory committees.

Transparency, Publication, and Administrative Measures:

- Secure commitments to:
 - Promptly publish laws, regulations, administrative rulings of general application, and other procedures that affect trade and investment;
 - Provide meaningful opportunities for public comment on measures before they are adopted and finalized; and
 - Establish and maintain mechanisms for review and, if warranted, correction of final administrative actions.

Trade in Services, Including Telecommunications and Financial Services:

Trade in Services

- Secure commitments from Kenya to provide fair and open conditions for services trade, including through:



- Rules that apply to all services sectors, including rules that prohibit:
 - Discrimination against foreign services suppliers;
 - Restrictions on the number of services suppliers in the market; and
 - Requirements that cross-border services suppliers establish a local presence.
 - Specialized sectoral disciplines, including rules to help level the playing field for U.S. delivery services suppliers in Kenya; and
 - Where any exceptions from core disciplines are needed, the negotiation, on a negative list basis, of the narrowest possible exceptions with the least possible impact on U.S. firms.
- Retain flexibility for U.S. non-conforming measures, including U.S. non-conforming measures for maritime services.
 - Improve the transparency and predictability of regulatory procedures in Kenya.

Telecommunications

- Promote competitive supply of telecommunications services by facilitating market entry.
- Secure commitments to provide reasonable network access for telecommunications suppliers.
- Establish provisions protecting telecommunications services suppliers' choice of technology.

Financial Services

- Expand competitive market opportunities for U.S. financial service suppliers to obtain fairer and more open conditions of financial services trade.
- Improve transparency and predictability in Kenya's financial services regulatory procedures, and ensure that Kenya's financial regulatory measures are administered in an equitable manner.
- Include state-of-the-art commitments to ensure that Kenya refrains from imposing measures in the financial services sector that restrict cross-border data flows or that require the use or installation of local computing facilities.

Digital Trade in Goods and Services and Cross-Border Data Flows:

- Secure commitments not to impose customs duties on digital products (e.g., software, music, video, e-books).



- Ensure non-discriminatory treatment of digital products transmitted electronically and guarantee that these products will not face government-sanctioned discrimination based on the nationality or territory in which the product is produced.
- Establish state-of-the-art rules to ensure that Kenya does not impose measures that restrict cross-border data flows and does not require the use or installation of local computing facilities.
- Promote the interoperability of data protection regimes and mechanisms to facilitate cross-border information transfers.
- Establish rules to prevent governments from mandating the disclosure of computer source code or algorithms.
- Establish rules that limit non-IPR civil liability of online platforms for third-party content, subject to the Parties' rights to adopt non-discriminatory measures for legitimate public policy objectives or that are necessary to protect public morals.

Investment:

- Secure for U.S. investors in Kenya important rights consistent with U.S. legal principles and practice, while ensuring that Kenyan investors in the United States are not accorded greater substantive rights than domestic investors.
- Establish rules that reduce or eliminate barriers to U.S. investment in all sectors in Kenya.

Intellectual Property:

- Promote adequate and effective protection of intellectual property rights, including through the following:
 - Obtain commitments to ratify or accede to international treaties reflecting best practices in intellectual property protection and enforcement;
 - Provide a framework for effective cooperation between Parties on matters related to the adequate and effective protection and enforcement of intellectual property rights;
 - Promote transparency and efficiency in the procedures and systems that establish protection of intellectual property rights, including making more relevant information available online;
 - Seek provisions governing intellectual property rights that reflect a standard of protection similar to that found in U.S. law, including, but not limited to, protections related to trademarks, patents, copyright and related rights (including, as appropriate, exceptions and limitations), undisclosed test or other data, and trade secrets;



- Provide strong protection and enforcement for new and emerging technologies and new methods of transmitting and distributing products embodying intellectual property, including in a manner that facilitates legitimate digital trade, including, but not limited to, technological protection measures;
- Ensure standards of protection and enforcement that keep pace with technological developments, and in particular ensure that rights holders have the legal and technological means to control the use of their works through the Internet and other global communication media, and to prevent the unauthorized use of their works;
- Prevent or eliminate government involvement in the violation of intellectual property rights, including cyber theft and piracy;
- Secure fair, equitable, and nondiscriminatory market access opportunities for U.S. persons that rely upon intellectual property protection;
- Prevent or eliminate discrimination with respect to matters affecting the availability, acquisition, scope, maintenance, use, and enforcement of intellectual property rights;
- Respect the Declaration on the TRIPS Agreement and Public Health, adopted by the WTO at the Fourth Ministerial Conference at Doha, Qatar, on November 14, 2001, and ensure that the Agreement fosters innovation and promotes access to medicines, reflecting a standard similar to that found in U.S. law;
- Prevent the undermining of market access for U.S. products through the improper use of Kenya's system for protecting or recognizing geographical indications, including any failure to ensure transparency and procedural fairness, or adequately protect generic terms for common use; and
- Provide the means for adequate and effective enforcement of intellectual property rights, including by requiring accessible, expeditious, and effective civil, administrative, and criminal enforcement mechanisms. Such mechanisms include, but are not limited to, strong protections against counterfeit and pirated goods.

Procedural Fairness for Pharmaceuticals and Medical Devices:

- Seek standards to ensure that government regulatory reimbursement regimes are transparent, provide procedural fairness, are nondiscriminatory, and provide full market access for U.S. products.

State-Owned and Controlled Enterprises (SOEs):

- Build on the definition of an SOE in the United States-Mexico-Canada Agreement.
- Retain the ability to support SOEs engaged in providing domestic public services.



- Establish rules requiring that SOEs accord non-discriminatory treatment with respect to the purchase and sale of goods and services.
- Establish rules requiring that SOEs act in accordance with commercial considerations with respect to the purchase and sale of goods and services.
- Establish strong subsidy disciplines applicable to SOEs, beyond the disciplines set out in the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement).
- Require that SOEs not cause harm to the United States through provision of subsidies.
- Require that SOEs not cause harm to the domestic industry of the United States via subsidized SOE investment.
- Ensure impartial regulation of SOEs, designated monopolies, and private companies.
- Ensure that Parties provide jurisdiction to courts over the commercial activities of foreign SOEs.
- Allow Parties to request information related to the level of government ownership and control of a given enterprise and the extent of government support.
- Create a mechanism for Parties to regularly discuss and exchange information related to third party SOEs operating in the markets of the Parties, including, *inter alia*, the extent to which third party SOEs accord non-discriminatory treatment and act in accordance with commercial considerations with respect to the purchase and sale of goods and services.

Subsidies:

- Seek to build on the existing transparency principles in the SCM Agreement.
- Seek to establish a consultative mechanism to discuss subsidy issues that arise in the bilateral relationship.
- Seek to facilitate the exchange of information and to expand cooperation with respect to subsidy issues outside of the bilateral relationship.
- Seek to develop disciplines that address the creation or maintenance of capacity inconsistent with market principles.

Competition Policy:

- Maintain and implement rules that prohibit anticompetitive business conduct, protect consumers from fraudulent and deceptive commercial acts and practices, and ensure that those rules are transparent.



- Establish or affirm basic rules for procedural fairness on competition law enforcement, including by: ensuring non-discriminatory treatment for persons of the other Party; allowing representation by counsel; recognizing privileged communications; providing for the protection of confidential and privileged information and communications; ensuring access to information necessary to prepare an adequate defense; providing an opportunity to present rebuttal evidence and cross-examine testifying witnesses; and ensuring the resolution of competition law cases before an impartial administrative or judicial authority.
- Ensure that, in calculating a fine for a violation of a national competition law, the Party considers revenue or profit relating to the Party's territory or commerce.
- Limit remedies relating to conduct outside the Party's territory to situations where there is an appropriate nexus to the Party's territory.
- Promote cooperation among the relevant authorities on competition and consumer protection enforcement-related matters, including investigative assistance, notification, consultation, and exchange of information.

Labor:

- Require Kenya to adopt and maintain in its laws and practices the internationally recognized core labor standards as recognized in the ILO Declaration, including:
 - Freedom of association and the effective recognition of the right to collective bargaining;
 - Elimination of all forms of forced or compulsory labor;
 - Effective abolition of child labor and a prohibition on the worst forms of child labor; and
 - Elimination of discrimination in respect of employment and occupation.
- Require Kenya to have laws governing acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.
- Establish rules that will ensure that Kenya does not waive or derogate from labor laws implementing internationally recognized core labor standards in a manner affecting trade or investment between the Parties.
- Establish rules that will ensure that Kenya does not fail to effectively enforce labor laws implementing internationally recognized core labor standards and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health laws through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties.
- Require Kenya to prohibit the importation of goods produced by forced labor, regardless of the source country.



- Require Kenya to ensure that foreign workers are protected under labor laws.
- Provide access to fair, equitable, and transparent administrative and judicial proceedings.
- Ensure that these labor obligations are subject to the same dispute settlement mechanism that applies to other enforceable obligations of the Agreement.
- Establish a means for stakeholder participation, including through public advisory committees, as well as a process for the public to raise concerns directly with their respective governments if they believe a Party is not meeting its labor commitments.
- Establish or maintain a senior-level Labor Committee, which will meet regularly to oversee implementation of labor commitments, and include a mechanism for cooperation and coordination on labor issues, including opportunities for stakeholder input in identifying areas of cooperation.

Environment:

- Establish strong and enforceable environment obligations that are subject to the same dispute settlement mechanism that applies to other enforceable obligations of the Agreement.
- Establish rules that will ensure that Kenya does not waive or derogate from the protections afforded in environmental laws for the purpose of encouraging trade or investment.
- Establish rules that will ensure that Kenya does not fail to effectively enforce environmental laws through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties.
- Require Kenya to adopt and maintain measures implementing obligations under select Multilateral Environmental Agreements (MEAs) to which Kenya and the United States are full parties, including the Convention on International Trade in Endangered Species of Wild Fauna and Flora.
- Establish a means for stakeholder participation, including commitments for public advisory committees, and a process for the public to raise concerns directly with its government if they believe it is not meeting its environment commitments.
- Require Kenya to ensure access to fair, equitable, and transparent administrative and judicial proceedings for enforcing environmental laws and provide appropriate sanctions or remedies for violations of environmental laws.
- Provide for a framework for conducting, reviewing, and evaluating cooperative activities that support implementation of the environment commitments, and for public participation in these activities.



- Establish or maintain a senior-level Environment Committee, which will meet regularly to oversee implementation of environment commitments, with opportunities for public participation in the process.
- Combat illegal, unreported, and unregulated (IUU) fishing, including by implementing port state measures and supporting increased monitoring and surveillance.
- Establish rules to prohibit harmful fisheries subsidies, such as those that contribute to overfishing and IUU fishing, and pursue transparency in fisheries subsidies programs.
- Promote sustainable fisheries management and long-term conservation of marine species, including sharks, sea turtles, seabirds, and marine mammals.
- Protect and conserve flora and fauna and ecosystems, including through action by countries to combat wildlife and timber trafficking.
- Include provisions to mitigate the discharge of solid waste in the marine environment.

Anti-corruption:

- Secure provisions committing Kenya to criminalize government corruption, to take steps to discourage corruption, and to provide adequate penalties and enforcement tools in the event of prosecution of persons suspected of engaging in corrupt activities. In particular:
 - Require the adoption or maintenance of requirements for companies to maintain accurate books and records, which facilitate the detection and tracing of corrupt payments;
 - Require the establishment of codes of conduct and the development of other tools to promote high ethical standards among public officials;
 - Require Parties to disallow the deduction of corrupt payments for income tax purposes; and
 - Encourage Parties to promote the active participation by the public in efforts to combat corruption.
- Require measures that address money laundering, recovery of proceeds of corruption, denial of safe haven for foreign public officials that engage in corruption, and protections for whistleblowers.

Trade Remedies:

- Preserve the ability of the United States to enforce rigorously its trade laws, including the antidumping (AD), countervailing duty (CVD), and safeguard laws.



- Facilitate the ability to impose measures based on market distortions due to ongoing subsidization or dumping.
- Promote cooperation between trade remedies administrators, particularly with regard to the sharing of information that would improve the ability of administrators to effectively monitor and address trade remedies violations.
- Strengthen existing procedures and create new procedures to address AD/CVD duty evasion, including the ability to conduct AD/CVD duty evasion verification visits.
- Establish transparency and due process obligations reflected in U.S. AD/CVD laws, regulations, and practice.

Government Procurement:

- Increase opportunities for U.S. firms to sell U.S. products and services to Kenya.
- Ensure reciprocity in market access opportunities for U.S. goods, services, and suppliers in Kenya.
- Establish obligations and procedures to combat corruption in procurement.
- Establish fair, transparent, predictable, and non-discriminatory rules to govern government procurement in Kenya, including rules mirroring existing U.S. government procurement practices such as:
 - Publishing information on government procurement opportunities in a timely manner;
 - Ensuring sufficient time for suppliers to obtain tender documentation and submit bids;
 - Ensuring that procurement will be handled under fair procedures;
 - Ensuring that contracts will be awarded based solely on the evaluation criteria specified in the notices and tender documentation; and
 - Providing impartial administrative or judicial review authority to review challenges or complaints.
- Exclude sub-federal coverage (state and local governments) from the commitments being negotiated. Keep in place domestic preferential purchasing programs such as:
 - Preference programs for small businesses, women and minority owned businesses (which includes Native Americans), service-disabled veterans, and distressed areas;



- “Buy America” requirements on Federal assistance to state and local projects, transportation services, food assistance, and farm support; and
 - Key Department of Defense procurement.
- Maintain broad exceptions for government procurement regarding:
 - National security;
 - Measures necessary to protect public morals, order, or safety;
 - Protecting human, animal, or plant life or health; and
 - Protecting intellectual property.
 - Maintain ability to provide for labor, environmental, and other criteria to be included in contracting requirements.
 - Establish requirements that promote transparency in procurement statistics.

Small and Medium-Sized Enterprises (SME):

- Secure commitments by the Parties to provide information resources to help small businesses navigate requirements for exporting to each other’s market.
- Cooperate on SME issues of mutual interest, including participation in the ongoing implementation of the June 2018 Memorandum of Understanding Between the Government of Kenya and the Government of the United States Concerning the Development and Implementation of Strategic Infrastructure and “Big Four” Priority Projects in Kenya, as a means of exchanging timely information on and enhancing trade and investment opportunities related to Kenya’s “Big Four” economic agenda, which sets targets in the areas of food security, affordable housing, manufacturing, and healthcare.
- Establish an SME Committee of government representatives to ensure that the needs of SMEs are considered as the Agreement is implemented in order for SMEs to benefit from new commercial opportunities.
- Establish an SME Dialogue in the Agreement that may include the private sector, non-governmental organizations, and other SME stakeholders to provide views and information to the SME Committee.

Dispute Settlement:

- Encourage the early identification and settlement of disputes through consultation and other mechanisms.



- Establish a dispute settlement mechanism that is effective and timely, and in which panel determinations are based on the provisions of the Agreement and the submissions of the Parties and are provided in a reasoned manner.
- Establish a dispute settlement process that is transparent by:
 - Requiring that Parties' submissions be made publicly available;
 - Requiring that hearings be open to the public;
 - Requiring that final determinations by a panel be made publicly available; and
 - Ensuring that non-governmental entities have the right to request making written submissions to a panel.
- Have provisions that encourage compliance with the obligations of the Agreement.
- Provide mechanisms for ensuring that the Parties retain control of disputes and can address situations when a panel has clearly erred in its assessment of the facts or the obligations that apply.

General Provisions:

- Include general exceptions that allow for the protection of legitimate U.S. domestic objectives, including the protection of health or safety and essential security, among others.
- Provide a mechanism for ensuring that the Parties assess the benefits of the Agreement on a periodic basis.
- Provide mechanisms for terminating the Agreement under appropriate circumstances.
- Provide a mechanism to ensure transparency and take appropriate action if Kenya negotiates a free trade agreement with a non-market country.
- With respect to commercial partnerships:
 - Discourage actions that directly or indirectly prejudice or otherwise discourage commercial activity solely between the United States and Israel;
 - Discourage politically motivated actions to boycott, divest from, and sanction Israel;
 - Seek the elimination of politically motivated nontariff barriers on Israeli goods, services, or other commerce imposed on Israel; and



- Seek the elimination of state-sponsored unsanctioned foreign boycotts of Israel, or compliance with the Arab League Boycott of Israel.

Currency:

- Ensure that Kenya avoids manipulating exchange rates in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage.

