



# Fact Sheet Proposed U.S.-Kenya Free Trade Agreement

Prepared by  
Kenya Library and Information Services Consortium (KLISC)  
EIFL (Electronic Information for Libraries)

## What is the proposed U.S.-Kenya Free Trade Agreement?

The [proposed U.S.-Kenya Free Trade Agreement \(FTA\)](#) is a comprehensive bilateral trade agreement that aims to strengthen the economic relationship between the U.S. and Kenya through addressing tariff and non-tariff barriers to achieve 'free, fair, and reciprocal trade'.

It is the first time the U.S. has negotiated a comprehensive deal with a country in sub-Saharan Africa. According to the United States Trade Representative (USTR), it can serve as a [model for additional trade agreements across Africa](#).

## Who is in charge of negotiations?

The Office of the United States Trade Representative (USTR), and the Ministry of Industrialization, Trade and Enterprise Development, Republic of Kenya.

## What is the timeline for negotiations?

The [first round of negotiations was launched on 8th July 2020](#). Talks are taking place online due to coronavirus (talks were stalled at one point due to COVID-19 concerns among the negotiating team).

Trade deals take time to negotiate, and can be expected to take at least a couple of years. The U.S. Presidential election in November 2020 could also force a delay.

## What topics might be covered in the FTA?

At least 20 priority areas have been identified by USTR and Kenya including Trade in Goods, Sanitary and Phytosanitary Measures (food safety and animal and plant health), Customs, Rules of Origin, Anti-corruption, Digital Trade in Goods and Services and Cross-Border Data Flows, Investment, Intellectual Property, Labour, Environment, Government Procurement.

Potentially contentious areas are tariff liberalization on agricultural goods, rules on intellectual property rights, investment and data flows, labour and environmental protections.

An early challenge in the negotiations might be to establish a framework for the talks that can achieve the ambitious level of commitments required by the U.S., while withstanding political and domestic pressures in Kenya for import-sensitive areas, such as agriculture, or nascent industries.

### **Have any public consultations taken place?**

In March 2020, USTR requested public comments on a proposed U.S.-Kenya trade agreement, including U.S. interests and priorities, in order to develop U.S. negotiating positions. [131 written responses were received.](#)

In its document on [Kenyan Negotiating Objectives](#) released on 22.6.2020, the Ministry of Industrialization, Trade and Enterprise Development states that various stakeholders were consulted in developing the objectives, and the Ministry looks forward to receiving comments to enrich preparations for the negotiations.

### **What are the main issues for libraries?**

Generally, in Free Trade Agreements that contain a chapter on Intellectual Property, libraries are concerned with copyright issues. Typically four main copyright issues are of concern:

1. term of protection;
2. limitations and exceptions;
3. technological protection measures (TPMs);
4. enforcement measures.

Any copyright provisions agreed in an FTA that contains an IP chapter would be incorporated into Kenya's copyright law (if changes are required to comply with the FTA). Once incorporated into national law, libraries in Kenya would be bound by the provisions.

However, it is important to note that to date, no country in sub-Saharan Africa is subject to U.S. trade rules on IP. In fact, in 2006, trade talks with the Southern African Customs Union stalled largely due to U.S. demands on intellectual property rights.

Any requirement to apply a standard of IP protection similar to that found in U.S. law to Kenya, as a developing country, raises significant concerns among libraries and other civil society stakeholders.

Libraries recognize the importance of appropriate standards in meeting local needs, and in achieving the targets set out in the Sustainable Development Goals (SDGs), such as quality education, decent work and poverty reduction.

### **Government negotiating objectives – Intellectual Property**

## Kenya

### 4.6 Intellectual Property

- The text on intellectual property in the Kenya –US FTA shall aim to reduce IP-related barriers to trade and investment by promoting economic integration and cooperation in the utilization, protection and enforcement of intellectual property rights. It shall cover other intellectual property areas covered by Convention on Biodiversity, including genetic resources, folklore, traditional knowledge, and benefit sharing.
- Capacity Building and technical assistance will be provided to Kenya in order to fully implement the Agreed provisions on IPR

For more information, see [Proposed Kenya-United States Of America Free Trade Area Agreement Negotiation Principles, Objectives, And Scope.](#)

## USTR

*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.

For more information, see [United States-Kenya Negotiations Summary of Specific Negotiating Objectives](#).

### **How are trade relations currently governed between the U.S. and Kenya?**

As members of the World Trade Organization (WTO), trade between the U.S. and Kenya is governed by WTO commitments.

In addition, the U.S. provides unilateral preferential tariff treatment to Kenyan exports through the African Growth and Opportunity Act (AGOA), so that most exports from Kenya to the United States enjoy duty-free access.

Kenya is the second biggest beneficiary of AGOA's tariff benefits, and a leading exporter to the U.S. of apparel (textiles and clothing) from sub-Saharan Africa.

### **Regional trade**

Kenya is a member of the East African Community (EAC) customs union and the African Continental Free Trade Area (AfCFTA).

The AfCFTA is an Africa-wide trade agreement that aims to boost intra-African trade. It was originally set to take effect in summer 2020, but is delayed to 2021 due to COVID-19.

AfCFTA is a framework agreement covering a range of areas including Trade in Goods and Services, Investment, Intellectual Property Rights and Competition Policy, Competition Policy, and Dispute Settlement.

The chapter on Intellectual Property is contained in Phase II, and has not yet been negotiated.

A U.S.-Kenya FTA may therefore influence Kenya's negotiating positions, and could affect regional trade patterns. In July 2020, [two lawyers issued a challenge to the proposed free trade deal](#) before the East Africa Court of Justice.

### **Trading statistics**

Trade between the U.S. and Kenya stands at about \$1.1 billion a year.

In global terms, Kenya is not a major U.S. trade partner; in 2019, it was the 96th largest trading partner of the U.S.

The U.S. is Kenya's fifth largest trading partner, and the second largest export market (9% of Kenya's products, especially agricultural products). Kenya's largest trading partner is China.

Trade is concentrated on goods. Top U.S. exports to Kenya are aircraft, plastics and machinery, and cereals (wheat). Top Kenyan exports to the U.S. are apparel, fruit & nuts, titanium ore and coffee.

Trade in services is negligible.