KENYA

In 1996, the U.S. trade deficit with Kenya was $2 million, a shift of $14 million from the U.S. trade surplus of $12 million in 1995. U.S. merchandise exports to Kenya were $104 million, a decrease of $10 million (8.8 percent) from the level of U.S. exports in 1995. Kenya was the United States' one hundred and seventh largest export market in 1996. U.S. imports from Kenya were $107 million in 1996, an increase of $5 million (4.9 percent) from the level of imports in 1995.

In 1996, Kenya's economy continued its recovery from a period of near-zero growth in 1992-1993. The preliminary estimate of the country's gross domestic product (GDP) growth rate in 1996 is about 4 percent, slightly lower than in 1995. The Government of Kenya predicts about 6 percent growth in GDP in 1997, although many private economists believe it is likely to be lower as the result of the current drought and continuing power interruptions that slow business and manufacturing.

IMPORT POLICIES

Kenya has progressively reduced its number of custom duty bands (including the zero rate) from 8 to 5 between June 1994 and June 1996. The maximum tariff rate has fallen steadily from 45 percent in June 1994 to 40 percent in June 1995 and 35 percent in June 1996. The duty on computers, specifically, was reduced in 1995 from 10 to 5 percent. Tariff rates on agricultural imports, such as vegetable oil and breakfast cereal, remain high. The potential increase in U.S. exports, if agricultural tariffs were to be reduced, would probably be less than $10 million, based on shipping distance and past market experience.

Kenya abolished import licensing in 1993, except for a list of items based on health, environmental, and security concerns. The list includes livestock and commercial seeds. From April through June 1995, the government banned the import of sugar, soft wheat, and corn. Imported dairy products were also banned in April 1995. In January 1996, the government imposed a one-year ban on the import of dairy products.

All imports with an f.o.b. value of more than $1,000 require pre-shipment inspection (PSI). Shipments originating in the United States are inspected by the Swiss firm Cotecna Inspection S.A. In addition to a "clean report of findings" (CRF) certifying that the goods are consistent with the invoice, the inspection agency also furnishes a "valuation certificate" which enables the Kenyan Government to determine the correct duty. The import declaration fee, which includes a pre-shipment inspection fee, is 2.75 percent of the export (f.o.b.) value. Most of the funds collected from the fee go to the general treasury rather than to pay for pre-shipment inspection services. Moreover, effective February 1, 1996, if importers fail to obtain the inspection in advance, a penalty of 10 percent (20 percent for motor vehicles) is applied.

The government has taken steps to counter corruption at the Port of Mombasa. In early 1996, 22 officials were suspended and charged with duty evasion. The government has since appointed a new management team at the port; beginning in September 1996, the UK Port of Felixstowe assumed management of Mombasa's container facility under a two-year contract.

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STANDARDS, TESTING, LABELING, AND CERTIFICATION

In July 1995, the Kenya Bureau of Standards began inspecting imports to ensure conformity to national standards. The inspection fee is 1 percent of c.i.f. value. Certain agricultural goods are subject to further inspection by the Kenya Agricultural Research Institute (KARI). Commercial hybrid grain seed must be evaluated for a period of three years by KARI. Furthermore, in early 1996, Kenya, citing environmental standards, effectively banning commercial seed imports by requiring that nearly all approved seed be grown in the country. The rule, if enforced, would reduce U.S. exports by less than $10 million.

The Weights and Measures Act requires products to be labeled with metric measurements and packaged in even units (e.g., 2.5 liters, not 2.51). Shipments that violate these rules may not be re-exported.

GOVERNMENT PROCUREMENT

Although not repealed, Kenya's "buy national" requirement, which provides local firms with a 10 percent preference in government tenders, is no longer observed. According to government regulations, goods worth over $4,000 must be purchased through open tender. In practice, however, tenders are frequently awarded to uncompetitive firms in which government officials have a significant interest. Conflict-of-interest regulations are not enforced. Some of the largest government contracts, including $83 million for an international airport in 1994 and $50 million for a presidential jet in 1995, have been awarded in secret. More transparent government procurement could boost U.S. exports by $100-500 million, based on government procurement opportunities available.

EXPORT SUBSIDIES

In 1992, the government enacted a duty/value-added tax remission facility that allows exporters to purchase imported inputs tax free. There is no general system of preferential financing, but sectoral government development agencies in areas such as tourism and tea are supposed to provide funds at below-market rates to promote investment and exports by Kenyans.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Kenya is a member of the World Intellectual Property Organization (WIPO) and the African Regional Industrial Property Organization. It has joined both the Paris Convention on Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works. Although a unified system for the registration of trademarks and patents from Anglophone Africa was signed in 1976, the effort has not proceeded due to lack of cooperation and funds. Future protection may be achieved through the African Intellectual Property Organization, although the enforcement and cooperation procedures are untested. Kenya, as a member of the WTO, must also implement the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs).

Kenya is in the process of amending its intellectual property laws to conform to WIPO guidelines, the TRIPs Agreement, and other international conventions. In December 1995, the Kenyan Parliament revised the Copyright Act, incorporating, among other changes, protection for computer technology and satellite transmissions. The Industrial Property (Patent) and Trademark Acts are scheduled to be amended in 1997. The Copyright Act protects sound as well as video recordings. Violations are subject to a fine of up to $3,600 or imprisonment for five years or both. In practice, however, the Attorney General's office (which is responsible for copyright matters) and the police seldom enforce the laws. Pirated sound recordings are common, and virtually all videos available in shops are unlicensed.

For the fiscal year ending June 1996, the Kenya Broadcasting Corporation owed the local music copyright community nearly $182,000 for artists' royalties. Kenya Film Corporation, a bankrupt parastatal that controlled the importation, distribution, and exhibition of feature films until 1993, routinely showed unlicensed films at Nairobi's biggest movie theater. Other commercial theaters and a Kenyan cable television company also violated copyright norms in 1996. Given the small size of the market, improved copyright protection might increase exports by less than $10 million.

SERVICES BARRIERS

There are no explicit barriers on the provision of services by U.S. professionals. For example, a U.S. bank prepared flotation of shares by Kenya Airways and a U.S. life insurance firm is the leader in its industry sector. Nevertheless, foreign companies offering services in construction, engineering, and architecture may face discrimination when bidding for public projects, and the Kenyan Bar has declined to admit foreign lawyers for over 10 years. New foreign investors with expatriate staff are required to submit plans for the gradual elimination of non-Kenyan employees.

INVESTMENT BARRIERS

Foreign equity investment on the Nairobi Stock Exchange has been authorized since January 1, 1995, subject to certain limits. The limits were increased in June 1995 to 40 percent for combined foreign ownership and 5 percent for individuals. Life insurance companies are required to have at least 33 percent local ownership. In other industrial sectors, local partners are encouraged but not mandatory. Small-scale commercial enterprises no longer require a Kenyan partner. Technology transfer requirements and foreign exchange controls have been abolished. Difficulty in obtaining clear title to land, lack of confidence in speedy and fair resolution of disputes, and requests from officials for illicit payments continue to hamper investment. If these investment barriers were lifted, U.S. investment might increase by $25-100 million.

Nonstrategic Parastatals

While Kenya, the most industrialized country in East Africa, maintains an open foreign exchange system and liberal investment regulations, its parastatal sector is large and could be reduced. The Kenyan Government began privatizing parastatals in 1994, and by June 1996, had either completely divested from or reduced its shareholding in 140 of the original 207 "non-strategic" parastatals. Divestitures took the form of preemptive rights (41 firms), tea factories sold to farmers (39), receiverships and public flotation (14 each), liquidations (12), subsidiaries of those sold through flotation (5), and a management buy out (1). Total gross proceeds as of June 1996 amounted to $10 billion. In December 1995, the government sold 26 percent of Kenya Airways to KLM. The government sold an additional 48 percent of the national carrier to the public (including foreign investors) in April 1996.

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Expected privatizations in 1997 include a large reinsurance company, two chains of hotels, and the largest sugar refinery in the country. In addition, the government is committed to reform and partial privatizations in the power and telecommunications sectors. These programs, however, are behind schedule.

Strategic Parastatals

The Government of Kenya has removed most of the monopolies, including all trading monopolies, formerly enjoyed by the country's "strategic" parastatals. Nevertheless, several state corporations remain barriers to open investment. Kenya continues to restrict access to radio and TV licenses for independent media organizations. Kenya Broadcasting Corporation (KBC) is no longer the sole provider of television through its two channels. However, one of the other two current operators is controlled by the governing party, while the other belongs to a private Kenyan firm with close ties to the government. Since the fall of 1996, KBC radio has had two competitors, both firms with connections to the governing party. A suit against the government by a local independent company seeking a TV broadcasting license is still pending in court.

The government has been hesitant to open public infrastructure to competition, although there may soon be progress in this area. At the beginning of 1997, the Kenya Power and Lighting Company (KPLC) was split into two entities, Kenya Power Company, to deal with all power generation, and KPLC, which will now be responsible only for distribution of electricity. There has been discussion of allowing private firms to build and operate roads. Since 1994, refined oil products may be imported, but they are subject to high duties to protect the national refinery's market share. The state reinsurance company is still entitled to 20 percent of all general insurance business. Kenya Posts and Telecommunications Corporation (KPTC) provides both postal and telecommunications services and regulates the provision of these services. It has authorized pay telephones for use in private group houses. KPTC also authorized private very small aperture terminals (VSAT), but these must receive presidential approval. So far KPTC has not approved various satellite and internet projects and more direct competition in telephone services. KPTC stopped licensing private telephone bureaus beginning mid-December 1996. In addition, and more damaging to U.S. firms, KPTC shut down home country direct telephone services in October without warning.

KPTC is scheduled to be split into three parts at the end of December 1998: a post office, a telecommunications company, and a regulatory authority. Thereafter, at least a 30 percent share in the telecommunications company will be sold to the public. A consulting contract has been awarded for the separation of the three independent entities, and draft legislation is being prepared.

OTHER BARRIERS

The state agriculture sector is an area in which trade barriers flourish. Only the National Cereals and Produce Board (NCPB) is permitted to export corn. All coffee produced in Kenya must be sold through the Coffee Board of Kenya. Kenya Seed Company and the National Dairy Cooperative are subsidized. One of the biggest problems is the unclear, ever-shifting agricultural policies. For example, some tariffs are variable and can change overnight; import bans come and go. Private firms do not restrict the sale of U.S. goods and services. There is, in fact, significant demand for U.S. products. The difficulty lies in overcoming the preference by importers and distributors toward suppliers in Europe and the United Kingdom, Kenya's former colonial ruler, in particular.