KENYA

In 1997, the U.S. trade surplus with Kenya was $112 million, an increase of $114 million from the U.S. trade deficit of $2 million in 1996. U.S. merchandise exports to Kenya were $226 million, an increase of $122 million (117 percent) from the level of U.S. exports to Kenya in 1996. Kenya was the United States' ninety-first largest export market in 1997. U.S. imports from Kenya were $114 million in 1997, an increase of $7 million (6.5 percent) from the level of imports in 1996.

Kenya's economy slowed down in 1997. Following an estimated gross domestic product (GDP) growth rate of 4.6 percent in 1996, local economists estimated Kenya's growth rate to be around 2 percent for 1997. Kenya, however, anticipated a slightly higher growth rate. The slow growth rate resulted from the drought early in 1977 that interrupted power and slowed manufacturing. This catastrophe was followed by severe floods, deteriorating infrastructure, political uncertainties, and sporadic violence preceding the December 1997 general election. In July 1997, Kenya's economic status was complicated when the International Monetary Fund (IMF) allowed its assistance program to lapse after Kenya declined to address key governance problems. Tight control of the money supply by the central bank helped keep inflation moderate.

IMPORT POLICIES

Kenya progressively reduced its number of customs duty bands (including the zero rate) from 8 to 4 between June 1994 and June 1997. The maximum tariff rate fell from 45 percent in June 1994 to 25 percent in June 1997. Additional suspended duties of 5 percent or 10 percent apply to certain products including paper and paperboard, flat-rolled iron and steel, resin, yarn, cars, minibuses, pickups, and tires. Kenya's import regulations on agricultural products are constantly changing, depending on politics, domestic supply, and demand. Kenya has either frequently applied prohibitively high tariffs or outright import bans on certain agricultural imports. The 70 percent duty was suspended for imports of milk, maize, rice, sugar, and wheat. A 10 percent duty was suspended for imports of apples, pears, grapes and oranges. Kenya's dairy import ban was lifted in mid-l997. However, as of December 1997, an ad valorem duty of 70 percent was levied on rice, sugar, and milk. The tariff on wheat was the higher of the following: (a) 75% ad valorem or (b) 50% ad valorem plus 3.5 Kenyan shillings per kg (approximately $56 a metric ton).

In 1993 Kenya abolished import licensing except for certain items based on health, environmental, and security concerns. The list includes livestock and commercial seeds. To address food security concerns, Kenya routinely prohibits exports of wheat and corn.

All imports with an f.o.b. value of more than $2,000 require pre-shipment inspection (PSI). Shipments originating in the United States are inspected by the Swiss firm of 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" that enables the Kenyan Government to determine the correct duty. The import declaration fee, which includes a PSI fee, is 2.75 percent of the export (f.o.b.) value. In addition to the import declaration fee, agricultural imports are charged a 1 percent c.i.f. value fee to support the Kenya

Agriculture Research Institute. Most of the funds collected from the c.i.f. fee are for the general treasury and not for PSI. Moreover, if importers fail to obtain an advance inspection a 10 percent penalty (20 percent for motor vehicles) is applied. Goods airlifted by courier services are not subject to PSI if their value does not exceed $10,000.

In 1997, the Kenyan government largely reversed earlier promising steps to counter corruption at the Port of Mombasa. The government replaced a well-respected businessman hired to manage the port. In early 1996, 22 officials were suspended and charged with duty evasion. Under suspicious circumstances, most of the officials have since been cleared of wrongdoing, and allowed to return to their jobs. In September 1996, the government, under pressure from international donors, turned over the management of the port container facility to the UK port of Felixstowne. Felixstowne withdrew in September 1997 after the government failed to address many deficiencies and problems at the port.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

The Kenya Bureau of Standards (KBS), a government regulatory body under Kenya's Ministry of Industrial Development, inspects imports to ensure conformity to International Standards Organization (ISO) product standards. The inspection fee is 1 percent of c.i.f. value. KBS conducts product testing for individual product categories and undertakes certification. KBS conducts random checks on imported products to ensure that they conform to ISO standards. Products that do not meet the standards are withdrawn from the market, and the importer is prosecuted. KBS is reviewing all standards, especially those that are ten or more years old and about 500 standards still need to be reviewed.

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 four years by KARI. In early 1996, Kenya, citing environmental standards, effectively banned commercial seed imports by requiring that all approved seed be grown in the country. The rule would reduce U.S. exports by less than $10 million, but the Kenyan Seed Company no longer has an absolute monopoly. Nonetheless, Kenya still carefully controls seed corn imports, and requires any company wanting to sell over 50 MT of seed corn to produce that seed corn in Kenya.

As of July 1997, the Weights and Measures Act requires a reduced list of twenty different products to be labeled with metric measurements and packaged in even units (e.g., 2.5 liters, not 2.51). Shipments in violation of 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 noncompetitive firms in which government officials have a significant interest. Conflict-of-interest regulations are not enforced. Some of the largest government contracts, including those for an international airport in 1994 and for a presidential jet in 1995, have been awarded in secret. More transparent government procurement

could boost U.S. exports by $100 million to 500 million, based on available government procurement opportunities.

EXPORT SUBSIDIES

In 1992, the government enacted a duty/value-added tax remission facility that enables exporters to purchase imported inputs tax free. No general system of preferential financing exists, 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. Kenya 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 owing 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 amending its intellectual property laws to conform to WIPO guidelines, the TRIPs Agreement, and other international conventions. The Industrial Property (Patent) and Trademark Acts are scheduled to be amended in 1998. 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.

The Kenya Broadcasting Corporation (KBC) has not paid local artists their royalties since 1994/95. For the fiscal year ending June 1997, KBC owed the artists nearly $190,000 for royalties. Some 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.

Regarding intellectual property rights for seeds, Kenya has not joined the union for the protection of new varieties and plants, and its plant variety protection laws do not conform to international regulations. The Ministry of Agriculture restricts international seed trade by setting quantitative ceilings on cereal seed imports. Moreover, the variety certification process is tedious and restrictive. A minimum of four years is needed for the government of Kenya to approve or reject a variety, a timetable that effectively restricts trade.

SERVICES BARRIERS

No explicit barriers exist 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. The Kenyan Bar, for example, has declined to admit foreign lawyers for over 11 years. New foreign investors with expatriate staff are required to submit plans for the gradual elimination of non-Kenyan employees.

INVESTMENT BARRIERS

For firms listed on the Nairobi Stock Exchange, non-Kenyan ownership can total up to 40 percent, with a 5 percent limit on individual foreign investment. Life insurance companies are required to have at least 33 percent local ownership. Foreign brokerage and fund management firms are allowed to participate in the local market through locally registered companies. Such companies must have local ownership of at least: (a) 30 percent in the case of fund management firms, or (b) 51 percent in the case of brokerage firms. In other industrial sectors, local partners are encouraged but not mandated. 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 $100 million to 150 million.

Nonstrategic Parastatals

Although 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 1992. Initially 207 “nonstrategic” parastatals were targeted for divestiture. Another 33 “strategic” parastatals were to be retained by the government. By June 1997, the government of Kenya had completed 154 divestitures, from which it received $158 million. Capitalization of the Nairobi Stock Exchange increased by $105 million. Divestiture took the form of flotations on the Nairobi Stock Exchange (10 firms), competitive bidding (12), liquidations (15), receiverships (16), preemptive rights (50), and one management buyout. The government of Kenya also divested 11 other firms. The government sold 26 percent of Kenya Airways to KLM, and an additional 48 percent of the national carrier to the public (including foreign investors) in April 1996.

Anticipated privatizations for 1998 include a large reinsurance company, and flotation of additional shares in a leading majority government-owned commercial Bank. Kenya Railways Corporation has contracted out maintenance of some of its locomotives to General Electric and may be commercialized further.

Strategic Parastatals

Although the government is committed to reform and partial privatizations in the power and telecommunications sectors, these programs are well behind schedule. 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. The government of Kenya continues to restrict access to radio and TV licenses for independent media organizations. The government provides no clear-cut guidelines for licensing TV and radio stations, which result in a biased licensing system.

Despite licensing problems, Kenyans now have three open-air television stations: Government -owned Kenya Broadcasting Corporation (KBC) and two private stations. The owners of these private stations have close ties to the government. In addition, two other stations have been licensed but are not yet operating. Kenya now also has one private radio station in addition to several stations operated or partly-owned by KBNC. The private stations are permitted to provide only entertainment programming. The news is the sole province of KBC. The government licensed the British Broadcasting (BBC) in mid-1997 to broadcast its world service news programming. However, Kenya Posts and Telecommunications Corporation (KPTC), a government parastatal, had delayed approvals for the equipment necessary to broadcast.

Public Infrastructure Barriers

The government has been hesitant to open public infrastructure to competition, although progress may soon be made in this area. At the beginning of 1997, the Kenya Power and Lighting Company (KPLC) was split into two entities: the Kenya Power Company, to deal with all power generation, and KPLC, which will now be responsible only for distribution of electricity. Discussions have been held concerning whether to allow private firms to build and operate roads. Since 1994, refined oil products have been 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. KPTC provides both postal and telecommunications services and regulates the provision of these services. KPTC has authorized pay telephones and has entered a joint venture with a private cellular telephone operator. Several Internet service providers are operating in Nairobi. In general, KPTC has neither approved requests from foreign missions, businesses, or individuals to operate broadcast satellite dishes (VSATS) nor 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 without warning shut down home country direct telephone services in October 1996. KPTC has allowed some competition in the area of "add ons" such as fax and telex services. KPTC currently operates an ETACS system with a capacity of over 2,000 lines. A wireless local loop is being planned to enhance countrywide telephone penetration.

KPTC is scheduled to be split into four parts at the end of December 1998: a post office, a telecommunications company (Telcom Kenya), a "national communications secretariat," and a regulatory authority--the Communications Commission of Kenya. After the split takes place, the government's current plans are to sell up to 30 percent of Telcom Kenya to a strategic partner and to sell additional shares on the Nairobi Stock Exchange. Before these steps are taken, the Kenyan parliament must pass a new telecommunications act, and the bill must receive presidential assent. 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. KPTC has allowed some competition in the area of "add ons' such as fax and telex services, and a tender for a GSM cellular telephone network

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. The unclear, ever-shifting agricultural policies are a major constraint to U.S. trade with Kenya. 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. In fact, significant demand exists for U.S. products. The difficulty lies in overcoming the preference by importers and distributors toward suppliers in Europe and the UK, Kenya's former colonial ruler, in particular.