Trade in Services International ***building economic growth and sustainable development with trade in services***

Comments Regarding U.S.-Kenya Strategic Trade and Investment Partnership
for the United States Trade Representative
Docket Number USTR-2022-0008

Linda Schmid
International Development Adviser
Trade in Services International

September 16, 2022

Thank you for the opportunity to provide comments on the U.S.-Kenya Strategic Trade and Investment Partnership. Trade in Services International (TiSI) is dedicated to helping small and medium-sized enterprises and services firms leverage the global services economy for export expansion, quality employment, and sustainable and inclusive economic growth. TiSI offers advisory services on trade and investment, economic development, and women's economic empowerment. TiSI conducts market research, surveys, and interviews to synthesize trade challenges and improve conditions in the marketplace.

The U.S. generated over $24 trillion in GDP in the first Quarter of 2022[i] **and consistently exports over $684 billion in commercial services each year.**[ii] Today 80% of U.S. workers are employed in services industries.[iii] The professional and business services sector represents 13.4% of employment versus 7.8 % of employment in manufacturing according to the U.S. Bureau of Labor Statistics. Financial services and information technology services together represent 7.4% of employment. The highest paying services sectors are information, finance, professional, and business services. USTR should remove obstacles to trade in services where the U.S. has a competitive advantage and where services expertise can help solve the formidable challenges nations face.

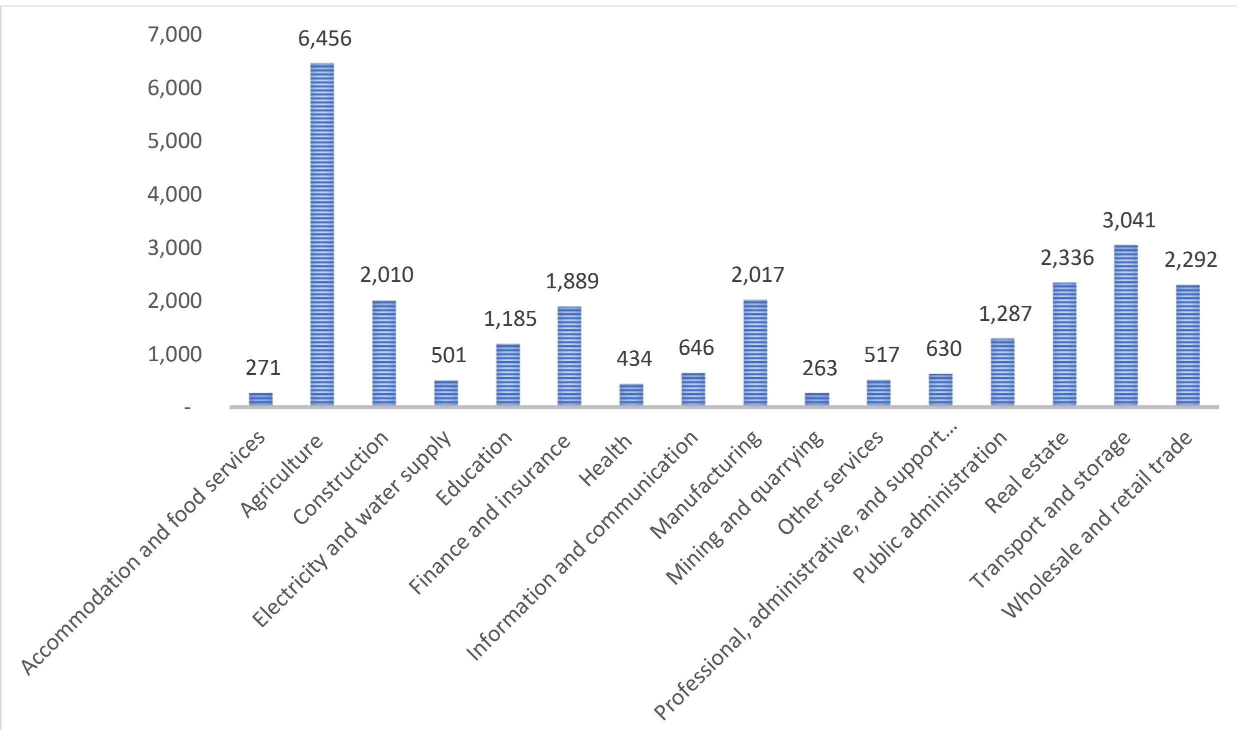
Kenya can engage with the U.S. on trade in services obstacles that inhibit investment and sustainable growth. Kenya has a track record of engagement on trade in services in the World Trade Organization (WTO) including financial reform as a signatory to the financial services agreement. Kenya has hosted regional consultations on services industry regulatory reform in years past under the East African Community (EAC). Kenya as a partner state of the EAC is engaged in on-going services negotiations under the Africa Continental Free Trade Agreement (AfCFTA) with a focus on communications, transport, tourism, financial, and business services as well as associated protocols on investment, competition policy, intellectual property rights, and digital trade.

Under the Strategic Partnership, the U.S. and Kenya have an opportunity to facilitate trade in services, which in and of themselves create benefits for society. For example, efficient financial services governed by sound prudential regulations contribute to the qualified expansion of credit and a lower cost of borrowing. Insurance services enable enterprises and individuals to mitigate risk and reduce exposure to unanticipated events. Legal services facilitate the rule of law and investment. Accountancy adds rigor to corporate health as well as public sector accountability. Information technology services facilitate innovation and efficiency. U.S. and Kenyan services professionals in each of these sectors have the capability to help create more robust enterprises and more effective government institutions.

Services industries and services knowledge are instrumental in tackling environmental, climate, and socio-economic challenges. For example, trade in environmental services protects against air, water, and ground pollution. Scientific and technical services can discover and implement solutions to climate, health, and energy challenges. Arts, entertainment, and sports express cultural vibrancy and create social unity. Educational services are fundamental to socio-economic development and can reduce inequality and insecurity. Facilitating trade in services regionally and internationally can help nations find common solutions to extreme challenges.

Services industries are an increasing component of GDP growth in Kenya and lead Kenya's economic recovery.[iv] Agriculture represents a quarter of GDP in Kenya while services contribute well over 50% to GDP and six times as much as manufacturing. Figure 1 provides GDP data from the first quarter of 2022 for Kenya illustrating a diversified services economy well worth attention in trade negotiations. From a strategic standpoint, services are primary inputs into agricultural and manufacturing products. The U.S. and Kenya can boost productivity in the agriculture and manufacturing sectors with attention to the trade in services environment including investment conditions, digital trade, and the temporary movement of services professionals.

Figure 1: Kenya GDP by activity (US$ million), 1st Qtr. 2022



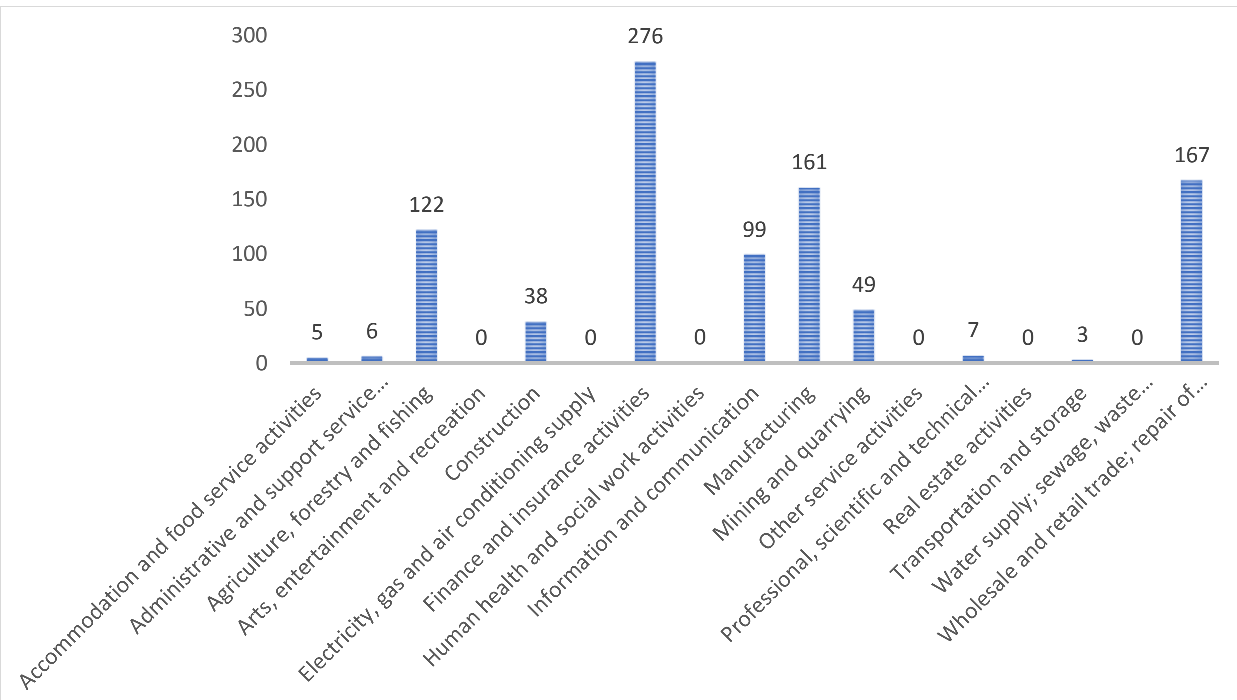
Source: Kenya National Bureau of Statistics Statistical Release, June 2022
Note 120.14 Ksh = 1 US$

As a leader in international trade in services, the U.S. can offer Kenya services expertise to solve production, environmental, and institutional challenges. For example, US services providers can help Kenya achieve food security goals as services are intermediate inputs into efficient and sustainable agricultural production. Agricultural production uses finance, insurance, transport, marketing, and wholesale services. Fostering sustainable agricultural practices as well as innovative agricultural technologies will necessarily depend on the availability of engineering, scientific, and technical services.

Furthermore, digital trade in services offers an exceptional opportunity to meet distinct engineering and research demands to contend with severe drought and sustain agricultural production and trade.

The U.S. and Kenya can focus on the investment environment to promote sustainable and inclusive economic growth. Figure 2 illustrates Kenya's FDI inflows in 2019. FDI inflows to Kenya demonstrate the differences between services sectors that attract substantial investment and services sectors that forgo investment. For example, Kenya attracts services investment in finance and insurance, wholesale and retail trade, information and communication, and mining and quarrying. Kenya experienced minimal investment in professional, scientific, and technical services important to solving extreme climate, health, and energy challenges. Similarly, Kenya experienced minimal investment in transportation and storage, particularly pertinent to agricultural production. Expanding investment in services requires concerted attention to the underlying factors that inhibit growth and financial returns, which attract domestic and foreign investors.

Figure 2: Kenya FDI Inflows (US$ million), 2019



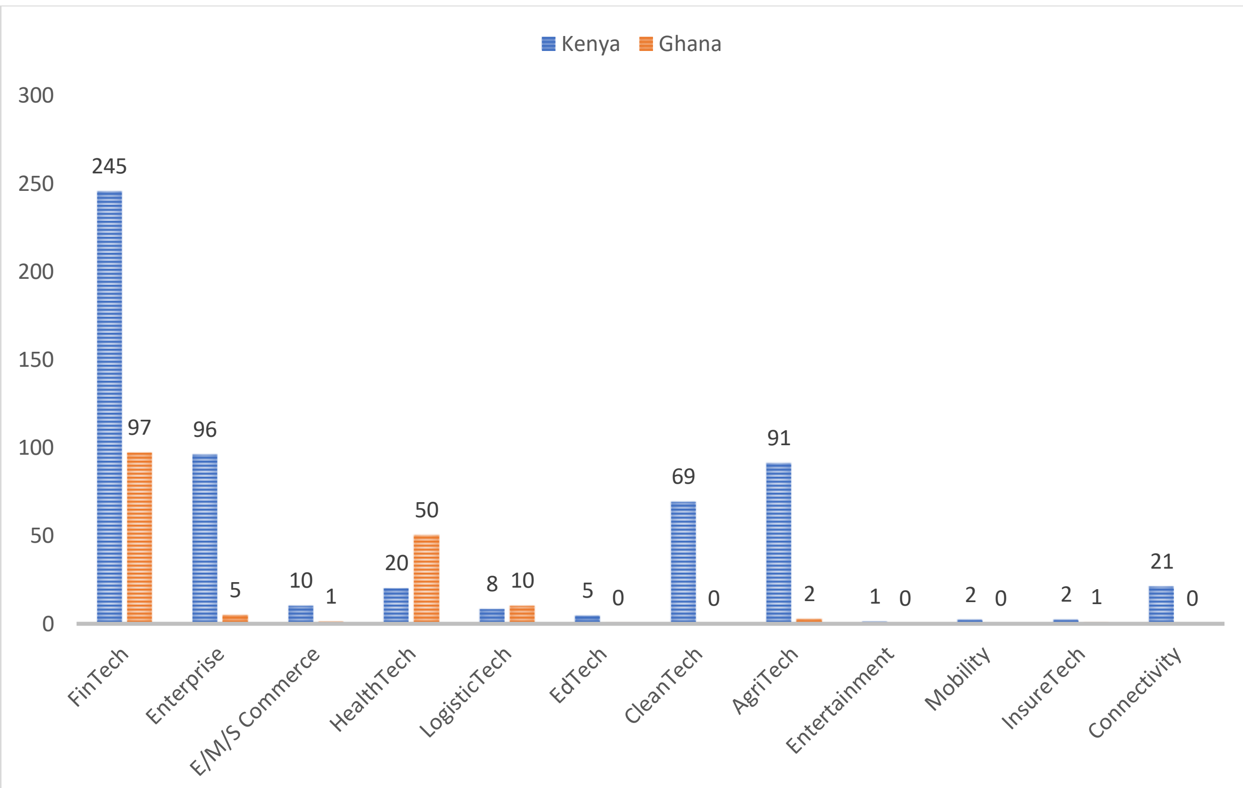
Source: Central Bank of Kenya Foreign Investment Survey, 2020
Note: 120.14 Ksh = 1 US$

The "informal" sector in Kenya is holding back inclusive growth and domestic and foreign investment. The informal sector represents 83.3% of employment in Kenya.[v] Workers employed by informal enterprises experience lower wages and less security than those in the formal economy. Informal firms although contributing to GDP operate outside of the formal business registration, licensing, and tax systems. Informal enterprises often overlook the administrative and financial records as well as business registration certifications necessary to qualify for financing or attract domestic and foreign investment. Human resource constraints, regulatory compliance costs, and omissions in the rule of law contribute to informality. Establishing clear and transparent business requirements, labor market regulation, and tax administration can reduce informality.[vi] Improving the quality and access to education is the most influential means of moving enterprises and workers from the informal to the formal economy.[vii] Therefore, the U.S.

and Kenya should explore and support Kenya's private sector initiatives in EdTech, facilitate digital trade in educational services, and strengthen exchange relationships between Kenyan universities and U.S. land grant universities.

Kenya's success in fintech and enterprise software suggests it has the homegrown IT competence to solve persistent administrative challenges in the public sector, which inhibit businesses from formalizing operations. Figure 3 illustrates the diverse IT enterprises in Kenya attracting venture capital funding. From a practical standpoint, the new Kenyan administration should be encouraged to commission Kenya's growing IT community to develop mobile systems to improve administrative procedures and technological processes for informal and formal businesses to easily understand and adhere to tax, labor, and registration requirements. From a strategic standpoint, the U.S. and Kenya can share a commitment to moving enterprises and workers from the informal to the formal sector to create greater opportunities for domestic and foreign investment and to decisively improve conditions for workers including women and youth.

Figure 3: Africa technology venture capital funding (US$ million), 2021



Source: Partech Africa Tech Venture Capital Report, 2021
E/M/S Commerce = e-commerce, mobile commerce, & social commerce

Kenya attracts investment in the IT sector with a concentration in FinTech, Enterprise software, AgriTech, and CleanTech. Negotiators can emphasize the commercial value of the use and full enforcement of intellectual property rights to Kenya's IT sector. From a strategic perspective, Kenya's IT sector can help solve persistent challenges that constrain trade in services within the EAC, under the forthcoming services obligations in the AfCFTA, and vis-à-vis the U.S. For example, IT enterprises can offer technological solutions to deepen transparency and improve the efficiency of implementation of trade in services rules, regulations, and administrative practices. The FinTech sector can simplify payment systems across borders. Kenyan IT solutions can ease the secure temporary movement of people regionally and under the AfCFTA. Facilitating the secure temporary movement of people contributes to inclusive growth as remittances represented 3% of Kenya's GDP in 2020.[viii]

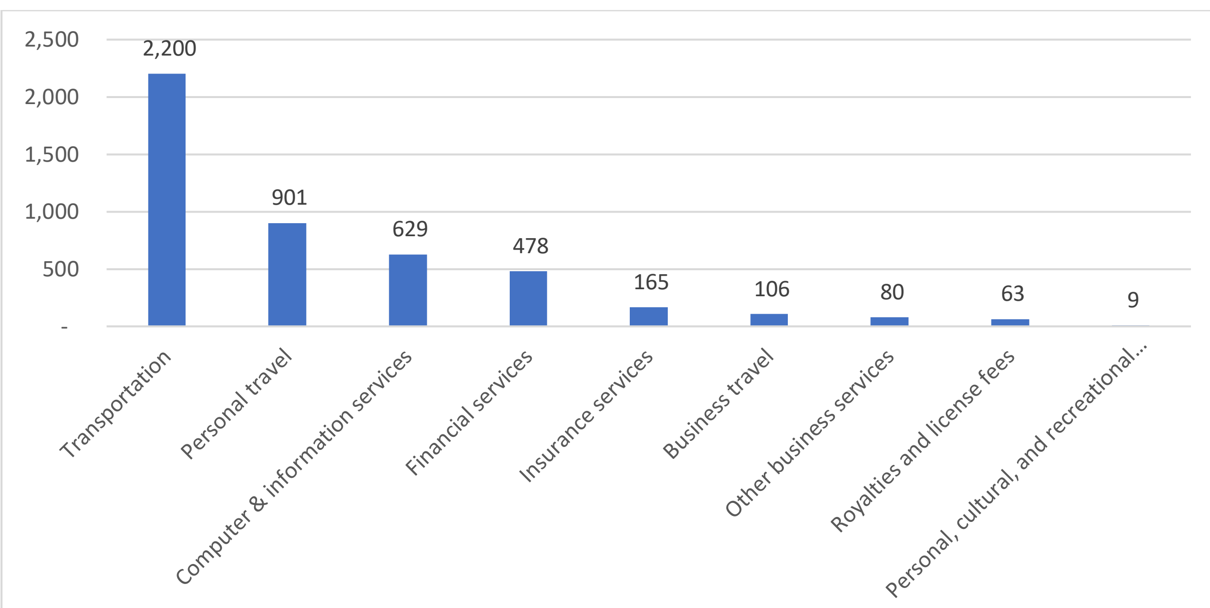
Kenya is recognized for significant advances in improving the business environment; however, opaque administrative procedures and omissions in the rule of law continue to deter investment. The WTO reference paper on domestic regulation offers an approach that can improve regulatory conditions for trade in services. For example, services industry regulatory authorities can:

- ensure rules and regulations are adopted in a transparent and open manner;
- provide regulatory transparency with publication, comment, and designated enquiry points;
- ensure authorization fees are defined, reasonable, and transparent via publication.

The growing Kenyan IT community can make these objectives achievable. Kenya has the ability to provide institutional transparency, efficiency, and public private consultation to build a robust services economy, which provides quality and competitively priced services inputs to agricultural and manufacturing production.

Kenya is a services exporter with an interest in expanding exports. Figure 4 illustrates Kenya's commercial services exports in 2019. Kenya's commercial services exports are concentrated in transportation followed by personal travel, computer and information services, financial, insurance, business travel, other business services, and personal, cultural, and recreational services. Kenya is a magnet for tourism as the export of personal travel demonstrates. Kenya has a significant foothold in the regional computer and information as well as financial services market. An examination of the insurance regulatory regime and the competitive position of insurance providers may generate insight into possible reforms and removal of constraints at the regional level to build the insurance industry's export performance. Negotiators can emphasize how robust intellectual property rights use and enforcement could benefit the lagging export of cultural services where global demand is growing due to streaming services.

Figure 4: Kenya commercial services exports (US$ million), 2019



Source: The Observatory of Economic Complexity

In conclusion, the US and Kenya can develop an agenda on trade in services in recognition of the socio-economic benefits services generate as identified in figure 6. Negotiators can recognize how services industries and services professionals, as intermediate inputs, create more robust enterprises and more effective government institutions as well as high-quality, competitively priced agricultural and manufacturing products. Negotiators can emphasize the underlying constraints to domestic and foreign investment in services, such as, informality, opaque regulations, and omissions in the rule of law. With over 83.3% of Kenyans employed in the informal sector, the strategic partnership can create the conditions for enterprises and workers to move from the informal to the formal economy to generate domestic and foreign investment. Services enterprises can automate seamless adherence to tax, labor, and registration requirements, to create a transparent business environment for sustainable and inclusive economic growth. The strategic partnership can examine private sector EdTech initiatives, facilitate digital trade in educational services, and support academic exchanges. The U.S. and Kenya can use the WTO reference paper on domestic regulation to improve the regulatory environment and model reform for the EAC and AfCFTA. The U.S. and Kenya can note the progress in AfCFTA protocols on investment, competition policy, intellectual property rights, and digital trade, which will influence continental trade in services development and integration. As partners, the U.S. and Kenya can facilitate digital trade in services with on the ground provision of engineering, scientific, and technical services as a strategic means to solve advancing environmental, climate, and energy challenges.

Figure 5: Socio-economic benefits of services industries

Services Sector	Socio-economic benefit
Financial	Expands credit and lower cost of borrowing
Insurance	Mitigates risk and exposure to unanticipated events
Accountancy	Supports corporate health and public sector accountability
Legal	Contributes to the rule of law and investment facilitation
Information technology	Creates innovation and efficiency
Environmental	Protects against air, water, and ground pollution
Scientific and technical	Provides solutions to climate, health, and energy challenges
Arts, entertainment, and sports	Expresses cultural vibrancy and can create social unity
Educational	Fundamental to socio-economic development

Source: compiled by author

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[i] Federal Reserve Bank of St. Louis, FRED Gross Domestic Product, August 25, 2022
[ii] World Trade Organization, Trade Profile United States, 2020
[iii] U.S. Bureau of Labor Statistics, Employment by Major Industry Sector, September 8, 2022
[iv] International Monetary Fund, Kenya, (Country Report No. 22/232), July 2022.
[v] International Monetary Fund, Kenya Selected Issues, (Country Report No. 21/276), December 2021
[vi] Finance & Development, What Is the Informal Economy?, December 2020
[vii] Ibid
[viii] International Monetary Fund, Kenya 2021 Article IV Consultation, (Country Report No. 21/275), December 2021