



AMCHAM
KENYA

**Report on a Business Roundtable Discussion held with
the U.S. Department of Commerce, the U.S. Trade
Representative, the U.S. Trade and Development**

Agency and USAID

February 14, 2019

Nairobi, Kenya

BACKGROUND

This roundtable session was convened by AmCham Kenya, with the support of the U.S. Commercial Service of the U.S. Embassy in Nairobi. In attendance were representatives of the U.S. State Department of Commerce, the U.S. Trade representative, U.S. Development Agency and the USAID, in addition to a cross-section of AmCham members representing key American companies operating in Kenya.

This was a follow-up session from a previous roundtable engagement held on October 23, 2018 with the U.S. Trade Representative on trade barriers in Kenya.

The session served to highlight priority issues from the list of trade barriers presented in the earlier meeting and discuss a possible joint course for action.

The session was chaired by the AmCham Kenya CEO, Maxwell Okello.

DISCUSSION

PART I: TRADE BARRIERS

Attendees received an overview of the AmCham Advocacy Priority Agenda for 2019, which summarized the key trade barriers experienced by AmCham member companies, identified as priority areas for advocacy. AmCham members present then received the opportunity to expound on their experience and give their perspectives on the issues. The issues discussed were:

Immigration

The requirement by the Kenya Department of Immigration to have all foreign workers and expatriates register for their work permit prior to arrival in Kenya which came on the back of a directive for fresh registration of all foreign nationals in Kenya late 2018 was discussed and its impact on American companies operating in Kenya. The increased scrutiny that came with this led to delays in processing of work permits and an increase in rejected applications affecting some of the companies present. The cases were only resolved with the direct intervention of the Chamber to the Director of Immigration.

The major concern presented by the companies was not in the law itself but in how the directive was implemented creating a sense of concern on future trends although at present things appear to have settled down.

The issue of immigration was also discussed as viewed from a perceived government shift to a stronger localization policy especially on larger infrastructure projects.

Overall, it was suggested that future meetings with the Department of Immigration emphasize the competitive advantage value of U.S. businesses in skills development and absorption of local human resources to counter the misconception that foreign workers take away opportunities for locals and highlight the differentiator for American businesses.

Government Procurement

The challenge of corruption in government procurement locking out U.S. companies and denying Kenya the benefit of great American quality, solutions and innovation was discussed in regards to opportunities for resolution through U.S. support. The USTDA in response, mentioned that it is in the planning phase for orientation visits to the U.S. for Kenyan Government officials through its Global Procurement Initiative to cover best-practice in the U.S. around procurement and anti-corruption issues. This program would ideally follow-up with an advisory component and technical support to improve Kenya's procurement system in line with the areas highlighted should it run its course.

However, companies present reiterated that even with an improvement in government procurement to factor quality, project lifetime value, incorporation of local resources both material and human, and opportunity for skills transfer, the issue of funding for projects remains an ongoing challenge hindering U.S. companies' competitiveness in Government procurement in Kenya as the Kenyan government gives preference to proposals with attached funding.

Governance

Non-payment of contracts and lengthy commercial dispute processes both which have significantly impacted American companies in Kenya were discussed. The issue of non-payment of VAT refunds was also raised as a major challenge with one company present detailing that it was owed KES 1billion in VAT refunds.

The new government move to centralize payments for contracts to suppliers/vendors, although termed helpful in reducing the levels bureaucracy in the process, was agreed to not present an immediate solution as the bigger problem is the inadequate funding for projects made worse by revenue leakages and a tightening fiscal stance by government.

Customs and border measures

A renewed focus on customs and border inspections in Kenya to curb widespread proliferation of counterfeit goods and enforcing compliance, is having unintended consequences on trade, negatively impacting the flow of goods for many American businesses operating in the country and the East African region. Some of the challenges mentioned included:

The requirement for physical inspection of all imported goods not being practical for medical equipment as the sensitivity of some of the devices requires that they are delivered to the client with original packaging intact. Other medical equipment is also shipped in parts therefore making it difficult to meet the standard of inspection as a whole. One of the companies present mentioned they are in discussions with KEBS to create a green channel for pre-inspected medical equipment especially cancer treatment equipment which is time sensitive.

The Agricultural sector was also highlighted as being greatly impacted by the current customs inspection processes with imported fertilizer being the most affected as the Kenya Bureau of Standards (KEBS) lacks the technical capacity to conduct inspection.

One of the companies present also reported a recent surge in seizure of their products at both Kenya's and Tanzania's borders, slowing down trade. This is in addition to delays currently being experienced due to these directives which have a significant financial implication.

These examples underscored the wider impact of these directives on trade. Although Kenya is implementing stricter border control in the pursuit of a legitimate goal - curbing the influx of counterfeits into the country - the means of enforcement runs counter to those efforts. This was described with examples from the pharmaceutical space and in Kenya's positioning as a regional hub.

If Kenya makes it difficult to import pharmaceutical products that are approved in other countries this would only open the Kenyan market to proliferation of counterfeits; counter to government efforts. Kenya also having positioned itself as a regional hub, would have this positioning challenged if existing regulation hinders the movement of goods across its borders.

These measures further place legitimate companies who follow the rules at a disadvantage as their products end up being too expensive and unable to compete with counterfeits, again further encouraging proliferation of counterfeits.

Del Monte's Lease Agreement

The issue of renewal of Del Monte's lease agreement currently under threat due to unreasonable demands by the County governments, despite the company's significant contribution to the Kenyan economy was also raised as an urgent issue requiring intervention.

PART II: STRENGTHENING THE U.S. – KENYA COMMERCIAL COOPERATION

In this section of the discussion, representatives of various U.S. Government departments and outlined their role in strengthening the U.S. – Kenya commercial interaction and addressing trade barriers.

The segment was led by Skip Jones - Deputy Assistant Secretary for the Middle East & Africa U.S. Department of Commerce.

The Trade and Investment Working Group (TWIG) – U.S. Trade Representative

Work is currently ongoing to set it up. Its objectives are:

- Pursuing exploratory talks on a future bilateral trade and investment framework
- Maximizing the remaining years of the AGOA program
- Strengthening commercial cooperation
- Identifying and resolving short-term barriers to trade and investment

The first meeting for the TWIG is planned to take place in March, 2019.

The U.S. Trade and Development Agency (USTDA)

USTDA can provide support in de-risking planned projects at various stages to help them reach financial close. They have current interest in expanding their presence and portfolio in Kenya with Energy, ICT and transportation being the current areas of interest.

Other Tools for Strengthening the U.S. – Kenya Commercial Cooperation

Kenya – U.S. MoU – Facilitates the ability of U.S. Companies to do business in Kenya by providing a pipeline through which the U.S. government can receive information from the Kenyan government on projects that they would like to see U.S. private sector participation. The Department of Commerce can then work to find U.S. companies that would be interested and feedback the same to the Kenyan government who also through the MoU have the provision to choose to work directly with the interested company. The U.S. government side would also look into its programs for what support it could provide to the company to make it more attractive for the project e.g. feasibility studies, grants, training, reverse trade missions etc. This forms a deal-team model operating both in Kenya and the U.S. The MoU also has provision to address business climate issues that would otherwise hinder participation of U.S. private sector and can therefore be leveraged to address some of the issues raised in collaboration with the TWIG.

Prosper Africa – Focus on helping Kenya transition from an aid-based relationship with the U.S. to one of a trade partnership by strengthening the commercial sector in Kenya through expansion of the U.S. commercial presence in the country. The provisions of the MoU would work to support this and the Power Africa initiative is currently serving as a pilot for this model.

The BUILD ACT – This has raised the amount available for funding to \$60billion from the previous \$29billion and provided experience and expertise from other previously independent agencies such as the Development Credit Authority. It has also led to the creation of a new body, the Development Finance Corporation, with an estimated timeline to full operation by October 2019, which will be able to take private equity positions thus improving the competitiveness of U.S. companies.

RECCOMENDATIONS AND WAY FORWARD

Prioritization

It was agreed that further prioritization be undertaken by AmCham on the highlighted trade barriers with a view to segment them into those that are easily/immediately achievable, those that can be achieved mid-term and those that would require a more long-term approach. The prioritization will also focus on what would be of most value to the companies. The U.S. side will focus on placing 2-3 issues to be addressed per 6-months period and this form of prioritization would help in that regard.

To this end, the companies present were requested to submit detailed descriptions (case vignettes) of the issue/s they are facing to be forwarded to the Department of Commerce through AmCham. This would provide a more in-depth perspective of the issues and offer case examples to facilitate conversations with the Kenyan government.

Leverage

The State Department of Commerce encouraged AmCham and its members to find avenues that could be used to leverage Kenya's action on some of the trade issues such as the World Trade Organization's Trade Facilitation Agreement which Kenya ratified on December 10, 2015 but has to date only achieved 7.1% compliance on its obligations.

The USTDA also welcomed suggestions from AmCham on areas they feel would benefit from a reverse trade mission.

Leveraging the Kenya – U.S. MoU

Based on the provisions of the MoU, companies present were encouraged to present project ideas that would be of interest to their organizations irrespective of whether they fall under planned projects by the Kenyan Government. It would be possible to focus the deal team efforts on these projects, under the auspices of the MoU, to help them come to close. Another approach that was suggested was to share the existence of this mechanism to other U.S. companies outside AmCham Kenya's membership through the U.S. Chamber to widen the net.

PARTICIPANTS

AmCham Member Companies Present

- Brenda Mbathi, Executive Director Govt. Affairs and Policy Eastern Africa G.E. East Africa
- Pumla Mathe, Investor Relations, Everstrong Capital
- Timothy Muya, Country Manager, BDP International
- Philipine Mtikitiki, Regional Commercial Director, Kenya and Tanzania, Coca - Cola
- Stergios Gkaliasoutsas, Managing Director, Del Monte Kenya
- Thomas Yongo, East Africa Business Development Manager, Bechtel Infrastructure
- Humphrey Lilech, Government Relations Executive East Africa, IBM
- Vishnu Govender, Market Development Leader, Sub-Saharan Africa, 3M
- Edwin Maina, Varian Medical Systems
- Idah Asin, Director, Government Affairs and Policy East Africa, Johnson and Johnson

U.S. Government Representation

- **U.S. State Department of Commerce (USDOC)**
 - Skip Jones, Deputy Assistant Secretary for Middle East and Africa
 - Giancarlo Cavallo, East Africa Desk Officer
- **Office of the U.S. Trade Representative (USTR)**
 - Alan Treat, Director for African Affairs
- **U.S. Trade and Development Agency (USTDA)**
 - Heather Lanigan, Regional Director for Sub-Saharan Africa
 - Katrien Hinderdael, Country Manager, Sub-Saharan Africa
- **Foreign Commercial Service (FCS), U.S. Embassy in Nairobi**
 - James Rigassio – Commercial Counselor

- Tyler Hacking – Commercial Officer
- Mary Masyuko – Senior Commercial Specialist
- Janet Mwangi – Commercial Specialist
- **The Economic Section, U.S. Embassy in Nairobi**
 - Mario Fernandez – Economic Counselor
 - Adam Ross – Economic Officer
- **USAID**
 - Scott Cameron - Chief for Economic Growth and Integration USAID Kenya and East Africa
 - Lisa Walker - Deputy for Trade, USAID Kenya and East Africa