



Comments of the American National Standards Institute on FR Doc. 2022-0008, Request for Comments on Negotiating Objectives for a United States-Republic of Kenya Strategic Trade and Investment Partnership.

September 16, 2022

The American National Standards Institute (ANSI), welcomes the opportunity to provide its input to the Office of the U.S. Trade Representative, in support of its preparation of Negotiating Objectives for a United States-Republic of Kenya Strategic Trade and Investment Partnership (STIP). ANSI respectfully submits the following comments addressing these topics:

- The relevance of Technical Barriers to Trade (TBT) and Good Regulatory Practices (GRP) provisions as part of the STIP negotiations
- Market access and standards collaboration to facilitate the inclusion of small and medium enterprises (SMEs) in the global value chain and standards development processes
- Supporting participation of women, youth, and others in trade

Overview

ANSI is a federation whose members are government agencies, trade associations, standards developing organizations, professional societies, companies, academic and international bodies, and consumer organizations. ANSI represents the interests of more than 270,000 companies and 30 million professionals worldwide. As the voice of the U.S. standards and conformity assessment system, ANSI empowers its members and constituents to strengthen the U.S. marketplace position in the global economy while helping to assure the safety and health of consumers and the protection of the environment.

The U.S. standardization system is fundamentally built on the needs of the marketplace, where users decide which standards best meet their needs, and in which standards development settings they wish to work. Ultimately, the U.S. standardization community supports the fact that there are multiple paths to global relevance – as articulated by the World Trade Organization’s Technical Barriers to Trade (TBT) Agreement – and that the marketplace decides the utility or applicability of any given standard.

Voluntary consensus standards for products, processes, and services are at the foundation of the U.S. economy and society. The United States has a proud tradition of developing and using voluntary standards to support the needs of our citizens and the competitiveness of U.S. industry in world markets. ANSI oversees the creation, promulgation, and use of thousands of norms and guidelines that directly impact businesses in nearly every sector: from acoustical devices to construction equipment, from dairy and livestock production to energy distribution, and many more. ANSI is also actively engaged in accreditation – assessing the competence of organizations determining conformance to standards.



The Institute promotes the use of U.S. standards internationally, advocates U.S. policy and technical positions in international and regional standards organizations, and encourages the adoption of international standards as national standards where they meet the needs of the user community. ANSI is the sole U.S. representative and dues-paying member of the two major non-treaty international standards organizations, the International Organization for Standardization (ISO), and via the U.S. National Committee (USNC), the International Electrotechnical Commission (IEC). As a founding member of ISO, ANSI plays a strong leadership role in its governing body while U.S. participation via the USNC, is equally strong in the IEC.

ANSI is a permanent member of both the ISO Council and Technical Management Board. ANSI and its members participate in more than 75% of ISO Technical Committees (TC) and Subcommittees (SC) and administers 15% of TC and SC Secretariats. ANSI's USNC is a permanent member of the IEC Council Board, Standardization Management Board, and Conformity Assessment Board. The USNC participates in over 94% of IEC TCs and SCs, and administers over 13% of TC and SC Secretariats.

The need for STIP to uphold TBT and GRP provisions

Standards and technical barriers to trade (technical regulations and related compliance programs) are consistently identified by U.S. industry as top barriers to exports – adding significant time and cost to market. A June 2016 report by the Department of Commerce (DoC) estimates that 92% of U.S. exports may face foreign technical regulations that make it difficult to compete in key markets. U.S. industry is increasingly global and invests in relevant international standards forums to develop standards. If foreign governments use these standards, this expands market opportunities – particularly for small businesses, which do not have the resources to comply with various homegrown requirements in different markets.

When observing Kenya's business environment, key indicators suggest that it may present important barriers related to regulatory quality:

- **According to the World Bank's World Governance Indicator**, which measures company perception of a country's business environment (ranked from 0 to 100), with regard to its regulatory quality, and quality of the rule of law, foreign companies, including U.S. industry, had a more negative perception of Kenya's governance in 2020 compared to 2015. The regulatory quality indicator which assesses the ability of the government to formulate and implement sound policies and regulations that permit and promote private sector development fell from 42.78 to 35.58; and the rule of law indicator, capturing the perception of extent to which public agents abide by the rules of society - and thus offering transparency and legal certainty - dropped from 36.54 to 31.25,¹ reflecting a decline in supportive mechanisms for a conducive business environment.
- **According to the World Economic Forum Global Competitiveness Report**, Kenya has a score of 121/141 on the transparency of its business environment, and ranks 104/141 on the prevalence

¹ <http://info.worldbank.org/governance/wgi/Home/Reports>



of Non-Tariff Barriers; which places Kenya at a rank of 95/141 on the overall competitiveness scale.²

It is relevant to underscore that Kenya has international treaty obligations, such as the WTO TBT Agreement which includes commitments and provisions on transparency. Therefore, negotiations under the STIP should reflect provisions that are at least equal to the commitment that both the U.S. and Kenya have made under this Agreement to facilitate transparency mechanisms for all stakeholders in trade proceedings. This could potentially improve perceived barriers being experienced by investors in Kenya's business environment; and increase bilateral trade between the U.S. and Kenya. Therefore, the STIP negotiations represent a real opportunity for U.S. companies to support the development of Kenya's local economy and its diversification, in accordance with best international principles.

The areas of TBT and GRP also provide an opportunity for the U.S. government to demonstrate its commitment to the WTO, and the TBT Agreement in particular. Further, the U.S.-Mexico-Canada Agreement (USMCA) established important baselines for the private sector. For non-FTA partnerships, status quo or backstepping from practices set by the USMCA may reflect a misalignment with best international practices. For any new trade partnership, we strongly advocate for the U.S. Government to reiterate and build upon key private sector advances within USMCA, including for example articles of the Technical Barriers to Trade (TBT) Chapter, including:

- Article 11.4: International Standards, Guides and Recommendations;
- Article 11.5: Technical Regulations; and
- Article 11.6: Conformity Assessment

If TBT text is not categorically recognized in this new arrangement, then we recommend the following:

- Including the specific TBT and USMCA elements described above in the new arrangement under both general overarching provisions (e.g. preamble or initial provisions) and in the "Standards Collaboration" section;
- Restate commitments to the WTO Agreement on TBT and the WTO TBT Committee Decision on International Standards; and
- Seek to apply good regulatory practices and principles to the development and implementation of technical regulations and conformity assessment principles for goods, services and technologies.

ANSI recommends that in the STIP negotiations the African Continental Free Trade Agreement (AfCFTA), is also viewed as a priority when developing provisions related to TBT and GRP. The African Union has designated Kenya as one of the first countries in the continent to begin implementing the provisions transcribed in the AfCFTA, and stated that all trade policy in the continent should take into account a "Whole of Africa" approach.³ The Government of Kenya (GoK) has issued a national strategy for

² https://www3.weforum.org/docs/WEF_TheGlobalCompetitivenessReport2019.pdf see page 318

³ [wto2022_0538a.pdf \(insidetrade.com\)](https://www.insidetrade.com/wto2022_0538a.pdf)



implementing the agreement, and negotiations around the STIP may need to account for AfCFTA stipulations.⁴ As part of this strategy, Kenya intends to build strong institutional and regulatory frameworks to support effective implementation of the AfCFTA agreement. The government intends to do so by holding workshops with members of the private sector to identify solutions for the issues they face. ANSI believes that offering U.S. expertise and assistance as part of the STIP negotiations to help with the implementation of the AfCFTA could ensure alignment between both agreements and increase the consistency of the STIP with Kenya's priorities. Given that ANSI has extensive experience in implementing activities that are designed to improve the transparency of the regulatory framework, and supporting national TBT enquiry points and notification authorities, ANSI would welcome the opportunity to support capacity building efforts aimed at creating and promoting consistency between the STIP and AfCFTA.

ANSI and USAID have an existing technical assistance mechanism and public-private partnership called the [Standards Alliance: Phase 2 \(SA2\)](#), which is designed to bolster the capacity of developing countries in the areas of legal and regulatory frameworks, standards development, conformity assessment procedures, and private sector engagement. Through Phase I and Phase II of the Standards Alliance, ANSI and USAID have been successful in developing strong partnerships that have facilitated trade flow, economic growth and improved the business environment, as recognized by the USTR 2022 Trade Policy Agenda.⁵

Programs like the Standards Alliance support two-way trade and investment through targeted assistance to existing partners such as Kenya.⁶ These efforts enhance the understanding and application of various aspects of international trade, including technical barriers to trade (TBT) and good regulatory practice (GRP), and also consider priorities set forth by the AfCFTA.

Market access and standards collaboration to promote SMEs growth

According to the national strategy for the AfCFTA implementation, Kenya has a stated objective to increase SMEs involvement in global trade. Given that standards are a key component of U.S.-Kenyan trade relations; further U.S. support in this area would be an avenue or tool through which Kenyan SMEs can achieve greater global trade participation, influence international policy and standards development processes and contribute to innovation.

ANSI Members include standards development organizations (SDOs) and other organizations with an interest in standards, companies, government agencies, consumer representatives, academia and other standards stakeholders. Company Members make up 60% of the ANSI membership and of those Company Members, 82% of companies that are ANSI full members at the lowest tier (tier 1 - revenues less than \$100M) are small businesses (fewer than 500 employees). ANSI offers many programs and events that engage small businesses and in specific cases, has catered to small business interests. Small

⁴ <https://repository.uneca.org/bitstream/handle/10855/48179/b12016822.pdf?sequence=1&isAllowed=y>

⁵ USTR Trade Policy Agenda p. 177

⁶ The Standards Alliance project is active in Kenya in the healthcare and concrete sectors.



businesses are represented in a number of ANSI standards collaboratives, such as the additive manufacturing and unmanned aerial systems collaboratives as well as the ANSI Nanotechnologies Standards Panel (NSP).

ANSI, in accordance with the principles and strategic objectives highlighted in the U.S. Standards Strategy, recommends that strategic initiatives developed under the STIP should address the need for standards in support of emerging national priorities, as well as promote and encourage a standards-literate workforce by building standards awareness and competence among various communities, especially SMEs in Kenya. Furthermore, ANSI, recommends that regulatory cooperation mechanisms developed under the STIP, should ensure regulators, companies, and consumers have the ability to choose international standards from multiple sources.⁷ This strategy, developed and maintained under the leadership of ANSI, promotes a flexible, multiple-path approach and recognizes the growing need for standards designed to meet stakeholder needs irrespective of national borders. U.S. law and policy call for federal agencies to base technical regulations on voluntary consensus standards developed by the private sector – and, in particular, relevant international standards – wherever possible, rather than creating government-unique standards. In addition, U.S. regulators are given flexibility to select the standards that best suit their regulatory objectives.

In Kenya, standards, conformity assessment, technical regulations, and related compliance programs are developed primarily by the Kenya Bureau of Standards (KEBS) – which is the government regulatory body under Kenya’s Ministry of Trade and Industrialization. Policies allowing Kenyan regulators flexibility could enable them to select the standards that best meet their objectives and will provide an important mechanism for greater regulatory alignment between the U.S. and Kenya. These mechanisms will also ensure more predictable market access for U.S. business by further development of Kenya’s regulatory infrastructure.

In the STIP negotiations a particular emphasis should be placed on furthering Kenya’s integration to the global value chain (GVCs). According to the Organization for Economic Cooperation and Development (OECD), about 70% of international trade today involves GVCs – as services, raw materials, parts, and components cross borders – often numerous times.⁸ This emphasizes the importance of reducing barriers to entry in Kenya and limiting red tape. With easier market access, Kenyan SMEs would benefit from linkages with U.S. companies creating pathways for technology transfer and positive spillover to the local private sector and thus make them more competitive and further integrated in global trade.⁹

U.S. and Kenya companies have had difficulties meeting specific requirements to enter both markets. For example, a December 2021 report¹⁰ by the Overseas Development Institute stated that some U.S.

⁷ https://www.ansi.org/standards_activities/nss/uss

⁸ <https://www.oecd.org/trade/topics/global-value-chains-and-trade/>

⁹ See World Bank, Global Investment Competitiveness Report p. 7 (<https://openknowledge.worldbank.org/bitstream/handle/10986/33808/9781464815362.pdf?sequence=4&isAlloved=y>)

¹⁰ See Overseas Development Institute, Overview of Kenya–U.S. Bilateral Trade p. 3&4 (<http://www.odi.org/publications/overview-of-kenyaus-bilateral-trade>)



companies have shifted their production out of the United States to facilities in Europe to have greater access to African markets. Additionally, stakeholders from both countries face challenges in obtaining access to their respective markets ranging from standards, conformity assessment, certification and packaging requirements. Recently, there have been reports of lengthy processing and confusing documentation requirements from Kenyan customs authorities.¹¹

Finally, ANSI believes that standards collaboration between the U.S. and Kenya can promote inclusive growth for SMEs in Kenya. If conducted effectively, in conjunction with demonstration of conformity with relevant standards, this can bring significant benefits for SMEs in the areas of digital trade¹². For example, with the introduction of digital trade in mobile money transactions, the GoK plans on using those transactions to build payment history for SMEs¹³. In addition, this will expand access to credit line for SMEs and enable them to access funding. However, there are still some uncertainties regarding digital trade. Therefore, in negotiating the STIP agreement, the U.S. and Kenya could consider examining common benefits of digital trade to further harmonization in that sector.

In that sense ANSI believes that the STIP negotiations should be guided by principles both countries already accept to abide by in principle and are transcribed in the WTO Trade Facilitation Agreement, which aims to reduce red tape for cross border trade so that SMEs may have a more active role in bilateral trade between the U.S. and Kenya.

Supporting participation of women, youth, and others in trade

The participation of women, youth and others in trade are critical components of the U.S.-Kenya STIP. For example, a 2021 study from the World Bank Group stated that most of the SMEs in Kenya are owned by women; and 30% of those SMEs are currently struggling due to the impacts of COVID-19 and funding access¹⁴. As noted above, the primary drivers of MSMEs in Kenya are women, as well as its primarily young but growing population. This presents a perfect opportunity for sustainable job creation for not just women but also young workers. As part of targeted interventions, gender and youth responsive policies and tools can be employed to support women and youth in shaping a more sustainable economic opportunity. For this reason, ANSI recommends that the U.S.-Kenya STIP negotiations consider incentivizing public-private partnerships and design growth models as well as gender-responsive standards that can give rise to greater sustainable economic opportunities, thus helping U.S. firms become more competitive in Kenya. Lastly, ANSI encourages the U.S.-Kenya STIP negotiations to include provisions for women-led SMEs in public-private partnerships and standards development processes so

¹¹ See International Trade Administration, Investment Climate Statement (<https://www.trade.gov/country-commercial-guides/kenya-investment-climate-statement>)

¹² See U.S Chamber of Commerce U.S. Africa Business Center & the American Chamber of Commerce Kenya p. 10 (https://www.amcham.co.ke/sites/default/files/reportdocuments/Kenya_US%20FTA%20Report_April%202021.pdf)

¹³ See Global Systems for Mobile Communication, Mobile taxation in Kenya Report p. 12 (https://www.gsma.com/publicpolicy/wp-content/uploads/2020/03/GSMA_Mobile_taxation_in_Kenya_2020.pdf)

¹⁴ See International Finance Corporation, Covid-19 and Women-led MSMEs in Sub-Saharan Africa p. 50 (<https://www.ifc.org/wps/wcm/connect/b03405d3-5082-497e-9027-6b4dd559bbf0/202103-COVID-19-+and-Women-Led+MSMEs-Sub-Saharan-Africa.pdf?MOD=AJPERES&CVID=nxGKX6C>)



as to facilitate their growth. This provision will encourage increased participation of women and support the promotion of economic opportunities.

Closing

ANSI looks forward to continuing to contribute toward increased alignment and greater compatibility between the U.S. and Kenya to promote two-way trade and investment. Ensuring that this new partnership framework is well-crafted will be of critical importance as it may be the model for future trade harmonization on the African continent.

Thank you for your consideration and the opportunity to comment. We would be happy to provide clarification or further engage with you in any way deemed useful as you work toward a strong and effective trade partnership.