US Tells Kenya to Publicly Support Israel or Forget Free Trade Deal

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Global Research, September 23, 2020
The East African 21 September 2020

Region: Middle East & North Africa, sub-Saharan Africa, USA
Theme: Global Economy

The US wants Kenya to support Israel's political and commercial interests, or forget a free trade deal (FTA) with the world's biggest economy.

This is one of a raft of conditions set in the ongoing FTA negotiations between Nairobi and Washington.

The US has indicated in its objectives seen by *The EastAfrican* that the deal with Kenya should, with respect to commercial partnerships, discourage actions that prejudice or discourage business between the US and Israel.

Washington argues that the FTA should "discourage politically motivated actions to boycott, divest from, and sanction Israel."

The US also wants the "elimination of politically motivated, non-tariff barriers on Israeli goods, services, or other commerce imposed on Israel; and the elimination of State-sponsored, unsanctioned foreign boycotts of Israel, or compliance with the Arab League Boycott of Israel."

The inclusion of a third party, Israel, in the negotiation agenda, has seen lobby groups in Nairobi warn that the agreement could be too risky for Kenya.

The US has for decades been a staunch supporter and defender of Israel on the global stage and in volatile Middle East.

> "The United States published its negotiating position before negotiations began for all to see. We are negotiating with transparency and openness," said the US ambassador to Kenya, Kyle McCarter, when asked about the inclusion of Israel in the negotiations. "This is how we have treated the numerous other countries with which we have concluded successful free trade agreements benefiting both parties," he added.

Political connotation

The East African Tax and Governance Network (EATGN) and East African Trade Network (EATN), the groups who have been following developments on the matter, said Nairobi was being ''entrapped'' in the Palestine-Israeli conflict.

> "Due to Kenya's own special relationship with Israel and its pragmatic

> approach in dealing with issues like tensions in the Middle East, US demands for such political connotations in the USFTA would undercut the country's reputation," argued Leonard Wanyama, the co-ordinator of the EATGN and vice-president of the International Relations Society of Kenya, a lobby for foreign policy experts in Nairobi told The EastAfrican.

The Network and other groups had raised a petition opposing the negotiations, unless there is clarity on tax exemptions to avoid any revenue losses for the government.

But the demand for protection of Israeli interests means Washington is pursuing the goal of ending any possible support for Palestine's Boycotts, Divestments and Sanctions (BDS) against Israel, a global initiative by various groups across the world friendly to Palestinian grievances. The groups often seek to have Israel meet obligations under international law.

These include withdrawal by Israel from the occupied territories; removal of the separation barrier in the West Bank; full equality for Arab-Palestinian citizens of Israel; and "respecting, protecting, and promoting the rights of Palestinian refugees to return to their homes and properties," according to a bulletin by the BDS Committee.

Traditionally, Kenya has often recognised Israel, but rarely makes a public statement endorsing one side or the other and supports the ultimate two-State solution for Palestine and Israel. It allows Palestine to establish a representative office in Nairobi.

This week, the Tax Network said Washington's demand could place Nairobi in a difficult situation and called for officials to reject the call.

On Thursday, Johnson Weru, the Trade and Industry Principal Secretary told *The EastAfrican* that political issues are not part of the agenda, but declined to discuss the issues they agreed to.

Controversial objectives

Nairobi's own published objectives indicate the agreement must be discussed within the limits of the EAC and the World Trade Organisation regulations. Kenya also wants a deal that takes into consideration the "special and differential treatment applicable to Kenya as a developing country."

Under the WTO guidelines, developed countries provide certain preferential treatment to developing partners such as duty-free market access without expecting reciprocal treatment.

Whether Kenya's refusal to accept political discussions is because of the petition filed earlier last month is yet to be clear. But the US has also included other controversial objectives, which the lobbies are opposed to.

For example, the US insists Kenya must not tax digital products like e-books or music, and Nairobi must include no provisions that require US firms operating to store data locally.

Under the WTO moratorium on e-commerce, Customs duty should be charged on ''transmission'' of those services and products, not the products or their contents themselves.

The 1998 moratorium has been challenged in situations where physical products have been digitised.

Peter Lunenborg, a Senior Programmes Officer for Trade and development at trade policy research group, South Centre, told *The EastAfrican* it was not unusual for countries to include conditions like this in trade negotiations, as long as they enhance their market access.

> "These are disciplines that are also in USMCA (US-Mexico-Canada Agreement), so there are no surprises there. Essentially these rules, inter alia, aim at maintaining the dominance of US-based e-commerce firms," he said, referring to the US deal that came into force last July.

Mr Lunenborg said there have been concerns, however, raised at the WTO by some members who argue e-commerce needs to be structured to protect developing countries.

Since 2017, for instance, the Africa Group at the WTO has argued that developing countries need to look beyond the possible benefits of digital solutions, and to start assessing the impact that the lack of digital and technological capabilities would have in cementing and widening the technology divide.

A report on the ''digital industrial policy and development'' by the Africa Group concluded that "a thorough assessment is required, particularly for developing countries, to assess the opportunities and threats that digital transformation will bring.

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