THE US-KENYA STRATEGIC TRADE AND INVESTMENTS PARTNERSHIP

AN ANALYSIS

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Kenya-US STIP – some analysis

1. Background: Some analysis of the implications of the Kenya-US STIP

The announcement of the launch of the Kenya-US Strategic Trade and Investment Partnership (STIP) identified 'initial issues where the United States and Kenya will develop an ambitious roadmap for enhanced cooperation with the goal of negotiating high-standard commitments'.[1]

Below are some of the implications of the Kenya-US STIP based on the launch announcement above.

Agriculture

The STIP launch announcement includes:

- 'The United States and Kenya will consider measures to facilitate agricultural trade'. This is presumably not about trade facilitation (TF) since there is a separate paragraph in the launch announcement on TF, see below. Kenya has a number of laws/regulations/policies ('measures') which reduce imports of agricultural products (including from the USA) into Kenya. The US may try to ban these Kenyan measures as part of the STIP in order to 'facilitate agricultural trade' (i.e.

increase imports of US agricultural products into Kenya), even if these Kenyan measures comply with World Trade Organization (WTO) rules, since the purpose of free trade agreements (FTAs) is to go beyond WTO rules. Some examples of these Kenyan measures which the US may target in the STIP negotiations since they are listed in the US government's 2022 report on foreign trade barriers[2] include:

  - 'In instances where domestic agricultural production exceeded projections, the Ministry of Agriculture has imposed quotas to limit imports and stabilize domestic prices.'
  - 'Kenya has maintained a ban on genetically engineered (GE) food and feed imports since November 2012. Kenya's GE ban has blocked both U.S. Government food aid and U.S. agricultural exports derived from agricultural biotechnology. The restriction affects U.S. exports of processed and unprocessed foods and feed ingredients, such as soy, corn, and distiller dried grains with solubles. The GE import ban also affects trans-shipment; as a result, U.S. Government food aid shipments of GE commodities destined for inland East African countries, which would ordinarily enter through the Port of Mombasa, must be diverted to other ports or reformulated with non-GE commodities.'
  - 'Kenya's Office of the Director of Veterinary Services (DVS) and the U.S. Department of Agriculture Animal and Plant Health Inspection Service agreed on veterinary requirements and certificate attestations for the importation of bovine embryos from the United States. However, in May 2020, DVS proposed additional requirements, beyond those previously agreed by the two agencies. Technical work is ongoing.'
  - 'Kenya maintains complex, non-transparent, and costly requirements for the importation of all meat, dairy, and poultry products including a "Letter of No Objection to Import Permit" (no-objection letter) from DVS under the Ministry of Agriculture, Livestock, and Fisheries. Before issuing a no-objection letter, DVS requires an importer to explain the reason for importation through a "Letter of Application to Import" and to specifically address the market need the import would meet. DVS issues the no-objection letter for meat, dairy, and poultry products at its discretion on a case-by-case basis. Importers have reported that DVS has at times provided them with non-sanitary-related grounds for denying permits, such as the local availability of a similar product.'
  - 'Kenya subjects imported and domestically produced corn to a total aflatoxin limit of 10 parts per billion (ppb) and a 13.5 percent maximum moisture content. As a result, most U.S. exports are denied permits for importation. Kenya's aflatoxin limit is lower than the U.S. Department of Health and Human Services Food and Drug Administration action level of 20 ppb. Under special circumstances, such as food shortages, Kenya has allowed higher moisture content for imported corn, which must then be dried and milled immediately upon arrival to reduce the risk of aflatoxin contamination. For U.S. corn exports that are permitted under special circumstances, the costs associated with the additional processing requirements make U.S. corn exports largely uncompetitive.
  - Kenya also restricts popcorn imports to a six percent maximum moisture requirement. The U.S. limit is 12.5 percent to 15 percent.
  - Kenya does not permit whole pea imports due to concerns about the Pseudomonas pisi fungus but permits the import of split peas. Kenya also prohibits bean imports from the United States due to the occurrence of Corynebacterium flaccumfasciens bacteria in some parts of the country. Kenya also prohibits lentils from the United States due to the risk of darnel weed; although, this weed already exists in Kenya.'

- 'The United States and Kenya will consider measures to . . . enhance transparency and understanding of the application of science- and risk-based Sanitary and Phytosanitary (SPS) measures. The two sides share an interest in . . . creating an enabling environment for innovative agricultural technologies'. It is clearly a US government priority to get Kenya to accept GE etc products, e.g. the 2022 USTR report notes that 'The U.S. Government continues to engage the Kenyan Government and stakeholders to support the adoption of GE and other emerging technologies.'[3] US companies such as CropLife[4] and Monsanto/their industry associations[5] have also been pushing for science-based regulations in the equivalent[6] Indo-Pacific Economic Framework (IPEF) negotiations occurring between the Biden Administration and 13 other

countries.[7] Are these Kenyan measures highlighted in the USTR 2022 report:[8] science-based (and enabling innovative technologies):
  - Kenya's GE ban? Especially since:
    - 'Kenya's commercialization of GE Gypsophila flower (baby's breath) intended for export, including to the United States, is stalled due to concerns that it could potentially jeopardize Kenya's market access to the European Union.'
    - Kenya has approved commercial cultivation of Bt cotton and is doing trials of BT corn etc, 'However, Kenya continues to maintain the ban of GE food and feed imports introduced in November 2012.'
  - Kenya's failure to give import permits for meat/dairy/poultry because of local availability of a similar product? (See USTR 2022 report above about DVS no-objection letters).
  - Kenya's lower aflatoxin limits in corn and lower moisture limits in popcorn? (See 2022 USTR report above).
  - Kenya's ban on: whole pea imports, bean imports from the US and lentil imports from the USA? (See 2022 USTR report above).
- The US may propose the biotechnology provisions from Section B of the USMCA agriculture chapter[9] which US multinational companies have used to pressure Mexico to approve GMOs: 'Bayer has been making the case both publicly in the media and privately to government officials that Mexico's refusal to approve its new genetically engineered corn variety violates the agricultural biotechnology provisions of USMCA. These claims were repeated by BIO's McMurray-Heath in her testimony before the U.S. Senate; because of the USMCA agricultural biotechnology provisions, she averred, "Mexico must resume the approval process for all agricultural biotechnology products" and "immediately rescind its anti-USMCA decree banning the import of biotech corn and begin creating a gene editing framework that conforms with international norms and trade agreement commitments." Industry complaints about Mexico's permitting process have been echoed by members of Congress in several letters sent to both U.S. Department of Agriculture Secretary Tom Vilsack and U.S. Trade Representative Katherine Tai. A joint letter from Senate Finance Committee Chair Ron Wyden and ranking member Mike Crapo calls for the U.S. to "take enforcement steps if necessary" under the USMCA because, they claim, "Mexico has failed to properly consider or approve applications for innovative U.S. biotech products" and "announced its intention to eliminate biotech corn for human consumption by 2024, a troubling step that would adversely impact access to the largest U.S. export market for corn."'[10]

Digital trade

The STIP launch announcement includes: the US and Kenya share an interest in addressing 'addressing discriminatory practices'. It is unclear what this will cover. E.g. discrimination could be the Kenyan government treating Kenyan companies/citizens better than US companies/citizens (e.g. in land-ownership/government procurement etc), i.e. not providing national treatment. Or it could be the Kenyan government treating state-owned enterprises (SOEs) whether foreign or domestic, better than private companies. Based on past US free trade agreements (FTAs), removal of 'discriminatory practices' could mean STIP provisions such as:

- Non-discriminatory treatment of digital products which can have implications such as https://rethinktrade.org/reports/digital-trade-doublespeak-big-techs-hijack-of-trade-lingo-to-attack-anti-monopoly-and-competition-policies/ and https://medium.com/rethinktrade/trade-law-hijacked-big-techs-digital-trade-doublespeak-strikes-again-8af0a37cead9
- Removing any Kenyan requirements to store data locally (e.g. by mandating cross-border data flows) because requirements to store data domestically could be seen to be 'discriminatory' because it can violate national treatment commitments.[11] A number of governments require certain types of data to be stored domestically (e.g. personal data for privacy reasons, or tax/financial records to ensure effective regulation[12]), as does Kenya, see below.
  - The 2022 USTR foreign trade barriers report notes that Kenya's 2019 Data Protection Act (DPA) 'requires consent of the data subject as a condition for the cross-border transfer of any "sensitive personal data," a broad category of information. Such conditions may prove burdensome for firms that supply services on a cross-border basis or depend on

data processing systems located abroad. Additionally, the Act empowers the Data Commissioner to prohibit the cross-border transfer of certain categories of data, creating uncertainty for businesses operating in Kenya that depend on cross-border data flows.'[13] I.e. Kenya's DPA does not currently allow companies to automatically (without consent etc) to transfer all kinds of data abroad. There is no data privacy exception mentioned in the STIP launch announcement.
  - In the equivalent IPEF negotiations the Biden Administration has repeatedly said it is seeking provisions on cross-border data flows/data localization to prevent these kinds of data localization requirements.[14]
  - US companies such as Google and Amazon (who are on US government committees who advise on trade negotiations[15]) have also made IPEF submissions to the US government calling for cross-border data flow provisions.[16] (Google and Amazon through their industry association also called for cross-border data flows in the Trans-Pacific Partnership (TPP) and these provisions were included in the TPP[17]).
- removing Kenya's 1.5 percent digital services tax (DST) which is applied to non-resident businesses since it has been listed in the USTR's 2022 report as a foreign trade barrier.[18] DSTs have been introduced by a number of countries such as: India, Austria, UK, Spain, Italy, Turkey and France[19] because otherwise big tech companies make significant profits in their countries without paying tax which is needed for vital public services and DSTs help ensure a level the playing field for local companies that have physical shops etc and which pay taxes.[20] However the US government has found DSTs to discriminate against US companies[21] and so it may try to eliminate Kenya's DST via the STIP.
- Removing Kenyan restrictions on foreign ownership in relevant sectors. E.g. the 2022 USTR report[22] notes that:
  - 'Licensed telecommunications service providers are required to maintain 20 percent ownership and control by Kenyan persons within four years from the issuance of a license.'
  - 'the Communications Authority, Kenya's telecommunications regulator, requires 30 percent Kenyan shareholding within three years of receiving a license.'
  - Kenya's 2019 National Information, Communications, and Technology (ICT) Policy includes 'a local equity requirement that mandates that firms providing ICT services must have at least 30 percent Kenyan ownership as well as preferences and incentives for Kenyan-owned ICT manufacturers.'
  - 'The 2010 Kenyan Constitution prohibits foreigners from holding freehold land title anywhere in the country, permitting only leasehold titles of up to 99 years.' So if an American digital trade company wanted to buy Kenyan land to build an office etc, unlike Kenyans it could not, so Kenya's Constitution is discriminatory and the STIP launch announcement said Kenya and the US share an interest in addressing discriminatory practices and did not mention or list exceptions to this.

  These foreign-ownership restrictions could be seen as discriminatory (since they are not providing national treatment - i.e. the same rights as Kenyans to own shares in these companies) and so these requirements could be removed by the STIP.

- Removal of any requirements for digital providers and foreign services companies to have offices etc in Kenya.
- Removal of any local content requirements, e.g. to have locally made programs on TV/radio etc.
- Liberalising government procurement (GP). Many governments (including the USA) direct their GP to domestic goods/services/companies to help local companies, create local jobs, improve the trade balance, stimulate the local economy etc. However this positive discrimination in favour of domestic companies/goods/services in GP could be restricted by the STIP since the launch announcement said the US and Kenya share an interest in addressing 'addressing discriminatory practices'. Kenya has not joined the optional Agreement on Government Procurement (GPA) at the World Trade Organization (WTO),[23] presumably because it wants to continue being able to direct its GP to Kenyans and/or thinks the costs would outweigh the benefits of joining it. Since

Kenya has not joined the GPA, it can direct its GP to Kenyans. According to the 2022 USTR report,[24] Kenya currently discriminates in favour of Kenyans in its GP in a number of ways including:

  - ‘Buy Kenyan Build Kenya’ requires ‘Kenyan state ministries, departments, and agencies to procure at least 40 percent of their supplies locally.’
  - ‘The Public Procurement and Asset Disposal Act (PPADA) of 2016 reserves procurement preferences for Kenyan-owned firms and goods manufactured or mined in Kenya. For tenders funded entirely by the government with a value of less than KES 50 million (approximately $455,000), the preference for Kenyan firms and goods is exclusive.’
  - ‘The PPADA further reserves 20 percent of county-level procurements for residents of that county. In April 2020, the National Treasury issued implementing regulations for the PPADA, which mandate that tender proposals include skills and knowledge transfer to Kenyan citizens, a 75 percent set-aside of employment opportunities for Kenyans, and a local content plan.’

- Liberalising state-owned enterprise (SOE) procurement. E.g. Kenya Power is an SOE and according to the 2022 USTR report ‘Kenya Power’s internal procurement rules require that 80 percent of supplies be sourced from Kenyan-registered companies to encourage foreign suppliers to establish manufacturing facilities in the country.’[25] Under the Obama Administration (when Biden was Vice-President) the Trans-Pacific Partnership (TPP) was negotiated and it liberalised SOE procurement on a negative list basis (i.e. the procurement of all SOEs except those listed in a negotiated schedule was liberalised for all goods and services, even the US$1 contracts).[26] US companies making submissions to the US government in the IPEF negotiations under the Biden Administration (which has a similar scope to the STIP) have called for the liberalisation of SOE procurement like the TPP,[27] so they are likely to also pressure the US government to include TPP-style SOE rules in the STIP.
- Removal of benefits received by SOEs: the 2022 USTR report on Kenyan trade barriers also notes that ‘Some SOEs have also benefited from easier access to government loan guarantees, subsidies, and credit at favorable interest rates.’[28] Governments often assist SOEs because they have loss-making public service functions, e.g. to provide affordable electricity or affordable: public transport/domestic flights to rural areas to make sure they can reach hospitals in the capital city etc. However the TPP limits the benefits which can be provided to SOEs on a negative list basis (SOEs cannot receive loans/loan guarantees etc on more favourable than commercial terms, except as listed in agreed schedules).[29] US companies in the IPEF negotiations under the Biden Administration (which has a similar scope to the STIP) have made submissions to the US government calling for restrictions on government assistance to SOEs,[30] so they are likely to pressure the US government to also restrict government assistance to SOEs in the STIP.
- Removal of any requirements for technology transfer (e.g. through joint ventures with local SOEs or firms to build national capacity)
- Removal of any requirements to employ and train local people (e.g. to build a skilled domestic IT workforce).

Good regulatory practices (GRP)

See https://twn.my/title2/briefing_papers/twn/IPEF%20GRP%20TWNBP%20Jan%202023%20Kelsey.pdf for analysis of GRP provisions e.g. in the USMCA that may be proposed in the STIP. https://sensiblesafeguards.org/assets/documents/down-the-regulatory-rabbit-hole.pdf has some examples of how this kind of regulatory process has slowed down and watered down health and environmental etc regulations in the US. Even though Kenya currently seems to do regulatory impact assessments (RIAs)[31] they may not be to the same extent and considering the same factors etc as the US may propose (and lock in) via the STIP. If there is no requirement to do RIAs in the STIP, then if RIAs turn out to be burdensome, expensive and slow, Kenya could stop doing them/do lighter versions or only in some ministries or for laws with considerable consequences etc. However if Kenya agrees to do RIAs in the STIP, it locks it in.

On GRP, the STIP launch announcement does not limit it to particular sectors, (so it could apply to agriculture, manufacturing, plastic bag etc bans, health regulation (e.g. COVID), regulation of services e.g. banking regulations etc) and it includes:

- 'The United States and Kenya will explore negotiating high-level commitments on topics such as:
    - ensuring adequate time for public consultations on proposed regulations; posting of proposed regulations for review by interested stakeholders'. Based on past USFTAs and the equivalent IPEF negotiations, this may include allowing anyone (including foreign companies) to comment on proposed measures and the Kenyan government may have to take these comments into consideration. While theoretically Kenyan MSMEs and small farmers can also comment, in reality, the US multinational companies and their industry associations have more money and lawyers to make comments. E.g.:
        - one multinational tobacco company had the potential to help generate 18,000 comments to the UK government on its proposed tobacco plain packaging law.[32] Kenya is a party[33] to the the World Health Organization's Framework Convention on Tobacco Control (FCTC).[34] The guidelines adopted by the FCTC Conference of the Parties include: 'Parties should interact with the tobacco industry only when and to the extent strictly necessary to enable them to effectively regulate the tobacco industry and tobacco products'.[35] However if the STIP allows all companies in all sectors (including tobacco companies) to be able to be consulted and comment on proposed regulations (e.g. for tobacco control), this would violate these FCTC guidelines. There is no health exception proposed in the STIP according to the launch announcement.
        - In the USA, three of the largest broadband companies 'spent $4.2 million generating and submitting more than 8.5 million fake comments' to the Federal Communications Commission (FCC) to pretend that the public wanted to repeal net neutrality, even though there was actually widespread public support for net neutrality.[36] 'nearly 80% — were expected to be collected through a type of lead generation known as co-registration. In co-registration, consumers are offered rewards — gift cards, sweepstakes entries, or an e-book of recipes, for example — for providing information about themselves and responding to a series of marketing offers' such as discounted children's movies. . . 'As a result, nearly every comment and message the broadband industry submitted to the FCC and Congress was fake, signed using the names and addresses of millions of individuals without their knowledge or consent.'[37] If each of these kinds of comments have to be considered by the Kenyan government, they are likely to push Kenyan policy-making in the direction that US companies want, to the disadvantage of Kenyan companies etc (as well as being very burdensome and costly for the Kenyan government to deal with).
        - This is presumably why the Africa, Caribbean and Pacific countries said in 2006 during the WTO's multilateral services domestic regulations disciplines negotiations that 'any future disciplines must not contain prior comment requirements either in a legally binding or best endeavour form. This is also supported by the fact that such requirements may be contrary to constitutional structures and legal systems in many developing countries as well as result in granting foreign-service suppliers opportunities to exert undue pressure on domestic decision making process, which is the core of sovereignty.'[38]
    - 'basing regulatory decisions on best available information, science, and evidence, including undertaking risk analysis and regulatory impact assessment as appropriate.'
        - See above for some of the potential implications if science and evidence are needed instead of the precautionary principle for new dangers like COVID-19 where there may not yet be much scientific evidence etc. E.g. if Kenya had waited for science and evidence before it imposed lockdowns, or required mask-wearing etc for this new disease, many would have died unnecessarily. This is

only 'best available', so if there is no evidence available yet for a new disease etc, maybe Kenya will still be able to regulate. There are no health, environment, privacy, financial crises etc exceptions listed in the STIP launch announcement.

- Regulatory impact assessments (RIAs) are difficult to do, e.g. even governments like New Zealand fail them 50% of the time and they cost about $2million to do each one before a government can regulate.[39] Governments like Australia's have had difficulty complying with RIAs when they introduce first-in-the-world regulation such as plain packaging for cigarettes because they cannot cite examples of where it has already been introduced and evidence of the impact elsewhere.[40] RIAs can significantly delay regulation and make it more expensive to regulate. Although the wording re RIAs is 'as appropriate' in the STIP launch announcement, it does not appear to be a subjective decision (which would be when the Kenyan government thinks RIAs are appropriate[41]), it is an objective decision of when RIAs are appropriate.

- 'The two sides will also explore negotiating provisions on services domestic regulation.' Services domestic regulation disciplines (DRD) negotiations amongst all WTO Members have not concluded because of concerns by developing countries etc. Kenya has not joined the WTO's plurilateral services domestic regulation disciplines (DRD)[42] presumably because it thinks the costs outweigh the benefits.[43] Nevertheless Kenya has agreed to explore in the STIP negotiating DRD provisions. Some implications of DRD in terms of restrictions on regulatory space and lost licensing fee revenue etc can be seen at https://www.twn.my/MC11/briefings/BP2.pdf.

Standards Collaboration

The STIP launch announcement includes: 'The United States and Kenya will discuss the role of standards, conformity assessment procedures and technical regulations that have a significant impact on trade, including opportunities to reduce impediments to trade due to differences in their respective systems.'

In the USA, Congress has the power to negotiate FTAs.[44] Since it is impractical to negotiate an FTA with hundreds of members of Congress,[45] from time to time Congress' negotiating authority has been delegated via 'fast track authority' to the executive branch and the US Congress then just votes to approve/disapprove the FTA as a whole (an 'up-or-down vote').[46] Fast track authority expired in the USA in 2021,[47] so if the STIP has to pass the US Congress, they could reopen it and make amendments to it etc, which would mean Kenya would have to negotiate with each member of the US Congress (since they do not necessarily vote on party lines). To avoid this, the USA is unlikely to change its laws in the STIP (because then the STIP would have to pass the US Congress etc). This means that it would be Kenya that has to change its standards, conformity assessment procedures and technical regulations which are impeding US exports to Kenya and the US will not remove any laws it has which are impeding Kenyan exports to the USA.

The US government's 2022 report on foreign trade barriers[48] includes under 'Technical Barriers to Trade' 'Verification of Conformity to Standards Procedures' that U.S. industry has raised concerns that the testing, certification, and labeling requirements of Kenya's Pre-Export Verification of Conformity (PVoC) program (which involves pre-shipment inspection of most imports to ensure compliance with Kenyan health, environmental and security etc regulations) 'deviate from international standards without providing an additional measure of safety.'[49] The US may try to include in the STIP a provision eliminating this Kenyan PVoC program since US industry has had a strong influence on US negotiating positions in trade agreements in the past, e.g. see Appendix 1 below.

Trade facilitation

The STIP launch announcement includes:

- 'The United States and Kenya recognize the pandemic's impact on supply chains and the demonstrated benefits of streamlining border procedures and **accelerating WTO Trade Facilitation Agreement** implementation for trade in goods during this challenging time.'

    - The USA has already completely implemented the WTO's Trade Facilitation Agreement (TFA)[50] because the TFA merely copied US law so the USA did not have to do anything to comply with it,[51] so will not be required to do anything to accelerate its TFA implementation.
    - However Kenya has only implemented 7.6% of the TFA,[52] presumably because it is costly and difficult for Kenya to implement. 68.5% of Kenya's TFA commitments are in Category C[53] which indicates Kenya needs capacity building to enable it to implement them[54] and Kenya has requested assistance with: infrastructure and equipment, ICT, human resources and training, legislative and regulatory framework, institutional procedures, awareness-raising and diagnostic and needs assessment, but no donor has been identified for any of this capacity building that Kenya has specified it needs to implement the TFA.[55] Despite this, the STIP recognises the benefits of accelerating TFA implementation (which may translate to a commitment in the STIP to implement the TFA faster, which would be a provision that only Kenya would have to work to comply with (so it is an exception (or special and differential treatment[56]) for the USA) and no additional aid has been promised in the launch announcement to cover the costs of Kenya's faster TFA implementation.
- 'The two sides will discuss opportunities to simplify procedures'. It is unclear what this will cover. For example the US government's 2022 report on foreign trade barriers[57] includes:
    - 'US industry has also expressed frustration with inadequate de minimis relief from customs duties and taxes for express shipments.' Kenya currently appears to have no formal de minimis (below which tariffs are not imposed on imports).[58]
        - In the recent US-Mexico-Canada Agreement (USMCA), the trade facilitation chapter set a de minimis of US$117 for Mexico and C$150 for Canada so that express shipments below those amounts would enter their countries without paying tariffs.[59]
        - In similar current Indo-Pacific Economic Framework for Prosperity (IPEF) negotiations under the Biden Administration, US companies and their industry associations have noted in their submissions that the US de minimis is US$800 and called for the IPEF to include US-level (US$800) de minimis.[60]
        - When in 2016 the US increased its de minimis from US$200 to US$800, this 'caused a dramatic increase in the volume of shipments making use of de minimis entry procedures.'[61] (It is not just the logically greater number of shipments that naturally fall under the higher de minimis threshold, but that importers can also cut up their shipments to come under the de minimis threshold and so avoid paying import duties).
        - If Kenya were required to introduce a de minimis of US$800 because of the STIP, this would mean imports of agricultural products (e.g. milk powder) and manufactured products which are in shipments of less than US$800 would enter Kenya without any import tariffs. Since the US already has a de minimis of US$800, if the STIP requires a de minimis of US$800, it will not increase the tariff-free market access of Kenyan exports into the USA, so it would only increase US tariff-free imports into Kenya and only Kenya would suddenly lose tariff revenue from introducing such a high de minimis. Since tariffs are often easier taxes for developing countries to collect than other taxes such as value added tax or income tax, International Monetary Fund (IMF) economists found that for a middle income country such as Kenya,[62] only 45-60% of lost tariff revenue can be recovered via other taxes (e.g. a value-added tax etc).[63]

Other possible sources of information on the STIP

- Submissions to USTR on STIP e.g. by USCIB, NFTC, PhRMA etc (some of the US companies/industry associations making submissions are cleared advisers, see Appendix 1 below) calling for the STIP to include:[64]
    - a ban on: Kenya's digital services tax and any technology transfer requirements ,

    - cross-border data flows and source code etc provisions
    - investment treaty/chapter provisions such as fair and equitable treatment, expropriation, investor-to-state dispute settlement etc
- Since the US government has said that 'IPEF will be a model for the rest of the world',[65] and government statements about what is in IPEF and the STIP seem like they will be similar, it may be useful to look at available information about IPEF e.g.:
    - Ministerial statements on 4 pillars: https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/september/indo-pacific-economic-framework-prosperity-biden-harris-administrations-negotiating-goals-connected
    - Summaries of US proposals: https://ustr.gov/sites/default/files/files/uploads/IPEF%20PIllar%201%20text%20summaries%20USTR%20March%202023.pdf, https://www.commerce.gov/ipef/pillar-ii, https://www.commerce.gov/ipef/pillar-iii, https://www.commerce.gov/ipef/pillar-iv
    - Submissions to US government on IPEF: https://www.regulations.gov/document/USTR-2022-0002-0001/comment, https://www.regulations.gov/document/ITA-2022-0001-0001/comment
- The US may propose provisions from some of its recent FTAs e.g. the USMCA (e.g. the GRP/digital trade chapter)[66] or TPP[67]. E.g. the table below lists the USMCA chapters and based on the July 2022 STIP launch statement, it looks like the STIP could include provisions from the USCMA chapters in **bold**:

Initial Provisions and General Definitions?	Telecommunications
National Treatment and Market Access for Goods	**Digital Trade**
Agriculture	Intellectual Property
Rules of Origin	Competition Policy
Origin Procedures	State-Owned Enterprises
Textiles and Apparel	**Labor**
Customs Administration and Trade Facilitation	**Environment**
Recognition of Mexican Ownership of Hydrocarbons	**Small and Medium-Sized Enterprises**
Sanitary and Phytosanitary Measures	Competitiveness
Trade Remedies	**Anticorruption**
Technical Barriers to Trade	**Good Regulatory Practices**
Sectoral Annexes	Publication and Administration
Government Procurement	Administrative and Institutional Provisions?
Investment	Dispute Settlement?
Cross-Border Trade in Services **(domestic regulation provisions)**	Exceptions and General Provisions?

Temporary Entry	Macroeconomic Policies and Exchange Rate Matters
Financial Services	Final Provisions?

What will not be in the STIP

Based on the launch announcement above, the STIP will not include:

- New market access for Kenya to the USA. E.g. the USA will not remove any remaining tariffs on Kenyan exports entering the USA.
- New enforceable aid (see below). The few mentions of 'cooperation' in the STIP launch announcement do not specify:
    - That it is the USA that will be assisting Kenya. (Often the cooperation provisions in USFTAs are reciprocal, i.e. all Parties help each other, which would mean Kenya would also be supposed to assist the USA re the environment etc).
    - That the US will provide significant new, enforceable aid to Kenya.

  This is not surprising since past USFTAs have:

    - had no cooperation chapter, or
    - the cooperation chapter is unenforceable, or
    - any enforceable cooperation provisions are only to have a committee.

    See below for more information
- Exceptions to the provisions above that are problematic for MSMEs. The mention of MSMEs in the STIP launch announcement would not actually assist MSMEs (no new enforceable aid etc) and would not exempt them from the provisions above that will be problematic for Kenyan MSMEs.
- Exceptions to the provisions above that are problematic for youth, women, persons with disabilities (PWD) etc. The mention of youth and women in the STIP launch announcement would not actually assist Kenya youth/women/PWD (no new enforceable aid etc) and would not exempt them from the provisions above that will be problematic for Kenyan youth, women and PWD.

Past USFTAs have imported the health, environment, privacy and prudential exceptions from the WTO and even then, the US has not allowed them to apply to all FTA chapters.[68] The health and environment exceptions at the WTO are so difficult to use, governments have only succeeded in passing all the tests to use them twice in 48 attempts since the WTO began.[69] The WTO's privacy exception requires governments to pass all the difficult-to-satisfy tests for the health and environment exceptions and then is self-cancelling (it can only be used to save laws that already comply with the WTO's services rules).[70] The WTO's prudential defence is also self-cancelling (cannot be used to avoid commitments under the services rules).[71] However even these few and difficult-to-use exceptions have not been mentioned in the STIP launch announcement (or the call for submissions to the US government on the STIP[72]).

2. What are the potential benefits for Kenya from the STIP?

Will Kenya be able to export more to the US via the STIP?

When developing countries are in an FTA with developed countries, the chapter that developing countries usually benefit from is the goods chapter where the developed country reduces or removes tariffs on the developing country's exports. However the STIP does not include market access, see above, so this benefit is not available to Kenya via the STIP.

Beyond tariffs, some developed countries have non-tariff barriers to developing country exports e.g. in their laws. However since the Biden Administration has been adamant that IPEF does not need to pass the US Congress, this means that in the similar STIP, Kenya cannot expect the US to change any of its laws that are blocking its exports.[a] This means that any trade facilitation provisions in STIP are presumably exporting current US practice so would not be facilitating additional imports from Kenya into the US more quickly (but may be costly, difficult and burdensome for Kenya to implement, see above). Even for USFTAs which went to Congress e.g. the USMCA[73] (or were planned to like the TPP[74]), the US did not have to change many laws to comply (e.g. no US laws/regulations had to be changed to comply with their environment chapters) since the US just exports its existing laws in its FTAs.

Will Kenya receive new/additional, enforceable aid via the STIP?

According to the US Constitution, it is the US Congress who decides the budget (e.g. whether to provide aid to Kenya in the SITP) and it must pass both the House of Representatives and the Senate, so it is generally not up to the executive branch such as the negotiators from the Office of the US Trade Representative or the US Department of Commerce whether to provide aid in the STIP and how much.[75] The budget is decided by the US Congress annually,[76] so even if STIP funding went to Congress, the current Congress could not bind future Congresses to provide annual aid of US$Xmillion for the duration of the STIP.

The opposition Republican Party currently controls the US House of Representatives[77] and they have proposed large cuts in foreign aid/the abolition of it altogether[b] so are unlikely to approve significant

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[a] E.g.:
-In June 2022, the Biden Administration had already decided that IPEF would be an executive agreement that does not go through the US Congress, https://insidetrade.com/daily-news/ipef-talks-not-expected-be-traditional-trade-negotiations-leaving-structure-unknown
-In September 2022, Deputy U.S. Trade Representative Sarah Bianchi said the Biden Administration is taking an executive agreement approach that would not have to go through Congress, https://insidetrade.com/daily-news/bianchi-ipef-countries-supportive-executive-agreement-format
-In response to calls for the Biden Administration to seek congressional approval for IPEF, a December 2022 article included 'The official contended that issues on the negotiating table did not require such approval. "They are a range of very meaty issues, but they do not trigger any need for congressional legislation," the official said', https://insidetrade.com/daily-news/senior-administration-officials-us-table-text-host-issues-during-ipef-round
-The Biden Administration does not intend to submit IPEF or Americas Partnership for Economic Prosperity to the US Congress for approval, https://insidetrade.com/daily-news/house-ways-means-democrats-ipef-requires-congressional-approval
- https://crsreports.congress.gov/product/pdf/IN/IN11814

[b] E.g.:
- 'Republicans are already preparing $150 billion in cuts to non-defense discretionary programs, including about $25 billion from the Department Education and cuts in foreign aid and programs aimed at preventing sexually transmitted diseases. They say that would save $1.5 trillion over a decade.'
https://www.reuters.com/world/us/biden-challenges-republicans-with-budget-that-raises-taxes-sets-up-2024-run-2023-03-09/
-' The forthcoming proposal from the House GOP, meanwhile, is expected to include large cuts to not just discretionary spending programs like foreign aid', https://www.brookings.edu/blog/fixgov/2023/03/10/the-presidents-budget-and-the-battle-ahead/
-' Hard-right House Republicans are readying a plan to gut the nation's foreign aid budget . . . Republicans say they are relying heavily on a budget outline developed by Russell T. Vought, the former Trump administration budget director . . . The outline includes a 45 percent cut to foreign aid',
https://www.nytimes.com/2023/03/08/us/politics/house-republicans-deficit-budget-biden.html
Republicans plan 'to balance the federal budget over 10 years, while extending Trump-era tax cuts and leaving Social Security, Medicare, defense and veterans benefits intact', https://www.politico.com/minutes/congress/03-14-2023/dems-tout-cbo-report/. To achieve this, Congressional Budget Office calculated that 'In that case, outlays for all major health care programs other than Medicare, all income security programs, all federal civilian and retirement programs, all other mandatory programs except for Social Security and veterans' programs, and all nondefense discretionary programs would be reduced to zero', https://www.cbo.gov/system/files/2023-

new aid proposed by the Biden Administration. (The Biden Administration may be able to reallocate some existing aid e.g. from HIV/AIDS and tuberculosis treatment that it currently funds in Kenya[78] to making sure that Kenya can comply with its STIP trade facilitation etc requirements).

It is therefore unsurprising that past USFTAs have not had enforceable aid provisions/cooperation chapters (or if they have, they are merely about having a committee), see Appendix 2. E.g. even when there were seven developing countries in the TPP negotiated by the Obama Administration (when Biden was Vice President), the TPP's: cooperation and capacity building, competitiveness and business facilitation, development and SME chapters are still all unenforceable. So even if developed countries do not comply with them, developing countries cannot sue them under the CPTPP to enforce these chapters. Furthermore, these chapters do not even specify that developed countries must provide technical assistance/capacity building to developing countries. Instead:

- The cooperation chapter says cooperation is optional (e.g. Malaysia may hold a seminar to help Canada) and is subject to the availability of resources and there is a committee to discuss the issue.
- The development chapter just says where both sides agree, they will try and facilitate some joint activities (with no promise of funding) and have a committee to discuss the issue.
- The SME chapter just requires a website with the CPTPP text and a committee to discuss issues. I.e. there is no requirement to train SMEs (let alone for developed countries to provide/pay for the training) and there are no exceptions in this chapter for SMEs that override the many other CPTPP provisions that are problematic for developing country SMEs in the CPTPP.
- The competitiveness and business facilitation chapter just sets up a committee which discusses various things.

Cooperation/capacity building/aid in the STIP may be provided by the private sector instead of the US government as can be seen in IPEF: An IPEF Upskilling Initiative for 14 US companies to train 7 million women and girls in digital tools was launched in September 2022. However some of the companies which promised to provide this training already give this training for free to the whole world online and many of the companies have since had to fire significant proportions of their staff to cut costs, so may not deliver this training. It is unclear what the penalties are if this training is not provided since IPEF is an intergovernmental treaty which the companies are not party to. See Appendix 3 for more details.

Will developing countries get FDI or technology transfer via IPEF?

The US government cannot force its private sector companies to invest in IPEF countries or transfer technology, they will do so if they want to. Even if private sector companies promise to invest, if they do not do so, IPEF cannot enable developing countries to force companies to invest (or transfer technology) since it is a treaty between governments (e.g. see Appendix 3 below re similar problems with promised aid from private companies).

The provisions likely to be proposed in IPEF (see below) are not the drivers of foreign direct investment (FDI), see Appendix 4 below. In fact to the extent that any labour provisions in the STIP raise labour costs in developing countries, they can discourage FDI into Kenya, see Appendix 4 below.

Conclusion

Given the above, it is unclear what the benefits are for Kenya from this STIP (since there appears to be no new market access or enforceable aid for Kenya in the STIP), that will outweigh the costs outlined above.

03/58984-spendings.pdf. Nondefense discretionary programs include international aid: https://www.cbo.gov/budget-options/58633, so this Republican plan would require the stopping of all this international aid and there would still be a small deficit.

Has the Kenyan government done a realistic cost-benefit analysis of this STIP including any laws/regulations/policies etc that Kenya will have to change at all levels of government? The impact and cost of changing those laws/regulations/policies at all levels of government and on all ministries and regulators, economic and social sectors? What are the results of this cost-benefit analysis?

3. Possible elements for a submission/letter

It is useful for submissions to start with a brief description of your organisation.

a) Given the above you may want to include in a submission:

- Since the USA's gross national income per capita is 35 times greater than Kenya's,[79] Kenya should not be required to take on the same obligations as the USA in the STIP. A few transition periods for a fixed number of years are not sufficient special and differential treatment that would fully reflect the difference in the development levels of Kenya and the USA.

Given the apparent scope of the STIP according to the launch announcement at https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/july/united-states-and-kenya-announce-launch-us-kenya-strategic-trade-and-investment-partnership, some more specific comments on the issues in that announcement are below.

- On agriculture:
    - Kenya should not be required by the STIP to remove or change its measures (such as laws, regulations, procedures and other requirements) relating to agriculture. E.g. Kenya should not be required in the STIP to weaken its regulation of genetically engineered food and feed imports etc.
- On digital trade: the STIP should not restrict regulatory space in this fast moving area of technology. E.g. it should not:
    - require cross-border data flows, nor should it restrict data localisation requirements
    - restrict the ability of Parties to require transfer of or access to source code/algorithms
    - restrict the use of digital services taxes
    - restrict customs duties on electronic transmissions
    - restrict regulation of electronic authentication/electronic signatures
    - limit Kenya's foreign ownership restrictions
    - limit Kenya's ability to require local presence of foreign companies
    - limit Kenya's ability to require local content
    - limit Kenya's ability to require technology transfer or training of Kenyans
    - limit Kenya's ability to give government procurement preferences to Kenyan: goods, services and companies
    - limit Kenya's ability to give state-owned enterprise (SOEs) procurement preferences to Kenyan: goods, services and companies
    - limit Kenya's ability to provide assistance to its SOEs.
- On good regulatory practices (GRP), the STIP should not:
    - require Kenya to allow comments by interested stakeholders on proposed measures.
    - require Kenya to consider or take into account comments on proposed measures
    - require Kenya to consult on proposed measures.
    - require Kenya to do regulatory impact assessments (RIAs).
    - have any services domestic regulation disciplines provisions.
- Any standards collaboration provisions should not require Kenya to remove or change its measures
- On trade facilitation and customs procedures:
    - There should be no requirement for Kenya to implement the World Trade Organization's Trade Facilitation Agreement (TFA) more quickly than the TFA specifies, unless in the STIP the US government provides new and enforceable aid and capacity building to a level Kenya deems sufficient to enable it to implement the TFA more quickly.

    - There should be no requirement to implement a de minimis at a specific level. If the STIP does require a certain de minimis, it should not be above US$X.
- The process for negotiating any U.S.-Kenya STIP must be transparent and participatory. Civil society organizations, legislators and the public must be invited to help formulate U.S. positions and comment on draft U.S. proposals, not just via this public comment period, but throughout the entire course of the negotiations. Specifically, the U.S. must publish draft versions of STIP proposals and solicit public comment upon them prior to tabling them. STIP negotiating rounds should be announced in advance and include public stakeholder engagement and interactions with negotiators from both nations. And proposed texts, related materials, and any consolidated texts must also be quickly published after each negotiating round so that the public can review and comment on the latest proposals while there is still opportunity to make real changes.

Appendix 1: the influence of the US private sector on US government positions in trade negotiations

The role of the US government's Advisory Committees

The USTR's advisory committees include US multinational companies such as Amazon, Chevron, Dow, FedEx, Google, Mastercard, Pfizer as well as industry associations such as BIO, BSA, Coalition of Services Industries, Motion Picture Association etc.[80]

'The advisory committee system, established by the U.S. Congress in 1974, was created to ensure that U.S. trade policy and trade negotiating objectives adequately reflect U.S. public and private sector interests.'[81] These include Industry Trade Advisory Committees (ITACs) which 'engage business leaders in formulating U.S. trade policy' which provide recommendations regarding 'negotiations of trade agreements' and advise on 'key objectives and bargaining positions' in multilateral, regional and bilateral negotiations.[82] 'The United States' negotiating position is strengthened because its objectives are developed with bipartisan, private-sector input throughout the negotiations.'[83]

During the Obama Administration (when Biden was Vice-President), 85% of the advisors in these committees were from the private sector (most of the trade union and government officials are concentrated in the labor and intergovernmental committees) and 'They attend private meetings with administration officials and get access to documents that the public cannot see.'[84] Under the Obama US trade agreements generally export US law and it asks the advice of the ITAC advisors and 'Where U.S. law is ambiguous, industry groups naturally gravitate toward interpretations of U.S. law that favor their employers' interests. And because public interest groups and independent experts aren't allowed to see proposed language (aside from occasional leaks), the agency may not even realize that it is exporting a warped interpretation of U.S. law.'[85]

Some of the other ways the US private sector influences US positions in trade negotiations

A Washington Post article[86] during the Obama Administration noted that in the Trans-Pacific Partnership intellectual property chapter 'the U.S. negotiating position also had an unmistakeable bias toward expanding the rights of copyright and patent holders' despite concerns raised by critics and listed one of the two main factors for 'the USTR's strong pro-rightsholder slant' as being 'the revolving door between USTR and private industry. Since the turn of the century, at least a dozen USTR officials have taken jobs with pharmaceutical companies, filmmakers, record labels, and technology companies that favor stronger patent and copyright protection.'[87]

There are many other examples of US corporate influence on US government positions in trade negotiations. E.g. the Computer & Communications Industry Association (CCIA) whose members include Amazon and Google etc[88] advocated for cross-border data flows in the Trans-Pacific Partnership (TPP)[89] and this was included in the final TPP text.[90]

Appendix 2: Do these USFTAs have an enforceable cooperation chapter?

The table below notes any standalone aid-type chapters such as cooperation/development/small and medium enterprise (SME)/competitiveness/business facilitation chapters based on the US free trade agreement (FTA) chapter titles. It does not check any cooperation provisions in other USFTA chapters (e.g. intellectual property).

USFTA[91] (in order of earliest to most recent)	Date entered into force	Cooperation/development/SME etc chapter enforceable?
NAFTA (Canada, Mexico, USA)	1/1/1994[92]	No such chapter[93]
Chile	1/1/2004	No such chapter
Singapore	1/1/2004[94]	No cooperation chapter
CAFTA (US, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua)	El Salvador: 1/3/2006.[95] Honduras and Nicaragua: 1/4/2006.[96] Guatemala: 1/7/2006[97] Dominican Republic: 1/3/2007[98] Costa Rica: 1/1/2009[99]	Enforceable capacity building section[100] but only includes having a committee
Australia	1/1/2005	No cooperation chapter
Morocco	January 1, 2006.[101]	No cooperation chapter
Bahrain	1/8/2006[102]	No cooperation chapter
Oman	January 1, 2009[103]	No cooperation chapter
Peru	February 1, 2009.[104]	Enforceable capacity building section[105] but only includes having a committee
Colombia	15/5/2012[106]	Enforceable capacity building section[107] but only includes having a committee
Panama	October 31, 2012[108]	Enforceable capacity building section[109] but only includes having a committee
Korea	March 15, 2012[110]	No cooperation chapter
Trans-Pacific Partnership (TPP)	CPTPP came into force without USA[111] with 22 of >1000 TPP provisions temporarily suspended[112]	Cooperation chapter – unenforceable Competitiveness & business facilitation chapter – unenforceable Development chapter – unenforceable SME chapter - unenforceable
USMCA (US, Mexico, Canada)	1/7/2020[113]	SME chapter – unenforceable Competitiveness chapter - unenforceable

The table above focuses on the standard broad USFTAs of more than 20 chapters like the USMCA, so does not include the narrower USFTAs like Cambodia, Lao, Jordan, Israel, Vietnam and the Trump Administration's Japan and China FTAs.

Appendix 3: IPEF Upskilling Initiative (UI) – some comments

What is the IPEF Upskilling Initiative?

According to the factsheet:[114]

- It was launched by the US Department of Commerce (USDOC) on 8 September 2022.
- 'Over the next decade, the Initiative will bring 7 million or more training and education opportunities that use digital tools to women and girls in the IPEF emerging economies and

middle-income partners. These partners currently include Brunei, Fiji, India, Indonesia, Malaysia, the Philippines, Thailand, and Vietnam.'[c]

- 'Fourteen U.S. companies –Amazon Web Services, American Tower, Apple, Cisco, Dell, Edelman, Google, HP, IBM, Mastercard, Microsoft, PayPal, Salesforce, and Visa –will each provide 500,000 or more upskilling opportunities that use digital tools for women and girls in IPEF emerging economies and middle-income partners by 2032.'
- It will:
    - 'Bolstering U.S. private sector engagement in the most economically-dynamic region of the world in ways that will pay long-term dividends for **companies** and workers in both the **United States** and the IPEF partner countries;
    - Supporting the region's ongoing efforts to strengthen economic resilience, equity and inclusion, and sustainability, all of which will help grow the region's middle class and **expand export opportunities for U.S. goods and services** and regional trade and investment; and
    - 'Facilitating training in areas such as data, cloud, and cybersecurity **to enable IPEF partners to achieve high-standard commitments, including around promoting cross-border data flows** and online privacy and to combat disinformation, corruption, and cyber-theft.'
- 'The participating U.S. companies will work with both governmental and non-governmental partners in the region to leverage their long-standing commitment to and deep experience in upskilling in the United States and the region to provide training and education opportunities that use digital tools in support of both IPEF objectives and the region's ongoing priority of addressing inequities in labor force participation, pay, and access to financial services. Some of the opportunities provided by the U.S. companies may include:
    - Providing training for girls in fields such as data science, cyber-security, AI, and robotics;
    - Developing and providing female small business owners with a comprehensive digital toolkit that includes website planning and development, search engine optimization and marketing, budgeting, and social media;
    - Supporting digital literacy and entrepreneurship training for rural girls and women via solar-paneled mobile bus training centers;
    - Training authors and illustrators in digital content creation designed to empower girls and providing that content through low bandwidth reading apps to enhance girls literacy'

Quotes by the 14 companies in the press release launching the Initiative give a slight idea about what kind of training each company would provide, e.g.:[115]

- Cisco will use its Networking Academy program (which is free of charge and already available to anyone online[116] so presumably if 7million women from IPEF countries used that existing free-of-charge training over the next 10 years, that would fulfil this Initiative).
- Salesforce: 'Through Trailhead, our free online learning platform, and other workforce development initiatives we are committed to empowering people from every background with the skills they need to build careers and thrive in the digital economy.' If Salesforce is just offering its existing free-of-charge online training[117] as its contribution to this UI, then if 7 million women from IPEF countries used it in the next 10 years, that would fulfil this initiative.
- Google: 'Through our Google Career Certificate scholarships, Google.org grants, cloud computing training and more, we're committed to helping more people access the opportunities digital technologies create.' According to Google, 'In 2017, we committed to prepare 10 million people for jobs of the future over five years. So far, we have trained +5M people in Digital Skills through our Grow with Google programs.'[118] The reason Google staff built and designed[119] these programs is because 'Google had long faced an issue that many other companies also contend

[c] It is unclear if there were initially only going to be two IPEF countries receiving this training, https://www.malaysianow.com/news/2022/09/10/ipef-upskilling-initiative-hailed-for-opportunities-for-women-and-girls and the Malaysian trade minister said it was a distinct honour for Malaysia to be selected etc (whereas the final list of recipients is basically all the IPEF countries with GNI/capita less than South Korea's, https://data.worldbank.org/indicator/NY.GNP.PCAP.CD)

with: we had open IT Support roles, and not enough qualified candidates to fill them. So we built and tested a training program to provide pathways to jobs in technical support at Google for people with no college degree or experience. In 2018, Google launched the IT Support Career Certificate so that this training could be available to everyone.'[120]

- The Google Career Certificate on Coursera on average[d] costs under US$300 in the US/Canada[121] and Google provides scholarships in various countries[122] including Singapore[123] for these courses. See Table 1 below for the number of existing Google Career Certificate scholarships that Google has been found to already be granting to IPEF UI countries before the launch of the IPEF UI.

Table 1: existing Google digital skills training to IPEF UI recipient countries

IPEF UI recipient country	Existing Google Career Certificate scholarships prior to IPEF UI	Number of people trained under Go Digital ASEAN so far[124]
Brunei	None found from quick internet search	3,426
Fiji	None found from quick internet search	NA
India	100,000 [125]	NA
Indonesia	10,000 in 2021 [126]	37,715
Malaysia[e]	31,000 [127]	16,742
Philippines[f]	39,000 [128]	16,980
Thailand	None found from quick internet search [g]	53,979
Vietnam	20,000 (in cooperation with NIC under the Ministry of Planning and Investment)[129]	81,560
Total		

NA = not applicable

How many training opportunities will be provided to each IPEF country?

E.g. will they get shares proportionate to their population? E.g. there are 1.98billion people in the IPEF countries receiving the training,[130] assuming half of them are women, that is 992million women (not all of whom will be old enough to train), but only 7 million training opportunities over a decade.

If these 7 million training opportunities are evenly spread over the decade, that is 700,000/year and assuming each woman gets one training opportunity (rather than one woman receiving multiple training opportunities), then 700,000 women can be trained per year.

[d] Coursera charges US$39/month in the US and Canada (it may be less in other countries) after an initial one week free trial and the course can be completed in less than 6 months at under 10 hours/week of part time study. E.g. in Indonesia and Malaysia it costs US$14/month: https://grow.google/intl/id_id/certificates/ (does not specify it is **US**$, but presumably it is), https://grow.google/intl/en_my/digital-marketing-ecommerce-certified-course/. While it says 'Google does not generate any revenue from Google Career Certificates and has made need-based financial assistance available', Google has chosen to use a course provider (Coursera) that charges for it, rather than providing it for free e.g. as Cisco does.

[e] Google has offered these since at least 21/7/2022 (before the IPEF Upskilling Initiative was launched in September 2022) according to https://web.archive.org/web/20220721103445/https://grow.google/intl/en_my/certificates/

[f] This was announced by Google on 28/9/2022 (after the IPEF Upskilling Initiative was launched on 8 September 2022) but it does not mention that it is part of IPEF, so it may be scholarships that Google was going to launch anyway.

[g] But see below that Google's 'Saphan Digital' programme in Thailand has trained over 100,000 small businesses

However India's population increases by 13million/year[131] (and assuming half of them are female, that is 6.5million new girls each year in India alone) so there is unlikely to be enough training to cover all the women who want to be trained. So how many training places will each participating IPEF country receive and how will participants be selected? E.g. Table 1 below shows how many women could be trained each year in the participating countries if these upskilling opportunities are allocated in accordance with the population share (e.g. India has 70% of the population of the IPEF countries[132] receiving the upskilling, so would receive 70% of the training opportunities) spread evenly over the decade.

Table 2: number of annual upskilling places if shared out proportionately to population[133]

IPEF UI recipient country	Annual number of upskilling places it receives under this initiative
Brunei	156
Fiji	319
India[h]	491,860
Indonesia	97,553
Malaysia	11,570
Philippines	39,198
Thailand	24,692
Vietnam	34,653
Total	700,000

What is the training?

- E.g. does a woman count as having been upskilled if she attends one 30 minute webinar? So if 10,000 women attend a 15 minute Zoom webinar about how to use Amazon, does that count as having trained 10,000 women?
- Are these month-long courses? See also the existing Cisco, Salesforce and Google training above.
- How was the training on these topics selected? E.g.:
    - Were they the top priority of all IPEF (developing?) countries? Or was it just training to get the IPEF digital economy commitments that the big US technology companies such as Google and Amazon and the US government want (given 'Facilitating training in areas such as data, cloud, and cybersecurity **to enable IPEF partners to achieve high-standard commitments, including around promoting cross-border data flows'** above)?
    - Presumably they were areas where the companies had expertise. But do they have to be areas where the companies already had existing training programs e.g. those organised by Cisco, Salesforce and Google?

Is any of this upskilling new by the companies?

E.g.:

- Cisco's Network Academy (which Cisco said in the press release is how it would be providing this IPEF upskilling) is already online for anyone to access and free of charge for everyone in the world,[134] so it is not clear if Cisco will be providing any new and additional training opportunities for women from these IPEF countries, or is just announcing its existing program.

[h] In April 2022 (before the IPEF Upskilling Initiative was launched in September 2022), an unspecified number of Google Career Certificate scholarships aimed at women were announced, https://www.news18.com/news/education-career/aicte-to-offer-google-career-certificate-scholarship-4964261.html

- It is unclear if Salesforce is just offering its existing free-of-charge online training[135] as its contribution to this UI, or if it would be providing new and additional training.
- Re Google's existing training:
  - See Table 1 above
  - In June 2022 (before the IPEF UI was launched), Google announced:[136]
    - it had 'trained 8.5 million micro, small and medium-sized enterprises (MSMEs) to date across the Asia-Pacific region through its 'Grow with Google' programmes and partnerships.'
    - 'The company said that over the next year and beyond, it will be deepening existing programmes to support small businesses and launching new ones'
    - 'Google's 'Saphan Digital' programme in Thailand has trained over 100,000 small businesses, while the 'Accelerate Vietnam Digital 4.0' initiative has trained 650,000 people'
    - "We will be offering the same opportunity in more countries soon we've committed to providing over 250,000 scholarships across Asia Pacific in 2022"
    - 'Since 2019, through its Google.org philanthropic arm, the company has contributed over $11 million in grants that support underserved MSMEs.'
    - 'Helping MSMEs in underserved parts of the region will continue to be a major priority -- including $4 million in Google.org support for The Asia Foundation, which will expand Go Digital ASEAN with new training programmes, including green skills, cybersecurity and financial planning," said the company.'
  - And in Vietnam a July 2022 article (before the IPEF UI was launched) noted that 'under Google Startups: Startup Academy Vietnam, 50 participating businesses have the opportunity to access in-depth training and meet leaders in the local and regional ecosystems. The programme is a five-day, intensive onsite bootcamp for early-stage Vietnamese tech startups from all industries, preferred but not limited to education, healthcare, agriculture, fintech, gaming and retail. It is designed to fast-track high-potential Vietnamese tech startups by providing access to the best of Google's programmes, products, and best practices. The five main elements that the programme focuses on are leadership skills, the latest models and trends, product management, technologies, and marketing. The two new ones are a follow-up of the Google Start-up Launchpad Accelerators and Indie Games Accelerators programmes, which have been successfully implemented over the past six years.'[137]
  - Google supports the Go Digital ASEAN Initiative with the Asia Foundation which began in June 2020[138] and 'broadens digital skills participation in 10 countries for 200,000 people from rural regions and underserved communities, including women-led small- and micro-businesses, underemployed youth, ethnic minorities, and people with disabilities'[139]
  - Google offered 100,000 scholarships in 2020[140] (although these may have been for US students[141]) and (another?) 100,000 scholarships in 2021 (again for US students?)[142]
- '"IBM is proud to partner with the public and nonprofit sectors to train one million women and girls in the Asia-Pacific Region over the next five years. This commitment from IBM will support the Administration's Indo-Pacific Economic Framework and its focus on economic growth, equity, and partnerships in the region," said Arvind Krishna, Chairman and CEO of IBM. "Today's announcement reinforces IBM's commitment to skill 30 million people globally by 2030 as we look to close the skills gap and expand access to STEM education and career training for people of all backgrounds."'[143]

Given the above, how much of the 14 companies' commitments are new and additional resources?

How much does it cost the companies to provide this training?

See above that companies participating in the UI such as Cisco and Salesforce already provide this training free to anyone in the world, so it is not clear what additional cost they would incur in participating in this UI.

The US Commerce Department and USTR 'declined to disclose the value of the investments' in this UI.[144]

As an indication, Google funded the training in digital skills of 225,778 people in ASEAN in 2020-2021 for US$3.3million.[145] Presumably it would cost less to extend the existing free online training programs such as those already provided by Cisco and Salesforce.

How will the UI be incorporated into the IPEF text?

Will this UI be incorporated into the main IPEF text? Or will it be some kind of side letter/not mentioned at all?

Will the UI be enforceable under any IPEF dispute settlement mechanism? If so what will the penalties etc be for the companies' failure to provide the UI? See below.

What happens if the companies don't provide the training?

Given how much profits have fallen for tech companies recently, it is not clear they will still be willing to fund this UI. 'In recent earnings reports, Alphabet Inc., Amazon.com Inc., Meta Platforms Inc., Microsoft Corp. and others fell short of projections, sending shares plunging and shaving hundreds of billions of dollars from their market valuations. Meta, for instance, has lost more than 67% of its value so far this year.'[146] Tech companies including those involved in this UI are making staff redundant to save costs e.g.:

- Amazon is doing the largest layoffs in its history into 2023[147] cutting about 10,000 jobs[148] which is about 3% of its workforce[149] and 'Amazon abandoned multiple projects this year in an effort to cut costs'[150]. 'Amazon has announced it will cut more than 18,000 jobs from its workforce – the largest set of layoffs in the US company's history' citing 'the uncertain economy' (this seems to include the 10,000 layoffs announced earlier).[151]
- Meta (which owns Facebook[152]) is laying off 13% of its staff (more than 11,000 employees)[153] which is 'the first major round of layoffs in the social-media company's history'.[154] It is also taking other steps to cut costs e.g.: 'Meta, the parent company of Facebook, would be vacating about 250,000 square feet of space at the new Hudson Yards development to cut costs'[155]
    - After the 11,000 staff were laid off in November 2022 above, Facebook announced in March 2023 that it was laying off about 10,000 more employees in addition to closing about 5,000 unfilled positions where people were still being hired (so a total of 26,000 jobs cut, which is 30% of Facebook staff[156]) 'as part of top boss Mark Zuckerberg's latest major cost-cutting push. "Here's the timeline you should expect: over the next couple of months, org leaders will announce restructuring plans focused on flattening our orgs, canceling lower priority projects, and reducing our hiring rates," Zuckerberg confirmed in a memo titled "Update on Meta's year of efficiency." . . . "At this point, I think we should prepare ourselves for the possibility that this new economic reality will continue for many years," Zuckerberg said. . . In an SEC filing, Meta said it expects lower full-year expenses in 2023 of between $86 billion and $92 billion following the cuts, down from a previous range of $89 billion to $95 billion. The company said its estimate "is inclusive of restructuring costs of approximately $3-5 billion related to facilities consolidation charges and severance and other personnel costs." . . . Zuckerberg has admitted the tech giant hired too aggressively during a pandemic-era boom in tech valuations. The company had its worst year on record in 2022 as it navigated a troubled shift toward costly metaverse technology despite sagging revenue and worsening economic conditions.'[157]
- HP 'plans to layoff off 4,000 to 6,000 employees over the next three years'[158]
- Alphabet (Google's parent company) has laid off 12,000 workers[159] (about 6% of its workforce) because 'a slumping ad market and grim macroeconomic conditions give it no other choice but to tighten its belt. Alphabet executives have said it is essential to make the company 20% more efficient.'[160]

- After several rounds of layoffs last year, Microsoft announced in January 2023 that it is cutting another 10,000 jobs (nearly 5% of its global workforce) and is consolidating some of its office leases as some of the world is in recession and changing customer priorities.[161]
- Paypal cut 2,000 jobs (7% of its workforce)[162] to reduce costs and closed an office[163]
- Salesforce plans to cut thousands of jobs[164] to improve profitability as demand for its products slows.[165] In January 2023 Salesforce announced 'it was laying off about 8,000 employees, or 10% of its workforce' which are by far the largest cuts in the 23-year history of the company.[166]
- After already cutting jobs from 165,000 in January 2020 to 133,000, Dell is cutting 5% of its worldwide workforce (6,650 people), after revenue fell 6% in a quarter with a 37% drop in computer sales (the largest of any computer manufacturers).[167]

In addition:

- Apple has escalated its plan to reduce budgets into next year and has paused hiring for many jobs and
- Cisco has started a restructuring plan that will affect about 5% of its employees and involve severance etc costs.[168]
- Google has slowed down/frozen hiring[169] and is cutting back employee benefits like free food and laundry[170].

So if any of these 14 companies do not provide the 500,000 upskilling opportunities promised under this UI:

- Will the companies be penalised? If so:
    - who will penalise them? E.g. the US government? The recipient IPEF countries?
    - What will the penalties be?
    - What is the mechanism to implement these penalties? E.g. can the 14 companies be sued in some domestic court/IPEF tribunal for failure to provide the upskilling? E.g. have the 14 companies signed some legally enforceable contract(s) with the US government/recipient IPEF countries?
- If the UI is a US government initiative, can the US government be penalised (by the other IPEF countries) for the failure of the companies to supply the promised upskilling (e.g. if it is written into the IPEF text and is enforceable by whatever the IPEF enforcement mechanism is)? If so:
    - This creates a legal risk for the US government since it cannot control these 14 companies to ensure they provide the upskilling opportunities. Or has the US government signed a legally enforceable contract with each of the 14 companies to pay for/provide the upskilling if the companies cannot do so?
    - What is the legal mechanism: e.g. a state-to-state dispute settlement case under any IPEF dispute settlement mechanism?
    - What will the penalty be? E.g. the recipient IPEF countries do not have to implement IPEF obligations e.g. on cross-border data flows until the promised UI has been provided?

If there are no penalties for failing to provide the promised upskilling opportunities under the UI, how can the recipient IPEF countries be confident these upskilling opportunities will be provided? If recipient IPEF countries agreed to other IPEF obligations (e.g. cross-border data flows) in return for this UI, then if the UI is unenforceable but the other IPEF obligations (e.g. cross-border data flows) are enforceable, then the obligations are not very balanced. (Especially since the UI is so vague that a 10 minute webinar to 10,000 women on Zoom (or a 5 minute YouTube video about how to use Google's search engine to maximise the data that Google collects, or Cisco and Salesforce's existing free training to anyone in the world) could count as having provided the upskilling).

Appendix 4: FDI drivers

- According to a World Bank study (2011)[171]: "both a review of the empirical literature and analysis using new data sources suggest that business opportunities - as represented by, for example, the size and growth potential of markets - are by far the most powerful determinants of FDI".
- Studies[172] show that issues of primary concern to investors include: size and growth potential of markets, infrastructure development, and availability of resources (natural and abundant labor).
- UNCTAD's World Investment Prospects Survey found that TNCs are mainly interested in investing in countries such as China, India, Russia and Brazil due to the long-term potential growth of their markets and, to a lesser extent, availability of cheap labour.[173]
- A survey of investment determinants across 30 African countries identified the regulatory and legal framework as having a negative impact on investment decisions in under 5% of cases.[174]
- 'As Ackerman and Gallagher (2005) note, there is no convincing theory that explains the effects of liberalization or FTAs on FDI, or indeed, any convincing evidence of an FDI-growth nexus.'[175]

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[1] https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/july/united-states-and-kenya-announce-launch-us-kenya-strategic-trade-and-investment-partnership

[2] https://ustr.gov/sites/default/files/2022%20National%20Trade%20Estimate%20Report%20on%20Foreign%20Trade%20Barriers.pdf

[3] https://ustr.gov/sites/default/files/2022%20National%20Trade%20Estimate%20Report%20on%20Foreign%20Trade%20Barriers.pdf

[4] https://www.regulations.gov/comment/USTR-2022-0002-1248

[5] https://www.regulations.gov/comment/USTR-2022-0002-1271

[6] IPEF's negotiation objectives are very similar to the STIP's: https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/september/united-states-and-indo-pacific-economic-framework-partners-announce-negotiation-objectives

[7] https://ustr.gov/ipef

[8] https://ustr.gov/sites/default/files/2022%20National%20Trade%20Estimate%20Report%20on%20Foreign%20Trade%20Barriers.pdf

[9] https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between

[10] https://www.iatp.org/documents/understanding-agricultural-biotechnology-provisions-us-mexico-canada-agreement

[11] https://e15initiative.org/wp-content/uploads/2015/09/E15-Policy-Brief-Crosby-Final.pdf according to a trade lawyer: https://www.kslaw.com/people/daniel-crosby

[12] E.g. see https://www.twn.my/MC11/briefings/BP3.pdf

[13] https://ustr.gov/sites/default/files/2022%20National%20Trade%20Estimate%20Report%20on%20Foreign%20Trade%20Barriers.pdf

[14] E.g.:
-'We will pursue high-standard rules of the road in the digital economy, including standards on cross-border data flows and data localization.' https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/23/fact-sheet-in-asia-president-biden-and-a-dozen-indo-pacific-partners-launch-the-indo-pacific-economic-framework-for-prosperity/
-'we will address issues in the digital economy that will help build connectivity and trust between key markets, including standards on cross-border data flows and data localizations.' https://www.whitehouse.gov/briefing-room/press-briefings/2022/05/23/on-the-record-press-call-on-the-launch-of-the-indo-pacific-economic-framework/
-We will explore new provisions that promote consumer trust, freedom of access to information, development of resilient and secure digital infrastructure, and the trusted flow of data across borders.' https://ustr.gov/about-

us/policy-offices/press-office/speeches-and-remarks/2022/june/remarks-ambassador-katherine-tai-2022-selectusa-investment-summit

[15] https://www.trade.gov/advisory-committee-members/2211 and https://www.trade.gov/advisory-committee-members/2219 and https://www.trade.gov/industry-trade-advisory-center

[16] https://www.regulations.gov/document/ITA-2022-0001-0001/comment and https://www.regulations.gov/document/USTR-2022-0002-0001/comment

[17] E.g. see https://www.ccianet.org/advocacy/trade1/trans-pacific-partnership/ and https://www.ccianet.org/about/members/ and Art 14.11 and 14.13: https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/tpp-full-text

[18] https://ustr.gov/sites/default/files/2022%20National%20Trade%20Estimate%20Report%20on%20Foreign%20Trade%20Barriers.pdf

[19] https://ustr.gov/sites/default/files/2022%20Trade%20Policy%20Agenda%20and%202021%20Annual%20Report%20(1).pdf

[20] E.g. see https://openknowledge.worldbank.org/bitstream/handle/10986/36840/P169976002e89a07209ae40d48d6ebb7154.pdf?sequence=1&isAllowed=y, https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/625132/EPRS_BRI(2018)625132_EN.pdf and https://www.dw.com/en/us-reaches-agreement-to-end-european-digital-services-taxes/a-59584827

[21] E.g. see https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/march/ustr-announces-next-steps-section-301-digital-services-taxes-investigations

[22] https://ustr.gov/sites/default/files/2022%20National%20Trade%20Estimate%20Report%20on%20Foreign%20Trade%20Barriers.pdf

[23] https://www.wto.org/english/tratop_e/gproc_e/memobs_e.htm

[24] https://ustr.gov/sites/default/files/2022%20National%20Trade%20Estimate%20Report%20on%20Foreign%20Trade%20Barriers.pdf

[25] https://ustr.gov/sites/default/files/2022%20National%20Trade%20Estimate%20Report%20on%20Foreign%20Trade%20Barriers.pdf

[26] Art 17.4 and 17.9, https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/tpp-full-text

[27] E.g. see https://www.regulations.gov/comment/USTR-2022-0002-1198

[28] https://ustr.gov/sites/default/files/2022%20National%20Trade%20Estimate%20Report%20on%20Foreign%20Trade%20Barriers.pdf

[29] Art 17.6 and 17.9, https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/tpp-full-text

[30] E.g. see https://www.regulations.gov/comment/USTR-2022-0002-1198 and https://www.regulations.gov/comment/USTR-2022-0002-1280 (calling for USMCA style restrictions on government assistance to SOEs, see Chapter 22 of https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between).

[31] E.g. https://www.odpc.go.ke/regulatory-impact-assessment/ and https://www.treasury.go.ke/wp-content/uploads/2022/01/31.01.2022-REGULATORY-IMPACT-ASSESSMENT-ON-PFM-DISASTER-MANAGEMENT-FUND-REGULATIONS-2022.pdf

[32] https://www.theguardian.com/business/2013/jul/28/philip-morris-plain-packaging

[33] https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IX-4&chapter=9&clang=_en (the USA is not party to it)

[34] https://fctc.who.int/publications/i/item/9241591013

[35] https://fctc.who.int/publications/m/item/guidelines-for-implementation-of-article-5.3

[36] https://ag.ny.gov/sites/default/files/oag-fakecommentsreport.pdf

[37] https://ag.ny.gov/sites/default/files/oag-fakecommentsreport.pdf

[38] Footnote 39 of https://www.twn.my/title2/briefing_papers/MC12/briefings/Reference%20paper%20on%20SDR%20TWNMC12BP%20Nov%202021%20Mohamadieh.pdf

[39] https://itsourfuture.org.nz/wp-content/uploads/2013/09/Kelsey-TPPA-A-Gold-Plated-gift-to-the-US-Tobacco-industry.pdf

[40] https://itsourfuture.org.nz/wp-content/uploads/2013/09/Kelsey-TPPA-A-Gold-Plated-gift-to-the-US-Tobacco-industry.pdf
[41] That would have been worded something like 'regulatory impact assessment as **a Party deems it** appropriate'.
[42] https://www.wto.org/english/tratop_e/serv_e/jsdomreg_e.htm
[43] See https://www.twn.my/title2/briefing_papers/twn/Domestic%20regulation%20TWNBP%20Oct%202021%20Kelsey.pdf and https://www.twn.my/title2/briefing_papers/MC12/briefings/Reference%20paper%20on%20SDR%20TWNMC12BP%20Nov%202021%20Mohamadieh.pdf for some examples of the implications
[44] https://crsreports.congress.gov/product/pdf/R/R43491
[45] There are 435 representatives in the House: https://www.house.gov/the-house-explained and 100 senators: https://www.senate.gov/reference/reference_index_subjects/Senators_vrd.htm
[46] https://crsreports.congress.gov/product/pdf/R/R43491
[47] https://crsreports.congress.gov/product/pdf/R/R43491
[48] https://ustr.gov/sites/default/files/2022%20National%20Trade%20Estimate%20Report%20on%20Foreign%20Trade%20Barriers.pdf
[49] It notes that 'Goods arriving at the port of entry without having undergone an inspection through the PVoC program to obtain a CoC, are subject to inspection by KEBS. The cost of this inspection is five percent of the customs value of the shipment, and the goods may be rejected. After obtaining a CoC or undergoing inspection at the port of entry, the importer must also purchase from KEBS an Import Standardization Mark label that must be affixed to each imported article or its retail packaging.'
[50] https://tfadatabase.org/implementation/progress-by-member from https://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm
[51] 'U.S. implementation of the TFA does not require changes from current processes, including planned efforts to update U.S. systems.' https://crsreports.congress.gov/product/pdf/R/R44777
[52] https://tfadatabase.org/implementation/progress-by-member
[53] https://tfadatabase.org/implementation/progress-by-member
[54] https://tfadatabase.org/notifications/implementation
[55] https://tfadatabase.org/members/kenya/technical-assistance-projects
[56] Special and differential treatment e.g. at the WTO are exceptions and transition periods for developing countries which recognise it is more difficult for them to comply with trade rules, https://www.wto.org/english/thewto_e/glossary_e/glossary_e.htm
[57] https://ustr.gov/sites/default/files/2022%20National%20Trade%20Estimate%20Report%20on%20Foreign%20Trade%20Barriers.pdf
[58] https://global-express.org/assets/files/GEA%20De%20Minimis%20Country%20information_4%20November%202021.pdf which notes that Kenya has an informal de minimis of US$20.
[59] Art 7.8 https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/07_Customs_Administration_and_Trade_Facilitation.pdf from https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between. E.g. see https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/fact-sheets/supporting
[60] E.g.:
-US Council for International Business at https://www.regulations.gov/comment/USTR-2022-0002-1284: 'non-U.S. IPEF partners should seek to agree to establish a de minimis threshold equal to the current U.S. threshold'
-E-Merchants Trade Council submission at https://www.regulations.gov/comment/USTR-2022-0002-1171: 'USTR should commit support for the current U.S. de minimis level and stress for near reciprocity in treatment of low value shipments in the Indo-Pacific countries within a limited phased implementation period'.
- Express Association of America (created by DHL, FedEx, and UPS) at https://www.regulations.gov/comment/USTR-2022-0002-1304 and ITI at https://www.regulations.gov/comment/USTR-2022-0002-1283: commercially meaningful de minimis levels.
Increasing the de minimis has been a longstanding demand of many US business associations e.g. the US Chamber of Commerce: https://www.uschamber.com/assets/documents/Final-The-Digital-Trade-Revolution-February-2022_2022-02-09-202447_wovt.pdf

[61] https://www.dhs.gov/sites/default/files/publications/privacy-pia-cbp-section321-059-september2019.pdf which notes that the simpler entry procedures for products under the de minimis means more products entering with checks for narcotics and health and safety risks etc.
[62] https://blogs.worldbank.org/opendata/new-world-bank-country-classifications-income-level-2022-2023
[63] http://www.imf.org/external/pubs/ft/wp/2005/wp05112.pdf
[64] https://www.regulations.gov/document/USTR-2022-0008-0001/comment
[65] https://ustr.gov/sites/default/files/2023-02/2023%20Trade%20Policy%20Agenda%20and%202022%20Annual%20Report%20FINAL%20(1).pdf
[66] https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between
[67] https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/tpp-full-text
[68] E.g. see Art 29.1 https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/tpp-full-text
[69] https://www.citizen.org/wp-content/uploads/WTO-General-Exceptions-Paper_.pdf
[70] https://www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm#articleXIV
[71] https://www.wto.org/english/docs_e/legal_e/26-gats_02_e.htm#annfin
[72] https://www.federalregister.gov/documents/2022/08/05/2022-16798/us-kenya-strategic-trade-and-investment-partnership
[73] https://www.finance.senate.gov/imo/media/doc/FINAL%20SAA%20USMCA.pdf
[74] https://ustr.gov/sites/default/files/DRAFT-Statement-of-Administrative-Action.pdf
[75] https://crsreports.congress.gov/product/pdf/R/R42388
[76] https://crsreports.congress.gov/product/pdf/R/R42388
[77] E.g. https://www.bbc.com/news/world-us-canada-63629003 and https://edition.cnn.com/2022/12/03/politics/john-duarte-house-election-california-republican/index.html
[78] https://www.usaid.gov/kenya/health-population-and-nutrition from https://www.usaid.gov/kenya
[79] https://data.worldbank.org/indicator/NY.GNP.PCAP.CD
[80] https://www.trade.gov/itac-committees from https://ustr.gov/about-us/advisory-committees
[81] https://ustr.gov/about-us/advisory-committees
[82] https://www.trade.gov/industry-trade-advisory-center
[83] https://www.trade.gov/industry-trade-advisory-center
[84] https://www.washingtonpost.com/news/wonk/wp/2014/02/28/how-companies-wield-off-the-record-influence-on-obamas-trade-policy/
[85] https://www.washingtonpost.com/news/the-switch/wp/2013/11/26/heres-why-obama-trade-negotiators-push-the-interests-of-hollywood-and-drug-companies/
[86] https://www.washingtonpost.com/news/the-switch/wp/2013/11/26/heres-why-obama-trade-negotiators-push-the-interests-of-hollywood-and-drug-companies/
[87] E.g.:
- the Australia-USFTA included TRIPS+ provisions on medicines etc and 'The lead American negotiator was Ralph Ives, who was promoted to Assistant USTR for Pharmaceutical Policy soon after the negotiations concluded. He was aided by Claude Burcky, Deputy Assistant USTR for Intellectual Property. Less than three months after the Australia agreement was signed, the Sydney Morning Herald reported that both men would take jobs at pharmaceutical or medical device companies. Their new employers stood to benefit from some of the pro-patent-holder provisions of the treaty.'
-Abbott hired two other USTR veterans.
-a USTR official went to work for Eli Lilly then returned to USTR as Deputy Assistant USTR for Intellectual Property Enforcement before going to work for AbbVie (a pharmaceutical firm that spun off from Abbott).
-USTR's negotiator of the Vietnam FTA went to work for PhRMA then BIO.
-Pfizer's person responsible for IP went to work for USTR then a lobbying firm.
-BSA (which represents Microsoft etc) has hired two former USTR Officials including its Assistant USTR for IP and innovation and President Obama's IP Czar responsible for IP enforcement: Victoria Espinel who is the President of BSA and is currently on the USTR's Advisory Committee for Trade Policy and Negotiations, https://ustr.gov/about-us/advisory-committees/advisory-committee-trade-policy-and-negotiations-actpn
-'Former USTR officials have also taken jobs at IBM, Microsoft, and Apple.'
-Former USTR officials then worked at the Motion Picture Association of America and Recording Industry Organization of America
[88] https://www.ccianet.org/about/members/
[89] E.g. see https://www.ccianet.org/advocacy/trade1/trans-pacific-partnership/
[90] Art 14.11 and 14.13: https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/tpp-full-text
[91] Texts from https://ustr.gov/trade-agreements/free-trade-agreements unless otherwise indicated

[92] http://www.nafta-sec-alena.org/DefaultSite/index_e.aspx?DetailID=282#4
[93] https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/fta-ale/index.aspx?lang=eng
[94] http://app.fta.gov.sg/asp/faqs/ussfta.asp.
[95] http://www.ita.doc.gov/press/publications/newsletters/ita_0706/shorttakes_0706.asp
[96] http://www.ita.doc.gov/press/publications/newsletters/ita_0706/shorttakes_0706.asp
[97] http://www.ita.doc.gov/press/publications/newsletters/ita_0706/shorttakes_0706.asp
[98] http://www.ustr.gov/Document_Library/Press_Releases/2007/March/Statement_of_US_Trade_Representative_Susan_C_Schwab_Regarding_Entry_into_Force_of_the_CAFTA_DR_for_the_Dominican_Republic.html
[99] http://www.ustr.gov/trade-agreements/free-trade-agreements/cafta-dr-dominican-republic-central-america-fta
[100] Section B of Chapter 19
[101] http://www.ustr.gov/trade-agreements/free-trade-agreements/morocco-fta
[102] http://www.ustr.gov/Document_Library/Press_Releases/2006/July/Statement_of_USTR_Susan_C_Schwab_Regarding_Entry_Into_Force_of_the_US_-Bahrain_Free_Trade_Agreement.html
[103] http://www.ustr.gov/trade-agreements/free-trade-agreements/oman-fta
[104] http://www.ustr.gov/trade-agreements/free-trade-agreements/peru-tpa
[105] Section B of Chapter 20
[106] http://www.ustr.gov/about-us/press-office/press-releases/2012/april/united-states-colombia-set-date-entry-force-us-colom
[107] Section B of Chapter 20
[108] http://www.ustr.gov/about-us/press-office/blog/2012/october/us-panama-set-date-eif-tpa
[109] Section B of Chapter 19
[110] http://www.ustr.gov/trade-agreements/free-trade-agreements/korus-fta
[111] https://www.dfat.gov.au/trade/agreements/in-force/cptpp/Pages/comprehensive-and-progressive-agreement-for-trans-pacific-partnership
[112] https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-in-force/cptpp/comprehensive-and-progressive-agreement-for-trans-pacific-partnership-text-and-resources
[113] https://ustr.gov/about-us/policy-offices/press-office/press-releases/2020/june/ambassador-lighthizer-celebrates-usmcas-entry-force-today-landmark-trade-agreement-fulfills-core
[114] https://www.commerce.gov/sites/default/files/2022-09/IPEF-Upskilling-Fact-Sheet.pdf
[115] https://www.commerce.gov/news/press-releases/2022/09/commerce-department-launches-indo-pacific-economic-framework-prosperity
[116] https://www.cisco.com/c/m/en_sg/partners/cisco-networking-academy/index.html
[117] https://trailhead.salesforce.com/
[118] https://africa.googleblog.com/2021/03/announcing-new-google-career.html
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