

This morning, 18 December 2023, the President of the Kenya Republic and the President of the EU Commission met to the State House in Nairobi for signing the [much disputed EU-Kenya Economic Partnership Agreement \(EPA\)](#).

The EU Council

[authorized](#)

on 12 December the EU Commission to sign the EPA with Kenya. Following this authorization, the President of the EU Commission traveled today to Nairobi to officially sign the agreement.

Kenya is

one of the

largest economy in Africa

, one of the most stable democracies in the continent, and

a gateway to

East Africa. For the

country,

the EU represents its

second largest trading partner

. Total

trade between the EU and Kenya

averaged

€3.3 billion in 2022, with a surplus in the EU's favour.

In particular, the

Kenya

exports to the EU goods for a total

amount to €1.2 billion

, mainly

represented by agricultural products with low value addition, such as

vegetables, fruits, and flowers.

On the other hand,

EU's exports to Kenya amount to €2.02 billion and are mainly

made by

high-value added products such as mineral and chemical products and machinery.

The EU negotiated for the first time a regional Economic Partnership Agreement with the East Africa Community (EAC) countries in 2014. Kenya and Rwanda signed such EPA in 2016, but only Kenya ratified it. The main reasons why the remaining EAC countries refused to sign or

ratify the EPA with the EU were basically two:

1.

1. Being [less developed countries](#), such countries already benefited from the Everything but Arms (EBA), a sub-arrangement under the [Generalized System of Preferences](#)

(GSP) of the EU that allows their products to enter the EU market duty-free and quota-free. Being a unilateral tariff concession scheme (non-reciprocal), such countries are not obliged to open their markets to the EU, as in the case of the EPAs. Kenya, on the other hand, was the only East African country to have the status of lower-medium economy. Therefore, the country could not benefit from the EBA, but only from the less favorable SPG standard (

[general](#)

SPG arrangement), which abolishes or reduces customs duties on imports from beneficiary countries for only 66 per cent of all EU tariff lines, instead that the exoneration of 99.9 percent of customs duties foreseen by the EBA (in the EBA, only arms and ammunitions are excluded from preferences).

Moreover, the GSP standard allows the EU to suspend tariff preferences on imports from Kenya according to specific product graduation criteria (according to such criteria, when a country reaches a sufficient level of competitiveness in the production of a certain product, tariff preferences at import in the EU can be suspended)

. The situation however, has now changed, since also Tanzania graduated in 2020

to lower-middle income country, even though the new

[legislative proposal](#)

of the EU that revises the GSP (the GSP is renewed by the EU at regular cycles, the current one expires at the end of 2023), still includes Tanzania in the list of beneficiaries of the EBA arrangement;

2. The other EAC countries were worried that the EPA with the EU could put their local industries in jeopardy, discouraging the development of new industries due to the fact that it will allow a large share of imports from the EU to enter their territories with a total duty exoneration. Accordingly, such States refused to sign the EPA, due to the refusal by the EU to introduce in the agreement a provision allowing them the imposition special export taxes in order to protect certain sectors they consider sensitive (mainly agriculture).

Since all EAC members had to sign and ratify the agreement in order for the EPA 1994 to enter into force, the agreement has been in a sort of limbo for the last 7 years. In the meantime, during such a period, Kenya has been working on the negotiation of an “interim” (bilateral) EPA with the EU, awaiting the conclusion of the regional EPA. Being Kenya a member of a Customs Union (the EAC), separate agreements between this country and third countries or trade blocks should not be possible. However, the EAC Customs Union Protocol has a peculiarity, as it recognizes (art. 37) the right to each Partner State to separately conclude or amend a trade agreement with foreign countries, provided that the terms of such an agreement or amendments are not in conflict with the provisions of the Protocol, and on condition that the text of the agreement is accepted by the other partner States.

The acceptance of Kenya to sign a bilateral EPA with the EU came from the EAC Heads of State, who at their 21st ordinary summit of February 2021 [decided](#) that all individual EAC members wishing to commence engagements with the EU in view of the EU-EAC EPA implementation, were allowed to do so under the principle of variable geometry. Such a principle is defined in Article 7.1(e) of the EAC Treaty. It states that: “the principle of variable geometry allows for progression in cooperation among groups within the Community for wider integration schemes in various fields and at different speeds”. To be noted that this conclusion represents a faulty application of the variable geometry principle, because this principle applies uniquely to integration within the EAC (art. 7.1.e talks about progression in cooperation "*among groups within the Community*" ) , and has not an external relevance (it does not apply to third countries or territories, i.e. external to the EAC).

Kenya is not the only African country that has embarked on this path. Examples of bilateral interim EPA are the EPAs that the EU concluded with Cameroon, Cote d'Ivoire and Ghana.

The EU-Kenya interim EPA is basically modeled upon the EAC EPA (2014), with some additional provisions on special safeguards for agriculture, measures on food security and infant industry protection. Despite being a bilateral EPA, its characteristic is that it will be open to accession of the EAC Partner States, so to become in future a multilateral agreement.

Kenya will open its market gradually to imports from the EU, by following a specific liberalization calendar. This calendar entails the liberalization of 83.3 percent of tariff lines within 15 years from the moment the EPA enters into application. The remaining 2.9 percent will be liberalised within a longer period, i.e., 25 years. In total, Kenya has committed to liberalise the equivalent of 82.6% of imports from the EU by value, while a list of sensitive products has been excluded from this process. These products include wines and spirits, chemicals, plastics, wood-based paper, textiles and clothing, footwear, ceramic products, glassware, articles of base metal and vehicles.

Moreover, a specific provision allows the country to activate safeguards in case of unforeseen, sharp and sudden increase of imports of certain products from the EU in its territory.

It is envisaged that a new protocol on rules of origin will be negotiated as soon as possible, and at the latest within the first five years of the implementation of the EPA. In this regard, a [joint statement](#)

adopted by the two parties establishes that the 2014 Protocol will be the basis for negotiation of the new set of rules, with limited adjustments particularly linked to the bilateral nature of the agreement.

A rendez-vous clause allows the Parties to extend the content of the agreement, within five (5) years from its entry into force to other policy areas, including services, an inclusion on which some observers advise being '[cautious](#)'.

Now, the next steps will be the transmission, by the EU Commission, of the signed agreement to the European Parliament for its consent (this consent is equivalent to a ratification). After the decision of the EU Parliament, the EPA will officially enter into force for the EU. Kenya, on the other hand, has to follow its own ratification process according to its national laws. After that, the hard part will start. Its implementation.

An [Annex on Economic and Development Cooperation](#) confirms that the EU will support Kenya in the implementation of the agreement as part of the overall EU-Kenya cooperation and within the framework of the current EU cooperation instruments. This will probably lead, soon, to the launch of an EU-funded assistance program for Kenyan authorities to support the implementation of the EPA.

The press release of the signature of the EPA is available [here](#) .