Comments on the Negotiating Objectives for a U.S. – Kenya Trade Agreement

Docket Number USTR-2020—0011

U.S. GRAINS COUNCIL

NATIONAL CORN GROWERS ASSOCIATION

CRA CORN REFINERS ASSOCIATION

April 15, 2020

FR Docket Number USTR-2020-0011
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Dear Sir/Madam:

On behalf of the U.S. Grains Council, National Corn Growers Association and the Corn Refiners Association, we offer the following submission with respect to the request for comments on a proposed U.S.- Kenya Trade Agreement as USTR develops its negotiating objective and positions for the agreement. This submission responds to the request to identify the organizations' general and product-specific negotiating objectives; relevant barriers to trade in goods and services; economic costs and benefits to U.S. producers and consumers of removal or reduction of tariffs and non-tariff barriers; treatment of specific goods; customs and trade facilitation measures; sanitary and phytosanitary measures (SPS) and technical barriers to trade and other trade-related measures or practices that undermine fair market opportunities.

As the largest economy in eastern and central Africa, a trade agreement with Kenya will provide opportunities to expand free and fair trade, strengthen our economic and strategic relationship between our two countries, and help promote economic growth across the African continent.

Again, thank you for the opportunity for the organizations to provide our priority negotiating objectives. We look forward to continued collaboration as the negotiations commence.

Sincerely,

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Director, Trade Policy and Biotechnology
U.S. Grains Council

Comments on Negotiating Objectives for a U.S.-Kenya Trade Agreement
Docket Number: USTR – 2020-0011
April 15, 2020
Washington, D.C.

Statement of the U.S. Grains Council, National Corn Growers Association, and Corn Refiners Association

The U.S. Grains Council, National Corn Growers Association and the Corn Refiners Association offers the following statement to the United States Trade Representative (USTR) with respect to participation with Kenya in a proposed U.S. – Kenya Trade Agreement. The Council is a private, non-profit organization representing U.S. producers of corn, sorghum, barley and co-products such as ethanol, distiller's dried grains with solubles (DDGS), and corn gluten feed and meal, as well as associated agribusinesses.

Founded in 1960, the Council now has 10 international offices, representatives in an additional 15 locations and a network of consultants and partnerships that support programs in more than 50 countries. Our members, leadership and staff fundamentally believe exports are vital to global economic development and to U.S. agriculture's profitability.

Founded in 1957, the National Corn Growers Association represents nearly 40,000 dues-paying corn farmers nationwide and the interests of more than 300,000 growers who contribute through corn checkoff programs in their states. NCGA and its 50 affiliated state associations and checkoff organizations work together to create and increase opportunities for their members and their industry.

CRA is the national trade association representing the 100 percent of the U.S. corn refining (wet milling) industry,[1] which is responsible for over 250,000 direct and in-direct jobs with an annual economic impact of $54 billion. Corn refiners manufacture starches, sweeteners, corn oil, advanced bioproducts and animal feed ingredients using on average 38.4 million metric tons of U.S. corn a year.

At the outset, the organizations believe that it is fundamental that food and agriculture issues are a key component of this bilateral agreement. The organizations strongly supported the objectives of the recently signed U.S.-Mexico-Canada Agreement (USMCA) which contains both market access and regulatory provisions to address non-tariff barriers that should serve as the foundational language for negotiations in a U.S.- Kenya trade agreement.

As Kenya represents one of the largest economic and strategic countries in Africa, a trade agreement with Kenya will provide opportunities for free and fair trade, strengthen our economic and strategic relationship, and help promote economic growth in Africa.

[1] CRA's member companies include Archer Daniels Midland Company, Cargill, Grain Processing Corporation, Ingredion Incorporated, Roquette America, Inc., and Tate & Lyle Americas.

Potential of Kenyan Market for U.S. Feed Grains and Ethanol

Kenya is a large and influential market in East Africa with a population predicted to about double and per capita income expected to increase by 150 percent by 2050. With this growth in population and economy, domestic food demand is predicted to triple in the same timeframe.

Kenya has a population of nearly 50 million people and $42 billion Gross Domestic Product. Agriculture is the largest sector, providing more than 22% of total GDP. Agricultural products are the largest exports with tea and coffee as traditional cash crops. Kenya is the 3rd world's largest exporter of cut flowers. However, its agriculture sector remains underdeveloped and largely inefficient. Despite this, the agricultural sector is the largest employer in the country, with 75% of the workforce earning at least some of their income from the sector, compared to less than 3% in food secure developed countries.

In the short-term, Kenya's feed industry is facing severe supply shortages. Kenya produces nearly 730,000 metric tons (28.7 million bushels) of feed annually - enough to meet between 60 and 70 percent of feed grain demand. However, drought conditions in recent years have resulted in a nearly 330,000-ton (nearly 13 million bushels) feed shortage. Worsening this production issue, the country is experiencing the worst infestation of desert locust swarms in 70 years.

The combined results of these detrimental factors are increased demand for feed grains, increased prices for locally produced corn and more frequent price fluctuations. Additionally, since corn is also a staple for human consumption in the region, corn is often diverted away from animal feed when supplies are tight.

Kenya is a corn deficit country, predicted to produce 3.6 MMT of corn in MY 2019/20 (a decrease of 400 TMT compared to MY 2018/19). Corn is a staple crop in Kenya, used not only in food but also in animal feed and oil. A shortage of corn in Kenya caused prices to surge in the latter half of 2019, increasing by 35 to 70 percent per kilo in some cases. Much of the shortage can be attributed to drought conditions in the country, reduced planting areas, post-harvest losses (which exceed 35 percent) as well as lingering effects from a MY 2017/18 marketing crisis. It is predicted that Kenya may import as much of 1.3 MMT of corn in MY 2019/20 to meet local demand, doubling corn imports from the previous three marketing years.

Demand for corn and other coarse grains needed for animal feed in Kenya is expected to increase in the coming years. More than 1 million people are being added to the Kenyan population annually. By 2050, the country's population will be an estimated 85 million. Changing demographics and urbanization will increase demand for higher protein food in Kenya, intensifying the pressure on an already constrained industry.

In 2019, the Council signed a memorandum of understanding (MOU) with the Association of Kenya Feed Manufacturers (AKEFEMA), pledging to work together to develop the domestic feed industry through association capacity building, industry development, alternative feed grains promotion and advocacy work with the Kenyan government.

The Council also sent its first commercial mission to East Africa in 2019 to discuss potential for alternative feedstocks like U.S. sorghum and DDGS, supported by funding from the U.S. Department of Agriculture's (USDA's) Agricultural Trade Promotion (ATP) program. The Council is also using USDA's Quality Samples Program (QSP) to work with local industry representatives to conduct feed trials on U.S. DDGs and sorghum.

As this process continues, the Council is continuing to work with the QSP and is developing technical workshops with AKEFEMA on improving feed formulations and management. A trade agreement between the United States and Kenya - the first of its kind in sub-Saharan Africa - could further these efforts.

Implications for AGOA and Africa Continental Free Trade Area

Kenya is a participant in the **African Growth and Opportunity Act (AGOA**) whose objective is to expand U.S. trade in **Sub-Saharan Africa (SSA),** stimulate growth and facilitate SSA's integration into the global economy. The Act establishes the annual U.S.-Sub-Saharan Africa Economic Cooperation Forum (known as the AGOA Forum) to promote a high-level dialogue on trade and investment-related issues. SSA countries are provided substantial preferences, along with the Generalized System of Preferences (GSP) that allow virtually all market goods in AGOA-eligible countries to enter the U.S. market virtually duty-free. AGOA (including GSP) imports totalled $12 billion in 2018. Among the top suppliers, Kenya was fifth at $470 million (mostly apparel, macadamia nuts, cut flowers). In addition, the U.S. government provides assistance through regional trade hubs to African governments and businesses that are seeking to make the most of AGOA and to diversify their exports to the United States.

The **African Continental Free Trade Area** (**AfCFTA**) is a free trade area, which as of 2018 includes 28 countries. It was created by the **African Continental Free Trade Agreement** among 54 of the 55 African Union nations. The free-trade area is the largest in the world in terms of the number of participating countries. Kenya ratified the African Continental Free Trade Agreement, which entered into force on May 30, 2019, and will become operational on July 1, 2020.

The agreement initially requires members to remove tariffs from 90% of goods, allowing free access to commodities, goods, and services across the continent. The United Nations Economic Commission for Africa estimates that the agreement will boost intra-African trade by 52 percent by 2022.

The general objectives of the agreement are to:

- create a single market, deepening the economic integration of the continent
- establish a liberalized market through multiple rounds of negotiations
- aid the movement of capital and people, facilitating investment
- move towards the establishment of a future continental customs union
- achieve sustainable and inclusive socio-economic development, gender equality and structural transformations within member states
- enhance the competitiveness of member states within Africa and in the global market
- encourage industrial development through diversification and regional value chain development, agricultural development and food security; and
- resolve the challenges of multiple and overlapping memberships

We would concur that a trade agreement between the United States and Kenya will complement Africa's regional integration efforts, including the landmark AfCFTA. Additionally, we encourage USTR to track closely the development of AfCFTA and leverage the bilateral negotiation with Kenya as an entry point into more bilateral agreements with other AfCFTA members. In August 2019, the United States and African Union signed a joint statement concerning the development of the AfCFTA, which reflects our common goal to deepen trade and investment relationships across the continent.

In addition, a trade agreement between the two countries could also maximize the remaining years of AGOA; strengthen commercial cooperation; and develop short-term solutions to reduce barriers to trade and investment.

Negotiation Objectives and Priorities

In February 2020, the Administration formally notified Congress of its intent to initiate trade negotiations with Kenya. Prior to the announcement, the U.S. and Kenya launched the U.S. - Kenya Trade and Investment Working Group in August 2018 to begin laying the groundwork to explore ways to deepen the trade and investment ties between the two countries and establish a stronger future trade relationship.

The organizations have previously communicated various market access barriers regarding Kenya with USTR. In this submission, we are providing more detailed information on trade barriers that should be addressed for the free trade agreement to reach its full potential.

Market Access for Goods

Kenya is a member of the East African Community (EAC) free trade area and customs union, and a member of the Common Market for Eastern and Southern Africa (COMESA) free trade area. Kenya generally applies the EAC Customs Union's Common External Tariff, which includes three tariff bands: zero percent duty for raw materials and inputs; 10 percent duty for processed or manufactured inputs; and 25 percent duty for finished products. For certain products and commodities deemed "sensitive," Kenya applies *ad valorem* rates above 25 percent. This includes 50 percent for corn and corn flour. Kenya also applies substantive tariffs to imports of U.S. refined corn products. Kenya's MFN tariff rates range from 10 percent on corn starches, corn feed/meal and corn starches to 25 percent for corn oil.

The tables below summarize the latest five-year average of U.S. exports to Kenya. With the exception of grain sorghum, coarse grains, co-products, refined corn starch and ethanol have had no viable access to this market. The tables provides Kenyan MFN tariffs on corn; ethanol; sorghum; distillers grains and corn gluten products; coarse grain products; and barley and barley products and refined corn starch.

Corn

HS Code	Description	Kenya MFN Tariffs	U.S. Exports AVG (2014-19, $s)
1005902030	#2 CORN, excluding seed	50%	
1005902035	#3 CORN, excluding seed	50%	
1005904055	CORN, WHITE, excluding seed	50%	
1005902020	#1 CORN, excluding seed	50%	
1005902070	CORN, YELLOW, not elsewhere specified	50%	
1005904065	CORN, not elsewhere specified	50%	
1005902045	#4 CORN, excluding seed	50%	
Total			**0**

Ethanol

HS Code	Description	Kenya MFN Tariffs	U.S. Exports AVG (2014-19, $s)
2207200000	ETHANOL, denatured	25%**	$970
2207100000	ETHANOL, undenatured	25%	0
Total			**$970**

(**) ethanol used for cookstoves is exempted from 25% tariff and granted duty-free access

Sorghum

HS Code	Description	Kenya MFN Tariffs	U.S. Exports AVG (2014-19, $s)
1007900000	SORGHUM, EX SEED	25%	$12,871,250
Total			**$12,871,250**

Distillers Grains and Corn Gluten Products

HS Code	Description	Kenya MFN Tariffs	U.S. Exports AVG (2014-19, $s)
2303100020	CORN GLUTEN MEAL	10%	
2303100010	CORN GLUTEN FEED	10%	
2303300000	BRWR,DTLR,GRN	10%	$2242
Total			**$2242**

Coarse Grain Products

HS Code	Description	Kenya MFN Tariffs	U.S. Exports AVG (2014-19, $s)
1905909030	CORN CHIPS	25%	$115,736
1108120000	CORN STARCH	10%	$4528
1102200000	CORN FLOUR	50%	
1103130020	CORN GROATS+MEAL	25%	
1104230000	CORN,HULD,PEARLD	25%	
1104199000	GRN,ROLD,FLK,NES	25%	
1104120000	OATS,ROLD,FLAKED	25%	
1102908000	MISC FLOUR	25%	
1103191200	OATS,GROATS,MEAL	25%	
1104300000	GERM,ROLD,FLKD	25%	$2494
1103130060	CORN GROATS NES	25%	
1104220000	OATS,HULD,PEARLD	25%	
1103199000	GROATS,MEAL,NES	25%	$443
1102902700	RYE FLOUR	25%	
1103200090	CEREAL PELLETS	25%	
Total			**$123,201**

Barley and Barley Products

HS Code	Description	Kenya MFN Tariffs	U.S. Exports AVG (2014-19, $s)
1107100000	MALT, NT RSTD	10%	
1003904000	BARLEY,EX SD NES	25%	
1003902000	BARLEY FOR MALT	25%	
1901901500	MALT EXTRACT		
1107200000	MALT, ROASTED	10%	
1104191000	BRLY,ROLD,FLAKED	25%	
1104291000	BRLY,HULD,PEARLD	25%	
Total			**0**

Refined Corn Products

HS Code	Description	Kenya MFN Tariffs	U.S. Exports Ave (2014-19, $s)
Starches			
1108.12.0000	Corn Starch	10.0%	$4,528
3505.10.0020	Dextrins	10.0%	
3505.10.0040	Modified Starches Derived from Corn	10.0%	$102,257
Corn Oil			
1515.21.0000	Corn Oil, Crude (pre-2018)	10.0%	
1515.21.0010	Corn Oil, Crude, Food Grade	10.0%	
1515.21.0050	Corn Oil, Crude, Other	10.0%	
1515.29.0020	Corn Oil, Once Refined	25.0%	
1515.29.0040	Corn Oil, Fully Refined	25.0%	
Corn Syrup			
1702.30.0020	Glucose (dextrose)	10.0%	
1702.30.0040	Glucose Syrup w/ below 20% Fructose	10.0%	
HFCS			
1702.40.0000	Glucose w/ 20-50% Fructose (42)	10.0%	
1702.50.0000	Chemically Pure Fructose	10.0%	
1702.60.0050	Fructose Syrup w/ 50+% Fructose (55)	10.0%	
1702.60.0060	Fructose Syrup w/ 50+% Fructose	10.0%	
Animal Feed			
2303.10.0010	Corn Gluten Feed	10.0%	
2303.10.0020	Corn Gluten Meal	10.0%	
Total			$106,785

The U.S. government should demand that Kenya eliminate all tariffs on corn, ethanol for fuel use, sorghum, distiller grains and corn gluten products, refined corn products; coarse grain products, and barley and barley products.

Biotechnology Restrictions

One of the leading barriers to trade for U.S. corn and corn co-products into Kenya is an importation ban on all genetically modified food and feed. The ban, which has been in effect since November 2012, prohibits imports of all genetically engineered (GE) products, including crops, processed products and seeds. The ban put forth by the Kenyan Ministry of Health sought to address food safety concerns related to GE products.

The National Biosafety Authority (NBA) is responsible for the approval process of import shipments of GE products. The authoritative legislation, Kenya's Biosafety Act of 2009, stipulates that the approval process should take 90-150 days. In addition, the Kenya Plant Health Inspectorate Service (KEPHIS) requires imported GE plant products to have:

- A declaration from the country of origin that states the import's GE status, and
- A phytosanitary certificate.

This ban includes all food aid commodities, many of which are genetically modified products, such as corn and corn-soy blends. As a food aid recipient country, no food aid derived from GE technology destined for a World Food Program lead project has been accepted into Kenya since 2012. With an estimated two million people dependent on food assistance in Kenya in 2019, the ban on food aid containing GE products continues to put those already acutely food insecure at even greater risk. Kenya's GE ban not only impacts local food aid programs but transshipments of food aid destined for inland East Africa (such as Uganda and Burundi) which receives shipments through the Port of Mombasa.

While there have been ongoing discussions to lift the import ban over the past several years, it remains in place. As the demand for feed inputs rises, the ban is especially hampering the potential U.S. exports of feed ingredients including soy, feed corn, and other products.

Kenya does not commercially produce GE crops or GE seeds. However, cultivation of Bt. cotton has been approved and commercialization is expected to begin in 2020. Nonetheless, the import ban on GE products remains, denying many Kenyan producers and industry access to the best available science, limiting genetic engineering technology adoption and acceptance, and severely and unduly restricting commerce, trade, and regional food security.

Given production constraints concurrently facing the Kenyan feed industry, GE products can serve as a key tool for Kenya to meet the increased demand for the animal feed industry. The Council has begun working with the Kenyan feed industry through AKEFEMA to address the key market barriers not only hindering animal feed production in Kenya but opportunities for U.S. coarse grain exports to Kenya.

Food Safety Regulatory Policies

Kenya's agricultural and food trade regulatory mandates are managed through five key agencies, that are all linked to a single online import approval system. Kenya is a member of the World Trade Organization (WTO) and regularly notifies technical barriers to trade (TBT) changes to the WTO but has been slow to notify sanitary and SPS changes. The Government of Kenya (GOK) is currently reviewing its food safety laws and regulations, and a bill of parliament on food safety is expected later in 2020.

Kenya maintains a ban on imports of genetically modified (GM) agricultural food products. In addition, since October 2018, all exports to Kenya must be inspected in the country of origin or supply and be issued with a certificate of conformity prior to shipment. Both requirements are major constraints to U.S. exports to Kenya.

Food, feed, or ingredients containing GM products must conform to Kenya's Biosafety regulations. Since 2011, environmental regulations have been in place and cover activities involving the release of GMOs into the environment; placing on the market and during commercialization. The objective is to mitigate potentially adverse effects of GMOs to protect health and the environment when conducting environmental release of GM products for use in the public.

Import, export, and transit regulations aim to ensure safe movement of GMOs into, across, and out of Kenya while protecting human health and the environment. They establish procedures on importation, exportation, and transportation of GMOs and guidelines on measures to undertake in case of inadvertent release of products into the environment while on transit. The regulations require any person(s) involved in GMO import for consumption or research; GMO export to any country and GMO transit from one country to another through Kenya to seek approval from the National Biosafety Authority.

Contained use regulations guide activities involving GMOs under containment and are applied during research on GMOs while still in laboratory, greenhouse, growth chamber and combined field trials. They also provide details, procedures and regulations of Institutional Biosafety Committees, application for contained use and registration of decisions in the National Biosafety Clearing House—an internet platform for sharing information on GMOs. The objective of these regulations is to ensure that potentially adverse effects of GMOs are addressed to protect human health and the environment when conducting research.

Labeling regulations are required to ensure that consumers are made aware that the food, feed, or product is genetically modified so that they can make informed choices and also to facilitate the traceability of products to assist in the implementation of appropriate risk management measures when necessary.

The regulations seek to facilitate accurate labeling, monitoring of the effects on the environment and where appropriate, on health, and the implementation of the appropriate risk management measures including withdrawal of products from the market.

The regulations shall not apply to: food, feed or their ingredients containing approved genetically modified organisms and derived products where there is inadvertent presence of genetically modified material in proportions of less than 1% of the total weight, highly refined food, where the effect of the refining process is to remove novel DNA and/or novel protein; a processing aid or food additive, except where novel DNA and/or novel protein from the processing aid or food additive remains present in the food to which it has been added above the threshold level and food intended for consumption prepared and sold from food premises and vendors.

Specific documentation and certification requirements

Pre-Shipment Documents

• Plant Import Permit (PIP) for bulk commodities issued by the Kenya Plant Health Inspectorate Service (KEPHIS). The PIP form can be found at KEPHIS FORMS
• Import Declaration Form (IDF) issued by the Kenya Revenue Authority (KRA) found at KRA Forms

Post-Shipment Documents

• Certificate of Conformity (CoC)
• Phytosanitary Certificate (PC) containing the required Additional Declarations for bulk commodities (corn, wheat, pulses, rice, sorghum, barley, etc.).
• Non-Genetically Modified Organisms (GMO) Certificate
• Bill of Lading (three original B/L plus non-negotiable copies)
• Commercial Invoice
• Packing List
• Customs Entry Form
• Certificate of Origin
• Health Certificates (Cleanliness, Weight, and Quality)
• Insurance Certificate

Other Documents requested depending on the agricultural commodity or food product:

• Fumigation Certificate
• Radiation Certificate
• Noxious Weed Certificate
• Free from Karnal Bunt Certificate

Export certificates are required by the GOK to export food and agricultural products into Kenya. The Kenya TradeNet System provides a single point for importers and exporters to electronically submit and receive approvals from the relevant trade regulatory agencies.

For this agreement, the organizations would endorse the adoption of the biotechnology provisions that were included in the U.S.-Mexico-Canada trade agreement (USMCA). Given the concern that trade disruptions could occur when a biotech trait is approved under a science-based regulatory system but not by an importing country, the provisions noted the **importance of Low Level Presence (LLP) and provides procedures for Parties to follow when the low-level presence of a biotech material is detected in a shipment of agricultural commodities or food products.** Since it is not possible to achieve zero tolerance, identification and implementation of a LLP maximum concentration value will be helpful. Appropriate and transparent regulatory procedures will allow the U.S. seed industry to continue progressing in adoption of biotechnology and advanced agriculture.

USMCA included the **recognition of modern biotechnology and the regulatory implications of both *in vitro* nucleic acid techniques, including recombinant deoxyribonucleic acid (rDNA) and direct injection of nucleic acid into cells or fusion of cells beyond the taxonomic family, that overcome natural physiological reproductive or recombinant barriers and that are not techniques used in traditional breeding and selection. Given the current uncertainty of how Kenya will regulate these new breeding techniques, we believe these provisions would enable the efforts of Kenya to work cooperatively on policies for products produced through new plant breeding techniques.**

Finally, the agreement established a **Biotechnology Working Group under the Agriculture Working Group to exchange information issues, including on existing and proposed domestic laws, regulations and policies related to the trade of agricultural biotechnology products**. Most importantly, **these provisions were made binding.**

We would request that the administration also consider our request in other trade agreements for language supporting a mutual recognition agreement with Kenya on the safety determination of biotech crops intended for food, feed, and further processing. This would provide Kenya another alternative as it transitions to asynchronous approval process. The most effective way to reduce the risk of trade disruptions and enable farmers and related industry sectors to access the most advanced technologies within a reasonable time is to eliminate the gap in product approvals through an agreement on mutual recognition of safety determinations of biotech-enhanced commodities for use as food, feed or further processing. Such an agreement, in addition to reducing risk to international trade and enabling innovation, would be consistent with existing international obligations and the current direction that the U.S. government and others are taking in the areas of regulatory cooperation.

<u>Aflatoxin and Moisture Content Restrictions</u>

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. The aflatoxin limit is lower than the Codex Alimentarius Commission and U.S. standard 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 compared with corn not subject to these requirements. Kenya also restricts popcorn imports to a six percent maximum moisture requirement. The U.S. limit is 12.5 percent to 15 percent.

To help address these issues, the Council would advocate strongly for the inclusion of the provisions of the Sanitary and Phytosanitary (SPS) measures included in USMCA into a U.S.-Kenya agreement as referenced below.

<u>Sanitary and Phytosanitary Measures</u>

The U.S.- Kenya Agreement should include an SPS chapter laying out more detailed commitments relating to human health and animal/plant safety issues which would go beyond those found in the WTO SPS Agreement.

USMCA built on the already strong SPS chapter agreed to during the Transpacific Partnership (TPP) negotiations. High standards on **transparency, import notifications, and technical consultations prior to disputes**, among other provisions, should be helpful in establishing a baseline for future trade negotiations and serves as an ideal placeholder for the U.S. – Kenya agreement.

Such an agreement would provide **enforceable SPS obligations that build upon WTO rights and obligations. In fact, it goes beyond WTO, NAFTA and TPP obligations while still allowing each party to establish its own level of protection, while committing to avoid unnecessary barriers to trade. The Parties are to base measures on international standards or assessment of risk, and relevant scientific principles. It allows for provisional measures if an international standard or risk assessment does not exist. However, Parties commit to seeking additional information necessary for a more objective assessment of risk.**

Measures are to be applied only to the extent necessary to protect human, animal and/or plant life/health and in a manner that is not a disguised restriction to trade.

It establishes a mechanism to resolve unwarranted barriers that block the export of U.S. food and agricultural products and it seeks to establish cooperation, communication and consultation between Parties to ensure that science-based SPS measures are developed and implemented in a transparent, predictable, and non-discriminatory manner. The Parties commit to select sanitary or phytosanitary measures that are not more trade-restrictive than required to achieve the level of protection to be appropriate.

National Treatment of Goods

Import and Export Restrictions

The negotiations should ensure that countries do not maintain or expand other discriminatory trade barriers while they are eliminating tariffs or inventing new barriers to circumvent obligations. The national treatment and market access for a Goods chapter should incorporate the broad WTO obligations regarding import and export restrictions into a bilateral agreement as the fundamental framework for trade in goods between the Parties. In addition, the Goods chapter should prohibit import licensing conditioned on performance requirements, as well as prohibiting requirements that exporters establish contractual relationships with domestic distributors as a condition of importation.

Performance Requirements

Performance requirements impose obligations on companies, such as requiring that a certain level of goods or services be exported or that domestic goods and/or services be used in order to obtain preferential treatment for their imports. These requirements are used by some countries to unfairly discourage the use of imports even as tariffs are reduced. A bilateral U.S. - Kenya agreement should prohibit Parties from using performance requirements as a condition of qualifying for reduced tariffs.

Import Licensing

Complicated and unclear import licensing procedures can create costs and obstacles for exporters and can result in significant barriers to trade. The bilateral agreement should include requirements for Parties to notify each other of their import licensing procedures, including any conditions and eligibility requirements, and to regularly update these notifications. In addition, Parties should not apply import licensing procedures to bilateral goods without notifying all Parties of the license requirement and the reason for it.

Agricultural Export Subsidies

The agreement should contain a commitment by all Parties to eliminate agricultural export subsidies—which are considered among the most trade-distorting agricultural trade measures—on goods sold in both markets. The United States—which does not use agricultural export subsidies—has long sought to eliminate the use of such subsidies at the multilateral level. These provisions would also support the groundwork for global agricultural trade reform on export subsidies in the WTO.

Domestic Supports

If supporting producers, Parties should consider using domestic support measures with minimal or no trade or production effects to ensure transparency of domestic support programs.

Agriculture Safeguards

Originating agricultural goods traded under preference from any party should not be subject to any duties applied by a party pursuant to a special safeguard taken under the Agreement on Agriculture.

Food Security Export Restrictions

Provisions should provide for limits on export restrictions on foodstuffs to six months, requires notification of both Parties in advance when a country imposes such restrictions, and mandates consultation with interested importing countries if the restriction remains in place more than 12 months. This provision would be intended to discourage countries from imposing export restrictions on food and agricultural products as a means of protecting their domestic market from changes in the world market. When countries do so with respect to staple food products like rice and wheat, poor countries relying on the international market to import food supplies can suffer immediate and sharp crises in access to food.

State Trading Enterprises

Some countries have state trading enterprises that control exports of specific products. The negotiations should include provisions to agree to work together in the WTO to improve transparency around the operations of agricultural export state trading enterprises and agree on rules preventing these enterprises from receiving special governmental financing or trade-distorting restrictions on exports.

<u>Technical Barriers to Trade</u>

The organizations support provisions for a Technical Barriers (TBT) to Trade chapter that build both on the WTO TBT agreement but also the USMCA TBT provisions and ensure that they facilitate trade, including eliminating unnecessary technical barriers to trade, enhancing transparency, and promoting greater regulatory cooperation and good regulatory practices.

The USMCA provisions require Parties to apply decisions and recommendations adopted by the WTO TBT Committee that apply to standards, conformity assessment, transparency, and other areas. It requires **transparency and public consultation**. Parties are to **publish drafts of technical regulations and conformity assessment procedures and allow stakeholders in other countries to provide comments**. It also allows authorities to **address any significant issues raised by stakeholders and explain how the final measure achieves the stated objectives**. Also, it establishes a **Committee on Technical Barriers to Trade to monitor and strengthen implementation of the Chapter, to support coordination between the Parties, and to encourage the exchange of information.**

Good Regulatory Practices

An objective in past and proposed FTAs is the establishment of provisions to foster and open a fair and predictable regulatory environment for U.S. businesses promoting the use of widely-accepted good regulatory practices. This includes core principles such as transparency, impartiality, and due process as well as coordination across governments to ensure a coherent regulatory approach. USMCA includes provisions **that provide more predictability and transparency in the development of regulations relevant to U.S. agriculture and associated products. The organizations would offer its support for the inclusion of these provisions in a U.S.-Kenya agreement.**

Customs Administration and Trade Facilitation

USMCA **builds on TPP and the WTO Trade Facilitation agreements to help ensure that goods among the three countries will move quickly across borders, governed by facilitative and transparent procedures that require customs authorities to treat goods fairly and reduce conflicts of interest in customs administration.** Similarly, the organizations support inclusion of these provisions as part of the negotiations for a U.S.-Kenya agreement.

Summary

The organizations strongly commend the Administration's efforts to seek a comprehensive free trade agreement with Kenya. Kenya is the largest and most influential market in East Africa with a population predicted to about double and per capita income expected to increase 150 percent by 2050. In addition, a trade agreement between the United States and Kenya will complement Africa's regional integration efforts, including the landmark AfCFTA, and will help the U.S. to build its economic ties to Sub-Sahara Africa.

Africa is growing rapidly and presents enormous opportunities for U.S. commercial and economic interests. It is undergoing a transformative change toward greater regional integration, has among the highest growth rates globally, and will account for nearly a fifth of the world's consumers by 2030. It is also projected to produce just 15% of its food demand by 2030. Our global competitors have recognized this opportunity and have invested in the region in kind. This agreement would serve as a pivotal advancement for US competitiveness in Africa and for increased opportunity for Kenya to access the U.S. market.

However, to take advantage of these opportunities, we need removal of Kenya's GMO ban and movement to a transparent, science-based and timely risk assessment and approval process. All exports to Kenya must be inspected in the country of origin or supply and be issued with a certificate of conformity prior to shipment. Both requirements are major constraints to U.S. exports to Kenya. While Kenya has demonstrated a need for feed grains and potential for ethanol for fuel use, we will need elimination and/or reduction and phase-out of prohibitive tariffs. Various non-tariff barriers are also inhibiting trade. Aflatoxin levels should conform with international trade standards. Moisture content levels are not consistent with U.S. levels and is not a technical requirement for trade and should be removed. Finally, removal of all technical barriers will be key to ensuring access ensuring timely shipment and discharge of U.S. grain and ethanol exports.