IDFA
International
Dairy Foods Association

August 5, 2020

The Honorable Robert E. Lighthizer
Office of the U.S. Trade Representative
Washington, DC 20005

Dear Ambassador Lighthizer,

As U.S. negotiators restart bilateral negotiations with Kenya, I want to share with you IDFA's priorities for a U.S.-Kenya trade agreement and encourage the Administration to stay the course.

As you know, IDFA represents the United States' dairy manufacturing and marketing industry, which supports more than 3 million jobs that generate $159 billion in wages and $620 billion in overall economic impact. IDFA's diverse membership ranges from multinational organizations to single-plant companies, from dairy companies and cooperatives to food retailers and suppliers, all on the cutting edge of innovation and sustainable business practices. Together, they represent 90 percent of the milk, cheese, ice cream, yogurt and cultured products, and dairy ingredients produced and marketed in the United States and sold throughout the world.

First and foremost, IDFA commends the Administration for embarking on these precedent-setting negotiations, including negotiating objectives that are consistent with or exceed those of the United States-Mexico-Canada Agreement (USMCA). IDFA believes global competitiveness is key to the U.S. dairy industry's continued growth and the United States must take a proactive approach in developing market access opportunities that allow U.S. products to compete on a level playing field. To that end, with a population of roughly 1.3 billion people, the African continent represents significant market potential for U.S. dairy exports under equitable trade conditions. With no other full and comprehensive free trade agreement (FTA) in place in sub-Saharan Africa, the U.S.-Kenya negotiations have the potential to provide tangible market access for U.S. agricultural exporters to a growing economy while also leveling the competitive playing field for dairy exports to Kenya and beyond.

An FTA with Kenya is all the more important to U.S. dairy exports' global competitiveness when considered in view of two primary factors: 1) Kenya's protectionist measures over its dairy sector, and 2) the market access advantages enjoyed by the European Union (EU). Since about 2002, Kenya has strategically and aggressively pursued the restriction of dairy imports while building their domestic industry through the exponential expansion of the artificial insemination of their dairy cattle. The subsequent herd increase has resulted in Kenya enjoying the status of a dairy exporter for the region while continuing to restrict imports.[1] Around the same time period, the European Commission (EC) initiated trade negotiations with the East African Community (EAC), including Kenya, which resulted in an economic partnership agreement that was finalized in 2014.[2] The conclusion of the EC-EAC

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[1] Dairy Development in Kenya, Food and Agriculture Organization of the United Nations: http://www.fao.org/3/a-al745e.pdf.
[2] Trade between the EU and Kenya: Information on the EAC-EU Economic Partnership Agreement: http://eeas.europa.eu/archives/delegations/kenya/documents/press_corner/trade_between_the_eu_and_kenya_2105.pdf.

economic partnership agreement not only cemented the EU's advantage of geographic proximity to Kenya, but also secured European-East African trade commitments that have given EU exporters the ability to dominate Kenya's market. In 2019, the EU enjoyed 81% of the market, compared to the U.S. share of <1%.[3]

With this background, IDFA encourages U.S. negotiators to address the following priorities:

- **Market Access:** U.S. negotiators should seek ambitious tariff reductions, including for protected dairy products in Kenya, while seeking a simplified, trade facilitative entry of U.S. dairy imports into Kenya. Currently, Kenya maintains its highest tariffs on a range of agricultural products, including dairy at an average of over 50 percent, because it considers dairy to be "sensitive" products and uses tariffs to stabilize domestic prices.[4] In fact, Kenya's tariffs on dairy imports are significantly higher than most other agricultural import tariffs and present the primary barrier to U.S. dairy exporters to Kenya. In addition to the prohibitively high tariffs, Kenya's "Dairy Industry Import and Export Regulations (2004, Revised 2012)" require importers of dairy products to apply for an import permit, receive a recommendation from the national Dairy Board, be granted the import permit, then obtain a clearance certificate indicating the import permit was granted – all of this must be done for every consignment of imported dairy products. These concerns typify the kind of market access issues IDFA encourages U.S. negotiators to prioritize.
- **Sanitary and Phytosanitary (SPS) Measures:** Seek SPS commitments that align with USMCA commitments, and that eliminate Kenya's use of SPS measures to prevent the import of dairy products. For example, the SPS portion of Kenya's "Dairy Industry Import and Export Regulations (2004, Revised 2012)" requires dairy imports into Kenya be physically tested for radioactivity and be accompanied by attestations that the products stem from milk that originates from animals within the country of export, that the product has not been trans-shipped, and that the product has received not just one, but two pasteurization treatments. Consignment-based testing is not risk-based, not science-based, and exponentially increases costs and is more trade restrictive than necessary. It is imperative that U.S. negotiators ensure Kenya adopts SPS commitments that are consistent with the WTO and other, more recent agreements concluded by the United States.
- **Capacity Building and Regulatory Reform:** Kenya is the continent's seventh largest economy and has made significant political, structural and economic reforms that have driven sustained economic growth, social development and governance gains over the past decade. Despite this progress, IDFA believes additional reforms, including the adoption of good regulatory practices commitments, and engagement in capacity building will ensure Kenya is and remains a responsible trading partner with the U.S. agricultural community. IDFA encourages U.S. negotiators to pursue good regulatory practices commitments with Kenya, such as those in USMCA and promoted in multilateral fora such as the Asia Pacific Economic Cooperation (APEC). IDFA further encourages U.S. negotiators to undertake robust capacity-building efforts that focus on technical assistance for Kenya's system of oversight, including

[3] United Nations Commodity Trade Statistics, United Nations Statistics Division: https://apps.fas.usda.gov/gats/ExpressQuery1.aspx.

[4] 2020 National Trade Estimate Report on Foreign Trade Barriers: https://ustr.gov/sites/default/files/2020_National_Trade_Estimate_Report.pdf.

regulatory reform, and the adoption and implementation of international guidelines, standards, and recommendations, such as those published by Codex Alimentarius. IDFA opposes providing Kenya with commodity-specific capacity building, which has the potential to disproportionately benefit certain commodity industries over others, creating a situation where U.S. agricultural exporters may be competing with one another.

With truly liberalized markets, comprehensive regulatory reform, and gold-standard commitments, protectionist approaches will no longer be necessary as the United States and Kenya work in tandem to achieve a level playing field free of barriers to trade. IDFA appreciates the Administration's efforts to unlock new opportunities and regions for U.S. exporters, and encourages U.S. negotiators to continue pursuit of an agreement with Kenya. I sincerely appreciate your consideration of our comments and please do not hesitate to contact me with any questions.

Sincerely,

Michael Dykes

Michael Dykes, D.V.M.
President and CEO

Cc: Ambassador Greg Doud
Chief Agricultural Negotiator
Office of the U.S. Trade Representative

Under Secretary Ted McKinney
Trade and Foreign Agricultural Affairs
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