

# **USSEC - ASA Comments on Proposed U.S. – Kenya Trade Agreement**

**April 2020**

## **Introduction**

The U.S. Soybean Export Council (USSEC) and the American Soybean Association (ASA) welcome the opportunity to submit comments on the proposed U.S.-Republic of Kenya trade agreement.

USSEC represents the interest of U.S. soybean producers, commodity shippers, merchandisers, allied agribusinesses and agricultural organizations in international markets. USSEC's global network of offices and strong support in the U.S. helps to: build a preference for U.S. soybeans and soybean products; advocate for the use of soy in feed, aquaculture and human consumption; promote the benefits of soy use through education and technical expertise, and; ensure market access. ASA represents U.S. soybean farmers on policy issues important to the soybean industry. ASA has 26 affiliated state associations representing 30 soybean-producing states and more than 300,000 soybean farmers.

## **Background**

In 2017, USSEC embarked on a strategy to diversify its exports markets and to increase its investments in emerging markets around the world. Many of those countries import relatively small amounts of U.S. soy or none at all (as is the case of Kenya). At the same time, some of those emerging markets represent good opportunities for growth in the medium to long-term future due to their growing populations and middle class.

As part of that overall marketing strategy, USSEC is engaged in a long-term program to address current or potential future market access issues in the form of regulatory obstacles in these countries. These obstacles include barriers to the import of genetically modified (GM) crops, the regulatory uncertainty for plant breeding innovations (PBIs) and the potential for restrictive policies on plant protection products.

One of the main obstacles to export U.S. soy to Kenya is such a regulatory barrier: in 2012 the country put in place an import ban on GM crops following the publication of an inflammatory report ('the Seralini report' – since widely discredited) which claimed herbicide-tolerant corn caused cancer in rats. This ban signaled the end of the small amounts of (GM-origin) soybean meal Kenya had been importing from the U.S. until October 2012 shortly before the ban.

## **Kenya Market Potential**

A November 2019 report on the U.S. soy export opportunities in Kenya<sup>1</sup> presented an overview of current and projected future local soy production, soy imports, the market for

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<sup>1</sup> Soy Export Opportunities from U.S. to Kenya, Draft Final Report by Aranca for the World Initiative for Soy in Human Health (WISHH), ASA

animal feed, livestock and poultry and crushing capacity. The main findings of that report were:

- soybean meal is the preferred protein source of Kenyan animal feed manufacturers, but local production is very limited. Kenya typically imports about 200,000 metric tons (MT) of soy per year, mostly soymeal and oil cakes (and some whole beans) from Uganda, Zambia and Malawi;
- the demand for compound feed is expected to rise 3.5% through 2030, driven mostly by government policies such as the removal of 16% value added tax. Poultry and cattle account for more than 60% of feed consumption;
- current crushing capacity (even if limited today) is significantly under-utilized;
- without the ban on GM imports, U.S. soy would be competitive with suppliers from the East African region in terms of quality, reliability and even price, in particular if the 10% import tariff is removed.

The report stresses that its findings were based on telephone interviews and a diverse range of literature since official trade data were not always reliable (import data did not tally with export origin data) and it is likely that the actual imports of soy may be higher. With its growing population and economy, the demand for animal feed in Kenya is expected to grow further. Local production is regularly affected by challenging conditions such as drought and crop damage from desert locust swarms and fall armyworm.

### **Agricultural Biotechnology in Kenya**

With the adoption of a comprehensive National Biosafety Act, a regulatory framework for biotechnology has been in place since 2009. The Act establishes the National Biosafety Authority (NBA), which established implementing regulations and works with eight ministries including health and environment in regulating biotech products. It provides for an approval procedure for GM imports that should take between 90 and 150 days.

While Kenya has been actively researching and testing agricultural biotechnology crops, e.g., cassava, sorghum, corn, sweet potato, and banana, a government GM import ban was introduced in November 2012, including processed and unprocessed goods, seeds, and food assistance commodities. The ban was based on a report from French scientist Gilles-Eric Seralini which claimed GM corn caused cancer in rats. This report was widely condemned and discredited by national scientific agencies and by scientists around the world, and the report was ultimately retracted, but the Kenya ban remains in place.

USDA Foreign Agricultural Service reports that “as the demand for feed inputs rises, the ban is especially hampering potential U.S. exports of feed ingredients including soy, feed corn, and distillers dried grains”.

### **Recent improvement**

In December 2019, in a decisive and positive move, the Kenyan government approved an insect-resistant GM cotton for cultivation in 2020. Several Kenyan scientists and commentators believe this could lead to an easing of the 2012 GM import ban.

USSEC and ASA believe that this first GM approval together with the upcoming trade negotiations offer an important opportunity to encourage Kenya to rescind the 2012 import ban and to implement its approval procedure for GM imports under the 2009 law. South Africa remains the only major producer of GM commodity crops (including soy) in Africa. However, several influential African countries such as Nigeria (Bt cotton and Bt cowpea) and Ethiopia (Bt cotton) have in recent years authorized the cultivation of GM crops and are conducting field trials for GM corn, among others. Nigeria and several other countries also use a regulatory procedure to authorize GM imports. These are all positive developments which could serve as examples to reinforce the recent shifts that are taking place in Kenya.

## **Recommendations for the U.S./Kenya Trade Agreement**

### Agricultural biotechnology

USSEC is in the process of developing and implementing a program to build support for the easing of Kenya's GM import ban. In our view, local industry stakeholders (feed manufacturers, importers, crushers, poultry and livestock farmers, the food industry) have a major role to play in generating the practical and political support to make this happen. We believe this program can be reinforced through the inclusion of provisions on agricultural biotechnology in a future U.S.-Kenya Trade Agreement.

USSEC and ASA believe the inclusion of similar language on the authorization procedures for GM crops that was included in the Agricultural Biotechnology section (Articles 3.12-3.16 in the [Agriculture section](#)) of the United States-Mexico-Canada Agreement (USMCA) could be a very positive step in any negotiation with Kenya. In our view the use of the language in these provisions would be appropriate since Kenya already has a biosafety framework in place, including a regulatory procedure for GM import approvals.

To ensure that the approval procedures are conducted in a timely fashion, USSEC and ASA suggest that the trade agreement also includes a provision on the mutual recognition of scientific risk assessments carried out in other countries. This is an objective of the African Union which wishes to see coordination and strengthening of *“ongoing biosafety initiatives in order to harmonize regulatory practices and promote cooperation and mutual recognition of biosafety regulatory decisions, among other goals”*.<sup>2</sup>

### Plant Breeding Innovation

Plant breeding innovation such as genome editing is an important technological development which holds great promise for farmers across the world. USSEC and ASA suggest that a trade agreement with Kenya emphasizes that these technologies result in

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<sup>2</sup> *African Union mulls harmonized biosafety system framework* by Nkechi Isaac, July 17, 2019, Cornell Alliance for Science

a range of products that are often distinct from GMOs, and which should be subject to a proportionate, risk appropriate, science-based regulatory approach. It is our understanding that the NBA has drafted guidelines that were based on the approach used by Argentina.

#### Crop protection products and Maximum Residue Levels (MRLs)

NGOs and several local stakeholders have been calling for restrictions in the use of glyphosate in Kenya following the International Agency for Research on Cancer (IARC) controversial opinion that glyphosate could be a 'probable carcinogen'. Court cases in the U.S. and opposition in some European countries, have added to the misinformation and dissension. There are currently no signs that this issue will represent a current obstacle or may develop into future barriers to imports, but USSEC and ASA suggest that a trade agreement should contain language on the need for science-based decision-making and adherence to the provisions in the World Trade Organization (WTO) Sanitary and Phytosanitary (SPS) Agreement (for example, as per the [SPS section](#) in the USMCA) as well as recognition of international standard setting bodies such as Codex Alimentarius.