AEM
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April 28, 2020

Mr. Alan Treat
Assistant U.S. Trade Representative for Africa
Office of the United States Trade Representative
600 17th Street
Washington, D.C. 20006

Re: Request for Comments on Negotiating Objectives for a United States-Republic of Kenya Trade Agreement

Dear Mr. Treat:

On behalf of the Association of Equipment Manufacturers (AEM) and our more than 1,000 member companies that manufacture equipment and provide services for the construction, agriculture, utility, forestry, and mining sectors, we would like to thank you for this opportunity to provide comments on the future negotiation of a United States-Republic of Kenya Trade Agreement.

Equipment manufacturers support 2.8 million jobs across all 50 states, representing 12% of all U.S. manufacturing jobs, and contribute $288 billion a year to the U.S. economy. With nearly 30 percent of equipment manufactured in the U.S. designated for export, our industry's growth depends on export opportunities in emerging markets. A U.S. – Kenya Trade Agreement has the opportunity to not only increase U.S. exports of manufactured goods, but also become a model for future trade agreements across Africa and other emerging markets.

We would like to take this opportunity to highlight the following negotiating objectives beyond establishing duty-free treatment for originating goods in the U.S. – Kenya Trade Agreement. Incorporating the following provisions will boost U.S. equipment manufacturing exports and our nation's domestic manufacturing base.

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Eliminating Restrictions on Remanufactured Industrial Machinery

Remanufactured finished goods are end-of-life components that have been returned to a “same-as-when new” condition and are sold with a new warranty. By salvaging and reusing existing cores, remanufacturers save tremendous amounts of energy, minimize carbon emissions and the creation of greenhouse gases, and reduce the waste sent to landfills. Remanufactured equipment has a huge potential in markets like Kenya where customers demand both value and long-lasting performance.

Remanufacturing maintains the product’s integrity so that a large fraction of the product’s input materials and energy are preserved and used again. This contrasts with recycling, which destroys the finished product to recover raw materials for use in the creation of different products. U.S. remanufactured industrial equipment is thoroughly tested to ensure that it meets or exceeds original specifications and passes stringent safety and reliability standards in order to equal or exceed the expected life cycle service demands. In fact, remanufactured products often have better durability, life span, and performance records than that of the originally manufactured item.

Non-tariff trade barriers often preclude or complicate the import and/or export of remanufactured finished goods as well as the core material needed to feed the remanufacturing process. In some countries there is little differentiation between used, refurbished, and remanufactured finished goods. The most typical example of non-tariff trade barriers is the absence of a definition of remanufactured finished goods. In this case, customs officials may treat remanufactured finished goods as “used” goods and prohibit their import. Similarly, countries may impose age restrictions on certain imports and treat remanufactured goods as having the age associated with the original manufacture of the components comprising the remanufactured finished good. With durability, performance, quality, and warranty equal to new, U.S. remanufactured finished goods are clearly not “used” goods. Accordingly, any current restrictions or future restrictions on the import of remanufactured goods should be eliminated and rules of origin should allow remanufactured finished goods to qualify as an originating good, thereby facilitating increased trade.

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Rules of origin usually impose a method of calculating the regional value content ("RVC") for certain remanufactured finished goods and components. In some cases, rules of origin provide that goods manufactured in, or otherwise qualifying as originating goods from, a certain trade territory lose their originating status once they leave the territory. Manufacturers acquire cores from numerous independent sources, including from outside the relevant trade territory. In some cases, the cores may be more than 10 years old. Due to the number of suppliers, the several countries involved and the age of the core products, it is not commercially feasible to segregate among cores sourced from within the relevant territory and cores sourced from outside the relevant trade territory, and track inventory according to the source of the cores. Accordingly, we urge the United States and Kenya to adopt rules of origin that enable goods (especially cores) to retain (or regain) their originating status upon their return into the relevant trade territory from a third party country, and to eliminate third party requirements for Certificates of Origin for cores or any exportation of a good for which an importer may claim preferential tariff treatment on importation of the good into the territory of another Party.

Similarly, Kenya should not inhibit the movement and export of cores necessary to enable remanufacturing by original equipment manufacturers (“OEMs”). Countries sometimes restrict the movement of cores due to concerns that the cores could be resold in the used goods market. However, OEMs need cores to create their remanufactured finished goods. Stringent export documentation requirements can make it cumbersome or impossible for the current owner to export a core and thus receive a refund of its core deposit or avoid a penalty for not returning a usable core. There are examples where countries require a customer to provide documentation connecting the core being exported with the original product that was imported. It could be very difficult for the current owner of a machine, engine or component to track down the importation documents of the original purchaser/importer used to import the machine or component years before.

Finally, government owned assets, such as an engine should be eligible for remanufacturing and regulations need to be established to authorize government customers to repair/overhaul government owned assets through remanufacturing exchange programs. Given Kenya’s geographical location and status as the commercial

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hub of East Africa, this is especially important to incentivize investment and development of the remanufacturing sector in the entire region.

Customs and Trade Facilitation

Given Kenya's status as East Africa's commercial hub with the Port of Mombasa and soon to be completed Port of Lamu, trade facilitation is incredibly important to the economic growth of the country. The following recommendations will improve Kenya's customs process and incentivize foreign direct investment in Kenya's logistics industry.

Digital Documents and Electronic Signatures

The WTO Trade Facilitation Agreement allows for the digitization of customs documentation to expedite the movement of goods. Reducing the need for suppliers to print, sign, and scan back signed documents would simplify and streamline customs procedures. The U.S. Kenya Trade Agreement should include language that allows for the digitization of documents and electronic signatures to reduce costs and customs delays.

Transparency

Any finalized agreement must contain provisions for transparency in import licensing and export licensing procedures. There should be a prohibition on export duties, taxes, and other charges associated with specific customs processing fees. As well as prohibiting either party from requiring the use of local distributors for the importation of commercial goods, or requiring consular transactions and their associated fees and charges.

HTS Classifications

Kenya should update their HTS tariff codes to better align with the U.S. Eliminating the chances of goods having different, binding tariff codes would prevent confusion on customs forms. A consistent classification system will

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improve the flow of goods at Kenya's ports of entry and prevent unnecessary customs delays from occurring.

Allow for Trans-Shipment of Goods

A U.S. – Kenya Trade Agreement should allow for trans-shipments, preferably with the same or similar language used in the U.S.-Chile Free Trade Agreement, where goods are still eligible if they leave customs control provided that they do not undergo further processing.

Digital Trade and Intellectual Property Protections

Modern equipment is incredibly data dependent. Farmers require real-time data analytics to measure soil moisture, seed disbursement, and GPS tracking. Similarly, construction and mining equipment operators use data to safely operate their machinery while creating workplace efficiency. Many of these onboard and digital technologies will be highly impactful for Kenyan producers as they seek to increase agricultural yields, reduce waste, increase fuel efficiencies, and improve workplace safety. For these technologies to be deployed in the Kenyan market, intellectual property protections and data use regulations must be firmly established.

To realize this potential, the following provisions should be incorporated into the U.S.-Kenya Trade Agreement:

- Enshrine patentability standards and patent office best practices to ensure that United States innovators, including small- and medium-sized businesses, are able to protect their inventions with patents.

- Require full national treatment for copyright and related rights so United States creators are not deprived of the same protections that domestic creators receive in a foreign market.

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- Enhance provisions for protecting trademarks, including well-known marks, to help companies that have invested effort and resources into establishing goodwill for their brands.

- Prohibit customs duties and other discriminatory measures from being applied to digital products distributed electronically (e-manuals, videos, software etc.)

- Ensure that data can be transferred cross-border, and that limits on where data can be stored and processed are minimized.

- Ensure that suppliers are not restricted in their use of electronic authentication or electronic signatures, thereby facilitating digital transactions.

- Guarantee that enforceable consumer protections, including for privacy and unsolicited communications, apply to the digital marketplace.

- Limit governments' ability to require disclosure of proprietary computer source code and algorithms, to better protect the competitiveness of digital suppliers.

- Promote collaboration in tackling cybersecurity challenges while seeking to promote industry best practices to keep networks and services secure.

Rules of Origin

The U.S. – Kenya Trade Agreement should adopt rules of origin provisions that make it easier for U.S. manufacturers to qualify goods under the future agreement. Provisions should;

- Reduce transaction costs to qualify products under the new agreement.

- Avoid the establishment of Heavy Duty requirements which would save thousands of supplier solicitations and reduce burdensome record keeping requirements.

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- Align de minimis requirements with recent agreements allowing goods to qualify as originating proved materials are not more than 10 percent of the net cost.

In closing, we appreciate your consideration of the previously mentioned negotiating objectives. The United States has an incredible opportunity to establish a modern and rules-based trade agreement with the Republic of Kenya -- an agreement which will bolster U.S. equipment manufacturing and bring our industry's technology to 50 million Kenyans eagerly working to transform their economy. AEM and our member companies stand ready to assist you and your team make this a reality.

Sincerely,

Dennis J. Slater
President
Association of Equipment Manufacturers (AEM)