Citizens Trade Campaign

working **together** for **social** and **environmental justice** in **trade policy**

Citizens Trade Campaign's Comments Concerning the Proposed U.S.-Kenya Trade Agreement

Docket Number: USTR-2020-0011-0001

April 9, 2020

Thank you for the opportunity to comment on the proposed U.S.-Kenya Trade Agreement.

Citizens Trade Campaign (CTC) is a national coalition whose members include the American Federation of Teachers, Americans for Democratic Action, Communications Workers of America, Friends of the Earth U.S., Institute for Agriculture and Trade Policy, Interfaith Working Group on Trade and Investment, International Association of Machinists and Aerospace Workers, International Brotherhood of Boilermakers, International Brotherhood of Electrical Workers, International Brotherhood of Teamsters, International Union of Bricklayers and Allied Craftworkers, International Union of Painters and Allied Trades, National Family Farm Coalition, National Farmers Union, Public Citizen, Sierra Club, UNITE HERE, United Methodist Church General Board of Church and Society, United Brotherhood of Carpenters, United Mineworkers of America and United Steelworkers, as well as state-based coalitions, organizations and individuals throughout the United States.

Our coalition judges every trade agreement on the same basic criteria: does it contribute overall to a more just and sustainable global economy? Like any new pact, the potential exists for a U.S.-Kenya Trade Agreement to meet this most basic of goals, but to do so will require a significant change in direction from past trade and investment agreements — including the recent U.S.-Mexico-Canada Agreement (USMCA).

As a developing country, Kenya currently has preferential access to U.S. markets under the African Growth and Opportunity Act (AGOA). However imperfect AGOA may be, we believe that preferential access for Kenyan goods that meet labor, environmental and consumer standards should continue, and that it is unnecessary for market access between the two nations to be reciprocal. Striking a trade pact with Kenya that is anything like recent U.S. Free Trade Agreements would serve the interests of transnational corporations over the American and Kenyan people, and would thus be inappropriate and irresponsible.

Insofar as the administration can make the case for a new model of trade with Kenya that is better than a simple AGOA extension, from the outset, we urge the Office of the U.S. Trade Representative (USTR) to publish all draft proposals, negotiating texts, reports and supporting documents about a U.S.-Kenya Trade Agreement in as close to real-time as possible on an ongoing basis, so that our members and the general public all have the opportunity to scrutinize them and participate meaningfully in influencing the formative stages of this agreement.

Put simply, the lack of transparency surrounding earlier trade negotiations conducted by this and previous administrations must not be allowed to continue in any U.S.-Kenya Trade Agreement talks. Creating an open, participatory process from the start is the only way that the public will have confidence that these negotiations are not rigged in favor of large corporate interests.

As to the substance of a U.S.-Kenya Trade Agreement, in order to address Kenya's ongoing struggles with persistent child labor and the threats it faces from the climate crisis, and to otherwise create jobs, raise wages, protect the environment and promote public health in both countries, CTC asks that U.S. negotiators prioritize:

- ***Joint action against child labor and other ongoing labor rights abuses.*** A U.S.-Kenya Trade Agreement must include strong and binding labor standards explicitly based on the International Labor Organization (ILO) Conventions and their accompanying jurisprudence, as well as resources for ongoing monitoring and robust mechanisms for swift and certain enforcement. It must likewise remove barriers that could prevent labor enforcement action from being taken, such as those requiring that labor violations must be proven to be "in a manner affecting trade or investment" or that they be "sustained" or "reoccurring" before enforcement actions can be taken. Provisions must be added to safeguard against any backsliding of existing labor standards, wages and working conditions by barring movement of jobs to evade labor laws and by establishing formal protections for joint labor activities, including collective bargaining, by workers in both countries. Special provisions must be added to address the ongoing issue of child labor within specific Kenyan industries, including a requirement for Kenya to ratify, implement and enforce the UN Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. The protection of labor rights and other human rights must be prioritized over commercial interests in all elements of U.S. trade policy.

- ***Joint action against climate change.*** A U.S.-Kenya Trade Agreement must require parties to adopt, maintain and implement conventions and policies that fulfill the Paris climate agreement and other climate measures, and must include mechanisms that ensure their swift and certain enforcement. Any pact must explicitly recognize the primacy of domestic and international climate policies over commercial rights.

- ***Access to affordable medicine.*** Maintaining access to affordable, generic medications is critical to reducing health care costs in the United States and to saving lives throughout the world. A U.S.-Kenya Trade Agreement would be an inappropriate vehicle for extending the length of drug patents and must not provide monopoly rights to pharmaceutical companies in any other ways, including via patent ever-greening, data or market exclusivity, trade secrets or other means.

- ***Protection of food sovereignty.*** A U.S.-Kenya Trade Agreement must respect governments' ability to implement programs that ensure farmers and other food workers receive fair compensation, and that consumers have access to safe and affordable foods and the right to know where and under what conditions their food is produced. Likewise, nations must be able to protect themselves from dumping, land grabs and other unfair trade practices that force farmers off their land.

- ***Improved consumer and environmental standards.*** A U.S.-Kenya Trade Agreement must set floors, rather than ceilings, when it comes to environmental, food and product safety, privacy and consumer right-to-know measures, and must in no way prohibit, limit or penalize communities for adopting policies based on the precautionary principle. There should be no chapter on "regulatory coherence," nor any "sectoral annexes" requiring health, safety or environmental deregulation or imposing new corporate rights for any sector. Provisions that undermine the regulation of digital technology and the protection of digital rights must likewise be excluded. A broad "carve-out" that exempts non-discriminatory domestic policies from all of the deal's rules should be included to provide a deterrent and early defense against future challenges.

- ***Space for robust financial regulations and public services.*** A U.S.-Kenya Trade Agreement must in no way limit the regulation of banks, insurance companies, hedge funds and other financial service providers, and must again set floors, rather than ceilings, when describing their regulation. The pact's broader services provisions must also contain clear and specific language stating that nothing in the agreement should be interpreted as requiring deregulation or privatization of any private or public service.

- ***An end to investor-state dispute settlement.*** A U.S.-Kenya Trade Agreement must not elevate corporations to the level of governments when it comes to enforcement of the pact. A pact must not include Investor-State Dispute Settlement (ISDS) provisions that allow panels of private sector lawyers to order unlimited taxpayer compensation to firms that claim that a country's policies undermine their expected future profits. Nor should any "ISDS-lite" International Court System or similar proposal be adopted. Any international investment rules must also narrowly define terms including "investment," "expropriation" and "minimum standard of treatment" in order to safeguard the ability of governments to regulate in the public interest.

- ***Respect for local procurement policies.*** A U.S.-Kenya Trade Agreement must not impede governments from spending taxpayer funds in ways that prioritize local development, environmental and social goals. The procurement provisions of an agreement must maintain existing "Buy American" preferences and similar preferences by Kenyan authorities, as well as space for existing and potential future prevailing wage requirements, green preferences, sweat-free preferences, human rights preferences and policies designed to address long-standing inequalities.

- ***Strong Rules of Origin.*** A U.S.-Kenya Trade Agreement must include strong Rules of Origin for airplanes, cars, trucks, other manufactured goods and other products, as well as other measures to stop "transshipment." These rules should not just include high national content requirements, but also high wage standards. Such wage standards should go beyond those in the USMCA to ensure that wages for workers actually increase.

- ***Safeguards against currency manipulation***. To ensure a fair playing field for American job creation, a U.S.-Kenya Trade Agreement must include strong, enforceable disciplines against currency manipulation and misalignment, along with a clear commitment to cooperate multilaterally to confront harmful currency manipulation and misalignment by trade partners around the world.

Thank you for your consideration. For more information, please contact CTC executive director Arthur Stamoulis at info@citizenstrade.org.