

***In the Matter of:* Section 332 Investigation: U.S. Trade and  
Investment with Sub-Saharan Africa: Recent  
Developments**

**Testimony of  
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On Behalf of USA Poultry & Egg Export Council  
and  
The National Chicken Council**

**U.S. International Trade Commission  
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Mr. Chairman and Ladies and Gentlemen Commissioners:

Thank you for the opportunity to participate in today's hearing. My name is Larry Lieberman. I am the President of Boston Agrex, Inc., a food distribution and trading company headquartered in Norwell, Massachusetts. I have been involved in the poultry and agricultural trade business for 45 years, beginning in 1973 as a sales manager for a poultry company in Pennsylvania. In 1981, I founded Boston Agrex and, over the years, my company has been actively involved in exporting U.S. poultry products to many international destinations and, in particular, to South Africa. My company has long been a member of USA Poultry & Egg Export Council (USAPEEC), the national association headquartered in Stone Mountain, Georgia that represents the export side of the U.S. poultry and egg industries. I have served as the Chairman of USAPEEC's Market Development Committee, and as a Member of USAPEEC's Executive Committee. In 2004-05, I was USAPEEC's Industry Chairman. I hold a Bachelor of Arts degree in Philosophy from Boston College.

I appear here today on my own behalf and on behalf of Boston Agrex. But I have been authorized to say that the views expressed in my testimony also represent those of USA Poultry & Egg Export Council (USAPEEC) and the National Chicken Council (NCC). USAPEEC has more than 200 member companies involved in export trade including chicken, turkey and egg producers; trading companies; freight forwarders; shipping companies; cold storage facilities; and port authorities. USAPEEC member companies represents approximately 90 percent of all U.S. poultry and egg exports. A number of USAPEEC Member companies are, like my own company, SMEs.

NCC is the national association, headquartered in Washington, D.C., that represents the companies that produce/process over 95 percent of the chicken in the United States.

With me today is Kevin J. Brosch, a lawyer specializing in international trade law who has served for the past eighteen years as consultant to USAPEEC. Mr. Brosch was actively involved in the U.S. poultry industry's efforts to reopen the

South African market as part of the African Growth Opportunity Act (AGOA) renewal process several years ago, and has previously appeared before this Commission on behalf of USAPEEC and NCC.

I will focus my comments specifically on two issues of interest that the Commission identified in its Notice of November 22, 2017, where I believe Boston Agrex's experiences will prove helpful to the Commission. First, I will explain why U.S. poultry is an export sector that potentially has great opportunities in South Africa, the country with which I have had the most experience and in which my company has been trading for more than 25 years; and also in other Sub-Saharan Africa (SSA) countries. Second, I will describe the challenges that Boston Agrex has faced – which I believe are representative of those faced by most, if not all, small or medium-sized enterprises -- in exporting to South Africa. I will also be addressing the challenges our industry faces in two other SSA countries, Nigeria and Kenya, of which I am aware based on my participation in USAPEEC.

1. U.S. Competitiveness in Poultry Trade, and Sub-Saharan Africa's Potential for U.S. Poultry Exports.

The U.S. poultry industry has perennially been among America's most important and successful production and export sectors. In 2016, the U.S. industry produced 8.8 billion broiler chickens, weighing 54 billion pounds, live weight; and nearly 41 billion pounds of chicken product were marketed. In addition, U.S. poultry production includes nearly 6.0 billion pounds of turkey, approximately 102 billion eggs, and about 136 million pounds of duck.

In 2016, the most recent year for which full data is available, U.S. chicken production value was \$26 billion; turkey \$6.2 billion; and eggs, \$6.5 billion. The poultry industry employs more than 300,000 U.S. workers directly, and more than 1.4 million jobs in the U.S. economy are related to poultry. Poultry is vital to our farm economy. Annually, U.S. poultry consumes more than 52 million MT of the U.S. corn crop, and more than 27 million MT of U.S. soybean production.

Poultry exports are among the most important of all U.S. agricultural exports. In



2016, the most recent year for which full statistics are available, U.S. poultry exports were more than 3.6 million metric tons, with an export value of nearly \$3.9 billion, to more than 100 countries. And, these figures undoubtedly understate the potential for U.S. poultry export because 2016 was year in which the U.S. experienced an outbreak of highly pathogenic avian influenza (HPAI) that limited our ability to export. In 2015, the year before the HPAI outbreak, annual poultry exports were around 4.1 million MT, with an export value of \$5.5 billion per annum, and most observers consider 2015 to be more representative of the trajectory for U.S. poultry exports.

The U.S. is the top broiler producer in the world, followed by Brazil, China, EU-28, and India (Figure 1). In 2016, U.S. broiler production was about 18.3 million MT, accounting for 20.5 percent of world total production, according to USDA. The U.S. is the second largest exporter of chicken products in the world (behind Brazil), followed by EU-28, Thailand, China, Argentina, Ukraine, and Canada. In 2016, U.S. chicken exports were 3.23 million MT, accounting for 27.2 percent of world total exports of chicken products.

The U.S. is also the top turkey producer in the world, followed by EU-28, Brazil, Canada, and Chile (Figure 1). U.S. annual turkey production fluctuated around 2,7 million MT in 2016, accounting for 45 percent of world total turkey production, according to FAO. The U.S. is the top turkey exporter in the world, followed by EU-28, Brazil, Chile, and Canada. In 2016, U.S. turkey exports were 233,202 MT, accounting for 37.7 percent of world total turkey exports.

The U.S. is the third largest egg producers in the world (behind China and EU-28), followed by India and Mexico. U.S. hen egg production in 2016 was 6,037,552 MT, accounting for 8.2 percent of world total hen egg, according to FAO statistics. The U.S. the third largest egg exporter in the world (behind EU-28 and Turkey), followed by China, Malaysia and India. In 2016, U.S. egg exports were \$203 million, accounting for 13.9 percent of world total egg export sales.

In short, the United States is the most advanced, diverse and economically efficient producer and exporter of poultry and egg products in the world, and has

significant competitive advantage in an open marketplace. Sub-Saharan Africa presents an important future opportunity because, although SSA countries are, in general, much less prosperous than their counterparts in the developed world, they are countries with significant populations and slowly increasing middle classes. The current per-capita consumption of poultry products in these countries is very low, and poultry represents the lowest-cost and most economically efficient source of protein for improving the diets of SSA citizens.

We have already begun to tap that potential market since the passage of AGOA. U.S. poultry exports to Sub-Saharan Africa were less than 60,000 MT prior to 2000 (Figure 3). Since AGOA became law in 2000, U.S. poultry exports to SSAs have increased fairly constantly, with somewhat more rapid increases since 2010. Specifically, U.S. poultry exports to SSA grew from 59,800 MT in 2000 to 170,300 MT in 2009, an average annual increase of 12.3 percent; and then increased further from 170,300 MT in 2009 to 471,500 MT in 2014, an average annual growth of 22.6 percent. Exports to SSA in 2016 declined to 357,300, due to the aforementioned HPAI issues. U.S. poultry exports to SSA in 2017 are expected to show increases by more than 30 percent over the 2016 results.

Despite this improvement generally in SSA export trade, we have not done particularly well in three very important and populous markets – South Africa, Nigeria, or Kenya. Collectively, these three countries represent a total population of nearly 300 million people. Currently, the middle class population of Sub-Saharan Africa is estimated to be approximately 120 million, but it is predicted that the middle class will grow to 212 million by 2030. We know from decades of past experience, that when poor people enter the middle class, they spend their newly acquired income first on improving their diets, and in particular, with additional protein. We have already seen this beginning in SSA since the beginning of the AGOA period, and we can expect that demand for low-priced poultry protein should increase as SSA economies improve.



A comparison of the situation in South Africa, which has always been the most advanced economy in the region, with the situations in the other less-developed SSAs make this point clearly. South Africa currently had a per capita GDP of approximately US\$7,727 in 2016 and the most significant middle class population, now consumes approximately 30 kg of poultry per person annually, an amount almost as great as the average consumption figures for Europe and the United States. By contrast during the same period, Nigeria's reported per capita poultry consumption is only 1.1 kg, and Kenya's is only 0.6 kgs. In my view, these official numbers probably understate the actual consumption for reasons that I will discuss later. But, in any case, there is clearly tremendous potential for low-cost, high-quality U.S. poultry products in these markets as their middle classes grow

2. Challenges Faced by SMEs in Exporting Poultry – Dealing with Blatantly Unfair Antidumping Cases and Other Non-Tariff Barriers.

A. The Unfair Antidumping Case in South Africa

Boston Agrex was an early U.S. poultry industry entrant into the South African market after the apartheid era ended. President George H.W. Bush lifted U.S. economic sanctions in July 1991 and the new South African Government of National Unity led by Nelson Mandela was formed. Between 1991 and 1999, prior to the time that South Africa launched an antidumping investigation of U.S. poultry imports, Boston Agrex became the leading exporter of U.S. chicken to South Africa. By the end of that period, Boston Agrex accounted for approximately 55% of the export volume from the U.S. to South Africa. The primary poultry products that we initially exported to South Africa were chicken leg quarters and other dark meat portions, our most competitive products. Then, in 1999, the domestic poultry producers association in South Africa filed an antidumping petition against U.S. poultry imports, and South African authorities launched an investigation.

Let me make it very clear that U.S. poultry is not “dumped” in South Africa or in any other export market. There would be absolutely no reason for my company, or for

any other U.S. food distributor, to sell poultry in an export market at a price less than we could get in the domestic U.S. market. Under international law standards, the primary and preferred method of determining whether a product is dumped is to compare the price of the product sold at export with the price of comparable product sold in the home market of the exporter. Had South Africa applied this common method, there would have been no determination of dumping. U.S. poultry exporters do not sell their products at export for less than the U.S. price for the simple and economically rational reason that, if they can get the same or a higher price in the U.S. market, they will do so and will incur far less cost. As a result, neither South Africa nor any other country has ever initiated an antidumping investigation against U.S. poultry using the ordinary "home market price" legal theory.

Under limited and special circumstances - *i.e.*, where there are insufficient home market sales (usually less than 5% of all production) of a product to warrant price-to-price comparison -- international law standards permit antidumping cases to be determined on the basis of cost of production analysis. But it has certainly never been the case that there have been insufficient home market sales of U.S. poultry products to prevent comparison on a price-to-price basis. The majority of all U.S. poultry products -- including chicken leg quarters and other dark meat portions, our most common export products -- are sold and consumed here in the United States. So South Africa's decision to pursue its antidumping investigation on a cost of production theory was entirely unjustified because there was more than sufficient home market sales of chicken leg quarters and other chicken products to make direct price comparison available.

To make matters worse, South Africa not only departed from the ordinary price-to-price method of evaluation in favor of cost of production, but it also concocted an economically irrational theory known as "weighted cost of production." Under this theory, all parts of a meat animal are assumed to have the same value by weight, even if the market demand for the various parts - and therefore the market prices of those different parts - are radically different. If



weighted cost of production were applied to the beef sector, for example, it would assume that filet mignon and hamburger were of equal value by weight; if it were applied to the pork sector, it would assume that pork loin and pigs' feet had equal value by weight.

This is, of course, sheer nonsense. Not all parts of an animal have equal value by weight in the marketplace, and that is as true of poultry meat as it is of beef or pork. Filet mignon has always been worth more than hamburger; and pork loin has always been worth more than pigs' feet. Historically, breast meat and chicken wings have been higher-valued products in the market than chicken leg meat. South Africa's "weighted average cost of production" approach totally ignores these realities. Under international law norms, if cost of production methodologies are applied and there is need for allocation of costs among different products, those allocations are properly determined in accordance with the values normally associated with those different products on the books of the firm under investigation that have been kept in the ordinary course of business. The South African case also blatantly ignored this important international rule, even though South Africa's own accounting guidelines are the same as the U.S. and international rules, and require use of ordinary business accounting practices.

The South African antidumping case against U.S. poultry imports was not a legitimate trade action. It was a protectionist measure taken in favor of its domestic poultry industry. South Africa is a net importer of poultry meat and protein, and the imposition of antidumping duties meant not only that U.S. exporters like Boston Agrex were substantially excluded from the market, but also that the prices that South African citizens were forced to pay for domestic product rose to three or four times the world price. For the next 16 years, South Africa continued to protect a politically favored few who control its domestic poultry industry, at the expense of its consumers and, in particular, of many of its poorest citizens for whom poultry was the least expensive source of protein.



When South Africa initiated its antidumping investigation in 1999, we were told by U.S. Government officials that the United States viewed defense of antidumping cases in other countries as the responsibility of the private companies in the trade; and that the U.S. Government would not become involved until the domestic law process had run its course. Boston Agrex had been one of the first U.S. exporters to re-open the South African market after sanctions were lifted, and we had made substantial commitments to that market and to our importer partners, during the decade of the 1990's. And so, we made the difficult decision to retain counsel in South Africa and to attempt to present a defense in the case despite the substantial legal and resource costs of doing so. Boston Agrex was one of only three U.S. chicken exporters to defend the case. It was a very demanding, expensive, and as you undoubtedly know, ultimately unsuccessful effort. Without the support of the U.S. government to challenge South Africa's illegal dumping theory, we were playing against a stacked deck.

Once very high anti-dumping duties were imposed by the South African government, U.S. chicken leg quarters and dark meat portions became completely unmerchantable in South Africa. Exports of bone-in chicken to South Africa from the U.S. literally ended for the next 16 years. Nevertheless, during those intervening 16 years Boston Agrex maintained some presence in the market by exporting much smaller volumes of chicken and turkey items not subject to the anti-dumping duty. And, throughout that 16-year period, I was an active industry adviser and participant in USAPEEC's efforts to overturn the anti-dumping decision and to find a way for U.S. poultry to reenter the South African market.

Our experiences after South Africa first imposed antidumping duties were a series of frustrations, both with the failure of the Government of South Africa to act fairly, responsibly and in accordance with its international obligations; and with the failure of the U.S. government to pursue this case effectively through either bilateral negotiations or through available WTO dispute settlement procedures.

Our industry initially assumed, given the blatant irrationality and illegality of the South African antidumping case, that the U.S. government would immediately mount a challenge at the WTO. Indeed, when the Bush Administration first came into office in 2001, industry representatives met with the new U.S. Trade Representative concerning the South Africa circumstances, and Ambassador Zoellick assured them that the U.S. Government would act quickly to protect our rights under international law. But that did not happen. During the eight years of the Bush Administration, and despite constant requests from the industry that the case be pursued at the WTO, no action was ever taken. The industry received constant assurances that this issue was being raised at every trade meeting with South Africa, and we were told that our government preferred to “work out” a solution bilaterally with South Africa rather than to initiate dispute settlement before the WTO. Apparently, the South African government realized that the U.S. Government was not going to take action, and it simply did nothing.

Ironically, in 2007, South Africa's imposition of antidumping duties on U.S. poultry was determined by the South African Supreme Court to be illegal under South African law. WTO law contains a “sunset requirement” that antidumping duties be reviewed every five years or be removed, and this requirement became part of domestic South African law when the Republic of South Africa ratified the Uruguay Round treaty. When South Africa failed to initiate the necessary sunset review within the allotted five years, the duties were challenged and were found illegal by the Republic of South Africa's high court.

While this should have cured the problem, it did not. The South African antidumping authorities simply declined to implement the Court's holding and continued to impose antidumping duties on U.S. products. The failure by South Africa to comply with its own sunset review rules should also have given the U.S. government a procedural basis – in addition to the substantive deficiencies – to challenge South Africa, but again, the Bush Administration did nothing. The U.S. poultry industry and its importer allies in South Africa spent large sums on legal fees to pursue the case through the South African court system, but were met with



frustration at every point. Much later, after several years of tolerating the South African Administration's flaunting illegality, the South African courts reversed themselves and, in a classic "home town call," suddenly decided that South Africa's government's disregard of its own antidumping rules was not illegal after all.

When the Bush Administration left office at the beginning of 2009, the industry renewed its request for action with the incoming Obama Administration. Like the Bush Administration before it, the Obama Administration took no action against South Africa. Essentially, the Obama Administration has viewed this as a "cold case" that should have been pursued by its predecessor eight years earlier.

Eventually, after 16 years of frustration, our industry raised this issue with Congress in the context of the AGOA renewal bill. We provided testimony to this Commission during the pendency of that legislation. We argued that it was unacceptable for the United States to provide substantial trade preferences and benefits to South Africa – and to run trade deficits in the range of US\$2 billion annually – if South Africa was not going to treat our imports fairly. We were fortunate to receive bipartisan support in Congress led by Senator Chris Coons of Delaware and Senator Johnny Isakson of Georgia. As a result of their efforts, negotiations resulted in the agreement by the Government of South Africa to open a small annual 65,000 MT quota for U.S. dark meat portion chicken that is exempt from antidumping duties, but must still pay the full MFN duty. (EU imports pay no duty at all because of FTA agreements between the EU and South Africa). All imports of dark meat portions from the U.S. above the quota amount remained subject to antidumping duties.

I refer to this as a "small" quota for good reason. The irony is that the antidumping action against U.S. poultry has not prevented imports of poultry into South Africa as its domestic industry hoped. As I have said, South Africa is a deficit producer of poultry and its population needs additional supply of poultry meat as a basic food requirement. Currently, South Africa imports more than 600,000 MT of poultry annually, most of it from either the European Union or Brazil. So, during the 16 years

that we were shut out by antidumping duties and our government was unwilling to proceed against South Africa, the EU and Brazilian imports replaced us in the South African market.

While the 65,000 MT AGOA quota represents some progress in reaccessing the South African market for our most competitive poultry products, it is far from ideal. The South African government has insisted that a significant portion of this quota be allocated to “historically disadvantaged individuals” – people from racial or ethnic groups that were the victims of the apartheid system. While we commend the motives behind the HDI preference, the actual implementation of the preference has been erratic, inefficient and lacking in transparency, with the result that there has not been either real benefit to the HDI community or full and effective utilization of the special quota. A significant portion of the quota has been awarded to companies who neither know how to import, nor have the financial capacity to import in the volumes they are being awarded quota. And they do not have the distribution channels and infrastructure to commercialize the chicken once imported. As a result, much of the quota is being commercialized – *i.e.*, sold or leased in secondary transactions – to non-HDI persons or firms. This may provide some income to a fortunate few HDI’s in the short term, but there is no real benefit to the HDI population in the long term.

There is no question that the tonnage and dollar value of U.S. chicken imports to South Africa would be significantly higher, to the substantial benefit of South African consumers, if the anti-dumping duties were to be eliminated completely. However, a quota was negotiated and we should at least expect that the quota would be allocated in a manner which reflects the reality of the marketplace in South Africa, for example by awarding the quota based on actual historical imports, or alternatively by using a transparent auction system that would, in an economically rational way, establish a value for the quota. That could also have the added benefit of providing a source of income to fund grass roots level projects in South Africa that could provide real benefit to a much wider range of HDI’s who have demonstrated a



genuine interest and commitment to participating in the South African poultry industry from grass roots levels up.

I would note (although I realize this is not a primary concern of the Commission's current research) that the South African dumping case also did collateral damage to U.S. poultry in other markets. After the South Africans were successful in excluding us and there was no real push back from the U.S. government, a number of copycat dumping actions followed in other countries – in Mexico, the Ukraine and in China. All of these cases charged dumping under the same “weighted average cost of production” theory. The U.S. industry was able to prevail in the Ukrainian case, and also successfully challenged the Mexican dumping finding before a NAFTA panel. And the industry spent millions of dollars attempting to defend the dumping case in China. Eventually, the Obama Administration did challenge the China dumping finding in a WTO dispute case, and the WTO ruled that China was out of compliance with its WTO obligations. China was once our largest market with approximately 700,000 MT of imports annually. We have effectively been excluded from the Chinese market since it initiated dumping proceedings, and we are still waiting for China to take action on the WTO decision that would allow us to reenter that market.

Our industry's experience with the antidumping case in South Africa should be an object lesson for U.S. trade policy if the United States genuinely hopes to encourage and increase participation of SME's like Boston Agrex. Antidumping was, at one time, almost exclusively a U.S. trade tool with the vast majority of all antidumping cases brought under U.S. law. For many years, other countries did not have their own dumping laws, and they criticized U.S. antidumping law as protectionist, claiming that it was used to shelter and protecting uncompetitive industries against imports. When a few countries began to adopt antidumping laws, the U.S. was reticent to challenge cases brought in those countries apparently because of potential for setting precedent that might limit application of the U.S. law.

But times have changed and antidumping cases are no longer the sole province of the United States. Other countries like South Africa have now learned that they can use – indeed, can misuse -- this tool to protect their domestic industries against highly competitive imports. U.S. poultry is perhaps the most competitive sector in American agriculture, and among the most competitive of all U.S. product sectors. In the first seventeen years of this century, we have already seen four major antidumping cases brought against U.S. poultry on grounds that have been shown to be legally indefensible when challenged. However, given the historic policy of the United States to abstain from involving itself in these cases, we are likely to see more in the future.

I am concerned that this realization that other countries can use antidumping laws too has not hit home in Washington yet. Both the Bush and Obama Administrations were reticent to come to our defense in the South Africa case. Although the current Administration has not yet been involved in the South Africa case, the positions taken in other negotiations suggest that it favors even more expanded use of the antidumping laws to protect U.S. industries from imports. If the first two decades of this century tell us anything, it is that our trading partners will follow suit with whatever we do. An old poultry aphorism applies here: “What’s sauce for the goose, is sauce for the gander.”

Boston Agrex and other SMEs exporters in our industry have spent significant time, effort and money attempting to open markets for highly competitive U.S. poultry products. But companies of our size and economic resources simply cannot afford the substantial costs of hiring specialized antidumping legal counsel, retaining local counsel in the country in question, responding to long and involved questionnaires, and participating in numerous legal proceedings in every foreign country that decides to launch an antidumping investigation. And, if we do not participate, high antidumping margins are imposed on the basis of “best information available” (*i.e.*, whatever the domestic industry in that country submits), and we are permanently out-of-business in



that country. In addition, other U.S. exporters are then subject to an “all other rate” and to further proceedings if they attempt to enter the market.

The U.S. policy that applied in the South Africa case – and I am told this holds true in all other cases as well – was that defending antidumping cases brought against U.S. exports to foreign markets was, first and foremost, a private law matter and the responsibility of the exporter. The U.S. government would not become involved until the antidumping proceedings had run their course, and then only occasionally and selectively. This policy – and I reiterate that this was the policy of both Democratic and Republican Administrations – supposes that U.S. companies, like mine, have unlimited resources and can spend enormous amounts of time and money defending even the most meritless lawsuits in other countries. I can tell the Members of this Commission that this policy will never work for SME exporters. To quote the famous Mr. Bumble from Dicken’s classic novel *Bleak House*: “If the law supposes that...the law is an ass.”

#### B. Unjustified SPS Restrictions in Nigeria.

Boston Agrex has not been involved directly in shipping poultry to either Nigeria or to Kenya, and so I do not have first-hand experience with the situations in those two countries. However, I have been involved in various trade policy initiatives and discussions within our industry concerning Sub-Saharan Africa and so I am aware of the problems that U.S. poultry exports current face in those two countries.

With regard to Nigeria, you will note that it is a country of more than 190 million persons and yet, according to official statistics, imported only 500 MT of poultry products in 2016, mostly from the European Union. Even if per capita consumption of poultry is as low as currently reported – and that is doubtful – something is amiss with these numbers.

Nigeria has imposed a total ban on all imported poultry products since 2006. This ban was allegedly implemented to protect the domestic industry in Nigeria from the risk of Avian Influenza. However, this perpetual ban, which does not even consider whether AI has been detected in the regions where the poultry originates, is entirely inconstant with Nigeria's obligations as a Member of the World Trade Organization ("WTO").

Nigeria has been a WTO Member country since 1995, and prior to that and beginning in 1960 that a contracting party to WTO's predecessor institution, the General Agreement on Tariffs and Trade (GATT). WTO rules, and in particular, Articles 2.2, 3.1, 3.2, 5.2 and 5.6 of the WTO Agreement on Sanitary and Phytosanitary Measures ("SPS Agreement"), effectively prohibit a country from placing an absolute ban on imports where there is insufficient evidence of risk presented by imported product. The U.S. has a comprehensive system for detecting and controlling outbreaks of AI, and for restricting shipments from any area that might be affected by an AI outbreak. The U.S. system meets the guidelines of the World Organization for Animal Health (OIE) whose strictures have been accepted as relevant measures for WTO Members. As a result, the U.S. industry ships poultry to more than 100 countries currently and none of those countries applies a similar ban on our imports. In addition, AI is already a common occurrence in Nigeria, and Nigeria's production is a much greater risk from internal spread of the disease than it is from imports.

Obviously, this is not an issue that an SME like Boston Agrex can solve. Guaranteeing Nigeria's adherence to its WTO obligations is a governmental responsibility. This is an issue that can only be dealt with effectively by the U.S. government either through bilateral discussions, by raising the issue in the WTO SPS Committee in Geneva, or by invoking dispute resolution under WTO rules.

I would also note that the Nigerian ban only acts to stifle legal trade in poultry products. The reality is that a country in Sub-Saharan Africa with a population of 190 million cannot subsist with only 500 MT of annual poultry imports. Nigeria does not have the ability to produce sufficient poultry to meet the demands of its current middle



class population. It is very well known that there is substantial illegal trade of poultry into Nigeria through its neighbor country, Benin. These imports come largely from the European Union or Brazil through French trading companies operating in Benin.

### C. Restrictive Licensing and Cargo Rules in Kenya.

With regard to Kenya, to my knowledge no U.S. exporter has ever been successful in shipping to that country. Kenya has not imposed a complete ban on imports as Nigeria has, and so one might wonder why, according to official statistics, Kenya imported only 648 MT in 2015 and 253 MT in 2016. The answer is that Kenya imposes a series of administrative hurdles, paperwork requirements and shipping limitations that make importation impossible. Potential importers must apply for, and obtain, a special import permit and it is extremely difficult to get such an import permit issued. Each plant from which the poultry has been sourced has to be registered/approved, and these registrations and approvals are handled by various Kenyan government agencies; and Kenyan authorities may decide not to permit shipments until they have done plant inspections themselves. Kenyan retailers may import only mixed containers of poultry products; they are not allowed, to import a full container load of just one specific poultry item.

Like Nigeria, Kenya has been a WTO Member Country since 1995. Most of the restrictive measures described above are inconsistent with WTO rules. Again, these are not issues that can be addressed by SME's. The U.S. government is the only entity that can assert WTO rights and insist on compliance with international obligations.