

16 January 2020

Mr. Erland Herfindahl
Office of the United States Trade Representative
600 17th Street, NW
Washington, D.C. 20508

Dear Mr. Herfindahl:

RE: Docket USTR - 2019- 0020

Capespan North America LLC ("Capespan NA") is one of North America's leading importers and distributors of South African fresh fruit. We have been handling South African fruit in North America for over sixty years and were pioneers in bringing Southern Hemisphere fruit to North American markets. This innovation, which most now take for granted, allows American consumers to enjoy fresh fruit in the off-season: Navel oranges, clementines and grapefruit in the summer and table grapes in the winter. Capespan NA is majority owned by Capespan South Africa, a leading grower, packer, shipper and exporter of a full range of South African fresh produce to the USA and elsewhere.

In the many years in which we have been marketing South African fresh produce much has changed. Most significant among those changes was the challenging but peaceful full democratization of the South Africa polity and the full reintroduction of South Africa into the modern commercial world.

Extraordinary changes notwithstanding, South Africa still faces numerous challenges. The task of narrowing the gap between the haves and the have-nots is a massive social, economic and political task. But South Africa remains a beacon of hope in sub-Saharan Africa. Among other thriving industries in South Africa, the agricultural sector is providing jobs and opportunities to previously disadvantaged people throughout the country.

The African Growth and Opportunity Act was intended to offer enhanced market access to the USA for Sub-Saharan African nations who otherwise met the requirement of working to improve domestic civil rights including systematic application of the rule of law, elimination of barriers to US investment and trade (including intellectual property protection), commitment to reducing poverty and protection of workers' rights.

South Africa has worked hard toward achieving these objectives in the years following the 1994 election of the first ANC government. A great deal has been achieved but the job is not over. Human rights, access for all to public services, and enhancement to the general quality of life has, among other things, been the greatest benefit of this drive for reciprocal market access to the US.

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The exportation of its fresh fruit to the USA (and other markets) has generated great benefit to the fruit industry, its farm workers and to a wide range of allied industries. At the same time, it has created opportunities for business and labour in the USA. This is what AGOA was intended to do. It is also helping to provide consumers with increased choice of high quality fruits.

There is now legislation pending in South Africa to which the International Intellectual Property Alliance (“IIPA”) takes exception. We offer no comment on the legitimacy of the complaint as we have not reviewed it nor have we the expertise to opine on it. But we do note that the complained of legislation has not yet been signed by the President of South Africa nor has it been enacted into law. Nonetheless, the IIPA is holding AGOA ransom for its dispute with the proposed legislation, a dispute that is, as matters stand, theoretical.

The move to pre-emptively move for RSA’s loss of AGOA eligibility throws an entire industry, and its allied industries, into disarray. The petition is premature and is damaging to an industry that provides great benefit to what are among the most vulnerable of people in South Africa, many of whom are entirely dependent on the industry’s continued viability.

Rather than using the mechanism of this petition to remove South Africa’s AGOA eligibility, we submit that the IIPA should rather use its lobbying power to work with the appropriate bodies in South Africa to strive for the changes to the pending legislation that would address IIPA’s concerns.

We believe that the petition should be recognized for what it is: A bargaining tool in a negotiation that should be carried out in another forum. To call for the removal of the benefits that South African agricultural workers and other beneficiaries enjoy as a result of AGOA to advance its cause is, in our view, cynical and inappropriate and has been, in all events, been made prematurely.

All of which is respectfully submitted.

Mark Greenberg

Mark A. Greenberg
President & CEO
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