



**MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES AND
COOPERATIVES**

REGULATORY IMPACT STATEMENT

**THE DAIRY INDUSTRY (IMPORTS AND EXPORTS) REGULATIONS,
2020**

NOVEMBER, 2020

1. Introduction

Regulatory impact assessment (RIA) involves a range of methods aimed at systematically assessing the negative and positive impacts of proposed and existing regulations. The Statutory Instruments Act, No. 23 of 2013, provides that if a proposed statutory instrument (and the Regulations are a statutory instrument) is likely to impose significant costs on the community or a part of the community, the regulation-making authority shall, prior to making the statutory instrument, prepare a regulatory impact statement about the instrument.

RIA is an important instrument for improving the quality of regulations and good governance, by ensuring more coherent and transparent policies, and making regulation more effective and efficient. Through RIA, an analysis of proposed regulations is done, and by comparing different options, RIA is a methodological framework and an administrative procedure for better-informed policy-making and legislative enactments. It thereby improves the transparency of governmental decision-making and also increases the quality of political debate.

The Ministry has undertaken an impact assessment of the proposed Regulations after extensive consultations with stakeholders. This Statement is therefore made to fulfill the requirement of section 6 of the Statutory Instruments Act.

2. Purpose and Objects of the Regulations

The purpose or object of the Dairy Industry (Imports and Exports) Regulations, 2020 is to provide for the procedure for importing or exporting dairy produce; to ensure that dairy produce imports and exports meet the relevant standards; to protect the Kenyan dairy industry against unfair trade practices or competition and dumping; and to support government effort to guarantee food security and self-sufficiency. Specifically, the Regulations provide for —

- 2.1 The requirement for import or export permit for those who wish to engage in the import and export business;
- 2.2 Imposition of import levy and penalty for default;
- 2.3 The involvement of the Directorate of Veterinary Services in allowing one to be cleared to import or export dairy produce;
- 2.4 the fees payable to the Board for import or export permit;
- 2.5 transit permit where dairy produce transits through the country;
- 2.6 power of a compliance officer to seize and destroy non-compliant produce, equipment, materials or additives;
- 2.7 offences relating to imports and exports;
- 2.8 revocation of the Dairy Industry (Imports and Exports) Regulations, Legal Notice No. 103 of 2004.

3. IMPACT STATEMENT

The Ministry carried out a comprehensive regulatory impact assessment and the findings work in favour of promulgating the Regulations. The assessment considered the likely impact of the Regulations on the fundamental rights of the people, the impact on the economy and the public sector, economic impact on individuals and environmental considerations. The summary of the key findings are as follows:

3.1 Impact on Fundamental Rights and Freedom

- a) The Regulations are not expected to have a negative impact on fundamental rights of persons or institutions that are subject to the Regulations.
- b) The Regulations address matters that relate to the Bill of Rights, especially on fair administrative actions (cancellation or suspension of licence, etc.) and the right to privacy (data protection).
- c) The Regulations do not have negative impact on the environment or environmental rights of the people.

3.2 Impact on the Private Sector

- a) It is anticipated that the Regulations would positively impact on the private sector by increasing productivity upon better harnessing of resources toward milk production and processing;
- b) The Regulations would promote local dairy production by making it expensive to import dairy produce, and avoids Kenya being a dumping ground for foreign dairy products;
- c) The dairy farmer would be assured of a market for dairy produce and reasonable prices after cheap imports are restricted.

3.3 Impact on the Public Sector

- a) Clarity of relationship and roles between National Government (the Board) and relevant County governments concerning imports and exports;
- b) The Regulations would ensure that there is better collaboration between the Board and the County government in overseeing the industry;
- c) There will be clear procedures for licensing importers and exporters of dairy produce by specifying the role of the Veterinary Services Directorate and the Board in the Regulations;
- d) The Regulations would involve a rise in costs of enforcing compliance by the Board and resources would be required to ensure compliance.

4. Options to Regulation

Regulation is not the only means of realizing a policy objectives. There are alternatives which are handy in dealing with certain aspects of the dairy industry. Amongst the options that were considered are:

- a) Maintaining status quo: the *status quo* imposes less severe levy on imports.
- b) Policy guidelines: the Government ensures that policies decided by the Government are communicated to the persons to apply them, e.g. dairy farmers, distributors, importers and processors;
- c) Using market instruments, e.g. competition may be used to create demand or to moderate prices, or even to discourage certain practices, including imports.
- d) Use of fiscal instruments: taxation may be used, for example to subsidize local dairy farmer in order to compete with external dairy operators, etc.

The options were considered and it was found necessary that the dairy industry needed regulations immediately but the various options would be used to bolster the implementation of the Regulations as much as possible.

Maintaining *status quo* would mean that the low levy imposed on imports would continue applying. This levy has been a source of concern as it has not restricted imports in favour of the local dairy industry.

Policy guidelines lack a critical element of an effective regulatory regime: enforceability.

A tax on imports cannot be as punitive as a levy, hence the levy option is the best in protecting the dairy industry. Subsidy of local dairy farmers is undesirable as it cannot be administered over an indefinite period, hence this option is not tenable.

5. Conclusion

The Ministry conclude that the proposed Regulations are necessary to fill the existing void in the Regulations and will promote and improve the dairy industry for the benefit of the farmer, the operator and the consumers of dairy produce. Promulgating the Regulations is the only viable option.

6. Recommendation

It is recommended that the Dairy Industry (Imports and Exports) Regulations, 2020 be gazetted.