

Before
United States International Trade Commission
September 12, 2012

In re: Request for Comments on Negotiating Objectives with Respect to Mexico's and Canada's Participation in the Proposed Trans-Pacific Partnership Agreement

Testimony of Michael Brown
Reflecting the Comments of the National Chicken Council
And
USA Poultry & Egg Export Council

My name is Michael Brown. I am the President of the National Chicken Council (NCC), the national association that represents companies that produce, process, and market over 95 percent of the chickens in the United States. I am here today to speak on behalf of NCC and our sister organization, the USA Poultry & Egg Export Council (USAPEEC), which is the national association of companies involved in the export from the United States of poultry and egg products.

I am here today in response to the U.S. International Trade Commission's request for comments on negotiating objectives with respect to Mexico's and Canada's participation in the proposed Trans-Pacific Partnership Agreement (TPP) which would be a plurilateral free trade agreement among the United States and ten other Pacific Rim countries. TPP discussions initially began without either Canada or Mexico who are longstanding partners with the United States in the most successful of all U.S. free trade ventures, the North American Free Trade Agreement which has been in force approximately seventeen years.

Mexico

The experience of the U.S. poultry industry with Mexico in the NAFTA has been largely a positive one. When NAFTA began, there was little trade in poultry or egg products between the two countries even though we live along one another's borders, and despite the fact that the United States is the world's largest and most efficient producer of chicken. Initially, it was agreed that tariffs on poultry and poultry products would be eliminated over a ten-year period. In 2002, it became

apparent to all parties involved in poultry trade that this schedule of tariff elimination was perhaps too ambitious in light of the fact that the two countries had negotiated a less ambitious schedule for elimination of tariffs on feed grains, a major cost element in production of chicken. Mexico is a net importer of feed grains and its poultry industry complained that it was being disadvantaged by the agreement. It argued that without duty free access to feed grains, it could not be expected to compete against duty free chicken produced by an industry that did not have to pay duty on the grain that it used.

Even before this controversy arose, the U.S. poultry industry had engaged the Mexican industry to discuss issues of mutual concern, including fair and cooperative implementation of the NAFTA provisions. The U.S. industry -- represented by USAPEEC and the Mexican industry represented by the Union Nacional de Avicultores -- established a consultative forum known as the North American Egg and Poultry Partnership (NEPP) to hold these discussions and to find creative and mutually acceptable solutions to issues of common concern. In 2002, the NEPP partners agreed to jointly request the use of the NAFTA Safeguard provisions to address this problem. After discussions among the governments and the respective industry associations, the United States and Mexico entered into a formal agreement whereby NAFTA liberalization of the Mexican tariff on chicken leg quarters was extended for an additional five years through the use of an agreed tariff-rate quota system.

The U.S. industry believes that this decision was a win-win for both the United States and Mexico. By the time that this issue arose in 2002, U.S. exports of chicken leg quarters had increased to nearly 78,000 MT annually. In 2007, when tariffs in Mexico were finally eliminated for feed grains, tariffs on chicken leg quarters were also eliminated and normal NAFTA trade was allowed to proceed. Since that time, U.S. exports to Mexico have increased dramatically so that, in the most recent year for which full statistics are available, imports of U.S. poultry products into Mexico were approximately 260,000 MT.

I want to stress that the increase in U.S. exports of poultry products to Mexico did not come at the expense of the Mexican industry. In fact, during NAFTA, Mexican poultry production has increased every year, and overall has increased at a rate that is higher than the rate of expansion in the U.S. poultry industry. The driving force behind this, of course, is the continued increase in demand for poultry products among Mexican consumers because of the growing prosperity and economic benefits that NAFTA has fostered. With this story of increased trade and cooperation between industries, poultry trade between the United States and Mexico should be the poster child for the NAFTA; unfortunately there have also been difficult growing pains, and we are hopeful that the blemishes in the relationship can be addressed in the context of the TPP negotiations.

The single most prominent failure in the NAFTA story of poultry trade between the United States and Mexico has been the inability of Mexico to qualify its plants to ship poultry products to the United States. There is no U.S. tariff imposed on Mexican

poultry; all poultry lines in the U.S. schedule have been duty-free since the first day on which NAFTA entered into force. The problems have been sanitary issues, questions regarding disease status of many of the regions of Mexico, and also questions regarding the equivalency of Mexico's meat and poultry inspection system. Some regions of Mexico are affected by an OIE list A disease known as Exotic Newcastle Disease (END). The international standard is to quarantine all shipments of chicken from END-affected regions.

As a result, since 1995, the Mexican and U.S. governments have been engaged in various discussions and exchanges of information with respect to defining and recognizing END-free regions in Mexico from which poultry products could be exported. Unfortunately, the work and coordination between USDA's Animal and Plant Inspection Service (APHIS) and its Mexican counterparts SAGARPA-SENASICA, has been intermittent and, to this point, only partially successful. Thus far there have been five Mexican states recognized as END-free; but as far as both the U.S. and Mexican industries are concerned, greater progress had been expected. The regulatory authority on one side of the border points the finger at the other for this lack of progress. The U.S. regulators complain that the Mexican authorities do not provide enough information, or do not provide it in a timely fashion; the Mexican regulators claim that the U.S. is never satisfied with the information provided; that its requests are burdensome and unending. The only thing that is clear is that there is poor communication between the regulators and the relationship needs to improve.

With respect to plant approval, the U.S. requires plant approval on an equivalency basis. This means that the responsible U.S. regulatory agency – USDA's Food Safety Inspection Service (FSIS) -- does not approve individual plants for export, but rather must approve the regulatory system of the exporting country as providing a level of health protection equivalent to that provided by the U.S. system. This approach is different from the approach taken by some other countries, e.g. Japan, which will approve individual plants for export. Mexico currently exports poultry products to Japan from a certain limited number of plants and its government has had a hard time understanding why, if their plants are acceptable to the notoriously-demanding Japanese regulators, those plants cannot be approved for shipment to the United States.

The U.S. industry has been long committed to the principle of free and open trade and has made a number of efforts to get some level of two-way trade established between the United States and Mexico. For the past several years, USAPEEC has been an involved cooperator in a program administered by USDA's Foreign Agricultural Service known as a Global Business Initiative (GBI) project, along with the US Meat Export Federation, that has funded U.S. experts who are working with the Mexican government to improve disease monitoring and testing procedures with a view towards greater regionalization for END and a pork disease known as Classical Swine Fever. In addition, the NEPP initiated a "Vanguard Plants Project" in January 2011 to identify Mexican plants that would agree to participate in the first

plant inspections as part of the equivalency process. USAPEEC pledged to provide the monies to fund a U.S. veterinary expert (and former FSIS official) to travel to Mexico to review the plants before inspection, make recommendations to improve the plants to meet FSIS standards, and to participate with the plants during the FSIS visit. Two such visits have already taken place, one to an egg facility, the other to a broiler facility.

Despite industry cooperation on these issues, the lack of significant progress in establishing some level of two-way trade in poultry products after seventeen years of NAFTA has resulted in recent trade litigation. The largest Mexican poultry producer in Mexico, Bachoco, filed an antidumping case against imports of U.S. chicken leg quarters (CLQs) in February 2011. The case was filed shortly after China imposed dumping duties on U.S. poultry in retaliation for U.S. trade restraints on Chinese tires, and Bachoco's petition was essentially a "copy-cat" version of the Chinese case. The petition claimed dumping on the highly-questionable "average cost of production" theory used in the China case. As you are well aware, the U.S. is challenging China's imposition of antidumping duties at the World Trade Organization (WTO), and we firmly believe that the U.S. will prevail. But, in the meantime, as we wait for the WTO process to work its way to conclusion, the Mexican petitioner used the same theory as China to bring its antidumping case in Mexico.

After eighteen months, that antidumping investigation concluded on August 6, 2012 with a finding of dumping by the Mexican authority. Final antidumping duty levels of 25-129% were identified; however, in a highly unusual decision, the Mexican government decided not to impose any duties on imports of CLQ's at the present time due to rising food costs and a Highly Pathogenic Avian Influenza outbreak in the State of Jalisco that had seriously affected Mexican egg production. This decision is tacit recognition by the Mexican government that U.S. poultry products have become an important element of the food basket for Mexican consumers, in particular the large number of low income consumers that live in the northern border region of the country.

In our view, the Mexican government would not have accepted this case but for the fact that no appreciable progress has been made toward gaining Mexican chicken exports access to the U.S. market in the seventeen years NAFTA has existed. While NAFTA has been a great success for the Mexican consumer, the U.S. exporter and for poultry production on both sides of the border, the one flaw is the lack of progress on sanitary issues that would truly create a NAFTA poultry market.

As the United States and Mexico have long eliminated duties on poultry products, Mexico's participation in TPP offers nothing in terms of tariff reductions. What it does offer, however, is an opportunity for the two governments to negotiate on the two issues that remain thorns in the side of liberalized trade in poultry: lack of productive movement on SPS issues, and use of bogus antidumping cases to hinder trade.

As a result, the U.S. poultry industry welcomes Mexico's participation in TPP and sees that participation as a means of eliminating the remaining issues of contention in the bilateral relationship on poultry trade. The U.S. industry suggests two negotiating objectives for Mexico's inclusion in the TPP:

- (1) the negotiation of a specific and mutually agreed work-plan and timetable for recognition of END-free areas in Mexico, and for recognition of equivalency of the Mexican poultry inspection systems, with a view toward establishing an acceptable level of two-way trade as soon as possible, consistent with public and animal health protection; and
- (2) the negotiation of a "peace clause" that would prevent either country from bringing antidumping cases, or imposing antidumping duties, on the other's poultry products.

Canada

The U.S. industry's experience with Canada in the NAFTA has been, to put it mildly, much less successful. When the United States entered into NAFTA negotiations with Canada, it was the expectation of the U.S. industry – and we think it fair to say that it was also the expectation of the U.S. government and its negotiators – that once Canada entered into a free trade agreement, it would ultimately be required to move to duty-free treatment for all products imported from the United States. The U.S. had long been excluded from the Canadian market under the GATT and WTO rules by Canada's resort to the so-called XI.2.c exception for supply-managed agricultural products. The NAFTA contained no such exception and so the U.S. industry believed that Canada would, therefore, be obliged to give its free trade partner duty-free access, even if it maintained a closed border to other non-NAFTA suppliers.

The U.S. industry was, therefore, aggravated when Canada refused to provide NAFTA treatment for U.S. poultry and egg products and insisted that its ability to maintain restrictions based on supply control was impliedly "grandfathered" into NAFTA. The U.S. industry was totally shocked when a NAFTA panel subsequently ruled for Canada on this argument, with the three Canadian judges on the panel outvoting the two American judges. Frankly, the decision by the NAFTA panel was entirely unconvincing on the merits of the arguments; it only convinced us that there were very serious flaws in the NAFTA dispute resolution system.

Now Canada wants to be part of TPP negotiations. The U.S. poultry industry's view on this is the old Irish proverb: "Fool me once, shame on you; fool me twice, shame on me." The U.S. poultry industry strongly opposes Canada's participation in TPP unless Canada expressly commits to removing all border restrictions on poultry imports from the United States, including any restrictions claimed on the basis of supply control. Canada is free to maintain its domestic supply control system if it wishes; but it cannot maintain border restrictions on poultry if it wants to participate in a free trade arrangement such as TPP.

Concluding Note

Having summarized our industry's sentiments on both Mexico and Canada, we would offer that we do regard the inclusion of both countries into the Trans Pacific Partnership as an opportunity, if handled appropriately.

Mexico's membership is unconditionally supported by our industry and the opportunity to demonstrate improved relations by our government agencies and, thusly, both of our industries. Establishing such a peace clause, as we have proposed, could also serve as an example to other countries as well and would certainly be in the best interests of the U.S. poultry industry.

Canada's participation in the TPP would also be considered a positive opportunity by our industry, provided that Canada agree – in advance – to put its import protection policies on the negotiating table.

Both the National Chicken Council and the USA Poultry & Egg Export Council welcome the opportunity to express the views of its members, many of which jointly belong to both organizations. We also agree to offer our expertise and support to our government in its pursuit of the above-stated objectives.

Thank you again, for providing us with this opportunity.

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