# African Growth and Opportunity Act

# Trade and Investment Performance Overview

# Before The United States International Trade Commission

**Testimony of**

**William Roenigk**

**On Behalf of the National Chicken Council**

**and the USA Poultry and Egg Export Council**

**U.S. International Trade Commission**

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Mr. Chairman and Ladies and Gentlemen Commissioners, thank you for the opportunity to provide the U.S. poultry producers, processors, and exporters concerns about the important topic of today's hearing. My name is William "Bill" Roenigk. I am a senior consultant for the National Chicken Council (NCC). I am appearing here today on behalf of NCC, the national association headquartered here in Washington DC that represents the chicken producers/processors of the United States. With me today is Kevin J. Brosch, international trade advisor to USA Poultry and 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.

The National Chicken Council represents companies that produce/process over 95 percent of the chicken in the United States. Exports which account for one out of five pounds of chickens produced are a vital and expanding part of the industry being successful. USAPEEC is a national trade that represents the interests of America's poultry and egg export industry, perennially one of America's most important and successful export sectors. 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. Last year in 2013, the U.S. poultry industry exports almost 4.0 million metric tons valued at over $5.6 billion to more than 100 countries, making poultry and eggs one of the most important U.S. agricultural export products.

The companies that produce and trade U.S. poultry and eggs are some of America's most successful exporters, and are constant participants in the domestic and international markets for meat and poultry products. As such, NCC and USAPEEC members place great value and importance on the observance of the rule of law in international trade, and on adherence to the provisions of international trade law, in particular the multilateral agreements of the World Trade Organization. NCC and USAPEEC were staunch supporters of the efforts of the

United States to launch the Uruguay Round negotiations in the 1980's and to improve and extend the rule of law in international trade, and worked vigorously with the Clinton Administration to achieve passage of the Uruguay Round Implementation Act, and of the North American Free Trade Agreement (NAFTA) in 1994. Historically, NCC and USAPEEC have also been supporters of most other U.S trade liberalization efforts, including plurilateral arrangements such as the NAFTA, the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA), and numerous bilateral free trade agreements such as the U.S.-Panama, U.S.-Peru, U.S.-Korea and U.S.-Colombia FTAs. The U.S. poultry and egg industries have also favored efforts by the United States to improve the economic situation in the developing world, and in that context, previously supported extension of special duty preferences to the countries of sub-Saharan Africa under the African Growth and Opportunity Act (AGOA) when it first passed Congress in 2000.

Our industry believes that the United States should, where practical and sensible, aid the less developed countries of the world in improving their economies and the standard of living for their citizens. However, we also believe that developing countries receiving aid or special preferences also have their responsibilities. Chief among those responsibilities are the obligation to treat all their citizens fairly and see that trade preferences benefit the greater good, not just the advantaged few; and the obligations to become good world citizens and to conduct themselves in accordance with the rule of law.

The rule of law in international trade enhances, and in some cases ensures, fairness and predictability in international markets. Without the willingness of the world's governments to adhere to the rule of law, U.S. firms attempting to participate in world markets would be constantly frustrated by the vagaries of political decision-making. Prior to the conclusion of the Uruguay Round, U.S. exporters were too often excluded from markets through arbitrary and protectionist measures imposed by other governments.

The United States has been the leading champion of the rule of law in international trade since 1946 when it initiated the international discussions that led to the formation of the General Agreement on Tariffs and Trade (GATT) a year later in 1947. For nearly 50 years, the United States was a leading participant in the GATT, and was the party most responsible for the launch of the GATT Uruguay Round and the evolution of GATT into the WTO in 1994. Key U.S. interests in initiating the Uruguay Round included the development of a fairer and more predictable set of rules to govern trade in agricultural products, and in the application of sanitary and phytosanitary measures, the systems that assure safety in the food supply. While the United States has a keen interest in advancing the rule of law, its interests are particularly strong in the case of the WTO rules that apply to agriculture.

While international trade rules in the post-Uruguay Round world are certainly not perfect, they have been improved dramatically and are generally accepted and observed by the majority of WTO Member nations. Rules for enforcement of trade rules have also been strengthened through an improved system of dispute settlement, and can be very effective <u>if our government is willing to use those enforcement mechanisms</u> and to insist on adherence by our trading partners to the rule of law.

The effectiveness of international rules in challenging unfair practices was clearly demonstrated in the past year when the U.S. government challenged the unfair imposition of antidumping duties on U.S poultry by the Republic of China. Prior to 2009, the United States was exporting approximately $700 million of chicken products to China. But in 2009, after the U.S. imposed safeguard duties on Chinese tires, and Congress discriminated against the China by passing the so-called DeLauro Amendment that denied China the right to apply for FSIS approval of some of its products (the only country Congress singled out for this treatment), China retaliated and imposed dumping duties on our poultry products. Unfortunately, because of the size and success of our exports, our industry became the target for retaliation and a pawn in this trade dispute between China and the United States.

China pretended that U.S. poultry exports had been dumped so that it could impose retaliatory duties, but the case was politically motivated and had no economic underpinning. China could only make a finding of dumping by applying a convoluted and economically irrational theory known as "weighted cost of production." Fortunately, the current Administration decided that it was willing to use WTO dispute settlement to vindicate U.S rights in this case. The United States challenged China's determination as inconsistent with WTO rules, and this summer we won that case. China has decided not to appeal and is currently in the process of reevaluating it decision to impose dumping duties. Our industry is hopeful that the WTO case, along with improved trade relations between our countries, will result in renewed poultry exports to China in 2014.

China is not the only country that has imposed antidumping duties on U.S poultry using WTO-inconsistent standards and processes. The first "weighted average cost of production" case was brought against our industry by the Republic of South Africa in 2000, ironically the same year that the United States extended special duty preferences to many of the RSA's exports under the AGOA. Prior to 2000, the U.S. industry enjoyed a modest but respectable export market of approximately 55,000 metric tons annually. Since 2000 and the imposition of antidumping duties, we have been totally shut out of the South African market.

Ladies and Gentlemen: we are here today to say that, unless the Republic of South Africa changes its policies, lifts the imposition of dumping duties from our products and allows trade to resume fairly and without restraint, NCC, USAPEEC, and other members of the U.S. poultry industry will strongly oppose any further extension of AGOA preferences to the Republic of South Africa. We will also oppose extension of AGOA to any other African countries that impose similarly unfair and unjustifiable restrictions on our imports. As you fully understand from our earlier comments, the decision to oppose extension of AGOA, if we must oppose it, will be a clear departure from our past practice of unwavering support for all U.S free trade and developmental support initiatives. This will be an historical change in position for our industry, and we would not take such a decision lightly. We have not yet

made that decision, and will follow developments with South Africa closely over the next year while AGOA renewal is being considered and debated by Congress. We are, very frankly, looking for a reason to support AGOA extension, and hope that South Africa will take the necessary steps to justify our continued support. But, let us be clear: The U.S. poultry industry will actively oppose extension of AGOA preferences and benefits to any country, including South Africa, that unfairly excludes U.S. poultry exports from its market.

Our experiences since the Republic of South Africa first imposed antidumping duties fourteen years ago have been 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 through available WTO dispute settlement procedures.

The Republic of South Africa initiated an antidumping case against U.S. poultry imports in 1999 as a protectionist measure in favor of its domestic poultry industry. South Africa is a net importer of poultry meat and protein, and the imposition of antidumping duties only meant that the prices that South African citizens have been forced to pay for domestic product rose to three or four times the world price. For the past 14 years, South Africa has 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 is the least expensive source of protein.

Under international law standards, the 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 that 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. As a result, no country ever brings an ordinary "home market price" case against U.S poultry.

Under certain circumstances, antidumping cases will be determined on the basis of cost of production analysis where there are insufficient home market sales (usually less than 5% of all production) of a product to warrant price-to-price comparison. But that is certainly not the case with respect to U.S. poultry meat. The vast majority of all U.S. poultry products, including chicken leg quarters, our most common export product, are sold and consumed here in the United States.

South Africa's decision to pursue its antidumping investigation on a cost of production theory was entirely unjustified because there were certainly more than sufficient home market sales of chicken leg quarters and other chicken products to make direct price comparison available. But, making matters worse, South Africa departed from the ordinary method of evaluation in cost of production and concocted an economically-bizarre 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– and therefore market prices –are radically different for different parts. If weighted cost of production were applied to beef, for example, it would assume that filet mignon and hamburger were of equal value by weight; if it were applied to pork, it would assume that pork loin and pigs ears 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' ears. Historically, breast meat and chicken wings have been higher-valued products in the market than chicken leg meat; the South African weight cost of production approach totally ignores this reality. Under international norms, if cost of production methodologies are applied, differences in the values of parts of an animal are properly determined in accordance with the values normally associated with those parts on the books of a firm in the ordinary

course of business; the South African government's approach 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.

Our industry initially assumed that, given the blatant irrationality and illegality of the South African antidumping case, 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 this South Africa circumstances, and Ambassador Zoellick assured us 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 from USTR 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, it 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.

In the meantime, the Bush Administration left office at the beginning of 2009 and the industry renewed its request for action with the incoming Obama Administration. Like the Bush Administration before it, this government has taken no action against South Africa. Essentially, the Obama Administration has viewed this as an "old case" that should have been pursued earlier. To its credit, this Administration did pursue the China case and successfully litigate that case to victory, and the U.S. industry is greatly appreciative of its efforts, and in particular the efforts of Ambassador Isi Siddiqui and the USTR legal team.

But U.S. success in the China poultry antidumping case also serves to remind the industry of the failures in the South Africa case. In both cases, antidumping duties were imposed on the basis of very similar – and equally irrational -- legal theories. The WTO victory in the China case tells our industry that the South African duties are equally unjustifiable, and that our government has the means to eliminate those duties if it has the will to pursue them.

U.S. poultry has now been unfairly excluded from the South African market for more than 14 years. While the industry has long been one of the principal champions of U.S. trade and development initiatives, its faith in those initiatives has been shaken by the failure of some of our trading partners – in this case South Africa – to live up to their responsibilities; and by the failure of the U.S. government to make good on its promises to fairly and strictly enforce our trading rights. The

industry is particularly concerned that the U.S. government seems willing to extend special benefits and trade preferences to a country that has responded to our largesse with cynicism and contempt. We think that many Members of Congress will find it abhorrent that, during the same fifteen-year period that South Africa benefited from AGOA preferences, it shut U.S. poultry out of its market in a manner totally impermissible under international law standards. We think that many Members of Congress will find it unthinkable to extend those AGOA benefits if South Africa shows no willingness to change it ways.

Moreover, we think it makes little sense for the United States to provide development benefits to a country that fails to pass those benefits along to its citizens. The purpose of development aid and duty benefits is, ultimately, to make life better for the citizens of that country. Recently, we surveyed prices for frozen chicken leg quarters in South Africa and found that they continue to be nearly three times higher than the U.S. price for comparable product. So while the United States extends AGOA benefits to South Africa to help in its development, South Africa adopts protectionist trade policies than not only exclude U.S. products, but also result in unjustifiably high prices for its own citizens.

Lastly, we note that our industry is not looking, at this late date, for the U.S. government to initiate dispute settlement in this case. That process takes several years, at best, to conclude, and while we were willing to accept a lengthy litigation process 14 years ago, that time is now past. We have waited long enough for a just and legal decision and for fair access to the South Africa market. We are not asking, at this juncture, for a WTO case initiation; we are expecting South Africa to remove its restrictions and restore fair and unfettered access that we had prior to 2000 and to which the United States is entitled. Nothing less.

We hope that over the next months we will find reason to support renewal and extension of AGOA, and in particular its continued application to South Africa. If South Africa does not act to provide that justification, our industry will have no alternative than to ask Members of Congress to vote “no” on AGOA renewal.