BEFORE

THE UNITED STATES INTERNATIONAL TRADE COMMISSION

In re: Trans-Pacific Partnership: Likely Impact on the United States Economy and on Specific Industry Sectors, USITC Investigation No. TPA-105-001

Testimony of Michael Brown
On behalf of the
National Chicken Council
and
USA Poultry & Egg Export Council

Madam Chairman and Ladies and Gentlemen Commissioners:

My name is Mike Brown. I am President of National Chicken Council.

I am appearing here today on behalf of both the National Chicken Council of the United States ("NCC"), a national association headquartered here in Washington D.C. that represents the broiler chicken production industry of the United States; and the USA Poultry & Egg Export Council ("USAPEEC"), the national association headquartered in Stone Mountain, Georgia that represents the export interests of the U.S. chicken, turkey, eggs and duck industries.

The National Chicken Council (NCC), based in Washington, D.C., is the national non-profit trade association representing the U.S. chicken industry. NCC is a full-service trade association that promotes and protects the interests of the chicken industry and is the industry's voice before Congress and federal agencies. NCC member companies include chicken producer/processors, poultry distributors, and allied industry firms. The producer/processors members of NCC account for approximately 95% of the chickens produced in the United States. In 2015, the U.S. industry will produce almost nine billion broiler chickens, weighing 53 billion pounds, live weight, and more than 40 billion pounds of chicken product will be marketed. The U.S. industry employs more than 280,000 workers in the United States, and nearly 1.4 million jobs in the U.S. economy are related to chicken production. The chicken industry is also vitally important to the U.S. farm economy. Annually, chicken production consumes 1.2 million MT of the U.S. corn crop, and nearly 500,000 MT of U.S. soybean production. The current annual value of U.S. broiler production, on a wholesale value, is an estimated $90 billion.

USAPEEC is a national trade association that represents the interests of America's poultry and egg export industry, perennially one of America's most important and successful export sectors. (When I say poultry in my testimony, I am referring to chicken, turkey and duck products). USAPEEC has more than 200 member companies involved in export trade including chicken, turkey, duck and egg producers; trading companies; freight forwarders; shipping companies; cold storage facilities; and port authorities. USAPEEC member companies represent approximately 95% of all U.S. poultry and egg exports. Annually, the U.S. poultry industry exports more than 3.7 million metric tons ("MT") valued at nearly $6 billion to more than 100 countries, making poultry and eggs the most important U.S. agricultural export products.

Although they not registered to participate in this hearing, the National Turkey Federation (NTF) and the United Egg Producers (UEP) have expressed to us their agreement with our prepared testimony, and they are likely to indicate their support by separate letters to the Commission.

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, USAPEEC, NCC and all of our industry 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 (WTO). USAPEEC and NCC were staunch supporters of the Reagan and Bush Administrations' efforts to launch the Uruguay Round negotiations in the 1980s and to improve and extend the rule of law in international trade through the development of the WTO; and worked vigorously with the Clinton Administration to achieve passage of the Uruguay Round Implementation Act in 1993, and the North American Free Trade Agreement (NAFTA) in 1994. Historically, USAPEEC and NCC 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.

Both NCC and USAPEEC have previously endorsed the Trans-Pacific Partnership (TPP) free trade agreement. On November 5, 2014, NCC, NTF and USAPEEC issued a joint statement thanking our negotiators for their efforts over many years to reach a "commercially meaningful and high standard agreement that will open markets and increase U.S. chicken exports…." In addition, on December 1, 2015, USAPEEC's representative on USDA's Trade Policy Advisory Committee voted with the majority of that committee to recommend that Congress approve and pass legislation implementing the TPP.

Despite its unwavering support for U.S. free trade and trade liberalization initiatives over the past 30 years, the American poultry and egg industry's experience with the results of free trade agreement negotiations has been mixed. The internationally-accepted definition of a free trade area, set forth in Article XXIV.8.b of the General Agreement on Tariffs and Trade (GATT-1994), is as follows:

> A free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce… are eliminated on substantially all the trade between the constituent territories in products originating in such territories.

In reality, some of the free trade agreements in which the U.S. participates have not met that standard when it comes to access for U.S. poultry products to other markets. Our free trade partners have been anxious to gain access to the U.S.

market for their most competitive products, but have often been reticent to permit comparable access for U.S. poultry to their markets. During past free trade negotiations, poultry has often, even typically, been denominated as a “sensitive product” and the terms of market access for U.S. poultry is among the final issues negotiated in these agreements, with U.S. poultry getting access far less favorable than what is afforded other products. Regrettably, for the U.S. industry, “free trade agreement” does not always mean real free trade in poultry and egg products.

A few examples will suffice to make this point. In most free trade agreements, the parties negotiate market access liberalization -- which means reduction from currently applied tariff rates to zero duties -- in three categories. Many products are liberalized immediately so that tariff rates go to zero when the trade agreement comes into force; for a second category, tariffs are eliminated over a five year period; for a third category – generally a few products considered to be the most sensitive products – liberalization occurs over 10 years.

Under a number of past negotiations, market access for U.S. poultry has not been included in any of these three common categories, and has taken far longer than for any other product. In the CAFTA agreement, liberalization for poultry takes 18 years; in the U.S.-Peru Free Trade Agreement, 17 years; in the U.S.-Colombia Free Trade Agreement, 18 years; in the U.S. - Panama Free Trade Agreement, 18 years; in the U.S. - Morocco Free Trade Agreement, 24 years. No other sector has been subject to this type of consistent exclusion from the ordinary categories for liberalization.

In some cases, our trading partners have made their market access concession in the form of tariff rate quotas (TRQs) often with an extremely small initial duty-free quota. Under the free trade agreement that the United States negotiated with Morocco in 2004, Morocco agreed to provide initial duty-free access of only 1,250 MT of whole chicken, and only 4,000 MT of chicken parts. When CAFTA was negotiated, initial duty free access for Costa Rica was only 330 metric tons; for the Dominican Republic, only 550 MT for chicken leg quarters, 440 MT for deboned chicken meat, and only 3,850 MT for turkey.

The U.S. negotiated its initial free trade arrangement with Canada in 1988, and then expanded that agreement to include Mexico when the North American Free Trade Agreement (NAFTA) was ratified in 1994. At the time NAFTA was concluded, the U.S. poultry industry, like its friends in the U.S. dairy industry, was led to believe that the agreement would require Canada to open its market to U.S. imports. Apparently our government thought it had achieved full access in the NAFTA negotiation because when Canada refused to open its market to U.S. exports on grounds that it needed to maintain and protect its supply control systems for dairy and poultry production, a NAFTA dispute case ensued. The NAFTA panel ruled in favor of Canada, and for more than 27 years of "free trade" with Canada, U.S. access for broiler chicken, turkey and eggs have been limited to small TRQs. Our current TRQ for broiler chicken is approximately 7,000 MT; for turkey just over 5,500 MT. There are similarly small TRQs for eggs. This is a country that is our largest trading partner, that produces and consumes more than 1.235 million MT of poultry products annually, and whose consumer prices for poultry and eggs are often twice U.S. prices.

There have also been some notable successes. U.S. poultry access to Mexico under NAFTA began slowly and has had some bumps. In 2004, ten years after NAFTA began, the Mexican industry asked for an additional safeguard period to allow them to adjust to competition from the United States, and after negotiations among the two industries and the governments, a mutually acceptable safeguard arrangement was achieved. Since that time, due in large part to increased cooperation and dialog between the two industries, trade has grown and in 2014 Mexico became the largest and most important export markets for U.S. broiler meat, turkey and eggs.

Trade with four Central American countries – Guatemala, El Salvador, Honduras and Nicaragua -- under CAFTA has also been a success. The U.S. negotiated an initial TRQ of 21,880 MT annually with those countries; and an agreement was reached by which the quota was auctioned annually by a non-profit entity, with the proceeds of the auction going to fund scientific, educational and export promotion projects of the various industries involved. Although the agreement provided for a long 18-year period of liberalization, the auction has been highly competitive and the quota has filled each year. The industries have benefited from being able to fund various improvement projects, and the countries are now firmly on track for full liberalization within the next six years. As in the case of Mexico, the success in CAFTA has been marked by cooperation and dialog between the affected national industries.

Our very frank assessment of the TPP provisions with respect to poultry trade is that this agreement, on its current terms alone, will provide opportunity for moderate improvement for U.S. exports of poultry products in three of the eleven markets. With respect to a number of TPP partners – Canada, Chile, Mexico and Peru – the U.S. already has existing free trade arrangements and liberalization of most of those markets (with limited exceptions in Canada) will not occur on any different terms than had been previously negotiated. USAPEEC reviewed the TPP final text released by USTR on November 5, 2014, and that analysis showed that there would be significant additional tariff reductions in only three of the 11 TPP partner countries: Japan, Malaysia and Vietnam. Our assessment is that TPP will allow us to make some modest inroads in Japan and hopefully in Vietnam; but we do not believe the TPP, as currently negotiated, will provide our industry with any actual market access in Malaysia.

With respect to Japan, U.S. access has generally been at low rates of duty. The U.S. industry exported approximately $128 million in poultry and poultry products to Japan in 2014. Some of Japan's tariffs on these products are above 20% *ad valorem*, but all tariffs will be eliminated within 13 years. Currently, Japan applies duties of 11.9% *ad valorem* on whole frozen chicken and on frozen chicken pieces and offal; and 8.5% *ad valorem* on bone-in leg meat, the product for which the U.S. industry is most competitive and which accounted for $41 million of U.S. exports in 2104. Japan will eliminate these duties over eleven years. (While an eleven-year reduction not particularly problematic for the U.S. industry given the low initial rates of duty, it is surprising that Japan needs eleven year to eliminate tariffs that are only 11.9% and 8.5%).

For eggs, Japan is the fourth-largest market for U.S. egg products, with shipments valued at $51 million in 2014. For egg yolks, the most important category for the United States, tariffs that are currently as high as the greater of 20% or 48 yen per kilogram (approximately 24.1% *ad valorem* equivalent) will be eliminated within six years. Japan will immediately eliminate its current 8.0% tariff on egg albumin products, while tariffs on other egg products, currently as high as 21.3%, will be eliminated in 6-13 years. Japan's current 21.3% tariff on dried eggs, other than yolks, will immediately be cut to 10.6%. In Year Seven, the tariff will be reduced to 5.3% and remain at that level until it is eliminated in Year 13. Japan's current 17% tariff on fresh, chilled, and frozen eggs will immediately be cut to 13.6% and will remain at that level until Year Seven. From Year Seven to Year 13, the tariff will be phased out in equal annual increments. Again, this is positive, but it's unfortunate that it's taking 13 years to eliminate these tariffs.

Japan is immediately eliminating the 3% duty on turkey and turkey offal, so that's much better.

The U.S. industry welcomes any reductions in import duties, and these tariff cuts are likely to provide U.S. exports with moderately improved opportunities. We are also hopeful that the TPP's new SPS Chapter, which has been touted as being much improved over the SPS chapters in prior trade agreements, will serve to eliminate some past interruptions in U.S. exports to Japan which have occurred not because of high tariff levels, but because of SPS or technical regulation issues, especially Japan's very onerous minimum residue levels ("MRLs"), that far exceed U.S. MRLs .

In fact, we're hopeful that USTR's efforts to develop improved SPS provisions in the TPP – as evidenced by the provisions of Article 7.7 -- will also provide the initial thrust for placing more emphasis on SPS provisions in discussions with all of our trading partners. SPS barriers can create great damage, and the leading example of this is the impact that the U.S. poultry industry has suffered as a result of actions taken against the U.S. poultry industry based on detections of highly pathogenic avian influenza (HPAI) in some 15 States during the first six months of 2015. Even though these detections were regional and contained, some countries placed bans on imports of poultry products from anywhere in the United States, and some maintained those restrictions long after they were justified.

We realize that the World Organization for Animal Health (OIE) has not been receptive to arguments made on behalf of USDA's Animal Plant Health Inspection Service's (APHIS) call for a new global approach for trade in response to highly pathogenic avian influenza. But USTR needs to also share the leadership in this global effort both within the animal health section and SPS section and in all such Free Trade Agreements.

During the first ten months of 2015, unjustified trade restrictions by our trading partners have cost the U.S. poultry and egg industry over $3.3 billion in lost income, as a result of market closings and a buildup of previously-exported product on the U.S. market. This was equal to more than half the value of all U.S. poultry and egg exports the previous year. Efforts must be expanded to prevent other countries from using such HPAI incidents – which did not result in any affected product entering the food chain – as a means to erect not-tariff trade barriers.

In regards to Vietnam, the U.S. had approximately $97 million in export sales in 2014 despite tariffs of 40% on whole frozen chicken, and 20% on frozen chicken cuts and offal. Under TPP, Vietnam would eliminate these tariffs over 13 years and eleven years respectively. The U.S. could be highly competitive in the Vietnam market as these tariffs come down, provided that other restrictions are not imposed to take their place. Over the recent year, there have been threats that the Vietnam might launch an antidumping case against U.S. poultry imports. The U.S. industry would gain nothing, of course, if while normal tariff duties were being reduced, higher and punitive antidumping duties were being applied.

Of the three countries that are offering significant tariff cuts for U.S. poultry, Malaysia presents the least likely case for improved market access. Frankly, the U.S. industry was surprised to learn that the TPP does not require Malaysia to liberalize its market totally at any time in the future. Malaysia has only agreed to open small or modest tariff rate quotas (TRQs) for various poultry products. Its TRQ for frozen whole chicken provides initial duty-free access for only 400 MT, and an over-quota tariff rate of 40%; its TRQ for frozen cuts and offal will initially be 20,000 MT, again with an over-quota tariff rate of 40%. Malaysia has committed to reducing those rates to 20%, over periods of 16 years and 11 years respectively. There is no requirement in the TPP that Malaysia eliminate all duties on these products. This arrangement does not look like free trade to our industry.

But there is an even more significant barrier to trade in Malaysia that was not addressed at all in the TPP negotiations. <u>The U.S. currently has no exports of any chicken, turkey or egg products to Malaysia</u>. The currently applied tariff rate of 40% for frozen chicken cuts, while high, would not in itself preclude U.S. participation in the Malaysian market. As mentioned above, the U.S. is highly competitive in these products and last year shipped $97 million to Vietnam where that same 40% tariff level is applied.

The problem that U.S. poultry exporters face in Malaysia is an impenetrable technical barrier to trade. Malaysia demands that all chicken and turkey imports be halal-slaughtered, but will not certify U.S. plants willing to produce halal product. Although U.S. companies have been attempting to access the Malaysia market for at least a decade, to date only one turkey plant has been certified and it has not yet been able to export to Malaysia.

I should note that this is not because U.S. companies are unwilling to provide Halal-certified product. American poultry producers already export halal-certified products to other markets in Asia, Africa and the Middle East. There are a number of accredited halal-certifying entities in the United States, but Malaysian authorities are unwilling to accept them, and no mutually acceptable arrangement for halal certification of U.S. poultry product has been achieved. This barrier has been in place for a number of years.

One can debate whether the partial tariff reductions for poultry imports into Malaysia negotiated as part of the TPP should be considered sufficient in the context of a free trade agreement; or whether, even if such tariff reductions do not result in full free trade, they should be credited as progress because they represent a significant reduction from the currently applied tariffs. However, that debate is essentially irrelevant so long as Malaysia continues to require Halal slaughter for all imported poultry, and at the same time refuses to certify U.S. plants. At the current time, our industry can see no advantage gained by the TPP negotiations in terms of accessing the Malaysian market.

Recently, our industry asked our U.S. negotiators whether the halal issue had been addressed or raised in any way during the TPP negotiations, and were told that it had not been. USTR has acknowledged that the halal certification issue is a problem for U.S. exports, but admitted that the halal issue had simply not been resolved. The government indicated that it would be interested in any ideas we had regarding possible solutions to this issue.

Also recently, USTR officials have stated that there is renewed interest on the part of Indonesia to become a partner in TPP. Indonesia is the fourth most populous country in the world with a population of approximately 250 million. Indonesia reportedly produces approximately 1.565 million MT of poultry each year, a relatively small amount for a country with such a large population. (By contrast, for example, Canada has only a population of 35 million and produces 1.235 million MT.) Indonesia also has a relatively low per capita income level and because chicken, turkey and eggs are the lowest cost animal proteins available on the international markets, it would seem like an opportune market to which to export U.S. poultry and egg products.. However, the U.S. has no poultry imports to Indonesia; in fact, USDA-ERS reports that Indonesia imports no chicken at all. It is well known that Indonesia is fiercely protectionist in favor of many of its agricultural production sectors, including its poultry production industry.

Indonesia is, like Malaysia, a country with a large and politically influential Muslim population, and so if there are going to be negotiations with Indonesia, then it is clear that more than just tariff reductions need to be discussed. Resolution of the issue of halal certification is essential to ensuring that U.S. poultry obtains real market access in any free trade arrangement with Indonesia. The Malaysian experience is a painful reminder that free trade negotiations can often fail to achieve real free trade area. Tariff elimination or significant tariff reduction is not enough; as GATT Article XXIV.8.b indicates, a true free trade area also requires elimination of "other restrictive regulation of commerce."

In our view, Malaysia's policy of requiring halal slaughter for all imported poultry, coupled with its practice of refusing to accept halal certification for U.S. product, constitutes a restrictive regulation of trade in contravention of internationally understood standards for a free trade area. We have considered USTR's invitation to offer ideas on how to approach this issue, and have concluded that this issue has to be resolved as part of the overall free trade negotiation, and cannot be addressed after the negotiations have been concluded. Therefore, we want to make it clear that despite our historical support of all free trade efforts over the past 30 years, our industry would oppose any extension of the TPP to Indonesia unless, in addition to a regime of tariff reductions, the issue of halal certification was acceptably addressed. It is also our view that, even if Indonesia does not seek participation in TPP, that this technical barrier needs to be addressed in order to achieve market access into the Malaysian market.

New Zealand, we were pleased to learn, will immediately eliminate all tariffs on all poultry and egg products. Hard to find fault with that, except for the fact that to date, the U.S. has no access for poultry. Separately, however, USAPEEC has been working with our government and we do feel we're very close to gaining access for turkey products for the first time.

Finally, I should mention Canada. From the beginning of the TPP negotiations, the U.S. industry has made it clear that its principal objective in these negotiations was to achieve free trade in poultry and egg products with Canada. In our view, this was not just a matter of commercial trade, but of basic principle. The United States and Canada have been free trade partners for nearly 30 years, and the only products that remain subject to restraint are U.S. exports to Canada of poultry, eggs and dairy products. While virtually all other commercial sectors have been able to play the NAFTA game for the past three decades, U.S. poultry has been relegated to the sidelines. Previously, there was the excuse that restrictions on U.S. poultry exports to Canada had been inadvertent, as least as far as the U.S. government was concerned; that the U.S. thought that it had achieved free trade for poultry and dairy in the NAFTA negotiations, only to lose a NAFTA panel decision.

Under TPP, our access to the Canadian market will grow only very modestly. Over six years, the TRQs will grow to 23,500 MT for chicken, 3,500 tons for turkey, 16.7 million dozen for eggs and egg products, and 1 million dozen for hatching eggs and chicks. After that, the TRQs will grow by one percent annually for 13 more years.

The TPP was the opportunity to correct a 30 year-old mistake, and very frankly, the results of this negotiation are disappointing in that regard. Instead of free trade in poultry and egg products, we have small increases in quotas over a very long period of time. Free trade is, or should be, about that most basic economic principle – that countries can benefit from comparative advantage. There is no question that the U.S. has the most efficient and competitive poultry and egg production industry in the world, and that Canada's industry is far less competitive. In the TPP, the decision has been made to allow Canada to continue to protect its far less efficient supply control system for poultry to the detriment of the far more efficient U.S. free market system. Our industry has consistently supported this Administration, and all previous administrations, in advancing trade liberalization, but we consider the TPP falls short in the case of Canada.

Please know we appreciate this opportunity to provide input on behalf of our industry. Also, please know we appreciate the tremendous effort our government, and in particular USTR, has made on behalf of all commerce and agriculture with extremely limited resources, in our opinion.

We are wholeheartedly supporting TPP, as we did all the other Free Trade Agreements and will do all within our industry's power to support passage and implementation by Congress.