

House Ways and Means Trade Subcommittee Hearing
Advancing the U.S. Trade Agenda: Benefits of Expanding U.S. Agriculture Trade
and Eliminating Barriers to U.S. Exports
June 11, 2014

Written Statement of
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Mr. Chairman and members of the Subcommittee:

My name is Terence Stewart, a trade lawyer here in Washington, D.C. Over the years our firm has represented various agricultural and fishing interests in the United States. The views expressed today are my personal views and do not reflect the views of any of our current or prior clients.

The topic of today's hearing is both timely and important for agricultural interests across our country. Trade in agricultural products plays a large part in the global economy, with world exports of agricultural products totaling \$1,657 billion and accounting for 9.2% of world merchandise exports in 2012.¹ While the U.S. is a large net exporter of agricultural products, there is no serious question but that tariffs and non-tariff barriers abroad have reduced the trade potential of our agricultural sector by huge amounts.

Liberalizing agricultural trade not only holds out the promise of improved incomes for our farmers and ranchers and for those who process agricultural products, but also can improve the global response to increased food needs over the next decades and better balance our trade flows. Handled properly, such liberalization can be a win/win. Trade liberalization, that is good for American agriculture writ large and for our nation overall should be achievable whether a multilateral, plurilateral or bilateral basis. However to make the liberalization politically acceptable, Congress traditionally expects an Administration to factor in special provisions for import sensitive sectors.

As anyone familiar with the WTO knows, agriculture has lagged far behind other goods in terms of trade growth and liberalization. Tariffs are substantially higher on agricultural goods than on other

¹ The World Trade Organization, *International Trade Statistics 2013*, at 59, Table II-1.

goods.² Tariffs and quotas have historically been the preferred means of restricting agricultural trade. However, as some liberalization has occurred in agricultural goods with declining tariffs and increased export opportunities under tariff rate quotas (TRQs), concerns have shifted to the many restrictions on trade in agricultural goods that flow from measures purportedly meant to ensure the safety of products, but in reality can be new non-transparent methods to protect markets abroad. While these measures are often implemented due to societal or cultural pressures, they can arise from legitimate concerns about the safety of food products. Trade agreements should be designed to encourage upward harmonization of food safety and other consumer based standards.

The Agreement on the Application of Sanitary and Phytosanitary Measures (“SPS Agreement”) that is part of the World Trade Organization was the first effort to establish a global approach to addressing and managing the twin concerns of liberalizing trade while protecting human, animal and plant health. As recent meetings of the WTO Committee on SPS measures have shown, many WTO members have concerns with SPS measures taken by their trading partners and whether those measures unduly restrict trade flows.

For example in the October 2013 meeting of the committee countries raising SPS concerns with trading partners included China, the EU, Japan, Indonesia, India, Brazil, Argentina, the United States, Australia, Norway, Paraguay, and Peru. The WTO reports that, between 1995 and 2013, 368 specific trade concerns have been raised before the Committee on Sanitary and Phytosanitary Measures, 141 of which have been resolved.³ Obviously despite some successes at the Committee level, many SPS concerns remain unresolved, sometimes despite years of bilateral negotiations.

USTR for the last five years has compiled a report on Sanitary and Phytosanitary Measures. The 2014 report released earlier this year can only be described as a depressing document – literally dozens

² See The World Trade Organization, *World Tariff Profiles 2013*, at 12-23.

³ Committee on Sanitary and Phytosanitary Measures, *Note by the Secretariat: Specific Trade Concerns*, G/SPS/GEN/204/Rev.14 (March 4, 2014) at 5.

of problems around the world, some going back decades, with limited forward movement on some issues but with an awful lot of intractable situations. The United States Trade Representative has “reported about 150 ongoing trade concerns in more than 50 countries or trade regions involving agricultural products under both the SPS and [Technical Barriers to Trade] Agreements.”⁴ The examples of BSE restrictions on U.S. exports of beef and the inability to open Europe up to genetically engineered (genetically modified) crops are two notable examples.

Concerns exist here in the U.S. that the restrictions are unfounded, not science-based and essentially either protectionist or driven by fear unrelated to facts. However, for some societies, consumers have spoken fairly forcefully of their unwillingness to accept certain products and governments have faced the dilemma of whether consumers can be persuaded to accept those products. Europe has a spotty record historically of transparency with their citizens at the nation-state level on health risks from diseases or food contamination which fuels problems of consumer acceptance of EU decisions today.

At the same time, the concern about the safety of food imports is not limited to our trading partners. Many consumers have concerns about the safety of imported foods and fish products. While the U.S. has historically had an excellent food safety record, our agencies are stretched thin in terms of inspections and testing particularly of imports. Unfortunately, newer sources of imported product may have far less regard for rule of law issues (e.g., conformance with U.S. legal requirements). On some aquatic products that are imported, there have been reports of the use of many banned chemicals, including some that are carcinogenic. With ongoing disputes as to whether various agricultural and seafood will be labeled for consumers with sufficient information to permit informed consumer choice, it is not surprising that consumer and other groups have concerns about our ability to handle more

⁴ Renée Johnson, Congressional Research Service, *Sanitary and Phytosanitary (SPS) and Related Non-Tariff Barriers to Agricultural Trade* (March 31, 2014) at 27.

liberalized trade in these sectors. These problems are heightened when we don't simultaneously provide with new trade liberalization the additional resources to maintain historic safety review.

Moreover, SPS measures are adopted by all countries to protect human, animal and plant health. So the legitimacy of individual measures or their administration is often in the eye of the beholder. Our trading partners are not necessarily sanguine about U.S. SPS measures and the time it takes to achieve access to the U.S. market. At the same time, consumer interests and domestic producer interests often are concerned about whether the justification for lifting a ban meets domestic requirements/safety interests.

Consider the EU's Trade and Investment Barriers Report 2014 (page 7) and its review of what has been accomplished with U.S. provisions and what concerns continue:

The United States has expanded the list of EU Member States or regions that are considered free of Classical Swine Fever (CSF), Avian Influenza, Newcastle disease, and partially Swine Vesicular Disease (SVD). A final rule on Bovine Spongiform Encephalopathy (BSE) was published by the end of 2013 after several years of discussion. The EU expects that exports to the US of beef will now shortly resume. However, animal disease assessments are still pending for some EU Member States that have the same disease status in accordance with EU harmonized legislation. Rather than treating Member States individually, US import conditions should reflect the reality of the EU single entity and single market as well as the animal health management decisions adopted by the EU in due time and the existing provisions of international standardization bodies (e.g., Office International des Epizooties). EU applications for exporting products of animal origin face long delays for example as regards Grade A dairy products, live bivalve molluscs and small ruminant products. The EU also remains worried by the extremely long delays in treating other Sanitary and Phytosanitary (SPS) export applications submitted by the EU, e.g., for apples, pears, stone fruits and bell peppers. The ongoing negotiations with the US on a Transatlantic Trade and Investment Partnership (TTIP) offer the opportunity to discuss SPS issues in a new context.

More broadly, the European Union has identified seventy-one SPS measures imposed by twenty-nine different countries that act as barriers to EU exports.⁵

⁵ European Commission, *Market Access Database, SPS: Sanitary and Phytosanitary Issues*, http://madb.europa.eu/madb/sps_crossTables.htm?table=countryproduct.

And it is not only tariffs and SPS measures that restrict trade. The EU has aggressively promoted geographical indications to shut down exports from new world countries and has used FTAs to achieve what they have not been able to achieve in the WTO Doha Development Agenda negotiations.

So the challenges for the Administration and Congress are many and they are formidable as you look at leveling the playing field for U.S. agriculture and fishing. In considering what types of provisions to include in FTAs involving the U.S. or in any TPA negotiating authority, it is important to seek broad liberalization in agriculture. In addition, addressing particular import sensitivities, harmonization of SPS measures with countries with developed SPS systems and ensuring that in fact agreed standards on met on imports into the U.S. and all critical objectives.

The United States provides technical assistance to developing countries to help them develop science based risk assessment, but many nations fail to meet necessary higher standards. Congress should evaluate the adequacy of Administration resources to both ensure compliance of foreign food sources to meet U.S. standards (or foreign standards that are in fact comparable in protection) and to improve the review of imports to ensure compliance in fact. It has never been the intention of Congress or any Administration to sacrifice U.S. consumer interests in a safe food supply. Yet without adequate enforcement resources and the ability to provide consumers information to permit informed choices, we risk losing the trust of the electorate on a matter of national importance – a safe food supply whether domestic or imported.

Thank you for the opportunity to appear today before the Trade Subcommittee. I look forward to your questions.