

BEFORE THE
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
TRADE POLICY STAFF COMMITTEE
AGOA IMPLEMENTATION SUBCOMMITTEE

In re: African Growth and Opportunity Act:
Out-of-Cycle Review of South Africa Eligibility for Benefits
Docket No. USTR-2015-0009

Comments of
The National Chicken Council and USA Poultry & Egg Export Council

These comments are submitted on behalf of National Chicken Council (NCC), the national association headquartered in Washington, D.C. that represents America's poultry producers; and on behalf of 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. The United States is one of the most efficient poultry producing countries in the world, producing more than 19 million MT per year with an economic production value of approximately \$38 billion in 2014. Exports, which account for one out of five pounds of chickens produced, are a vital and expanding part of the industry's economic success.

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. 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 2014, the U.S. poultry industry exports more than 4.0 million metric tons valued at over \$5.5 billion to

more than 100 countries, making poultry and eggs some 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 international markets for meat and poultry products. Because international trade is so important to the U.S. poultry industry, NCC and USAPEEC members place great value and importance on the observance of the rule of law and on adherence to the provisions of international trade treaties, in particular to the multilateral agreements of the World Trade Organization (WTO). NCC and USAPEEC were staunch supporters of the efforts of the United States to launch and conclude the Uruguay Round negotiations in the late 1980's and early 1990's, and to improve and extend the rule of law in international trade. Both worked vigorously 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 other U.S. trade liberalization efforts, including plurilateral arrangements such as the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA), and bilateral free trade agreements such as the U.S.-Panama, U.S.-Peru, U.S.-Korea and U.S.-Colombia FTAs.

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 because of 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 in 1986, 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 the application of sanitary and phytosanitary measures, the systems that assure both fairness in the rules of trade and 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 if our government is willing to use those enforcement mechanisms and to insist on adherence by our trading partners to the rule of law.

The U.S. poultry and egg industries have also encouraged efforts by the United States to improve the economic situation in the developing world, and in that context, supported extension of special duty preferences to the countries of Latin America under the Caribbean Basin Initiative; and to sub-Saharan Africa, including the Republic of South Africa, under the African Growth and Opportunity Act (AGOA) when it first passed Congress in 2000.

Ironically, in the same year that the U.S. Congress initially passed AGOA into law (with the active support of the U.S. poultry industry) and eliminated import duties on many goods entering the United States from the Republic of South Africa, South Africa initiated an antidumping action which resulted in shutting U.S. poultry out of its market. The Republic of South Africa initiated the case against U.S. poultry imports in 1999 as a protectionist measure in favor of its domestic poultry industry.

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 preferred methodology, 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. Although several countries have attempted or threatened dumping cases against U.S. poultry imports, no country has ever brought or even considered 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 millions of metric tons of chicken dark meat portions, 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 totally 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, to make matters worse, South Africa departed from the ordinary method of evaluation in cost of production cases 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 price – is radically different for different parts. If a weighted cost of production methodology were applied in the case of beef, for example, one would have to assume that filet mignon and hamburger were of equal value by weight; if it were applied to pork, one would have to 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. Consumers will always pay more for filet mignon than for hamburger; and more for pork loin than for pigs' ears. Anyone who has ever entered a food market or grocery store knows that all parts of an animal are not equal in value by weight. 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.

And it is not just the U.S. poultry industry that sees this case as total nonsense; it is a textbook example of absurdity. In 2005, N. Gregory Mankiew and Phillip L. Swagel published an article entitled "Antidumping: The Third Rail of Trade Policy" in the July/August edition of the prestigious journal *Foreign Affairs* and specifically cited the South African antidumping action against U.S. poultry for its legal and economic irrationality. Professor Mankiew taught Economics at Harvard University and was the chair of the President's Council of Economic Advisors (CEA) from 2003 to 2005; Mr. Swagel was the Chief of Staff of the CEA from 2002 to 2005. Neither gentleman has, or had, any connection to the U.S. poultry industry.

Prior to 2000, the U.S. industry enjoyed a modest but respectable export market to South Africa – a high of approximately 62,000 MT in 1997, and an average of approximately 48,000 MT in the most recent representative period, 1997-99. U.S. exports during that period represented only about 6.4% of market consumption of poultry during that period, but provided an important supplemental source of competitively priced protein for low-income families in South Africa as it began its reform and transition towards a more inclusive and representative democracy in the late 1990's. Because South Africa has been – and will continue to be -- a net importer of poultry meat and protein, the imposition of antidumping duties meant

that the prices that South African citizens have had to pay for domestic product has been consistently well above the world price. For the past 15 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.

Our experience since South Africa first imposed antidumping duties fifteen years ago has 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 unwillingness of the U.S. government to pursue this case through available WTO dispute settlement procedures. 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 that this issue was being raised at every trade meeting with South Africa, but the Bush Administration indicated that it preferred to “work out” a solution bilaterally and diplomatically with South Africa rather than to initiate dispute settlement before the WTO. The current Administrations has pursued a similar “diplomatic” approach, also to no avail. Apparently, the South African government has realized over time 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.

Another irony is that this Administration has used WTO dispute settlement to challenge the unfair imposition of antidumping duties on U.S. poultry by the Republic of China in a nearly identical case. 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 passed 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 copying the

convoluted and economically irrational “weighted cost of production” analysis that South Africa had used a decade earlier. Fortunately, and to its credit, the current Administration decided to use WTO dispute settlement to vindicate U.S rights in this case with China. The United States challenged China’s determination as inconsistent with international trade rules, and the WTO ruled in our favor.

Unfortunately, we were never able to convince our government to take similar action in regards to South Africa. Because the U.S. poultry industry has been unable to obtain any meaningful relief over the past fifteen years, either through the South African legal system or through the WTO, it determined last year to take its case to Congress. As you know, last year Congress began its consideration of whether to renew AGOA preferences. We told our representatives that our industry believed that the United States should, where practical and sensible, aid the less developed countries of the world in improving their economies and in raising the standard of living for their citizens. However, we also believed that developing countries that receive aid or special preferences have their responsibilities. Chief among those responsibilities are the obligation to become good world citizens and to conduct themselves in accordance with the rule of law; and the obligation to treat all their citizens fairly and see that trade preferences benefit the greater good, not just the advantaged few. We argued that it made 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. We provided Members of Congress with surveyed prices for frozen chicken leg quarters in South Africa that showed they were nearly three times higher than the U.S. price for comparable product. So while the United States had been extending AGOA benefits to South Africa to help in its development, South Africa had adopted protectionist trade policies than not only excluded U.S. products, but also resulted in unjustifiably high prices for its own citizens.

As you are aware, the unfairness of the South African dumping case stuck a chord with Members of Congress. South Africa’s commitment to reopen its market

to U.S. poultry imports has become the *sine qua non* of the AGOA renewal debate. Two Members of Congress in particular – Senator Johnny Isakson of Georgia and Senator Chris Coons of Delaware – took the forefront on this issue, and their efforts resulted in the so-called “Isakson Amendment” that requires this out-of-cycle review of South Africa. Congress has demanded that South Africa change its ways and treat U.S. products fairly, most especially U.S. poultry. Unless South Africa makes significant progress in this regard, the law now requires the President to take action to limit, or even deny, further preferences.

Our industry has attempted to work with the South African poultry industry and the South African government to find a way forward. We began with meetings last summer at the Embassy of South Africa here in Washington; and continued over the winter with meetings with the South African Minister of Trade and Industry, and with the President of the South African Poultry Association (SAPA). We have exchanged numerous letters and proposals with the South Africans. In May, our industry sent delegations to the International Egg Commission meeting in Lisbon, Portugal where we met on the margins again with SAPA; and then in early June, we participated in two days of meetings at the South African Embassy in Paris, France where the two poultry industries met in conjunction with representatives of the South African trade and agricultural ministries, as well as representatives of the U.S. Embassy to South Africa and the Office of the United States Trade Representative.

As has been publically announced by the South African Trade Minister, the Paris meetings resulted in an agreement in principle to settle this longstanding dispute. South Africa has agreed to open, and the U.S. industry has agreed to accept, an initial annual antidumping duty-free quota of 65,000 MT, with future growth in that quota calculated upon an agreed formula based on growth in production and consumption of poultry. This quota arrangement is without prejudice to the right of the South African industry to contend, in a future sunset review proceeding, that imports under that quota would cause material injury. We are now looking for South Africa to implement that agreement.

We should note that this initial quota of 65,000 MT will represent a much smaller share of the South African market than the U.S. industry had achieved during the most recent representative period – only about 3.7% of recent domestic consumption, as opposed to the 6.4% share of consumption that our industry had achieved in the 1997-99 period before antidumping duties were imposed. However, our industry believed that we need to restart trade and was willing to accept this quota figure in order to move AGOA renewal forward.

At this point, fundamentally, three things must occur: first, the South African Poultry Association, as the original petitioner in the antidumping case, must make application to South Africa's International Trade Administration Commission (ITAC) for a "rebate facility" that would exempt the quota amount from antidumping duties. The U.S. industry will provide a letter indicating its agreement with the quota arrangement and its support for a rebate facility for that amount.

Second, South Africa's Department of Trade and Industry (DTI) in conjunction with South Africa's Ministry of Agriculture, Forestry and Fisheries (DAFF) must conduct a public process to develop guidelines and rules for administration of the quota. Our industry has already provided, initially at our meeting in Paris and subsequently through the U.S. Embassy in South Africa, some preliminary suggestions about the terms and conditions for a quota administration system that we feel would be fair and would result in full use of the quota. We remain prepared, as soon as the South African government initiates its process, to submit formal comments and to participate as fully as possible.

Third, South Africa must take the steps necessary to eliminate any sanitary measures that could potentially block imports. It would be unacceptable for our industry and government to have worked so long and hard to remove one barrier to trade, only to have it replaced by a different type of trade barrier. As you may be aware, one of the issues that the United States and many other countries have been dealing over the last several years is avian influenza. The U.S. has one of the strongest surveillance programs for avian influenza in the world. Surveillance is

ongoing in commercial poultry operations, live bird markets, and in migratory wild bird populations. This surveillance allows USDA's Animal and Plant Health Inspection Service (APHIS) to detect the incursions of highly pathogenic avian influenza (HPAI) quickly and respond appropriately. In that regard, APHIS has provided South Africa with updates regarding detections of HPAI along the Pacific flyway since mid-December. APHIS has also notified these detections to the World Organization for Animal Health (OIE) in accordance with OIE reporting criteria. APHIS, in cooperation with state and industry partners, has responded quickly and appropriately to each HPAI finding in poultry to prevent further spread and ensure the health and safety of U.S.-origin poultry and poultry products. APHIS has requested that South Africa regionalize the United States and reauthorize trade from areas of the U.S. that are not affected by HPAI. APHIS has also requested that South Africa evaluate the technical information provided and regionalize the United States for HPAI in accordance with OIE guidelines. This will allow trade of U.S.-origin poultry and poultry products from parts of the U.S. that have not been affected by HPAI to resume as soon as possible. We are awaiting decisions by the government of South Africa to approve a health certificate for poultry and to put into place a regionalization plan consistent with international guidelines.

We want to make two points very clear: (1) The Ball is in South Africa's Court. It is the South African poultry industry and the South African government that must take the actions necessary to implement the agreement that we achieved in Paris. The U.S. industry is prepared to support those efforts and to participate to make sure the terms and conditions of quota administration are fair and effective; but the onus of eliminating application of antidumping duties on the agreed 65,000 MT; of developing rules for allocating and administering the quota; and of approving a sanitary certificate and of establishing appropriate regionalization are on South Africa; and (2) There is no Success without Actual U.S. Imports. It is not enough to have reached an agreement in principle in Paris, or to initiate various legal processes in South Africa. In our view, South Africa will have only made the

progress it is required to make under the AGOA renewal legislation when there are actual imports of U.S. poultry moving into South Africa. Our industry will accept nothing less, and we believe that Members of Congress will accept nothing less.

U.S. poultry has now been unfairly excluded from the South African market for more than fifteen 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 inconsistency of the U.S. government in enforcing our trading rights. As we have brought this issue to Congress, many Members of Congress found it unacceptable 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. While Congress has now conditionally extended AGOA benefits to South Africa, its expectations are clear: South Africa must open its markets to U.S. poultry or lose those benefits. South Africa is on the clock...we are watching and so is Congress.