



**Testimony Before the Committee on Small Business
Subcommittee on Agriculture, Energy, and Trade
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My name is Jason Hafemeister. I am Vice-President of AFJ & Associates, a Washington, D.C based international trade consulting firm that focuses on promoting agricultural trade and development. AFJ & Associates provides consulting services to companies, trade associations, and international institutions, including designing strategies to overcome SPS barriers. Prior to this position I served for over 15 years at the U.S. Department of Agriculture and the Office of the U.S. Trade Representative as an agricultural trade negotiator. Among other responsibilities, I was the lead negotiator for agriculture in the Doha round of negotiations at the WTO, the CAFTA-DR, and China's accession to the WTO. I also was part of the negotiating team in the WTO's Uruguay Round, including work on the Agreement on the Application of Sanitary and Phytosanitary (SPS) measures.

U.S. agricultural exports are forecast to reach over \$130 this year, providing a healthy trade surplus for the sector. Thanks to trade agreements that have lowered tariffs and the competitiveness of U.S. farmers and ranchers, ag exports continue to make a positive contribution to the U.S. economy and balance of payments. Promising fundamentals, such as growth in international demand for agriculture and food products, the strong competitive position of the United States, and the process of greater economic integration, all suggest exports will continue to create opportunities for the farm and ranch families and food processors that are at the backbone of our agriculture system.

However, the persistent use of unjustified import restrictions related to health or safety concerns, sometimes sincerely but also sometimes disingenuously, is one of the most serious constraints on U.S. exports. In too many cases U.S. exporters are facing requirements in foreign markets that are

- not based on scientific evidence or risk assessments;
- developed without the taking into account comments from trading partners;
- implemented without adequate time for exporters to meet new standards;
- inconsistent with science-based international standards;
- not implemented using trade-facilitating policies (such as recognition of systems-based approaches that deliver equivalent levels of health and safety protection or not implementing harmonized export certificates); and
- enforced using questionable testing practices and methodologies.

These measures threaten, if they remain unchecked, to close entire markets to U.S. products. This threat is a particular problem for small businesses – farm and ranch families, small food processors, brokers, and others that lack the resources and the contacts with foreign governments to complete a sale when a government official makes an arbitrary decision to reject a shipment.

Specific health and safety barriers that currently unjustifiably restrict U.S. exports include the following drawn from the 2012 USTR report on SPS Measures:

- Indian restrictions on U.S. dairy imports that lack scientific justifications for onerous certification requirements.
- Restrictions on crops developed through modern biotechnology or genetic engineering techniques in China, Croatia, Ethiopia, the European Union, Norway, Peru, the South African Development Community, Korea, Sri Lanka, Switzerland, Turkey, Ukraine,
- Beef restrictions due to bovine spongiform encephalopathy (BSE) in Argentina, Australia, Bolivia, Brazil, China, Dominican Republic, Ecuador, El Salvador, Hong Kong, Israel, Japan, Korea, Mexico, Morocco, Russia, Singapore, South Africa, Sri Lanka, Taiwan, Thailand, Turkey, Uruguay, Venezuela, Vietnam.
- Restrictions on beef and pork for use of beta-agonists, including in China, the European Union, Russia, Taiwan, and Thailand.
- Continued restrictions on accessing the EU market for beef, despite a WTO decision against the EU hormone ban over 10 years ago, and related restrictions on U.S. pathogen reduction practices for other meats.
- Restrictions on U.S. poultry access purportedly because of avian influenza concerns in Argentina, China, India, Japan, and Venezuela.
- Restrictive standards for salmonella in Central America, China, Colombia, and Vietnam.
- Restrictions on U.S. pork exports purportedly for trichinosis concerns in Argentina, Chile, Colombia, European Union, Kazakhstan, Peru, Singapore, and Ukraine.
- Russia's restrictions related to plant inspections, health certificates, pathogen reduction treatments, and use of veterinary drugs that restrict exports of a number of U.S. agricultural products.
- Unjustified bans due to hog diseases in Australia, Jamaica, New Zealand and South Africa.
- Pesticide residues set at unreasonably low levels, or not set at all, effectively banning any imports of products with trace residues, including in the European Union, Japan, Korea, and Taiwan.
- Discriminatory export certifications setting unreasonable standards for wheat, dairy, meat, and other exports to China, India, Egypt and other countries.

Trade rules are in place to discipline the use of health and safety measures. The WTO Agreement on the Application of SPS Measures establishes a number of foundational principles for balancing the rights of importing countries to maintain measures to protect health and safety and obligations of these countries to remove unjustified measures that

restrict trade. Fundamental principles of the agreement include requirements that importing countries:

- measures be based on scientific evidence and backed up by scientific risk assessments;
- not discriminate against products from other countries when the same health situation exists from permitted suppliers;
- recognize products from pest- and disease-free areas in exporting countries;
- recognize systems in exporting countries that meet health and safety standards through equivalent measures;
- employ measures that are least-restrictive to trade; and
- meet specific transparency and procedural fairness standards.

These rules, and the application of the dispute settlement procedures of the WTO, have been a game changer, in a positive way, for international agricultural trade. Prior to the Uruguay Round, the mere declaration that an import barrier was maintained to protect animal, plant or human life or health was enough to justify the most restrictive trade ban. Now, new SPS measures that deviate from international standards must be notified and subject to public comment and discussion before the technical experts at the WTO. When U.S. exports face a new barrier purportedly protecting health and safety, U.S. officials can request information on the scientific basis and ensure U.S. products are being denied access if products from the importing country or other trading partners that pose the same risk are allowed onto the market. Importantly, disputes can be taken to a panel of WTO experts to determine if an SPS measure is consistent with WTO provisions.

The United States has used this process to successfully challenge the EU's ban on beef treated with growth promoting hormones, Japan's restrictions on certain horticultural products, Japan's onerous testing requirements, Korea's restrictive shelf-life requirements, Australia's restrictions on salmon imports, and the EU's import ban on biotechnology products. In addition, cases against India for restrictions on U.S. meat exports and the EU for unjustified restrictions on U.S. poultry exports are currently pending in the dispute settlement process. These cases have reopened markets for U.S. products and have sent powerful signals to other countries that if they maintain unjustified health and safety measures they run the risk of losing a WTO dispute, and then either must remove the offending measure or face retaliatory tariffs on its exports to the United States.

As useful as the WTO rules have been for U.S. exporters, health and safety measures in other countries still unjustifiably restrict exports of food and agricultural products. The United States should pursue a multi-prong approach to address these barriers, including the steps outlined below.

Strengthen U.S. Response Capacity: To address technical restrictions on U.S. exports, the United States relies on experts in technical agencies, in particular USDA and FDA, to assess requirements and develop arguments against them. In addition, officials posted in

foreign countries provide a key resource to assess the situation and develop the appropriate response. The United States needs to invest in its staffing and other resources to stay on top of restrictions imposed on U.S. agricultural exports. In addition, challenging these measures needs to be made a priority, including by having the Administration assign appropriate resources to trade resolution activities, financing data gathering and research, and providing personnel and travel budgets to allow U.S. officials to argue the strongest case in foreign capitals and before dispute settlement panels. Importantly, the United States must be comfortable to follow the scientific evidence – if a product is safe the U.S. should press for other countries to allow for imports and similarly if a foreign product is safe for the U.S. market our regulators should allow access.

Be Aggressive in International Institutions: Standards developed by the CODEX Alimentarius, the World Organization for Animal Health, and the International Plant Protection Convention have increasing importance in international trade. Countries that use these standards are protected from challenge in the WTO, and many countries that cannot conduct their own research rely on the process of international organizations to establish their domestic standards. The United States should press for these organizations to set more standards, and ensure they are based on the best scientific information. This includes working to overcome resistance from other countries that are resisting the establishment of standards, as the United States successfully managed in the case of setting residue standards for growth promoting hormones in the 1990s and more recently for the use of veterinary drugs in animal production.

Provide Technical Guidance to Developing Countries: Some countries lack the resources to conduct thorough scientific assessments, or are unaware of standards and practices in the United States that are effectively protecting health and safety. As a consequence, they may erect unnecessary trade barriers. The United States should engage with these countries and provide technical assistance to help them implement appropriate standards and to provide a counter-weight to protectionist countries that are encouraging the establishment of restrictive measures that will reduce U.S. exports.

Strengthen Trade Rules: Current WTO rules are a helpful framework of principles, but do not provide adequate guidance to address current trade barriers. The United States should take advantage of trade negotiations currently underway or planned for the future to strengthen disciplines on SPS measures. In particular, in the Trans-Pacific Partnership negotiations the United States has an excellent opportunity to work with like-minded countries to

- strengthen and elaborate requirements regarding risk assessment and risk management;
- reinforce the WTO rule that requires regulators to select the least-trade-restrictive of available risk management options;
- promote trade-facilitating measures such as equivalence, recognition of inspection systems and harmonization of export certificates;
- require parties to provide an adequate grace period before implementing new, non-emergency measures;

- enhance transparency;
- strengthen the role of science-based international standards and promote the harmonization of standards;
- grant importers the automatic right, in the case of an adverse test result, to a confirmatory test in a competent laboratory that uses validated testing methods; and
- establish a pro-active committee agenda that encourages partners to collaborate on specific issues in order to facilitate trade.

Importantly, any new trade rules must be fully enforceable under the agreement, or else risk being ignored by our trading partners.