

February 3, 2012



**National Pork Producers Council Submission  
Request for Comments on Barriers to Trade in Pork  
with the European Union**

The National Pork Producers Council (NPPC) hereby submits comments in response to Federal Register Notice Volume 77, Number 7, “Request for Comments” on barriers to trade with the European Union (FR Doc No. 2012-329, January 11, 2012). According to the referenced Federal Register Notice, these comments may be used in discussion in the U.S.-EU High Level Working Group on Jobs and Growth.

NPPC is a national association representing a federation of 43 state producer organizations, and represents the federal and global interests of 67,000 U.S. pork operations. The U.S. pork industry is a major value-added enterprise in the agricultural economy, and a significant contributor to the overall U.S. economy. The United States is the top global pork exporter with exports in 2011 valued at about \$6 billion, which created approximately 50,400 U.S. jobs.

**A U.S.-EU Free Trade Agreement**

It is our understanding that one of the options that will be considered in the U.S.-EU Working Group discussions is a possible free trade agreement (FTA) between the two parties. NPPC would fully support this initiative as long as the United States makes it clear from the outset that it is determined to negotiate and implement the kind of high standard 21<sup>st</sup> century agreement that has been central to the Administration’s trade policy efforts to date. Free trade agreements negotiated by the EU with other countries certainly do not come close to this standard. They are in reality, preferential trade agreements, with widespread exceptions, particularly in the area of agriculture.

Furthermore, many of the EU’s regulatory and sanitary and phytosanitary (SPS) requirements conflict directly with WTO rules and U.S. trade interests. EU SPS requirements of particular concern to the U.S. pork industry are addressed later in this submission. In order to enhance trade, any FTA with the EU must address and eliminate EU regulatory and SPS barriers to trade in a systematic way.

The Trans-Pacific Partnership (TPP) negotiations should serve as the template for a possible U.S.-EU FTA. The TPP is intended to be a comprehensive agreement covering all sectors – a U.S.-EU FTA must achieve this same standard. Undertaking U.S.-EU FTA negotiations that exclude agriculture, or any other sector, would undermine current U.S. efforts in the TPP, as well as any future U.S. FTA negotiations. The exclusion of key sectors such as agriculture likely would violate WTO GATT Article XXIV.8, which requires that FTAs provide for duty free treatment on “substantially all trade.”

## **The EU Pork Market**

The European Union has one of the most highly protected pork markets in the world. It makes use of small tariff rate quotas (TRQs) with high in-quota duties, and prohibitively high out-of-quota duties, to limit the inflow of pork from non EU suppliers. In addition, it maintains an array of non science based sanitary phytosanitary (SPS) barriers that further restrict imports.

EU pork consumption is 20 million metric tons annually, making it the second largest market in the world for pork consumption, behind only China. The United States is the lowest cost producer of pork in the world, and in the absence of restrictive TRQs and unjustifiable SPS barriers, the EU would be a huge market for competitively priced and high quality U.S. pork. However, due to the barriers described in this submission, at present U.S. pork exports to the EU are extremely small, totaling only 8,100 MT in 2010. By way of comparison, the United States exports more pork to countries such as Honduras, Chile and the Dominican Republic than it does to the EU, a market of 500 million people.

## **Tariff Rate Quotas**

During the WTO Uruguay Round, the EU blatantly ignored WTO negotiating rules in limiting its pork TRQs to 70,000 MT, far less than one percent of EU consumption. With EU-27 pork consumption of about 20 million MT, we note that 5 percent of EU consumption, the standard set in the Uruguay Round for minimum access, would translate into a TRQ of one million metric tons. Moreover, the in-quota duties for the EU's pork TRQs range from 250 Euros MT to 784 Euros MT, duty rates that make it difficult to ship under the TRQs. Out-of-quota duties for the TRQs are set at prohibitively high rates, making it almost impossible to ship product into Europe outside the TRQ amount.

During the WTO Doha Round negotiations, the Administration worked to significantly expand the size of the EU's pork TRQs. Prior to the current hiatus in Doha Round negotiations, the U.S. and EU had entered into serious negotiations about a possible expansion of the EU's pork TRQs. Getting a major expansion in the size of the EU's current pork TRQs is critical if the U.S. is to significantly increase pork sales to Europe. In addition, current high in-quota rates should be eliminated, and out-of-quota duties reduced. Finally, in order to improve TRQ administration, NPPC has sought consolidation of the EU's current six TRQs for different cuts into a single TRQ for all pork imports.

Expansion of the EU's current pork TRQs can be achieved through WTO multilateral negotiations, and full elimination of EU duties on pork could be achieved through a U.S.-EU FTA.

**Feasibility:** As noted, there is a good chance for expansion of the EU TRQ if WTO multilateral trade negotiations resume. Complete elimination of EU duties on pork could be achieved through a U.S.-EU Free Trade Agreement.

**Consistency of Proposal with Trade Obligations:** Expansion of the pork TRQ through the Doha Round is consistent with WTO rules and U.S. objectives in the Doha Round. Elimination of duties under a free trade agreement with the EU would be consistent with WTO rules, as long as the FTA met WTO obligations contained in GATT Article XXIV.8 that the agreement provided for duty free treatment on “substantially all trade.”

### **Chilean Tariff Preferences**

Under a free trade agreement that the EU and Chile concluded in 2002, the EU provides Chile with duty free access to the EU within specified TRQ amounts that grow by 5 percent each year. High in-quota duty rates that the EU charges to non-preferential suppliers like the U.S. put the U.S. pork industry at a serious disadvantage to Chile in the EU market. As a result of the FTA, Chile has displaced the United States as the number one foreign supplier of pork to the EU market.

The agreement between the EU and Chile excludes a large segment of the EU’s agricultural sector, as well as a few other product groups, from full trade liberalization. As a result, that agreement likely fails to meet the requirement contained in GATT Article XXIV.8 that import duties under a FTA must be completely eliminated on “substantially all trade.”

**Feasibility:** The only way that the U.S. could achieve the same market access that Chile enjoys is through a free trade agreement with the EU, or through a WTO challenge of the legality of the EU-Chile FTA.

**Consistency with Trade Obligations:** Elimination of duties under a free trade agreement with the EU would be consistent with WTO rules, as long as the FTA met WTO obligations contained in GATT Article XXIV.8 that the agreement provided for duty free treatment of “substantially all trade.”

### **SPS Requirements**

#### **A. Ractopamine Ban**

The European Union maintains a ban on pork produced with ractopamine hydrochloride (ractopamine), a protein synthesis compound that significantly improves efficiency in pork production. In order to ship pork to the EU, U.S. exporters must participate in a costly and administratively burdensome Pork for the EU (PFEU) program to verify that pork shipped to the EU has not been produced using ractopamine. In addition, U.S. pork must undergo expensive testing at a laboratory in Canada to verify there is no ractopamine residue in U.S. pork shipments to Europe. These requirements act as a

major impediment to U.S. pork exports to the EU, confining U.S. exports to a small group of U.S. suppliers.

Ractopamine was approved for use in U.S. pork production after an extensive review by the U.S. Food and Drug Administration (FDA). It is approved for use in 26 countries around the world. As a further indication of the safety of this product, the *Codex Alimentarius* reached the final stages in deliberation on the establishment of a recommended maximum residue level (MRL) for ractopamine in pork production, only to have adoption of the MRL recommendation blocked by the EU, its Member States, and a few other allied countries.

The EU's ban on ractopamine is not based on sound science. The Joint FAO WHO Expert Committee on Food Additives (JECFA), the Expert Committee that provides scientific advice to the *Codex Alimentarius* on food safety, issued a report recommending the establishment of a maximum residue level (MRL) for ractopamine in animal feed. Although the European Food Safety Agency (EFSA) responded to the JECFA report with a report of its own calling into question the JECFA findings, none of EFSA concerns about the JECFA study were substantive, and the report did not bring to light any new data that would trigger JECFA to conduct a review of the risk assessment. The EFSA paper is simply part of a systematic EU effort to derail the science based *Codex Alimentarius* process to establish a recommended MRL for ractopamine.

The EU's ban on pork produced with ractopamine violates numerous provisions of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, including the requirement that SPS measures be based on science (Article 2.2), and that SPS measures be based on legitimate risk assessments (Article 5.1).

NPPC strongly believes that the United States should continue to aggressively pursue removal of the EU's WTO illegal ban on imported pork produced with ractopamine.

**Feasibility:** The U.S. government has pushed the European Commission for several years to allow the import of U.S. pork produced with ractopamine, but the EU has refused to take action. There is a reasonable chance for success if the U.S. continues to push the EU aggressively on this issue. If there is a U.S.-EU FTA, this trade barrier should be eliminated. As noted, the EU ractopamine ban represents a major barrier to U.S. pork exports to the EU.

**Consistency with Trade Obligations:** NPPC supports bilateral engagement with the EU to remove this WTO illegal impediment to trade in a manner that is consistent with WTO rules, or to eliminate it through FTA negotiations.

## **B. Trichinae Testing**

Under the U.S.–EU Veterinary Equivalence Agreement, U.S. pork producers are required either to test pigs for trichinae through pooled testing, or to subject the pork to cold treatment in accordance with existing federal regulations (9 CFR 318.10). The EU

currently requires pooled testing for trichinae at a laboratory participating in the USDA, Agricultural Marketing Service (AMS) Trichinae Analyst and Laboratory Certification Program. In practice, this means testing will yield no findings of trichinae in virtually all cases.

In response to the EU testing requirement, some U.S. plants have made it a practice to export only frozen pork to the EU, thus avoiding the testing requirement and the costs that go with it. This has substantially limited export opportunities for the plants willing to bear the cost of participating in carcass testing.

While trichinosis is a significant problem in many countries, it is not in the United States. There is negligible risk of trichinae in the United States due to high biosecurity protocols and modern pork production systems. The U.S. pork industry maintains a world class system for preventing trichinosis, and there is no scientific reason why the EU should impose trichinae testing or freezing requirements on the United States.

A 2005 EU regulation (Commission Regulation No. 2075/2005) appeared to provide for the possibility of exemptions from EU trichinae testing requirements for pork produced under certain conditions related to trichinae prevention. However, to date U.S. pork suppliers have been unable to obtain exemptions from EU testing requirements, even though the likelihood of getting trichinae from commercially produced U.S. pork is less than one in three hundred million.

The EU's trichinosis related restrictions on U.S. pork violate numerous provisions of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, including the requirement that SPS measures be based on science (Article 2.2), and that SPS measures be based on legitimate risk assessments (Article 5.1).

The United States should continue to aggressively pursue elimination of the EU's WTO illegal trichinosis related restrictions on U.S. pork.

**Feasibility:** The U.S. government has pushed the European Commission for many years to remove its trichinae related restrictions on U.S. pork, but the EU so far has refused to take action. There is a reasonable chance for success if the U.S. continues to push the EU aggressively on this issue. If there is a U.S.-EU FTA, this trade barrier should be eliminated. As noted, the EU's trichinosis policy represents a significant barrier to U.S. pork exports to the EU.

**Consistency with Trade Obligations:** NPPC supports bilateral engagement with the EU to remove this WTO illegal impediment to trade in a manner that is consistent with WTO rules, or to eliminate it through FTA negotiations.

### **C. Pathogen Reduction Treatment Prohibition**

The EU currently prohibits the use of anti-microbial or pathogen reduction treatments (PRTs), including hyperchlorination, and organic acids. Only the application of water or

steam is permitted. PRTs used in the United States pose no health risks and actually help ensure the safety of meat products. The current EU prohibition on the use of anti-microbial washes adds significantly to the cost of exporting pork to the EU.

The U.S. is in the initial phases of a WTO dispute settlement case with the EU concerning its pathogen reduction treatments for poultry. USTR requested a WTO panel to hear this case in late 2009, but has yet to fully pursue it. NPPC fully supports the U.S. government decision to proceed to the WTO on this issue, and we urge USTR to proceed without further delay to the formation of a panel. The EU's PRT prohibition is a clear violation of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures. Given the EU's intractable position on this matter, we believe the United States has little option but to pursue this issue through formal WTO dispute settlement. We are hopeful that this approach will lead to the removal of this EU trade barrier not only for U.S. poultry, but for the U.S. pork industry as well.

As noted, the EU's PRT policy violates numerous provisions of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, including the requirement that SPS measures be based on science (Article 2.2), and that SPS measures be based on legitimate risk assessments (Article 5.1).

**Feasibility:** As noted, EU PRT policies have been a trade issue between the United States and the EU for years, and we believe the only viable way to resolve this issue is through a WTO dispute settlement case against the EU. We are confident that the United States would win a WTO dispute settlement case against the EU.

**Consistency with Trade Obligations:** Pursuing this case through WTO dispute settlement would be consistent with U.S. international trade obligations.

#### **D. Plant Approvals**

Although the EU has recently simplified the process for plant approval for export to the EU, there are nevertheless still significant costly requirements in place that deter most U.S. packers from seeking plant approval. As NPPC has pointed out for many years, the U.S. accepts a systems-based approach for inspection of countries that export to the United States. There is no reason why the EU cannot accept the USDA plant inspection and approval system for pork plants, as the majority of our trading partners have already done.

The EU's plant inspection policies are inconsistent with Article 4 of the WTO SPS Agreement, which requires that WTO members recognize the SPS measures of other members as equivalent if it can be demonstrated that the SPS measures achieve an appropriate level of protection.

**Feasibility:** The U.S. government has pushed the European Commission on plant inspection issues for years, with some modest success. The U.S. should continue to push

for full equivalence recognition by the EU as an achievable goal, either through bilateral engagement or through a FTA negotiation.

**Consistency with Trade Obligations:** NPPC supports bilateral engagement with the EU to remove this WTO illegal impediment to trade in a manner that is consistent with WTO rules, or through FTA negotiations.

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