

**Before
The U.S.-China Economic and Security Review Commission**

Ames, Iowa
April 25, 2013

Testimony of Kevin J. Brosch

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Good Morning Ladies and Gentlemen of the Commission. My name is Kevin J. Brosch. I am here today to testify on behalf of the poultry and egg export industry of the United States. For the past 14 years, I have served as special trade consultant to, and Washington D.C. representative for, USA Poultry & Egg Export Council (USAPEEC). I have been practicing international trade law in Washington for 32 years, initially with Steptoe & Johnson's international trade practice. I served in government as counsel to USDA during the Uruguay Round and NAFTA negotiations; and also as trade advisor to the Senate Agriculture Committee and then Chairman, Senator Dick Lugar. In 1999, I returned to private practice and formed the agricultural trade consultancy firm, DTB Associates, LLP.

USAPEEC is the national association for the U.S poultry and egg export industry. Its headquarters are in Stone Mountain, Georgia, and its more than 200 members companies – poultry producers, processors, export trading companies, cold storage operators, freight forwarders and other associated businesses -- account for approximately 95% of our country's very significant poultry and egg export trade.

The United States has one of the most efficient poultry industries in the world. The U.S. is the largest producer of poultry meat with about 20% of the world's production (China is second with approximately 17%) and is one of the two leading poultry exporting nations (the United States and Brazil each account for about one-third of the world's broiler exports). Poultry and egg exports are among the most important of all U.S. agricultural exports. In the most recent year for which full data is available, the U.S. exported approximately 3.7 million metric tons of poultry meat, with a value of nearly \$ 4.6 billion. The U.S. currently exports chicken, turkey and eggs to more than 120 countries. While the situation in different markets varies from year to year, over the past decade our five most important poultry export markets have been Russia, China, Mexico, Hong Kong and Canada.

U.S. Interest in the China Market.

We have been asked whether our industry considers China to be an important current and future market for U.S poultry. The answer to that question is simple: in the future, if the U.S. poultry industry is not significantly engaged in the China market, we are nowhere.

China is the largest country in the world by population with an estimated 1.3 billion citizens and has one of the world's fastest growing economies. While just a few decades ago China's population was poor and largely rural, today China's economy is increasingly prosperous and increasingly urban, particularly along its eastern seaboard. It is estimated that by 2025 an additional 250 million Chinese will come into the middle class. Economists have long observed that one of the first things that a person does when he or she acquires middle class income is to purchase a better and higher-protein diet. And so, one of the most predictable results of this rapid growth in China's economy is that China will increasingly need more poultry, eggs and meat.

And, for a person moving into the middle class who still has only moderate income, poultry meat is, in almost every case, the lowest cost option for increasing protein in the diet. Broiler chickens are very efficient converters of feed by comparison with other commercial meat animals. The U.S. industry and U.S. land grant universities have spent decades studying the science of efficient broiler chicken production, and have made incredible strides in genetics, breeding, diet and disease control. Today, the U.S. industry can produce a pound of chicken meat for less than two pounds of feed. By comparison, even where production is very efficient, a pound of pork meat requires four and a half pounds of feed; a pound of beef requires nearly nine pounds of feed. As a result, poultry is, in virtually every case, the least expensive source of animal protein commercially available.

Although China is currently the world's second largest producer of poultry meat, that production is not great in comparison with China's population. China's annual per capita consumption of poultry meat – about 10 kg.– lags well behind much of the rest of the world. Annual per capita consumption in the U.S., by comparison, is 42.4 kg.; in Brazil, 44.4 kg; in Canada, 30 kg. Even in the EU-27 or in Japan, where pork or fish are the preferred source of animal protein, average annual consumption is approximately 17 kg. However, as China's middle class grows over the next 25 years and as its citizens become more prosperous, there will be increased demand for, and consumption of, poultry meat.

Consider this: if China's population remained static at 1.3 billion over the next two decades, but China's consumption of poultry increased by 50% over its current level, annual per capita consumption would still only be about 13.8 kg. That would be less than one-third the per capita consumption in the U.S. However, the amount of additional chicken production required would be approximately six million additional tons. This is an amount that is approximately 60% of all current broiler meat exports in the world – or just slightly less than the total current annual exports

of both the United States and Brazil. If China's annual per capita consumption were to grow to the level of Japan – about 17 kg., still a modest level – the additional poultry needed would equal all current world exports of poultry meat.

As demand for additional meat and poultry products grows in China over the coming decades, China will have to weigh its options: it can import additional meat and poultry products from highly efficient producing countries like the United States, or it can attempt to increase its own broiler production. Several factors make it clear that the rational policy choice for China will be to look for trading partners from whom they can reliably source their poultry and egg requirements. China is a country with limited food-growing capacity. Only about eleven percent of China's land mass is arable and suitable for agricultural production. China is already using that scarce land resource to produce the rice, wheat, pork, chicken and vegetables that its people currently consume. If China were to attempt to grow its domestic poultry industry to meet increasing demand, it would need either to find a great deal of additional land to grow the feed needed for the poultry (and that is simply not an option because more arable land does not exist); or it would need to import massive amounts of feed. China simply cannot become an efficient poultry producer at a much larger scale because of the high acquisition and transportation costs that it would have to incur to import feed. The better alternative is to import the chicken, which is the policy that makes sense economically.

A second constraint that China faces is its record regarding food safety. As you all know, China has had a number of problems with its food safety system, including the famous episode of melamine in its milk supply. China sits on several of the world's largest migratory bird fly-ways and, as a result, is the original source of most strains of influenza, including new strains of avian influenza, a disease that is endemic in migratory birds. Several years ago, China endured one of the worst outbreaks of avian influenza that had ever occurred. Currently, China is attempting to deal with another, and potentially even more serious, avian influenza incident, this time of the H7N9 strain. Because of these various problems, there is a perception, even among the Chinese consumer, that food produced in China is not always safe and there is often a preference for imported products if they are available. While China will certainly improve its food safety system over the long term, in the near term, importing poultry meat is a potentially attractive policy option for China because it would help to relieve the strain on a beleaguered government health safety system.

In summary, our industry sees China as the most important export opportunity that we will have in the future. China's huge population and growing prosperity mean a large growth in demand for low-cost, high-quality protein products such as poultry meat; and China's problems of limited arable land and food safety concerns make importation of poultry meat from efficient producers like the United States a logical policy choice.

China's Accession to the World Trade Organization

You have also asked whether we consider China's recent accession to the World Trade Organization an advantage for our trade with China. We believe that, in the long term, WTO membership for China will be a very positive factor for our bilateral trade. However, in the short term, it has not been a positive factor; indeed, it has been problematic, and I should explain why.

China's accession to the WTO was a long and difficult process, and progress toward accession was often blocked as the U.S. and other WTO Members raised issues that were politically sensitive within China. Representatives of our industry were actively engaged in China during that entire time and, based on many conversations we have had with both Chinese government officials and our industry counterparts in China, we have come away with the very strong impression that China felt it was "bullied" in the process. Since its accession, China has lashed back on several occasions, and we believe that the sense that it had not been treated fairly in the WTO accession process contributed to the way in which China has reacted on several bilateral trade issues.

Of course, other factors have contributed to generating bilateral trade problems between the United States and China, including some serious policy missteps by the U.S. government. The U.S. poultry industry has been the unfortunate victim of one of the worst episodes in this regard.

In 2009, at the beginning of the current Administration, it was decided to use the U.S. safeguard law – section 201 of the Trade Agreements Act of 1974 – to impose restrictions on the importation of low-priced car tires from China. Much has been written about this matter but, in our view, the decision was motivated by domestic politics in the United States and did not serve either to protect a viable U.S. industry or to promote good trade relations with China. China had developed a very significant tire industry, and this decision led to the loss of many jobs in China and tremendous resentment.

About the same time, the U.S. Congress passed a provision into law known as the "DeLauro Amendment" which denied USDA's Food Safety & Inspection Service (FSIS) the ability to use any appropriated funds to conduct risk assessment with respect to China's request to ship certain cooked poultry products to the United States. This action was both myopic and misconceived. The WTO Agreement on Sanitary and Phytosanitary Measures requires WTO Members to take decisions whether to allow imported product based on sound science and risk assessment. A law that prohibits FSIS from conducting risk assessment on potential Chinese imports is a clear violation of WTO rules and a contravention of the obligations the United States had undertaken as a WTO Member. In addition, the DeLauro Amendment had singled out China for this unfair treatment; it was the only country among the more than 160 WTO countries where FSIS was denied funds to conduct risk assessment. This was a clear violation of the WTO's most fundamental rule, the

“Most Favored Nation” principle. China felt it had been insulted, and for good reason.

Our industry unequivocally supported China’s right to obtain a decision about its ability to export to the United States based on risk assessment. I personally testified before Congresswoman DeLauro’s subcommittee on behalf of our industry and a coalition of 39 other agricultural commodity groups and companies asking Congress to rescind the DeLauro Amendment and to treat China in accordance with WTO rules. Our industry did not prejudge China’s worthiness to export product to the United States; we believed that this was a technical decision that the appropriate health regulator, FSIS, should make based on sound science. We were willing to accept whatever decision FSIS made. We argued that Congress should, in accordance with U.S international obligations, do the same. Congress ultimately did make changes to the DeLauro Amendment, but in the meantime, China instituted dispute settlement proceedings at the WTO. The dispute settlement panel quickly and definitively ruled, as we were sure they would, that the DeLauro Amendment was inconsistent with U.S. obligations. The U.S. industry had predicted this outcome, and applauded the decision of the WTO panel.

However, an aggrieved China did not wait for Congress to act or for the results of WTO dispute settlement. Angered by its treatment during accession and aggrieved by both the Car Tire 201 decision and the DeLauro Amendment, it decided to strike back on its own terms. Unfortunately for our industry, we had been building a very successful trade with China – our exports had increased to nearly \$700 million annually at that point – and we provided a convenient target for retaliation. In September 2009, China initiated an antidumping and countervailing duty investigation against imports of U.S. poultry meat. Because U.S. poultry is not dumped by any recognized legal standard, China employed a relatively novel and economically absurd theory known as “average cost of production.” After a short investigation, China imposed dumping duties on U.S. poultry and shut down our trade. A case has since been brought before the WTO challenging China’s imposition of duties, and we fully expect that the U.S. industry will be vindicated when a decision is eventually rendered. But, in the meantime, the U.S. poultry industry has incurred huge legal costs and has suffered the loss of billions of dollars of trade for no good reason.

I should also add that the DeLauro Amendment was particularly misguided because, by denying FSIS the resources to do risk assessment with respect to Chinese imports, Congress was effectively saying that it did not trust FSIS to make a valid scientific decision or to adequately protect the U.S. consumer. Every day, FSIS inspects virtually all of the meat and poultry consumed in the United States. It is the agency that we depend on to protect our citizens. It is the agency that is respected as the world leader in meat and poultry safety and whose certificates enable us to export to more than one hundred other countries. It was, very frankly, highly irresponsible for Congress to presume that it (or more accurately a small subcommittee of Congress) could make a better judgment about the safety of

Chinese imports based on political perception than FSIS could make by engaging in a full and rigorous scientific assessment. Congress has empowered FSIS to do meat and poultry inspection and its scientists and inspectors do a world-class job. Congress should support FSIS's work; it should not undercut that important mission by passing provisions like the DeLauro Amendment.

The early years of China's membership in the WTO have not gone smoothly. In the long term, we believe that both China and the United States will learn that we all have to live by the rules if we want consistent and mutually beneficial trade. China has had WTO cases initiated against it and has lost a number of them. Ultimately, we believe that China will come to understand that it adhere to WTO rules for it to become a good world citizen and an effective voice in the world trading community. But the same applies to the United States. Our government -- both our Executive and our Congress -- must also learn to play by the rules. The politically motivated Car Tire 201 case and the DeLauro Amendment demonstrate that the U.S. Government does not always make decisions consistent with its international obligations or in its own best long-term trade interests. We need to learn to "do unto others" as we would have them do unto us.

Food Safety Issues within China and Impact on U.S. Exports.

You inquired whether the U.S. industry has had particularly difficult problems with China in respect to sanitary and food safety measures. While we have had difficulties, it is not our perception that China is attempting to use sanitary or food safety measures as non-tariff barriers against U.S. imports of poultry. Rather, we believe that China's strict, and sometimes unsupportable, decisions to impose limitations on U.S. imports are driven primarily by internal pressures on its government as a result of past domestic food safety mistakes.

As I discussed earlier, China is currently dealing with a crisis of confidence among its consumers regarding the safety and quality of food produced within China, and the Chinese government is under pressure to crack down on its domestic producers who fail to adhere to proper safety standards. The result has been that Chinese citizens often seek to obtain imported food products that they feel are safer. For example, it was recently reported that many mainland Chinese visiting Hong Kong are returning to China carrying canned milk and dairy products. China has been forced to impose limits on this practice as Chinese food producers, subject to increased scrutiny, have begun to demand greater vigilance with respect to imports.

China currently imposes bans on imports of poultry products from two States – Arkansas and Virginia. As a matter of international rules, neither of these bans is justified. The WTO Agreement on Sanitary and Phytosanitary Measures requires that WTO Member countries base their measures on certain specified international standards, including those of the World Organization for Animal Health (OIE). Under OIE guidelines, animal products should be banned for import only if the country from which they are exported is experiencing a reportable "List A" animal disease. In regard to Avian Influenza (AI), only highly pathogenic strains of AI are

reportable List A diseases. Neither Arkansas nor Virginia has experienced high path AI; the only cases they have reported are low path incidents. (In fact, the United States has not had a case of high path AI. Ironically, China has reported a number of high path AI incidents).

Although low path AI incidents are not reportable under international standards, in the United States all incidents of AI are reported. Our system of disease reporting is extremely comprehensive and intended to collect all possible data about human and animal diseases. As a result, we are, in a sense, our own worst enemy. Countries like China will, at times, take action against our exports based on reported incidents of low path AI. In our view, Chinese health officials are now under a tremendous amount of internal pressure and scrutiny and want to appear to their domestic constituents to be increasingly vigilant. However, the bans on Arkansas and Virginia are inconsistent with international rules and we are working with our government and with the Chinese government to address this situation.

I should add that China is not the only country that has imposed bans on exports from particular States of the United States based on reported low path incidents. Other countries – Japan, Taiwan and India immediately come to mind – have done likewise.

Key Policy Leaders in China

Our experience has been that key policy decisions in China are made within the China People's Congress. The U.S. industry has worked with both the China Chamber of Commerce of Foodstuffs and Native Produce (CFNA), which is part of the Chinese Ministry of Commerce (MOFCOM) and with the Chinese Animal Agriculture Association (CAAA), which is affiliated with China's Ministry of Agriculture. During the debate over the DeLauro Amendment and attempts to revoke or modify it, USAPEEC sponsored a visit to the United States by officials from both ministries so that they could better understand our congressional process. The delegation from China spent several weeks in Washington visiting with various congressional offices and attending a short course on the congressional process conducted jointly by Georgetown University and the Brookings Institution. Although we believe that the visit gave our Chinese interlocutors a better appreciation of the difficulty that we faced in attempting to get changes to the DeLauro Amendment, we were unable to forestall the initiation of the antidumping investigation in China.

Key Policy Changes in the United States

You have asked, finally, what policy changes the United States Congress should consider as we move forward toward increased, and increasingly important, trade with China. We can suggest several ideas:

- Revision of the Antidumping and Safeguard Laws. Historically, the United States has been the primary user of import protection laws. The U.S. has initiated hundreds more antidumping cases than any other country. Indeed, the antidumping bar has become a formidable industry in Washington. Traditionally, antidumping was considered to be a way in which the U.S. could allegedly guarantee “fair” competition from imports without any international oversight and without much consequence. However, those days are over. First, it should be noted that other countries have never considered the U.S. antidumping system to be fair; to the contrary, it is universally considered by our trading partners as unfair, protectionist and designed to shelter uncompetitive U.S. industries from foreign competition. Other countries have now learned to “play the game” and increasingly it is competitive U.S. exporters who are subject to antidumping investigations in other countries. Other countries now believe that they can bring antidumping actions and impose additional duties on U.S. goods with impunity because the United States, concerned about protecting its own antidumping system, will not challenge them. Since the turn of the Century, the U.S. poultry export industry has spent tens of millions of dollars defending antidumping cases. In 2000, the first of these cases was brought by South Africa under the dubious “average cost of production theory.” The U.S. Government has allowed this absurd decision to stand without being challenged for 13 years, and the U.S. lost this market to Brazil. Subsequently, copy-cat antidumping cases have been brought in the Ukraine, China and Mexico. In each case, the U.S. industry has incurred tremendous legal costs and has lost hundreds of millions of dollars in trade. Even when the U.S. has decided to launch a WTO challenge – as in the case of China – it required the industry to spend tens of millions of dollars on lawyers and to suffer several billions of dollars in lost trade as it awaits the outcome of the WTO panel decision. In short, the old antidumping rules and system no longer operate to the benefit of the United States. Reform of the U.S. laws, and of the international rules governing the imposition of antidumping duties, is long overdue. Similarly, the U.S. safeguard law is anachronistic and should be reconsidered and revised.
- Support for FSIS. One of the most important functions that the U.S. Department of Agriculture performs is its inspection of meat and poultry. It is also one of the functions for which USDA is universally respected. Congress should increase its support of FSIS and its role as protector of meat and poultry food safety. Congress should also realize that our success as an exporter of meat and poultry – U.S. pork and U.S. poultry are our country’s most competitive agricultural export sectors – is based on the international perception of FSIS as a high quality, science-based regulator. Congress should do nothing to interfere with FSIS’s valid exercise of that role, but instead should provide additional resources so that FSIS can function both as an inspector of U.S. product, and as a fair assessor of requests by other countries to access our market. The DeLauro amendment did nothing to

protect the U.S consumer; to the contrary, by suggesting that FSIS was not capable to doing its job, it undermined the very protections that we need from FSIS as the world's leading meat and poultry regulator.

- Honoring International Commitments. Americans expect other countries to treat us fairly and to live by international trade rules. The U.S Government needs to set the example. It cannot preach WTO rules if it does not live by them. This is particularly true for our Congress. It is an international embarrassment when Congress passes a law that is then found to be blatantly inconsistent with the international obligations that we have undertaken. This occurred when China challenged the DeLauro Amendment and the WTO ruled that it violated international standards. It has happened previously on other occasions – *e.g.*, in the mid-1990's when 21 other WTO Members challenged the so-called “Ford Amendment” on tobacco. As the leading nation in the international trade community, the U.S. must set the example. Congress needs to develop a mechanism whereby proposals like the DeLauro Amendment would be reviewed for consistency with international obligations – much like the process whereby the parliamentarian reviews proposed legislation for consistency with congressional process and rules.

Ladies and Gentlemen of the Commission: Thank you for this opportunity to speak with you today about trade with China. I would be happy to try to address any questions you might have.