



**National Pork Producers Council
Comments on the
“Transatlantic Trade and Investment Partnership”**

The National Pork Producers Council (NPPC) hereby submits comments in response to the request for comment by the Office of the United States Trade Representative (USTR), entitled “Request for Comments Concerning Proposed Transatlantic Trade and Investment Agreement,” published in the Federal Register on April 1, 2013.

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. 2012 was another record setting year for U.S. pork exports, with sales totaling 2.3 million metric tons, valued at \$6.3 billion. Exports have become a vitally important component of the U.S. pork economy, now accounting for 27 percent of overall demand for U.S. pork and pork products.

Increasing pork exports are important to many more Americans than just pork producers. The U.S. pork industry supports an estimated 550,000 domestic jobs, about 110,000 of which are the result of U.S. pork exports. According to Iowa State University economist Dermot Hayes, the increased U.S. pork exports that will be generated by TTIP will create 17,680 new jobs in the United States.

I. The EU Pork Market

The EU has one of the most highly protected pork markets in the world. It uses tariff rate quotas (TRQs) with high in quota duties and prohibitively high out of quota duties, kicking in at small volumes, to limit imports of pork. In addition, the EU maintains an array of non-science based SPS barriers that further restrict imports.

EU pork consumption is 22.5 million metric tons (MT) 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 the EU should be a huge market for competitively-priced, high quality U.S. pork. However, due to the barriers described in this submission, U.S. pork exports to the EU are extremely small, totaling only 4,889 MT in 2012. 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, mostly affluent consumers.

II. General Architecture of a U.S.-EU Free Trade Agreement as It Relates to Pork

NPPC has been a strong public supporter of the TTIP. As we have made clear in previous comments, it is vitally important that the TTIP be the kind of comprehensive, high standard 21st century trade agreement that has been central to the Administration's trade policy efforts to date. The Trans-Pacific Partnership (TPP) should serve as the template for the TTIP. The TPP covers all sectors. The TTIP must achieve this same standard.

Previous free trade agreements negotiated by the EU with other countries do not meet this standard. Existing EU agreements are, in reality, preferential trade agreements, with widespread exceptions to full trade liberalization, particularly in the area of agriculture. This kind of outcome is not acceptable for the TTIP negotiations. Undertaking TTIP negotiations that partially exclude agriculture, or any other sector, would undermine U.S. efforts in the TPP negotiations, as well as any future U.S. FTA negotiations.

In order to achieve the same outcome for U.S. pork with the EU that the U.S. has reached with all other FTA partners – complete open trade – EU import duties on pork must be eliminated and all non-tariff barriers, including sanitary and phytosanitary (SPS) restrictions, must be removed. Furthermore, U.S. negotiators must avoid introduction into the negotiations of other potential non-science based proposals by the EU that could, if implemented, act as major impediments to trade (*e.g.*, animal welfare measures).

The United States has reportedly taken a negotiating position with Japan with respect to the TPP that is directly relevant to its negotiating position with the EU with respect to the TTIP. It is our understanding that the United States will pursue a three-pronged approach with Japan, with parallel negotiations on tariff issues, non-tariff measures, and the automobile sector. U.S. negotiations with Japan will not be considered concluded until all significant non-tariff measures are satisfactorily addressed. This same approach should be taken with the EU.

In a recent survey of key stakeholders in both the United States and EU, the Atlantic Council found that regulatory convergence would be the most important component of the TTIP negotiations, and that SPS issues would be the most difficult to resolve. The Atlantic Council survey highlights the importance of aggressively addressing non-tariff measures, and SPS measures in particular, through the TTIP.

NPPC's views on the TTIP are entirely consistent with those found in the Atlantic Council survey. The elimination of SPS measures is every bit as important as the elimination of EU import duties. We need look no further than Russia's recent WTO Accession negotiations to understand the importance of fully addressing SPS barriers to trade before negotiations are concluded and the United States opens its market. In that case, although the United States obtained tariff rate quota concessions on pork totaling more than 400,000 MT, those concessions are being nullified by Russia's blatant disregard for WTO SPS rules, including its ractopamine and tetracycline bans, which severely restrict U.S. pork sales.

Some high level EU political leaders and members of the EU Parliament have made statements in recent months suggesting that sensitive SPS issues, such as biotechnology and beef hormones,

must be off the table in the TTIP negotiations. While we have not seen direct statements about sensitive pork issues, such as ractopamine, we believe it is likely these same EU leaders would like to place some of our industry's key SPS concerns in the same "non-negotiable" category.

The EU's approach to agriculture was clearly enunciated in the Parliament's April 24, 2013 resolution on the TTIP negotiations. A key paragraph in the resolution reads:

17. (The EU Parliament) emphasizes the sensitivity of certain fields of negotiations, such as the agricultural sector where the perception of Genetically Modified Organisms (GMOs), cloning and consumer health is divergent in between the US and the EU; sees an opportunity in enhanced cooperation in agriculture trade and stresses the importance of an ambitious and balanced outcome in this field; stresses that the agreement must not undermine the fundamental values of either side, for example the precautionary principle in the EU; calls on the US to lift the import ban on EU beef products as a trust-building measure;

Accepting the EU's approach to the negotiations would be an enormous mistake. The TTIP offers a once in a life time opportunity to address, in a systematic way, non-tariff measures imposed by the EU that are not based on science and that are not consistent with EU obligations under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement).

Using the TTIP to extract broad based SPS related commitments from the EU, that are founded on sound science and legitimate food safety considerations, would have an importance that goes beyond highly valuable market access in the EU. In preferential trade agreements with other countries, the EU has succeeded in maintaining non-science based SPS measures and, in some cases, introduced additional non-tariff measures. Many of the unjustified SPS measures that U.S. pork producers face around the world, such as ractopamine bans, emanated from the EU. Thus, the TTIP should be used to send a message to trading partners around the world that science and legitimate food safety considerations should be the basis for the establishment of SPS measures, consistent with the WTO SPS Agreement.

III. Tariff Elimination

During the WTO Uruguay Round, the EU limited its pork TRQs to 70,000 MT, far less than one percent of EU consumption. With EU pork consumption at 22.5 million MT, five percent of EU consumption – the standard set in the Uruguay Round for minimum access – would translate into a TRQ of more than one million MT. Moreover, the in quota duties for the EU's pork TRQs range from 250 Euros / MT to 784 Euros / MT (\$325-\$1020 / MT), duty rates that make it difficult to ship under the TRQs. And, 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.

U.S. pork producers expect the same result in the TTIP negotiations as every other U.S. FTA – the complete elimination of the EU's import duties on U.S. pork in the shortest possible period of time. In its agreement with Chile, the EU provides a duty free TRQ for Chilean pork, with the

size of the TRQ growing each year. U.S. pork producers unequivocally will not accept a TRQ. Like all other U.S. FTA partners, the EU must eliminate tariffs on all pork and pork products. The EU's current six TRQs for different cuts of pork must be abolished immediately and tariff-only trade must be established with the tariffs quickly eliminated. U.S. pork producers will strongly oppose any deal which does not deliver the elimination of all tariffs on pork and pork products.

IV. Elimination of SPS Requirements

A. Ractopamine Ban

The EU maintains a ban on pork produced with ractopamine, a protein feed ingredient 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 European Union (PFEU) program to verify that the pork 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 the meat. These requirements are a major impediment to U.S. pork exports to the EU, confining U.S. exports to a small group of U.S. suppliers.

The U.S. Food and Drug Administration (FDA) approved ractopamine for use in U.S. pork production after an extensive review. It is approved for use in 25 countries around the world. The *Codex Alimentarius* endorsed the safety of ractopamine in July 2012, by agreeing on a recommended maximum residue level (MRL) in beef and pork.

The EU's ban on ractopamine is not based on sound science or legitimate food safety concerns. In fact, the EU has never conducted a risk assessment despite its promise to do so. The EU ractopamine ban thus violates numerous provisions of the WTO SPS Agreement, 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).

U.S. pork producers will not accept any outcome other than the elimination of the EU ban on the use of ractopamine in the production process, which is in clear violation of the WTO SPS Agreement.

B. Trichinae Mitigation Requirement

Trichinae is not an issue in the United States. USDA does not require the U.S. pork industry to test for the parasite because Center for Disease Control (CDC) data show that the likelihood of contracting the parasite in the United States is less than 1 in 300 million. Yet, even though the risk of contracting trichinae from consuming U.S. pork is negligible, the EU requires U.S. pork to be tested for trichinae through the USDA Agricultural Marketing Service (AMS) Trichinae Analysis and Laboratory Certification Program. Submitting pork to testing under the AMS Certification Program is both costly and burdensome.

Over the last thirty years, the U.S. pork industry has implemented a strong biosecurity program for pork production that has been effective in reducing the risk of trichinosis in the U.S. swine herd to negligible levels. This biosecurity program is supplemented by the Pork Quality Assurance (PQA) Plus program administered by the National Pork Board, which facilitates veterinarian/producer development and maintenance of bio-security measures.

The strong bio-security measures and federal regulations on animal feeding practices implemented by the United States over the last 30 years has been remarkably successful in reducing the incidence of trichinae in the U.S. commercial herd. Swine surveys conducted by the U.S. government found no cases of trichinosis in 1990, 1995, 2000 or 2006. Based on tests conducted by USDA under the AMS Trichinae Export Program, the prevalence of trichinosis in the United States is 0.194 per million animals. As mentioned above, CDC data demonstrate that the chances of getting trichinosis through the consumption of commercially produced U.S. pork at one in 300 million.

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 United States has demonstrated negligible risk. The EU's refusal to provide an exemption from trichinae testing requirements may be related to domestic political considerations – only one EU Member State (Denmark) has been able to get an exemption from trichinae testing. Commission officials may be reluctant to provide a third country with a trichinae testing exemption, when most pork producing EU Member States fail to qualify for the exemption.

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

C. Pathogen Reduction Treatment Prohibition

The EU currently prohibits the use of anti-microbial or pathogen reduction treatments (PRTs) for pork, including hyperchlorination and organic acids. The PRT ban is contained in EU Regulation 853/2004, Article 3.2, which requires that food producers not use any substance other than potable water in removing contamination from meat products, including carcasses. Regulation 853/2004 is part of the EU's so-called "hygiene directives," implemented in January 2006. The EU prohibition adds significantly to the cost of exporting pork to the EU.

PRTs are approved for use in the United States as a means of reducing or eliminating bacterial contamination and improving product safety for meat products, including pork. The use of PRTs in pork production was subject to a rigorous risk assessment by the U.S. Food and Drug Administration (FDA), which found their use, in accordance with recommended manufacturing practices, to be a safe and effective way of eliminating bacterial contamination on pork products (21 CFR 184.1061, 21 CFT 173.370). The *Codex Alimentarius* has also recognized the safety of PRTs in meat production when used in accordance with good manufacturing practices (CAC,

Codex Standard, 192-1995). Thus, the PRTs commonly used in the U.S. pork industry pose no health risks, and help ensure the safety of meat products.

The United States is in the initial phases of a WTO dispute settlement case with the EU concerning its PRTs for poultry. USTR requested a WTO panel to hear this case in late 2009, but since then there has been no action on the case.

In February 2013 the EU approved the use of lactic acid as a PRT for beef. The EU approval followed an endorsement by the European Food Safety Authority, which found that the use of lactic acid for beef posed “no significant concerns for consumers.” EU meat processors welcomed the decision as providing a new and effective tool to reduce food contamination. Since lactic acid is the most widely used PRT in the U.S. pork industry, the EU should also, and without delay, allow its use in pork production. Further, each of the other PRTs used in the U.S. pork industry – peroxyacetic acid, hypochlorous acid, acetic acid, and sodium hypochlorite – should also be approved by the EU.

The EU decision on lactic acid for beef is a welcome step in the right direction. However, it is not enough. Like its ractopamine ban and the trichinae testing requirements, the EU’s restrictions on PRTs are not based on science and must be eliminated through the TTIP negotiations.

D. Equivalence Recognition

As part of the TTIP, U.S. negotiators should seek and receive a broad recognition by the EU of the equivalence of the U.S. pork production and processing system in ensuring product safety. The United States has sought and received such recognition by other FTA partners. A copy of the exchange of letters with Vietnam is provided as an example. Obtaining an equivalence recognition from the EU goes hand-in-hand with the principle of free trade under the TTIP.

A full recognition of equivalence by the EU has been a long sought, but elusive, U.S. government and U.S. meat industry goal. An EU equivalence commitment under the TTIP should be broad enough to ensure acceptance of existing U.S. SPS practices, and forward leaning in nature, to ensure that the EU cannot negate market access negotiated through the TTIP by imposing new measures (for example, relating to animal welfare or newly emerging and unanticipated production technology developments).

An integral part of an EU equivalence commitment must be recognition of the safety of the U.S. meat plant inspection and approval system. Although the EU has simplified the process for plant approval for U.S. exports to the EU, there are still significant costly documentation and segregation requirements in place that deter most U.S. exporters 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 specific EU plant approval requirements of primary concern are described below:

Non co-minglement requirement: The EU requires that all animals to be slaughtered for meat export to the EU be kept separate from other animals. It requires that slaughter, cutting and packing areas be cleaned and sanitized before slaughter and during processing of meat destined for the EU. It requires that meat intended for use in the domestic market or other third-country exports be kept in a separate room from meat intended for the EU, and that slaughter and processing of meat intended for the EU take place during a designated time period different from that for other meat.

There is no science-based reason for the segregation of meat destined for the EU in the slaughter and processing and packing process. Meat products coming from animals produced with ractopamine can be easily segregated and distinguished, without calling for separate slaughter and processing rooms, and without a requirement for complete sanitization of slaughter and processing facilities before and after an EU run. There is no science-based reason that the EU has cited for maintaining these stringent non co-minglement requirements.

Pig Heart Incision requirement: The EU requires the incision of six pig hearts per week for animals less than one year old, and incision of all pig hearts for animals more than one year old. The EU pig heart incision requirement is to prevent cysticercosis (tapeworm). Cysticercosis can only be acquired by eating uncooked pork from pigs that have become infected by eating feces from a human tape worm carrier. There is an extremely low incidence of cysticercosis in the U.S. herd, and FSIS looks for this parasite under its regular post mortem inspection procedure.

The pig heart incision is reportedly not required of pork from vertically integrated operation systems in the EU. Moreover, some EU member states fail to rigorously enforce the heart incision requirement.

The EU has never identified legitimate science-based reasons why the pig heart incisions are required for pork imported from the United States, in light of the Hazard Analysis and Critical Control Point based process that the United States uses to ensure product safety, and visual inspection of hearts by inspectors. Given these facts, the EU's pig heart incision requirement is not needed for U.S. pork.

Other Issues

During the course of the TTIP negotiations, we expect that the EU may table other proposals that, if implemented, would act as serious obstacles to free trade. One example is animal welfare measures, where the EU has implemented measures in its domestic market, which if imposed on the U.S. pork industry, would compromise our ability to export under the TTIP. The imposition of EU animal welfare standards on U.S. pork producers would be inconsistent with WTO rules and should be a non-starter in the TTIP negotiations. The WTO agreements do not permit the imposition of import restrictions based on animal welfare concerns, and such an action would thus violate GATT Article III, Article XI and various provisions in the WTO SPS Agreement. Likewise, the EU is reportedly seeking the introduction of restrictions on geographical indications (GI) for certain agricultural products as a component of the TTIP negotiations. The imposition of GI measures on certain U.S. agricultural products, including some pork products,

would impede exports of these products and should not be a component of the TTIP negotiations. The U.S. should forcefully push back on any and all current or future SPS barriers and other non-tariff barriers to trade that the EU may try to maintain or erect through the TTIP negotiations.