July 5, 2012

The Honorable Ron Kirk
United States Trade Representative
Office of the United States Trade Representative
600 17th St. NW
Washington, DC 20508

Dear Ambassador Kirk:

On June 21, 2012, Brazil announced that it is filing a challenge in the World Trade Organization against the anti-dumping duties South Africa recently imposed on Brazilian chicken. You will recall that South Africa imposed anti-dumping duties on U.S. poultry imports nearly 12 years ago, using the same flawed theory that it recently used against Brazilian imports. However, in the intervening years, our government has taken no action. The USA Poultry & Egg Export Council (USAPEEC) and the National Chicken Council (NCC) strongly urge you to match Brazil's commitment to its industry by filing a WTO challenge on behalf of U.S. chicken exporters. In addition to – but not instead of – we urge the U.S. government to support Brazil as a third-party in its case if Brazil will agree to reciprocate and support the United States in its case. Based on recent communication we have had with our Brazilian counterparts, we are confident that Brazil would welcome a coordinated effort by the United States in this matter.

Action in the WTO against South Africa is long overdue. South Africa has maintained illegal anti-dumping measures against U.S. imports since 2000. Indeed, a South African trial court ruled earlier this year that the South African government's measures are illegal; at the same time, however, the court also ruled that South Africa would have three more years to review the legal basis for its case and left the duties in place in the interim. USAPEEC and the South African Association of Meat Importers and Exporters (AMIE) were among 74 plaintiffs that had challenged anti-dumping duties before the South African courts.

This bizarre decision is just the latest of a series of egregious and blatantly unfair decisions. In 2000, the South African International Trade Administration Commission (ITAC) imposed anti-dumping duties on U.S. bone-in chicken cuts ranging from 2.24 to 6.96 rand per kilogram, in addition to the usual import duty of 2.20 rand per kilo, an effective duty range of 78.7 percent to 244 percent, depending on supplier. The ITAC decision effectively closed the door for imports of U.S. chicken into South Africa.

Although the duties were scheduled to expire in 2005 under South Africa's sunset law, ITAC ruled, in response to a request by the South African Poultry Association, that the duties would remain in place for an additional five years. The South African High Court ruled in 2007 that anti-dumping duties against U.S. poultry and many other products should have expired in 2005, but ITAC ignored the decision. Then, in 2010, after ITAC announced that the duties would expire later that year, the South African industry filed another submission which led to a "sunset review."

In February 2012, ITAC imposed across-the-board punitive duties of 9.40 rand per kilo, without differentiating among suppliers. Using a weighted average export price for U.S. bone-in chicken cuts from 2000 through the first quarter of 2012, the effective average duty levied by South Africa on these products is 258.8 percent.

In an analysis, USAPEEC's economist has determined that if the duties were to be rescinded, estimated exports of U.S. bone-in chicken parts (chicken leg quarters, drumsticks, etc.) to South Africa would increase to an estimated 127,000 metric tons annually. All else being equal, this would result in an increase of the export price of U.S. bone-in chicken parts of nearly 4 percent.

The South African anti-dumping duty is based on the flawed theory that all parts of a chicken have the same value. This defies common sense. In effect, South Africa is saying that chicken producers should sell chicken feet for the same price as chicken breast. It also flies in the face of generally accepted accounting principles (GAAP) followed by all major U.S. chicken producers (many of them large, publicly traded and audited companies), and by all major South African chicken producers. The premise also does not adhere to South Africa's own accounting principles. Because of this, it violates WTO rules governing the imposition of anti-dumping duties.

At every step, the South African government acted on the assumption that it could *violate WTO rules with impunity, and U.S inaction has confirmed and rewarded that approach. Worse yet,* U.S. tolerance of South Africa's illegal actions has emboldened other countries, including China, Ukraine and Mexico to bring almost identical anti-dumping cases against U.S. poultry. Countries like South Africa are illegally blocking U.S. exports at a time when the President's policy is to double U.S. exports over a five-year period. And, U.S. poultry is perhaps the most competitive and potentially successful export sector in U.S. agriculture.

USAPEEC and its members have challenged these illegal anti-dumping duties before ITAC and the South Africa courts for 12 years. The industry has carried this load alone, and has expended substantial efforts and millions of dollars to regain access to a market from which we have been illegally excluded. It is time for our government to tell South Africa we will no longer accept that exclusion. It is time for the U.S. government to show the same commitment to its poultry export industry that Brazil is showing to its.

Sincerely,

James H. Sumner
President
USA Poultry & Egg Export Council

Michael Brown
President
National Chicken Council