

**AGRICULTURAL TECHNICAL ADVISORY
COMMITTEE FOR TRADE IN PROCESSED FOODS**

December 3, 2015

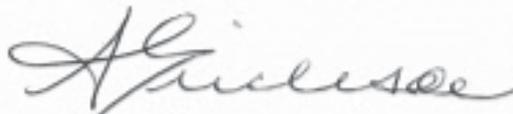
The Honorable Michael Froman
United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Dear Ambassador Froman:

Pursuant to section 5(b)(4) of the Bipartisan Trade Priorities and Accountability Act of 2015, and Section 135 (e) of the Trade Act of 1974, as amended, I hereby transmit the report of the Agricultural Technical Advisory Committee for Trade in Processed Foods on the proposed Trans-Pacific Partnership (TPP) Agreement.

I would be grateful if you would share this report with the President and the Congress.

Sincerely,



Audrae Erickson
Chair

Enclosure

THE TRANS-PACIFIC PARTNERSHIP (TPP) AGREEMENT

**Report of the Agricultural Technical Advisory Committee for
Trade in Processed Foods**

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AGRICULTURAL TECHNICAL ADVISORY COMMITTEE FOR TRADE IN PROCESSED FOODS

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Report of the Agricultural Technical Advisory Committee for Trade in Processed Foods to the President, the Congress and the United States Trade Representative on the TPP

I. Purpose of the Report

On November 9, 2015, President Obama notified the Speaker of the House of Representatives and the President of the Senate that he intends to enter into the Trans-Pacific Partnership (TPP) Agreement. Section 5(b)(4) of the Bipartisan Trade Priorities and Accountability Act of 2015 and Section 135 (e)(1) of the Trade Act of 1974, as amended, Section 2104 (e) of the Trade Act of 2002 require that advisory committees provide the President, the U.S. Trade Representative and Congress with reports required under Section 135 (e)(1) of the Trade Act of 1974, as amended, not later than 30 days after the President notifies Congress of his intent to enter into an agreement.

Under Section 135 (e) of the Trade Act of 1974, as amended, the report of the advisory Committee for Trade Policy and Negotiations and each appropriate policy advisory committee must include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the applicable overall and principle negotiating objectives set forth in the Bipartisan Trade Priorities and Accountability Act of 2015. The report must also include an advisory opinion as to whether the agreement provides for equity and reciprocity within the sector or functional area.

Pursuant to the statutory requirements referenced above, the Agricultural Technical Advisory Committee for Trade in Processed Foods hereby submits the following report:

II. Executive Summary of Committee Report

A majority of the ATAC for Trade in Processed Foods supports the TPP Agreement.

The Committee strongly endorses the fundamental U.S. goal of opening markets; promoting trade, investment and tourism; expanding economic opportunity; and strengthening political stability and security throughout the world. Since this ATAC for Trade in Processed Foods was established in 2003, it has firmly supported comprehensive free trade agreements and trade promotion agreements. The Committee endorses the Administration's goal of reaching a high standard trade agreement in the Asia-Pacific region to enable highly competitive U.S. processed food exports to reach almost 500 million consumers in the TPP member countries. We believe major progress has been made in achieving this goal. However, certain concerns were raised by the Committee as noted below. We believe the Administration must ensure that comprehensive elimination of tariffs and non-tariff barriers to trade remain the goal of future U.S. trade agreements and for future signatories to the TPP.

The Committee emphasizes that this report addresses the Agreement as it stood on December 3, 2015. Any subsequent amendments, side letters or other modifications cannot be anticipated, nor addressed, in this report.

III. Brief Description of the Mandate of the Agricultural Technical Advisory Committee for Trade in Processed Foods

The Agricultural Technical Advisory Committee for Trade in Processed Foods is authorized by Sections 135 (c) (1) and (2) of the Trade Act of 1974 (Pub. L. No. 93-618), as amended, and is intended to ensure that representatives of the private sector have an opportunity to provide input to U.S. Government negotiators regarding all tariff and trade matters. The Committee provides a formal mechanism through which the U.S. Government may seek advice and information. It is part of a network of statutorily established committees that provide advice on trade negotiations to the President, the Office of the U.S. Trade Representative, the U.S. Department of Agriculture and the U.S. Department of Commerce. Established in 2003, the ATAC for Trade in Processed Foods provides advice and information regarding international trade in processed foods, one of the fastest growing segments of U.S. agricultural trade. The Committee furnishes advisory opinions and reports and performs other technical functions that are appropriate or are requested by the U.S. Trade Representative and/or the Secretary of Agriculture. In carrying out its functions, the Committee draws upon the technical competence and experience of its members who represent a broad cross-section of the U.S. processed foods industry.

Further, while the Committee appreciated the consultations during the TPP negotiating process, we urge the Administration to further its engagement with the Committee before and during negotiations of trade agreements to ensure that the views and advice of the private sector are adequately reflected, consistent with Section 135 of the Trade Act of 1974, as amended and the legislative history thereof.

IV. Overall Value of the TPP Agreement to the U.S. Processed Foods Sector

The TPP offers unprecedented new market access opportunities for the U.S. processed foods sector with the potential to substantially increase U.S. processed foods exports to the eleven signatory countries, the total value of which exceeded \$26.3 billion in 2014. Significant potential to increase U.S. processed foods exports will be made possible due to market access openings stemming from reduced and eliminated tariffs, improved administration of newly established tariff rate quotas (TRQs) and enhanced rules governing non-tariff barriers. In short, the TPP agreement will usher in new access for several U.S. processed foods products in markets where trade in these goods face steep tariffs or a lack of preferential access. In addition, the TPP agreement covers an important portion of the global supply chain for many product categories in the processed foods sector with the potential for substantial further supply chain integration when additional countries join the TPP.

Preferential access granted under the TPP will enable the U.S. processed foods industry to compete on a more level playing field vis-à-vis its foreign competitors, including processed food exporters from Australia, Chile, Malaysia and Vietnam who currently have a competitive advantage over their U.S. counterparts as a result of their existing free trade agreements with

Japan. Similarly, once the European Union completes its free trade agreement negotiations with Japan, Malaysia and Vietnam, EU processed food exporters will enjoy preferential tariff access, leaving U.S. processed food exporters at a disadvantage unless the TPP is enacted.

V. Market Access and Goods

The TPP provides U.S. processed food industries with measurable market access benefits across the markets of the eleven other participating countries. The Committee welcomes the elimination of the vast majority of tariffs on the U.S. processed foods sector that will result from enactment of the TPP and encourages the Administration to pursue accelerated phase outs wherever possible. The United States already has duty free access for U.S. processed foods exports under existing free trade agreements with Chile, Mexico, Peru and Singapore. Benefits are particularly concentrated in the five countries with which the United States does not already have a free trade agreement (Brunei, Japan, Malaysia, New Zealand, and Vietnam). However, additional gains have been made with two existing FTA partners, Australia and Canada.

The section below outlines the country-by-country impact on market access for the U.S. processed foods industry.

Australia

The United States has had a free trade agreement with Australia since 2005. U.S. processed foods exports to Australia exceeded \$1.1 billion in 2014. No new market access will occur under the TPP as a result of the existing United States-Australia Free Trade Agreement.

However, Committee members expressed disappointment with the new TRQ for sugar imports from Australia, as it offers minimal expansion of access to the U.S. market from a country that is one of the world's most competitive raw sugar suppliers. Sugar is a key ingredient for U.S. food and beverage manufacturers. Access to a reliable and reasonably priced supply is critical to the competitiveness of U.S. processed foods. The Committee noted the processed foods industry will still face a shortfall that far exceeds the 65,000 metric tons in new sugar allocation provided to Australia.

Brunei

Brunei has agreed to the immediate removal of tariffs for nearly all processed foods with final implementation of 100 percent duty free access to occur in year seven. Although the value of U.S. processed foods exports to Brunei is small, the Committee applauds the complete elimination of duties to this market.

Canada

The United States has had a free trade agreement with Canada since 1994, with U.S. processed foods exports to this market reaching \$13.4 billion in 2014. Duty free access for all U.S. processed foods exports has been achieved under the North American Free Trade Agreement (NAFTA), except for certain dairy, poultry, egg and sugar products. As a result, the TPP will not

affect market access for the vast majority of U.S. processed foods. Regarding the product exceptions under the NAFTA, Canada has agreed to eliminate tariffs on certain dairy products and to phase in TPP-wide TRQs for other U.S. processed foods products. However, Committee members are disappointed with the lack of more significant and meaningful expansion of access for processed U.S. dairy products that would be highly competitive in the Canadian market. Additionally, Committee members are concerned U.S. exporters will not have quota rights for the new TRQs and that there is no transparent mechanism for the United States to verify whether quotas are filled.

Committee members are disappointed with the minimal expansion of access for sugar exports from Canada to the United States. Canada's proximity and reliable production of refined sugar make it a natural supplier to U.S. processed foods industries. Access to a reliable and reasonably priced supply of imported sugar is critical to the competitiveness of U.S. processed foods.

Chile

The United States has had a free trade agreement with Chile since 2004. Under the United States-Chile Free Trade Agreement all U.S. processed foods exports have already been granted duty free access.

Japan

Japan is the largest importer of processed foods among the TPP partners with which the United States does not currently have a free-trade agreement. U.S. processed foods exports to Japan totaled \$3.1 billion in 2014. Nearly one-third of all U.S. processed food exports to Japan will be granted immediate duty free access, including certain processed fruits and vegetables, flavored waters without added sugar, roasted coffee, soups and spices. Up to 75 percent of all U.S. processed foods exports will achieve duty free access between years four and twenty-one of the agreement, including frozen French fries, crackers and biscuits. Although the TPP will not fully eliminate tariffs on all U.S. processed foods exports, additional market access will be provided under tariff rate quotas for several products such as processed cheese, butter, and chocolate confectionary bars. Unfortunately, these TRQs only minimally expand access for U.S. processed foods exporters.

The Committee notes that Japan's removal of tariffs for many U.S. processed foods exports is significant. However, Committee members are concerned that several U.S. processed foods exports will continue to be subject to lengthy tariff phase-outs or will realize only limited additional access.

Malaysia

Under the TPP, Malaysia has agreed to immediately remove tariffs for the majority of all U.S. processed foods exports, including potato products, confectionery products, dairy products, and processed fruits and vegetables, herbal teas, cocoa-containing supplements, and juices. The Committee applauds this outcome as it will support the growth of processed foods exports to

Malaysia which totaled \$470 million in 2014. Importantly, all tariffs for U.S. processed foods exports to Malaysia will be eliminated as a result of this agreement.

However, tariffs for a limited number of U.S. processed foods products, including beer, wine and distilled spirits, will be subject to a long phase-out period. Although the full benefits of the agreement for those U.S. exporters will not be realized for some time, the Committee notes that this is the first time Malaysia has agreed to include such products within the scope of a free trade agreement.

Mexico

The United States has had a free trade agreement with Mexico since 1994. Committee members did not note significant changes to the bilateral trade relationship with Mexico as a result of the TPP.

New Zealand

New Zealand has agreed to immediately eliminate tariffs for most processed foods, but will phase out tariffs for a range of items such as pet food and certain confectionary products. Whereas Committee members had hoped for immediate duty-free access for all U.S. processed foods products, it welcomed the full elimination of tariffs by New Zealand.

Peru

The United States has had a free trade agreement with Peru since 2009. Committee members did not note significant changes to the bilateral trade relationship with Peru as a result of the TPP.

Singapore

The United States has had a free trade agreement with Singapore since 2004. Committee members did not note significant changes to the bilateral trade relationship with Singapore as a result of the TPP.

Vietnam

Under the TPP, Vietnam has agreed to eliminate nearly all tariffs on processed foods within eleven years. This will yield significant benefits to U.S. processed foods industries, which exported \$604 million of products in 2014. Currently, Vietnam's tariff rates are relatively high since it is still implementing the reductions agreed to as part of its formal accession to the World Trade Organization.

The Committee welcomes Vietnam's complete tariff elimination for the majority of processed food exports within four years on a number of priority products such as frozen French fried potatoes, biscuits, wet soups, and savory snack foods. These tariff eliminations are particularly important since many Vietnamese consumers are now being introduced to and are able to purchase U.S. consumer-ready foods and beverages.

The Committee is concerned with the length of phase-out periods for many products. For example:

- Tariffs for beer, wine and distilled spirits will be fully eliminated in 11-12 years.
- Tariffs for confectionery products will be fully eliminated in 4-8 years.
- Tariffs for crackers, biscuits, breads, and starches will be fully eliminated in 8 years.

Committee members note that the TPP includes a provision for parties to accelerate tariff elimination and urge the Administration to pursue discussions with Vietnam on accelerating tariff phase-outs, in particular for the U.S. processed foods products identified above, at the earliest possible opportunity.

VI. Tariff-Rate Quotas

In addition to tariff elimination, the TPP will also provide expanded access for U.S. processed foods exporters in the form of TRQs on sensitive agricultural products. Under the TPP agreement, Japan will establish new country-specific quotas (CSQs) for U.S. wheat and processed wheat products, including mixes and doughs. Japan will also establish a new, duty-free CSQ for U.S. rice and will establish TPP-wide TRQs for dairy products, such as butter, milk powder, evaporated and condensed milk. Canada will expand market access for U.S. dairy products through TRQs that grow over the course of the agreement. This covers products such as butter, cheese, yogurt, whey powder, whole milk powder, ice cream and other dairy products. Canada will also establish TRQs for chicken, turkey, eggs, and egg products and Malaysia and Vietnam will expand market access to U.S. poultry products through TRQs.

Committee members noted disappointment that the TRQs will not provide meaningful new access to the dairy markets of Japan and Canada. The TPP does not fully eliminate tariffs on dairy and for most products the TRQs are so small that meaningful new access is not achieved or does not increase at all in the case of Japan's TRQ for processed cheese. In addition, U.S. exporters to Canada will not have access to quota rights for the new TPP-wide TRQs as they will be reserved for Canadian based companies only. Committee members would like to see greater transparency with Canadian TRQs and larger TRQs for both Japan and Canada that increase annually and eventually phase out over time.

Committee members also note disappointment that the TPP grants country specific TRQs for a specialty food subset of the dairy market without granting reciprocal TRQs for the same specialty foods in other member markets. We note that this may set a non-reciprocal TRQ precedent on high value specialty products that are outside of general provisions for product categories wherein U.S. specialty food producers must compete with all TPP members for a share in the major product category. Importantly, we note that the absence of a Harmonized System code for this specialty food subset makes it difficult to determine immediate and future impacts of tariff free specialty dairy products on U.S. dairy producers.

The Committee is pleased to see strengthened rules governing the administration of TRQs generally and appreciates the commitment of the U.S. Government to work with TPP partners to ensure meaningful market access under these TRQs.

Some members of the Committee expressed concern with “first-come, first-served” system of quota administration. Use of a properly structured historical licensing system permits importers to operate with a degree of certainty concerning their ability to import merchandise that is subject to TRQ restrictions.

VII. Rules of Origin

In general, the rules of origin negotiated in the TPP are favorable to U.S. processed foods exporters. Most product specific rules allow for tariff shift, with some rules requiring Regional Value Content (RVC) requirements. The TPP provides for four different RVC rules, providing exporters with additional opportunities to achieve the RVC requirements. However, the use of RVCs adds complexity in determining TPP eligibility for certain products, such as the chocolate sector, and has the potential to reduce U.S. manufacturer’s flexibility in their operations even when a substantially new and different product is manufactured. The TPP also allows for a 10 percent de minimis rate for non-originating goods, with some exceptions. Certificates of origin do not need to follow a proscribed format as long as they contain a set of minimum data requirements, can be written in English, and should not be rejected due to minor errors or discrepancies.

VIII. Modern Agricultural Biotechnology

Committee members welcome new commitments in the TPP that foster transparency on government measures related to trade in products produced with modern agricultural biotechnology, while reaffirming member governments' right to adopt science-based measures necessary to ensure food safety and animal and plant health.

The TPP also provides for information sharing and institutes procedures for parties to follow when the low-level presence of biotech material is detected in a shipment of agricultural commodities or food products.

IX. Sanitary and Phytosanitary (SPS) Measures

The Committee welcomes enhanced commitments by TPP parties that build on existing commitments under the WTO SPS agreement. The Committee applauds the TPP SPS chapter’s new rules that commit parties to develop and implement science-based SPS measures in a transparent, predictable, and non-discriminatory manner. In particular, TPP enhances parties’ obligations to:

- Show that each risk assessment conducted is appropriate to the circumstances of the risk and that the risk management measure is no more trade restrictive than required to achieve the country’s appropriate level of protection; and

- Encourage parties to use transparent risk communication techniques to share information and explain measures to consumers and other stakeholders.

In addition, the Committee applauds the establishment in Article 7:11 of a mechanism to allow for rapid response to and timely resolution of SPS issues at the border, which is particularly important for perishable products.

Importantly, the TPP's SPS provisions are largely subject to dispute resolution, providing traders important protections against violations. The Committee is also pleased that the SPS chapter commits parties to increase transparency and cooperation on certain activities related to agricultural biotechnology and establishes a consultative mechanism to implement science-based solutions to SPS issues that emerge between TPP countries.

X. Technical Barriers to Trade (TBT)

The TPP's TBT Chapter includes new features that are welcomed by processed foods and beverage exporters. Building on commitments in the World Trade Organization's TBT Agreement and earlier U.S. Free Trade Agreements, the TBT Chapter includes new transparency requirements, including obligations for public consultation early in the development of new measures. Regulatory transparency enables trade-related concerns to be vetted and addressed before new measures are finalized.

The TBT Chapter also provides greater clarification that companies will need to have their goods undergo conformity assessment procedures only once before being able to sell them in TPP markets. In addition, for the first time in an FTA, the TPP has TBT-related annexes of importance to processed food manufacturers, including those on proprietary formulas for prepackaged foods and food additives. Moreover, the Wines and Spirits Annex of the TBT Chapter, simplifies labeling and certification procedures in TPP countries. The Committee welcomes these annexes and encourages the Administration to develop additional annexes that improve regulatory practices for other processed foods industries, such as beer.

XI. Intellectual Property

The TPP strengthens protections against the overly-broad application of geographical indications (GIs) by providing administrative procedures for notification, opposition, and cancellation and setting guidelines to protect the use of generic terms. The TPP also specifies additional commitments for TPP countries to work toward greater mutual acceptance of winemaking practices.

XII. Related Instruments

Vietnam, Malaysia and New Zealand have agreed to recognize Bourbon and Tennessee Whiskey as distinctive products of the United States, and Japan has agreed to begin its internal process for affording such recognition. This recognition is a very important tool to ensure that these distinctly American spirits offered for sale in these markets are produced in accordance with U.S. laws and regulations for the production of Bourbon and Tennessee Whiskey.

XIII. Investment

Investor-State Dispute Settlement (ISDS) offers investors critical protections against unfair or discriminatory treatment. Consistent with the Processed Foods ATAC's previous opposition to product exclusions in U.S. free trade agreements, our Committee has expressed strong opposition to proposals for product-specific exceptions to TPP's provisions. Despite our steadfast support for free trade and the TPP negotiations as a whole, we have cautioned that any product-specific exemption would undermine decades of international and U.S. trade policy, create uncertainty, and introduce avenues for potential discrimination against other U.S. food and agricultural exports.

The Committee is, therefore, deeply concerned to learn that the United States supported a product-specific exemption in the TPP. The Committee calls on the Administration to ensure no current or future party to the TPP or other U.S. trade agreements are allowed product-specific exemptions that weaken support for science-based rules and standards that apply evenly to all product sectors.

XIV. Minority Position

A minority position does not support the TPP agreement. Specifically, the representative from North Carolina dissented due to product exceptions in the Investment Chapter. The representatives from Porter Creek Vineyards and the United Food & Commercial Workers International Union (UFCW) dissented due to the lack of adequate currency manipulation protections. The UFCW representative also dissented due to lack of protections for workers.

XV. Membership of the Committee

A list of members of the Agricultural Technical Advisory Committee for Trade in Processed Foods, along with their respective affiliations, has been provided below.

NAME	ORGANIZATION
John Allan, III	International Dairy Foods Association
Andrew Anderson	Western U.S. Agricultural Trade Association
Robert B. Anderson	Organic Trade Association
Robert Bauer	Association of Food Industries
Muhammad M. Chaudry	Islamic Food and Nutrition Council of America
George R. Davis	Porter Creek Vineyards
Audrae Erickson	Mead Johnson Nutrition

NAME	ORGANIZATION
Thomas S. Gellert	Cheese Importers Association of America
Barbara Gilbert	United Food & Commercial Workers International Union
Ann Grappin	American Potato Trade Alliance
Tim Hamilton	Food Export Association of the Midwest USA / Food Export USA - Northeast
Lisa Hill	Ocean Spray International Services, Inc.
Karen S. Horan	National Confectioners Association
Maia M. Jack, Ph.D.	American Beverage Association
Tom LaFaille	Wine Institute
Christine LoCascio	Distilled Spirits Council of the United States, Inc.
David McCaleb	Brewers Association
John McDermid	PepsiCo
Bill J. McFarland	Musco Family Olive Co.
Autumn V. Price	Land O'Lakes
Melissa San Miguel	Grocery Manufacturers Association
Dick Sadler	Dundee Fruit Company
Paul Schiefer	Amy's Kitchen
Kelly Shea	The WhiteWave Foods Company
Ron Tanner	Specialty Food Association
Sue Taylor	Leprino Foods
Peter Thornton	North Carolina Department of Agriculture and Consumer Services
Bernadette M. Wiltz	Southern United States Trade Association