

November , 2013

Hon. Michael Froman
United States Trade Representative
Office of the United States Trade Representative
600 17th St., N.W.
Washington, DC. 20508

As representatives of the agriculture and food industries, we are writing to express our concerns regarding the U.S. proposal to the Trans-Pacific Partnership Agreement to add a product-specific reference into the language that provides a general exception for regulations to protect human life or health. We are concerned that the proposal would create a new and troubling precedent undermining existing trade disciplines in the Trans Pacific Partnership negotiations.

Indeed, this new approach to the general exception could be used to weaken trade disciplines and defend discriminatory and non-science based regulatory proposals, potentially doing great harm to producers and exporters in the United States. This approach steps toward the ‘precautionary principle’ that is operated by the European Union as a barrier to U.S. agriculture.

We, like others in the business community, are deeply concerned that since the U.S. Government has introduced the product-specific concept, our trading partners will almost certainly follow suit and propose in the TPP and other trade agreements similar product-specific language to protect sensitive industries without the constraints that international rules ordinarily would provide. As a consequence, U.S. farmers and agricultural processors would be the targets of a narrow, parochial set of regulatory interests in overseas markets.

There are myriad types of regulatory measures that confront U.S. agricultural products, and we cannot afford to undermine international rules that ensure that such measures are adopted and applied in ways that result in fair treatment of our exports. To illustrate the harm that would result from the precedent that would be set by the proposed TPP “product-specific” language, it is useful to consider recent examples of foreign regulations that were inconsistent with applicable trade rules but whose sponsors sought to justify them on dubious, non-science-based, health-related grounds:

- **Hormone ban** – In 1997, a WTO dispute settlement panel found the European Union’s import ban on meat from animals treated with certain growth-promoting hormones to be inconsistent with WTO rules and to lack a science-based, health-related justification.
- **Moratorium on genetically modified organisms** – In 2006, another WTO dispute settlement panel found that the European Union’s moratorium on the approval of new GMO traits in agriculture, and individual member states’ bans on GMOs already approved in the EU, to be inconsistent with WTO rules and to lack a science-based, health-related justification.

It is critical for US agriculture and food producers that regulations be science-based to achieve a legitimate health-related objective in order to justify a departure from the ordinarily applicable rules. Trade agreement exceptions like the one now under consideration likely would create a justification for trade harmful measures by implying that they should be subjected to a different standard of review in a dispute-settlement context.

Given that the existing language from GATT Article XX has served the interests of our members for decades without constraining evidence-based U.S. regulatory initiatives, we urge the Administration to reconsider this ill-advised proposal that would create a new and troubling precedent undermining existing trade disciplines and instead focus on opening markets and ensuring fair treatment for U.S. agricultural and food exports.

Sincerely,