Instruments for Achieving U.S. Meat Trade Policy Objectives

Leonard W. Condon*

Thank you for inviting me to address this prestigious conference. I am especially honored to be a part of this very distinguished international panel.

My presentation will focus on instruments available to address trade problems in the meat sector. In that context, I intend to cite certain meat-specific examples which produced positive results, or that are especially relevant. My friend and colleague, Mr. Billy Lloyd will present, I am sure, a more comprehensive inventory of the trade problems faced by U.S. meat exporters.

I. Profile of U.S. Trade in Meats

A. Exports vs. Imports

The United States is in the unusual position of being both a major red meat importer and exporter. Traditionally, the United States has been a large and relatively open market for meat. We have long been a major producer, consumer and importer of beef and pork. More recently, our nation has become a world-class exporter of these meats. According to preliminary data published by the U.S. Department of Agriculture in 1997, the U.S. was the world's largest exporter of pork, and the third largest importer (after Japan and Russia). We lead the world in the volume of beef imported, and only Australia exports more beef than the United States.

The market strategy of the U.S. livestock and meat industry has clearly changed over the past two decades, as reflected in the emergence of the U.S. as a major meat exporter. Because the U.S. population is growing slowly and aging, compared to countries in the developing world, the future growth of the U.S. livestock and meat sector is inextricably linked to our ability to open and expand foreign markets.

In 1995, the U.S. became a net exporter of pork. For now, we still import more beef than we export. However, we earn more money selling beef to the world than we spend buying it. In 1990, we exported 4.4 percent of the beef we produced and 1.6 percent of the pork. Last year, we sold 8.3 percent of U.S. beef and veal production and 6 percent of our pork output to foreign markets. The exported proportion of our production is expected to continue to grow and provide further support for U.S. livestock prices.

B. Export Effects on U.S. Livestock Prices

Export sales of U.S. beef and pork have a direct and growing impact on prices paid to livestock producers. For example, according to a study done by CF Resources, Inc., for USMEF, U.S. beef exports contributed $110.06 per head to the value of each 1,150 pound fed steer sold for slaughter in the United States during 1996. This was up from less than $40 per head in 1987. Pork exports contributed $14.78 per head to the price of each market hog sold in the U.S., up from only $1.70 per head in 1987.

II. Trade Policy Guides

Turning more directly to the subject of international trade negotiation, I will begin by identifying a few of what I regard as fundamental principals. Hopefully, this will establish some parameters for what can realistically be achieved in such discussions:

A. Trade Negotiations are Political Negotiations:

International trade, by definition, involves the exchange of goods or services between countries. Therefore, efforts to resolve trade problems involve bargaining between countries. Since trade is involved, there is usually a significant economic component to such discussions. However, since the bargaining occurs between different political jurisdictions, there is almost always a critical political dimension to international trade negotiation.

To be successful, a negotiation must produce an acceptable political and economic balance for all sides. Trade negotiations are not zero sum exercises. The potential benefit is not finite, and it is not necessary for one side to lose for the other to gain. Therefore, it is possible for all sides to achieve results in trade negotiations that advance their national economic and political interests.

The goal of each negotiating team involved in negotiations that require changes in national law — like the North American Free Trade Agreement (NAFTA) or the Uru-

** Leonard W. Condon, Vice President, International Trade, American Meat Institute, 1700 North Moore Street, Arlington, VA 22209*

Reciprocal Meat Conference Proceedings, Volume 51, 1998.

guay Round Agreement— is to return home with a package that will receive political acceptance. For the U.S. negotiators of these particular agreements, the performance standard was clear and simple -- deliver a product that would attract at least 218 yea votes in the U.S. House of Representatives and more than 50 in the Senate.

B. "Big" Deals Easier to Strike than "Little " Deals

In international trade negotiations, "big" deals are often politically easier to conclude than "little" deals. Complex, multi faceted negotiations — like those that produced the Uruguay Round and NAFTA Agreements — simply include more material to trade. Also, a rules-based, comprehensive negotiation, covering a multiplicity of goods and services complicates that task of vested interest groups dedicated to protecting unjustifiable policies.

C. Trade Negotiation Success Depends on "Leverage"

As in all other types of negotiation, the prospects for a party's success in trade negotiations are directly proportionate to that party's "leverage". Leverage consists of things that you can give to, as well as things you can take away. And leverage can be economic, political, or both. Before committing resources to an effort to overcome a trade barrier, a "leverage assessment" is imperative to determine potential cost versus benefit.

D. Not All Trade Problems are Solvable

Without the proper combinations of leverage and political will, a trade problem cannot be solved. This may mean waiting until the appropriate leverage develops, or it may mean accepting that the barrier is unlikely to disappear over a reasonable period of time

III. Mechanisms for Addressing Import Problems

My presentation will primarily focus on mechanisms to address export problems. However, since we are a major meat importing country, it may be instructive to summarize corresponding mechanisms available under U.S. law to assist U.S. producers and/or processors in obtaining import relief. In this regard, it is important to point out that the three primary U.S. import relief mechanisms are permitted under provisions of the Uruguay Round Agreement and previous multilateral trade agreements, as well as by NAFTA.

Historically, the United States has been more aggressive in its use of import relief instruments than any other country. However, other countries —especially those which have been frequent targets of U.S. actions, like Canada, Mexico, and the European Union (EU) — have now enacted similar laws and are becoming more active in using these internationally-sanctioned instruments to restrict imports from the United States and other exporting counties.

A. Anti-Dumping Duties

Dumping occurs when imported products are being sold in the U.S. market at prices below cost of production or below prices charged in the home market. The U.S. Department of Commerce (USDOC) is responsible for determining if dumping is occurring. Under international agreement, the application of dumping duties requires an independent finding that the imported products are "injuring", or "threatening to injure" the domestic industry. Under applicable U.S. law, the U.S International Trade Commission (USITC) is responsible for making injury determinations. If USDOC finds dumping margins and USITC makes an affirmative finding on injury, penalty duties in the amount of the dumping margins calculated by USDOC are automatic.

U.S. meat imports have not yet been the subject of any anti-dumping actions. However, U.S. beef exports to Mexico are currently being threatened by an anti-dumping petition filed by Mexican cattle feeders. Recently, Mexican sugar producers have successfully petitioned for dumping duties on high fructose corn syrup. Also, Mexican apple growers and settled a dumping case against U.S. apples with an agreement between the Mexican government and U.S. apple growers providing for minimum import prices. In 1996, a dumping petition filed by Florida tomato growers was settled when Mexican tomato growers agreed to respect minimum prices in shipping tomatoes to the U.S. market.

B. Countervailing Duties

Countervailing duties are levied by the United States to offset subsidies paid by foreign governments on products exported to our market. Countervailing duties offset a broad range of subsidies. USDOC is responsible for determining the extent to which imports may benefit from "actionable" subsidies. Countervailing duties may not be applied until there is a determination by USITC that subsidized imports are "injuring" or "threatening to injure" the domestic industry. With positive determinations by USDOC on subsidization, and by USITC on injury, countervailing duties are automatic and continue until USDOC determines that the subsidization has stopped.

In the mid-1980's, NPPC petitioned for countervailing duties on Canadian hogs and pork. The USITC found "injury" on live hogs, but not pork. Countervailing duties continue to be applied to imported Canadian hogs, but are at very low levels.

C. Section 201

Under Section 201, domestic producers do not allege that they are victims of unfair trade practices. They simply claim that their industry is being injured by imports, and temporary protection is needed to allow the domestic industry to adjust. USITC investigates to determine whether the industry is, in fact, being injured by imports and assesses whether temporary tariff relief would provide the

industry with some breathing room to enable it to regain its competitiveness. USITC transmits its recommendation to the President. The President has broad discretion with regard to acting on the USITC advice.

IV. Mechanisms for Addressing Foreign Trade Barriers

There are a number of instruments available to U.S. livestock producers and meat processors to address foreign trade barriers. Unfortunately, none of these approaches is capable of delivering results within time frames typically considered reasonable by the adversely affected parties. Patience and perseverance are essential ingredients in trade negotiations.

The basic framework of rules under which U.S., and world trade is conducted is embodied in agreements administered by the World Trade Organization (WTO). Before January 1, 1995, when the WTO was established, world trade was governed by the General Agreement on Tariffs and Trade, the WTO's predecessor institution. Over 130 nations — including most of the world's major trading nations — are currently members of the WTO.

Under NAFTA, the three North American countries have accepted additional rights and obligations. However, NAFTA was created under GATT/WTO rules and was designed to complement, not replace the WTO.

WTO membership carries with it a number of rights with respect to securing access to the markets of other WTO members, but imposes obligations with respect to providing reciprocal access. In confronting any existing trade barrier, the first issue that needs to be determined is the WTO status of the country. If the country imposing the measure is a WTO member, the next logical question is: does the Agreement give us any rights with regard to the offending barrier?

A. Barriers Covered by Existing Agreements

1. Bilateral negotiations under threat of formal dispute settlement action

Over the past 15 years, the United States has been successful in gaining valuable access to important markets by citing a GATT or WTO member for maintaining a trade restrictive measure in violation of the Agreement, and threatening to invoke formal GATT/WTO dispute settlement procedures. The key is that the threat must be credible. The U.S. Government must demonstrate strong political resolve to carry through. Using this strategy, U.S. negotiators — with the support of the industry — have obtained concessions that have proven immensely beneficial. The U.S. -Japan Beef and Citrus Agreement and the Korean Beef Agreement are notable examples of this strategy. These two agreements have been the engine driving the remarkable growth we have experienced in our beef exports over the past 15 years.

A more recent negotiation where a similar strategy was successfully employed involved Philippine restrictions on imports of pork and poultry. A system established by the government of the Philippines to provide limited access for imported pork and poultry essentially guaranteed minimal additional imports. U.S. negotiators complained about the mechanism, proposed modifications, and threatened action under WTO dispute settlement procedures if the import allocation system was not revised to provide real import opportunities.

To provide further leverage to U.S. negotiators in this matter, U.S. livestock and meat industry groups petitioned the U.S. Government to conduct a review of benefits received by the Philippines under the U.S. Generalized System of Preferences (GSP). GSP is a program under which the United States applies zero duties to specific products from developing countries. The Philippines is a major beneficiary of the U.S. GSP program. The Office of the United States Trade Representative initiated a formal review in response to the industry petition.

Earlier this year, U.S. and Philippine negotiators reached an agreement acceptable to the U.S. pork and poultry industries.

2. Formal Dispute Settlement

The most visible example of the United States invoking international dispute settlement proceedings to address a meat trade issue is the ongoing WTO action against the European Union's Hormone Directive. This is only dispute number eight under new WTO rules which went into effect January 1, 1995, and this is the first dispute under the new WTO Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement).

Even though new rules adopted as part of the Uruguay Round Agreements tighten dispute settlement time frames and make other procedural improvements, WTO dispute settlement continues to be a long and complicated process. The U.S. initiated a challenge of the EU Hormone Directive in January 1996, with a formal request for bilateral consultations, always a necessary first step in international dispute settlement. When these consultations failed to resolve the issue, the U.S. on April 25, 1996, asked the WTO's Dispute Settlement Body to establish a panel to rule on the U.S complaint. On August 18, 1998, the panel found that the EU Hormone Directive is inconsistent with WTO rules. The EU appealed the panel's ruling on September 24, 1997.

On January 16, 1998, the WTO Appellate Body modified and reversed some of the panel's findings, but upheld its key conclusion that the Directive was not based on a risk assessment, as required by the SPS Agreement. Now the issue is what does the EU have to do to bring its measures into compliance with WTO rules and how much time does it have to make the necessary legislative and/or regulatory changes. The Dispute Settlement Understanding suggests a time frame of 15 months. However, it encourages

the parties to agree on a reasonable period of time, and provides for an arbitrator to decide, if the parties are unable to agree. In early April, the EU requested that an arbitrator be named.

Other agricultural cases filed by the United States currently at different stages of the WTO dispute settlement process involve actions against the EU on bananas, against Japan on apples and against Canada on dairy products.

B. Barriers Not Covered by Existing Agreements

1. Barriers are Maintained by non WTO Member Countries

Trade barriers maintained by non-WTO member countries are difficult to address, since the United States has no agreement rights. However, as WTO membership becomes universal, this problem will diminish. Countries "accede to", or join, the WTO through a negotiation process which involves the granting of concessions to existing members. All existing members have a right to negotiate with the acceding country. However, as a practical matter, most accession negotiations are conducted by a core group of countries, typically including the United States, Canada, Japan, and the European Union. Concession obtained in these bilateral bargaining sessions become available to all WTO members, once the applicant country becomes a member.

Currently, more than 30 countries have applied for WTO membership. The U.S. has completed accession negotiations with Taiwan, and is hoping to conclude discussions with China. Other key countries negotiating their entry into the WTO include Russia and Saudi Arabia. In closing out negotiations with Taiwan, the U.S obtained some important concession for pork and pork offal products. Meat issues are also prominent in accession negotiations with China and Russia. Of the current WTO candidate countries, these two countries have enormous trade potential. The terms of their entry into the WTO will be critical.

2. Barriers Maintained by WTO Members

The most effective means for dealing with barriers maintained by WTO members who are not covered by existing agreements is a new negotiation. This could be either bilateral, plurilateral , or multilateral. Examples of a bilateral negotiation would be the U.S.-EU Veterinary Equivalence Agreement. A plurilateral negotiation could be the expansion of the North American Free Trade Agreement or the creation of a Free Trade Agreement for the Americas. The Uruguay Round Agreement on Agriculture calls for new multilateral negotiations to begin on agriculture before the end of 1999.

As indicated earlier, multilateral negotiations often provide the best opportunity to liberalize trade on a global scale. Opening markets is politically difficult for all countries, but it is easier to justify if done in the context of a multilateral trade agreement that returns tangible economic benefits.

V. Fast Track Negotiating Authority

In closing, I would like to briefly discuss the relevance of "fast track" negotiating authority. Under our Constitution., the U.S. Congress has exclusive authority over all tariff and trade matters. Fortunately, Congress recognizes that it is incapable of effectively conducting trade negotiations on behalf of the United States. Historically, it has elected to delegate that authority to the President, using a mechanism called fast track.

Fast track represents a promise by the Congress that it will vote on a package of measures negotiated by the Executive Branch with one vote in the House of Representatives and one in the Senate. It further promises that it will conduct the vote in a prescribed period of time. Fast Track is symbolically important because it represents a commitment by the Congress to a negotiating objective, whether it is a new WTO round, expansion of the NAFTA, or the creation of a Free Trade Agreement for the Americas. Without fast track, the Administration lacks negotiating credibility.

The absence of fast track does not render the Administration completely incapable of eliminating foreign trade barriers, but it certainly imposes a major handicap on U.S. negotiators in pursing comprehensive regional or global trade liberalization. More importantly, the unwillingness of the U.S. Congress to grant fast track authority raises serious doubts about the U.S. commitment to free trade and questions about whether the U.S. will retain its role as a world leader on trade.