USA Poultry & Egg Export Council

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Before the
Antitrust Modernization Commission

Comments of the USA Poultry & Egg Export Council
July 8, 2005

The USA Poultry & Egg Export Council (USAPEEC) hereby submits it views in response to the Commission's request for public comment by July 15, 2005, on its proposals of topics for study. In particular, USAPEEC would like to associate itself generally with the views expressed by the Joint Export Trade Alliance (JETA) in opposition to any changes in the Export Trading Company Act or the Webb-Pomerene Act. USAPEEC asserts that these laws provide valuable tools that enable U.S. exporters to address some of the more difficult export problems that they face, and indeed can be crucial in providing innovative means for advancing trade negotiations between the United States and its trading partners and providing market access opportunities for competitive U.S. exporters.

One very recent example should suffice to make this point. The U.S. poultry industry has been engaged in efforts to assist the U.S. government to open markets through the negotiation of various free trade agreements. During the negotiation of the U.S.-Central America Free Trade Agreement (CAFTA) one of the most sensitive - if not the most sensitive issue - was trade in poultry products. After long and difficult negotiations the United States was able to negotiate a market access package that included a tariff-rate quota of 21,800 metric tons of poultry for the most sensitive product - chicken leg quarters. Over time, the amount of that TRQ will increase and the over-quota rate of duty will decrease until there is free trade in 18 years. During the interim period, of course, there will be a limited amount of chicken leg quarters that can be exported to the Central American countries at a low tariff duty, and so there needs to be a mechanism for allocating that trade among competing interests in the industry.

Oftentimes, when TRQs are negotiated, imports are managed though a system of licensing operated by the importing country. However, in this instance, there was no system of licensing that the CAFTA countries could administer that would guarantee fair and transparent distribution of the quota amounts. In addition, there is no statutory authority that permits any agency of the United States government to manage or license exports. Eventually, the two sides reached a very innovative solution pursuant to which it was agreed that an Export Trading Company would be formed in the United States for the purpose of auctioning the TRQ, and that the Central American countries would recognize the auction results as the basis for entry under the TRQ.

This solution, although innovative in the context of the CAFTA, is not unique. The United States had previously negotiated a similar solution with the European Union over trade compensation due the United States as a result of the EC-15 accession of Finland, Sweden and Austria. In that case, the EU agreed to a 47,000 metric ton TRQ for U.S. rice, and also agreed that the TRQ would be managed by an export trading company formed under U.S. law. The rice industry formed the Association for the Administration of Rice Quotas, Inc. (AARQ), which was subsequently certified under the Export Trading Company Act by the Department of Commerce. AARQ had operated successfully and to the satisfaction of both governments and industries since 1999.

The Commission should be aware that the Export Trading Company Act is an important tool that can be used not only by private companies in attempting to compete more effectively in global markets, but also by industries and governments to find innovative and useful solutions in achieving new trade agreements. We are in an era, both in the World Trade Organization and in our various free trade agreements, where tariff rate quotas are being regularly used as a transition tool for increasing market access for agricultural products. While we still have to deal with TRQs and until there is free and open trade globally, the ETC will be an important tool to help solve problems of TRQ management that will invariably arise in many new markets.