

No. 21-468

IN THE
Supreme Court of the United States

NATIONAL PORK PRODUCERS COUNCIL, *et al.*,
Petitioners,

v.

KAREN ROSS, IN HER OFFICIAL CAPACITY
AS SECRETARY OF THE CALIFORNIA DEPARTMENT
OF FOOD & AGRICULTURE, *et al.*,
Respondents.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit**

**BRIEF OF CANADIAN PORK COUNCIL
AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONERS**

STEPHAN E. BECKER
Counsel of Record
MICHAEL EVAN JAFFE
PILLSBURY WINTHROP
SHAW PITTMAN LLP
1200 Seventeenth Street, NW
Washington, DC 20036
(202) 663-8000
stephan.becker@pillsburylaw.com
Counsel for Amicus Curiae

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INTEREST OF *AMICUS CURIAE*¹

Amicus Curiae the Canadian Pork Council is a federation of pork industry associations from nine Canadian provinces representing approximately 7,000 farms across Canada. Canadian farmers export to the United States significant quantities of both pork products and hogs destined for slaughter by U.S. pork producers.

California's Proposition 12 seeks to regulate how much housing space must be provided to sows bred to produce pigs for the production of pork. The pork producers represented by the Canadian Pork Council face a choice of (i) enduring significant increased costs and operational disruptions to bring themselves in compliance with Proposition 12 or (ii) potentially losing the opportunity to sell pork and hogs into any U.S. state. The Canadian Pork Council has a significant interest in preventing these adverse consequences for the operations of its members.

SUMMARY OF ARGUMENT

In evaluating the Petition, the Court should not overlook the disruptive effects of Proposition 12 on international commerce. Proposition 12's requirements for the housing of sows will impose significant additional costs on the Canadian pork industry, which exports a substantial volume of hogs and finished pork products to the United States.

¹ All parties have consented to the filing of this brief, and were notified by October 13, 2021, of *amicus curiae*'s intent to file. No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

Canadian and American pork production is deeply integrated at all levels of the supply chain, and it will be impossible for Canadian hog suppliers or pork producers to ensure products marketed in California comply with Proposition 12 without restructuring their business with respect to all pork sold everywhere. This includes pork sourced from Canadian hogs that is ultimately sold entirely in Canada, in other U.S. states, or in other international markets.

Further, Proposition 12 is inconsistent with Canada's own standards for the care and treatment of sows, effectively overriding Canadian animal welfare standards. Proposition 12 is also inconsistent with treaty obligations of the United States under multiple international trade agreements.

Proposition 12 will prevent the United States from speaking with one voice on the regulation of foreign commerce by raising the prospect of other states following California's example, and imposing an inconsistent patchwork of regulations on international trade.

The Court should grant the Petition to resolve the significant Constitutional issues raised by California's attempt to impose its policy preferences beyond the borders of the United States and to reinforce appropriate limits on the ability of individual states to unilaterally regulate foreign commerce.

ARGUMENT**I. PROPOSITION 12 REGULATES INTERNATIONAL AS WELL AS DOMESTIC COMMERCE**

The proceedings below and the Ninth Circuit's decision in this case focused on the effect Proposition 12 would have on hog and pork production in the United States. Proposition 12, however, would also have a significant impact on Canadian producers operating wholly outside the United States and the substantial commerce in hogs and pork products that flows between the United States and Canada.

The Canadian and U.S. pork industries largely mirror each other in structure and operations and share deep connections across the supply chain. As in the United States, the pork production process in Canada is segmented among sow farms, nursery farms, finishing farms, and packer-slaughter facilities. Also similar to the United States, Canadian packers process hogs received from different sources into different cuts of pork that will be sold in Canada, the United States, and other foreign markets, and it is not possible to trace every pork product to a particular sow housed in a particular way. Accordingly, the Canadian pork industry will be burdened by the same structural effects that Proposition 12 will have on the production of pork in the United States.

The Canadian industry is a major producer of pork, both for sale in Canada and for export to the United States and other countries. In 2020, the members of the Canadian Pork Council exported more than 300,000 metric tons of pork to the United States. *See Hog Supply at a Glance*, Agriculture and Agri-Food Canada, *Week Ending Feb. 20, 2021*, p. 2 (Feb.

2021), <https://www.cpc-ccp.com/file.aspx?id=6ad03a48-ea61-42f1-855b-72119af25479>.

Importantly, Proposition 12 will affect not just Canadian exports of finished pork products, but also exports of Canadian hogs supplied to U.S. producers. The Canadian and U.S. pork producing industries are closely integrated. In 2020, Canada exported 4.4 million feeder pigs to U.S. finishers and 870,000 hogs for slaughter in the United States. See *Hog Supply at a Glance, Week Ending Jan. 9, 2021*, Agriculture and Agri-Food Canada, p. 2 (Jan. 2021), <https://www.cpc-ccp.com/file.aspx?id=a3fad94-a933-4042-bd2f-29f3eb13d286>. Canadian exporters generally have no control over where the resulting pork products made from their hogs are distributed and sold. If Proposition 12's extraterritorial provisions take effect, the Canadian Pork Council anticipates that all U.S. buyers of hogs will demand that farmers selling those hogs be able to trace their origins to Proposition 12-compliant sow farms, in order to maintain their own flexibility to sell the resulting pork products in California.

Due to the interconnected nature of the pork supply chain in the United States and Canada, the requirements of Proposition 12 will affect sales of Canadian hogs and pork products that have no relation to California or even the United States. Those effects threaten to disrupt trade in pork and pigs between the United States and Canada, and potentially will increase the price of pork for Canadian suppliers and consumers in transactions with no connection to California or any part of the United States.

The California Department of Food and Agriculture has acknowledged that Proposition 12 will make pork

more expensive to consumers and impose substantial conversion, operating, and record-keeping costs on sow farmers, including “lower piglet output per animal and increased breeding pig mortality.” Pet. App. 68a, 85a-86a. The Ninth Circuit’s statement that the petitioners “plausibly alleged that Proposition 12 will have dramatic upstream effects,” “require pervasive changes to the pork production industry nationwide,” and cause “cost increases to market participants and customers” everywhere applies equally to Canadian producers. Pet. App. 18a, 20a.

II. PROPOSITION 12 IS INCONSISTENT WITH A NATIONAL CANADIAN ANIMAL WELFARE STANDARD

Proposition 12 is inconsistent with the standards for pig care and housing promulgated by Canada’s National Farm Animal Care Council (“NFACC”), which have been widely adopted in Canada through legislation and regulations.

NFACC is an organization that develops farm animal care and welfare codes of practice and creates a process for the development of animal care assessment programs. *See About NFACC*, NFACC, <https://www.nfacc.ca/about-nfacc> (last visited Oct. 27, 2021). It is the only organization of its kind that brings together animal welfare groups, government, and farmers in a collective decision-making model for advancing farm animal welfare. The NFACC Code of Practice for the Care and Handling of Pigs (the “Code”) was released in 2014, and contains highly specific requirements on such subjects as housing and handling facilities, feed and water, animal health, husbandry practices, transportation, and euthanasia. In particular, the Code includes guidelines for determining individual stall sizes for gestating gilts

and sows and recommended minimum floor space allowances for gilts and sows in group housing. *See Code of Practice for the Care and Handling of Pigs* (2014), Sec. 1.2, App.B, NFACC, <https://www.nfacc.ca/codes-of-practice/pigs#Various>. The Canadian Pork Council administers an animal care program, known as PigCARE, which incorporates the requirements of the Code. *See PigCare*, Canadian Pork Council, <http://www.cpc-ccp.com/pigcare>.

The Code is a key basis for enabling assurance systems, continuous improvement, and regulatory enforcement, and emphasizes a balanced approach to basic health and functioning, affective states (sensory), and natural living (including housing). *See Code, supra*. In contrast, Proposition 12 places an overwhelming emphasis on housing systems at the expense of other factors, which has the potential to undermine science-informed and more complete approaches such as those developed by NFACC in Canada.

The Code's requirements are not merely advisory: multiple Canadian provinces have adopted the Code's standards as requirements for Canadian pork producers. The Provinces of Manitoba, New Brunswick, Newfoundland and Labrador, Prince Edward Island and Saskatchewan incorporate the Code by reference into their regulations on animal care, obligating Canadian pork producers in these provinces to conform to the Code's requirements for, among other things, the housing of sows.²

² *See* Manitoba Animal Care Regulation M.R. 126/98 (Can.); New Brunswick General Regulation – Society for the Prevention of Cruelty to Animals Act, N.B.R. 2000-4 (Can.); Newfoundland and Labrador Animal Health Protection Regulations, NLR 35/12

The requirements of the Code are also imposed indirectly throughout Canada through the Canadian Ractopamine-Free Pork Certification Program. *See* Annex T: Canadian Ractopamine-Free Pork Certification Program (CRFPCP), Canadian Food Inspection Agency, <https://inspection.canada.ca/exporting-food-plants-or-animals/food-exports/food-specific-export-requirements/meat/crfpcp/eng/1434119937443/1434120400252>. That program requires producers to participate in the Canadian Pork Council's PigCARE program, and as explained above, the PigCARE program requires adherence to the Code. Because the Ractopamine-Free Certification is necessary for exports to many countries, all of Canada's federally-inspected pork processors participate in PigCARE and require their suppliers of pigs to do so. The Code's housing standards are therefore embedded in Canada's legislative and regulatory requirements for animal care and apply essentially to all Canadian producers that export hogs or pork products to the United States.

Under the Code and the PigCARE program, the recommended space allowance for gilts and sows mixed in group pens ranges from 18 to 25 square feet, depending on the type of flooring, group size and feeding system. *See Code, supra, App. B*. Further, the Code allows farmers to house sows in individual breeding pens during the 30 to 40 days between weaning a litter through rebreeding. *Id.* at Sec. 1.1.2-1.1.4. Proposition 12, in contrast, prohibits producers from confining a sow (or gilt at 6 months or older) with less than 24 square feet of useable space, includ-

(Can.), Section 4(e); Prince Edward Island Animal Welfare Act Animal Protection Regulations, P.E.I.R. EC71/90 {rev} by EC510/17/17 (Can.); Saskatchewan Animal Protection Regulations, 2018, RRS c A-21.2 Reg 1 (Can.).

ing during the transition period from weaning to rebreeding. Cal. Health & Safety Code § 25990(b)(2). Proposition 12 therefore, in effect, overrides the Canadian standards by requiring Canadian producers to comply with Proposition 12 to be able to continue exporting hogs and pork products to the United States.

III. PROPOSITION 12 IMPLICATES OBLIGATIONS OF THE UNITED STATES UNDER INTERNATIONAL TREATIES

The burdens imposed on international commerce by Proposition 12 are inconsistent with commitments made by the United States under multiple treaties addressing international trade.

For example, the World Trade Organization (WTO) Agreement on Technical Barriers to Trade applies to “technical regulations” – defined as mandatory rules that govern “product characteristics or their related processes and production methods.” Agreement on Technical Barriers to Trade, Annex 1(1), Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1868 U.N.T.S. 120 (“TBT Agreement”). Further, the U.S.-Mexico-Canada Free Trade Agreement contains a chapter on technical barriers to trade that incorporates by reference the substantive obligations of the TBT Agreement (art. 11.3), while adding additional obligations. *See* Agreement Between the United States of America, the United Mexican States, and Canada (July 1, 2020) (“USMCA”), Ch. 11, <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between>.³

³ Other obligations of international trade agreements may also apply, such as Article XI of the General Agreement on Tariffs

These agreements address potential impediments to international trade caused by governmental measures that are not taxes or customs duties. They impose obligations to ensure that a member state's regulatory measures affecting trade are non-discriminatory, not more trade-restrictive than necessary, support a legitimate objective, and are supported by science. *See, e.g.*, TBT Agreement, arts. 2.1, 2.2 and 3.⁴

Proposition 12 provides no benefits to the people of California that can justify imposing an arbitrary

and Trade 1994, which prohibits restrictions on imports unless they are neither discriminatory nor a disguised restriction on trade, and are also "necessary" to protect, among others, human, animal or plant life or health. General Agreement on Tariffs and Trade 1994, Arts. XI and XX, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187.

⁴ For example, in 2015 Congress repealed a federal statute that had imposed requirements that pork and beef products be labelled with the countries in which the animal from which the meat was produced had been born, raised and slaughtered. The labeling requirement, which had no safety-related purpose, had resulted in the imposition of significant economic burdens on meat processors and their supply chains arising from the necessity to segregate animals imported from Canada and Mexico so that their provenance could be identified on labels. The WTO Appellate Body found that the U.S. law was inconsistent with U.S. obligations, and later the WTO authorized Canada and Mexico to impose trade sanctions on the United States to compensate for the violation. *See* Appellate Body Reports, *United States – Certain Country of Origin Labelling (COOL) Requirements*, WT/DS384/AB/R, WT/DS386/AB/R (adopted July 23, 2012); Decisions by the Arbitrator, *United States – Certain Country of Origin Labelling (COOL) Requirements, Recourse to Article 22.6 of the DSU by the United States*, WT/DS384/ARB, WT/DS386/ARB, (Dec. 7, 2015). Congress repealed the law before the sanctions were imposed. Consolidated Appropriations Act 2016, Public Law No. 114-113, Sec. 759 (Dec. 18, 2015).

standard on commerce taking place entirely in foreign countries. California's notice of its proposed regulation to implement Proposition 12 expressly recognized that "[t]here are no quantitative studies that document or measure the effect of purchasing . . . whole pork meat from farms {sic} animals not confined in a cruel manner for people in California." Notice of Proposed Action – Animal Confinement at p. 6, California Department of Food and Agriculture, https://www.cdfa.ca.gov/ahfss/pdfs/regulations/AnimalConfinement1stNoticePropReg_05252021.pdf. The notice also stated that "[t]his proposal does not directly impact human health and welfare of California residents, worker safety, or the State's environment." *Id.* Further, California acknowledged that the space requirements of Proposition 12 "are not . . . accepted as standards within the scientific community to reduce food-borne illness" or "other human or safety concerns", or "drawn from specific industry standards." Pet. App., 7a-76a. Proposition 12 therefore advances no objective other than dictating California's policy preferences for animal treatment to other states and countries, without support by science or any type of research. For these reasons, it is likely that Proposition 12 would be found in violation of U.S. commitments under international trade agreements such as the TBT Agreement.

IV. CALIFORNIA'S EXTRATERRITORIAL REGULATIONS VIOLATE THE COMMERCE CLAUSE BY PREVENTING THE UNITED STATES FROM SPEAKING WITH ONE VOICE ON THE REGULATION OF FOREIGN COMMERCE

Review of the Ninth Circuit's decision is crucial because Proposition 12 violates the Foreign Commerce

Clause by regulating extraterritorial conduct occurring entirely in Canada, thereby impeding the U.S. federal government's ability to speak with one voice on issues of international trade.

As discussed *supra*, Proposition 12 would, in practical effect, allow California to dictate animal welfare standards not only to other U.S. states but also to foreign countries. The Petitioners have extensively discussed how Proposition 12 violates the extraterritoriality doctrine outlined in *Healy v. Beer Inst., Inc.*, 491 U.S. 324, 336 (1989) with respect to interstate commerce, and how the Ninth Circuit erroneously excised that doctrine from the Court's jurisprudence. Petitioners have also amply addressed the Ninth Circuit's failure to properly balance the "dramatic" and "pervasive" effects of Proposition 12 on non-California transactions against the putative local benefits to California under *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970). But Proposition 12 also violates the dormant Commerce Clause with regard to foreign commerce by raising the prospect that each of the fifty U.S. states could impose inconsistent process and production requirements on producers in foreign countries such as Canada.

The Commerce Clause grants Congress the exclusive power to "regulate Commerce with foreign Nations" as well as among the states. U.S. Const. art I, § 18, cl. 3. Attempts by states to regulate foreign commerce are scrutinized more heavily than those that deal only with interstate commerce, and "a more extensive constitutional inquiry is required." *Japan Line, Ltd. v. Cty. of Los Angeles*, 441 U.S. 434, 446 (1979).

The foreign commerce clause prohibits not only those state and local laws that unreasonably burden

foreign commerce, but also prohibits laws that impair the ability of the federal government to present a uniform position on international commercial relations. *Japan Line, Ltd.*, 441 U.S. at 446, 448.

Consistent with these principles, a state or local statute violates the Commerce Clause when it interferes with the federal government's ability to "speak with one voice when regulating commerce with foreign governments." *Id.* at 449. This is because "[f]oreign commerce is preeminently a matter of national concern." *Id.* at 448. Individual states that seek to impose their own regulations and policy preferences on foreign commerce threaten to "offend . . . our foreign trade partners" and could provoke retaliation from foreign nations that would affect the United States as a whole. *See Container Corp. of America v. Franchise Tax Board*, 463 U.S. 159, 194 (1983).

For this reason, in *Japan Line, Ltd.* the Court found unconstitutional a California state tax on shipping that would have created "an asymmetry" in the international tax structure that raised the prospect that "various instrumentalities of commerce could be subjected to varying degrees of multiple taxation, a result that would plainly prevent this nation from 'speaking with one voice' in regulating foreign commerce" if other states followed California's example and imposed their own tax requirements on foreign shipping. *Japan Line, Ltd.* 441 U.S. at 450-51. When a state statute raises the prospect of asymmetric regulations on foreign commerce, it inhibits the ability of the United States to "speak with one voice," even when the statute on its face applies equally to foreign and domestic companies. *See, e.g., Nat'l Foreign Trade Council v. Natsios*, 181 F.3d 38 (1st Cir. 1999) (striking down Massachusetts statute that

applied evenhandedly to domestic and foreign companies doing business in the state due to the likely effects on foreign commerce and foreign policy).

Proposition 12 raises the same specter of inconsistent state laws burdening foreign commerce that informed the Court’s decision in *Japan Line, Ltd.* Although *Japan Line, Ltd.* addressed a state tax, its reasoning applies equally to non-tax state laws that unnecessarily burden foreign commerce, are inconsistent with the laws of foreign countries, and conflict with international obligations of the United States. See *Japan Line, Ltd.* 441 U.S. at 450-451. Contrary to the Ninth Circuit’s decision, the Commerce Clause indeed applies to non-tax measures. See, e.g., *Bibb v. Navajo Freight Lines, Inc.* 359 U.S. 520, 529 (1959) (Illinois regulation on shape of truck mudguards held inconsistent with Commerce Clause because “state regulations that run afoul of the policy of free trade reflected in the Commerce Clause must also bow.”).

Indeed, the Canadian Department of Agriculture and Agri-Food has already provided comments to California expressing Canada’s concern that Proposition 12 “may violate the United States’ international trade obligations” (including the WTO agreements and the USMCA) and calling attention to “the negative impact of additional costs and disruptions to the integrated North American market which makes the United States and Canada competitive with other nations and trading blocs.” See Letter of K. Kochhar, A/Director General, Market Access Secretariat, Agriculture and Agri-Food Canada, to Dr. E. Cox, Program Manager, Department of Food and Agriculture of California (June 30, 2021) (App. 1a, 7a). These comments and the high costs Proposition 12 would impose on entirely foreign persons demonstrate that

Proposition 12 will have more than an incidental or indirect effect on foreign commerce and foreign relations. This effect will only be compounded if other states follow California's example and seek to apply their own standards for animal welfare to foreign commerce that may conflict with California's and Canada's own standards.

Proposition 12 threatens to create an asymmetry of animal welfare regulations that prevent the United States from speaking with "one voice" in its commercial relationship with Canada and burdens foreign commerce while advancing no meaningful state interest. The Court should grant the petition and reaffirm the limitations placed by the Commerce Clause on California's ability to unilaterally shift international trade policy with Canada and other U.S. trade partners.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in the petitioners' brief, the petition for a writ of certiorari should be granted.

Respectfully submitted,

STEPHAN E. BECKER

Counsel of Record

MICHAEL EVAN JAFFE

PILLSBURY WINTHROP

SHAW PITTMAN LLP

1200 Seventeenth Street, NW

Washington, DC 20036

(202) 663-8000

stephan.becker@pillsburylaw.com

Counsel for Amicus Curiae

October 29, 2021

APPENDIX

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APPENDIX

Agriculture et
Agroalimentaire Canada

Agriculture and
Agri-Food Canada

June 30, 2021

Dr. Elizabeth Cox, Program Manager
Department of Food and Agriculture
Animal Care Program
1220 N Street
Sacramento, CA 95814
animalcare@cdfa.ca.gov

Re: Proposed Regulations on Animal Confinement

Dear Dr. Cox,

Canada appreciates the opportunity to provide comments on this Notice of Proposed Action relating to Chapter 10 of Division 2 of Title 3 of the California Code of Regulations.

The Government of Canada and Canadian farmers take animal welfare seriously. In fact, our commitment to the welfare of farmed animals is evidenced by the development of Canada's Comprehensive Codes of Practice for the care and handling of farm animals that takes into account a full suite of measures to ensure the safety and comfort of farm animals. Canada considers this holistic approach to be the best way to ensure the comfort and well-being of animals.

Given that, Canada has serious concerns with several aspects of this rule-making and the Proposition 12 that prompted this Notice of Proposed Action.

Canada urges that any draft regulation be amended so as to clearly operate within the parameters of the international trade obliga-

tions of the United States under various multi-lateral free trade agreements.

While Canada's assessment of the draft regulations is ongoing, Canada considers that the regulations may violate the United States' international trade obligations. Canada urges the California Department of Food and Agriculture to work with the relevant United States federal authorities to consider all of the international trade obligations that apply to the United States.

Given the entire supply chain—producers, processors and distributors—will incur additional costs in order to comply with these regulations, Canada is concerned that the California Department of Food and Agriculture has underestimated the impact of these costs.

For example, the California Department of Food and Agriculture estimates in the Notice of Proposed Action that the cost to pork producers of converting barns and pens that have 1,000 breeding pigs into housing compliant with minimum standards outlined in the Act and these draft regulations is approximately USD\$66,000. Canada's pork producers consider a more realistic estimate to be between USD\$200,000 to USD\$600,000.

Further, California does not consider the costs to veal producers because there is no veal produced in California. Thus, the entire cost of converting barns to be compliant with this regulation falls on veal producers that are located outside of the State of California.

In addition, processing facilities and distributors will likely need to segregate California-compliant ("CA 24+" or "CA 43+") from non-compliant whole

pork meat and whole veal meat because Canada expects that not all pork or veal producers will be able to meet the proposed prescriptive housing standards. The costs and complexity of segregation, especially on the floor of a processing plant, are not adequately accounted for in California's assessments of costs. The pork industry experienced the negative impact of this type of segregation when the mandatory country-of-origin labelling measure was put in place in the United States in 2008.

Finally, the cost of determining, segregating and labelling all pork and veal that is not in compliance with these regulations but for transshipment through California, or to make products in California that are not covered by these regulations, is costly.

It is entirely possible that the costs of compliance with these regulations will be so high that it may lead to scarcity of these products in the Californian market and/or at prohibitive prices to the average consumer.

Canada has concerns regarding the cost and timeliness of the certification process.

Another possible cost that has not entirely been accounted for is the cost of certification. Can the California Department of Food and Agriculture provide assurance that it will be able to accredit all certification bodies that apply in a timely manner? Given all hog/pork, veal and egg-laying hen producers in the U.S., Canada and the world that wish to export to California will need to apply for certification there will likely be a large demand for this service. Further, the proposed regulation provides that in order to be accredited, certification bodies must have experience in certifying space requirements for the covered com-

modities. Is California confident that there are adequate certification bodies to provide this service with the capacity to take on the flood of new certification requests for producers that are able to meet the proposed requirements? Canada is concerned that if the proposed regulation goes into effect it is far from certain that producers will be able to obtain certification in a timely manner.

Canada is concerned about the negative impact of additional costs and disruptions to the integrated North American market which makes the United States and Canada competitive with other nations and trading blocs.

Another cost which California does not adequately address is the loss of efficiencies that come from disrupting the integrated North American hog and pork market. By introducing significant additional costs on producers, processors and distributors throughout North America, coupled with additional costs that result from a loss of efficiencies throughout the supply chain, pork exporters in the United States and Canada will become less competitive relative to pork exporters from other nations.

Canada is concerned about the impact and precedent of a regulation that has severe negative impacts outside of California.

Canada is very concerned about the severe negative impacts of these proposed regulations on Canadian producers. Canada notes that in the Initial Statement of Reasons (page 8), California offered the following statistics:

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In 2019, Californian's consumed:

- 7.9 million pounds of veal with 0% of those veal calves raised in California.
- 1,205 million pounds of whole pork meat with only 1.6% of the meat coming from breeding pigs or immediate offspring of breeding pigs raised in California.
- 656 million dozen shell eggs with 55% of the shell eggs coming from egg-laying hens raised in California.
- 314 million dozen liquid eggs with only 1.5% of the liquid eggs coming from egg-laying hens raised in California.

According to California's statistics, the regulations will apply to zero veal producers and an extremely small number of pork and liquid eggs producers within California. However, it will have severe negative impacts on thousands of producers outside of California, and even outside of the United States of America.

Canada offers the following comments on the California Department of Food and Agriculture's request for proposals that would lessen any adverse economic impacts on businesses:

The use of performance standards rather than prescriptive standards.

Canada takes animal welfare seriously and has developed comprehensive Codes of Practice for the care and handling of farm animals that take into account more than just housing. In scientific and industry expert circles, it has long been acknowledged that welfare is more complex than just housing and an animal's physical accommodation. In fact, focusing

solely on that one area may lead to poor welfare in other aspects of the animal's well-being (e.g., being free from pain, injury or distress, or meeting other biological needs).

Canada is a world leader in its collaborative and balanced approach to ensure all perspectives on animal welfare are incorporated into national standards and mechanisms to advance the welfare of farmed animals. The national Codes of Practice for the care and handling of farm animals are a key tool, developed under the guidance of the National Farm Animal Care Council. The Code development process relies on participation of a broad group of stakeholders, is science-informed and requires consensus decision-making.

Canada requests that California considers amending the language of the regulation to allow for an equivalency arrangement with Canada, such that compliance with Canada's Code of Practice for the covered animals is equivalent to compliance with these draft regulations. The performance standard of covered animals not being raised in a cruel manner will have been met and exceeded by adhering to Canada's Codes of Practice.

Equivalency based on outcomes, where different technical regulations can be equivalent, is included in the obligations of both the World Trade Organization Agreement text and the United States Mexico Canada Agreement.

Based on the above comments, Canada respectfully requests that California either withdraw its Act and regulations or amend the language of the regulation to allow for an equivalency arrangement with Canada based on outcomes. If California decides to proceed, Canada requests that the timelines be extended to

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allow for the establishment of an equivalency arrangement with Canada.

Sincerely,

/s/ Kanwal Kochhar

Kanwal Kochhar
A/Director General, Market Access Secretariat
Agriculture and Agri-Food Canada

Cc: Nadia Bourély, Minister Counsellor
(Economic and Trade Policy),
Embassy of Canada in Washington, D.C.
Rana Sarkar, Consul General,
Consulate of Canada in San Francisco