Testimony of Thomas M. Suber
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On the Trans-Pacific Partnership FTA
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I appreciate this opportunity to testify before the Senate Finance Committee on behalf of the U.S. Dairy Export Council regarding the Trans-Pacific Partnership trade agreement. In addition, the U.S. Dairy Export Council works closely with the National Milk Producers Federation on trade policy issues. In keeping with that, NMPF has submitted a statement of support for the points touched on in my testimony.

USDEC is supportive of TPP negotiations and hopes to be able to actively support the final TPP agreement. Our ability to do so hinges on how key elements of TPP are ultimately handled.

Overview of Sector and USDEC:
The U.S. is home to approximately 50,000 dairy farms, spread across all 50 states. Dairy farm receipts alone contribute approximately $40 billion a year to the U.S. economy. Dairy processing is also a vital part of the U.S. economy, employing 132,000 people and generating over $5 billion in wages. U.S. dairy exports have helped to grow our industry further in recent years, providing a market for 13% of U.S. milk production in the form of various processed dairy products. Last year U.S. dairy exports reached a record high of $5.2 billion. The U.S. dairy industry is a key engine of growth and jobs, particularly in rural communities, and growing export sales have helped to strengthen it.

USDEC is a non-profit, independent membership organization that represents the export trade interests of U.S. proprietary processors, milk producers, dairy cooperatives, and export traders. The Council's mission is to increase the volume and value of U.S. dairy product exports. Our membership includes a large number of this country's leading dairy companies such as Agri-Mark (in the Northeast), California Dairies Inc. (in California), Dairy Farmers of America (nation-wide), Dairigold (in the Northwest), Davisco (based in Minnesota), Glanbia Nutrionals USA (based in Idaho), Leprino Foods Company (based in Colorado), Michigan Milk Producers Association (based in Michigan), Schreiber (based in Wisconsin), Swiss Valley Farms Cooperative (based in Iowa) and many others.

Our membership, particularly the U.S.-based proprietary processors, dairy cooperatives and dairy farmers that collaborate to set USDEC's trade policy priorities, has articulated several key factors necessary to achieving that final positive outcome for our industry. Each would contribute to an overall TPP outcome that would substantially enhance our export growth potential and the future strength of the U.S. dairy industry.

TPP Opportunities and Challenges

The Trans-Pacific Partnership started with no clear upside for the U.S. dairy industry. The original few countries involved consisted of prior U.S. FTA partners (Chile and Singapore at the outset, then also Peru and Australia), a country without significant consumption of dairy products (Brunei) and a major competitor with a monopolistic industry structure (New Zealand). Opportunities were noticeably missing and the industry was skeptical of the benefits of such an agreement. In its testimony to the International Trade Commission in 2010, the National Milk Producers Federation calculated that without major reforms in New Zealand and given the lack of other offsetting dairy market access opportunities in TPP for the United States, open dairy trade between the U.S. and New Zealand would cost the industry $20 billion over the first decade of the agreement. This estimate was based on the facts that New Zealand is already the single largest dairy exporter to the U.S., that New Zealand dairy production is forecast to continue to grow (although less rapidly than in years past) and that the U.S. market will remain a comparatively lucrative dairy market in comparison with other sales opportunities.

Despite this grim initial outlook, we rolled up our sleeves and began working to identify offensive interests to seek to include in a package that could provide the foundation for a positive TPP outcome, thereby reflecting the more proactive trade stance that our industry has taken since 1995. The first three elements of that package are: 1) strong and enforceable TPP SPS provisions; 2) the protection of common food names such as parmesan and feta, which are currently under threat in foreign markets; and 3) changes in New Zealand government policies that have encouraged extreme industry concentration in that major dairy exporting country. The fourth critical element is market access.

In earlier stages of TPP market access essentially meant Vietnam, an important market for us but one that is already relatively open to dairy imports. However, the addition of Canada and now Japan, has created a new paradigm in the TPP negotiations that, if done properly, could provide a significant boost to the prospects of an overall net positive outcome in the negotiations. I should stress, however, that each element of this package is important in securing a positive outcome; gains in one area do not negate the importance of results in another.

Although we will review a final agreement prior to make a determination and take into account all dairy-related aspects of it, I am confident to state today that the dairy industry will reject any trade agreement that provides access into our markets for New Zealand without changes in their dairy industry structure and without gaining full market access into Canada.

- **Open Access into other TPP Dairy Markets, Especially Canada & Japan**

  In order to provide positive export opportunities for the U.S. dairy industry to capitalize on the significant potential of this agreement, it is critical that TPP provide open access for our products into the Canadian and Japanese dairy markets, as well as into Vietnam and Malaysia. The U.S. should ensure that full market opening is achieved in each of these cases for dairy, phasing-in those commitments over a period of time in some cases. Each of these bilateral negotiations is important; however the market potential in each country differs considerably.

  Prospects for a positive outcome for the U.S. dairy industry rest in great part on how dairy negotiations with Canada and Japan are handled. Many throughout the U.S. dairy industry would strongly reject an outcome in TPP whereby the U.S. industry is asked to accept negative net trade impacts with respect to other major dairy producing countries while omitting the obvious export gains in other markets, particularly Canada and Japan.

  Canada:

  By far the largest opportunity for U.S. dairy exports lies in Canada given the significant proximity advantage of the U.S. Despite exorbitant tariffs and many nontariff measures, Canada is our 2nd largest export market. However, a significant portion of U.S. dairy sales to Canada are under their Import for Re-Export Program whereby Canadian companies bring in dairy inputs duty-free on the condition that the final product is exported.

  The U.S. has already had two missed opportunities to secure dairy access into the Canadian market: as part of the U.S.-Canada FTA and again under the latter formation of the North American Free Trade Agreement. We are counting on the old adage that “the third time’s the charm” now in TPP.

  The Canadian dairy sector does not have inherent competitive disadvantages; it has ample land and is one of the world’s largest feed grain producers. The Canadian dairy sector could rightfully be quite competitive internationally. However, the policy choices that Canada has made over the last few decades have not capitalized on those advantages. Rather, Canada has put a policy priority on maintaining steep tariff walls to isolate its industry from the global market. This direction must change to create a true North America free trade area.

Canada's dairy tariffs are typically 250% - 300%. For the few dairy-containing tariff lines for which better access was granted under the WTO or NAFTA, Canada frequently resorts to non-tariff measures designed to hinder imports from the U.S. In other words, Canada continually seeks to nullify portions of even the small amount of access it provided in past trade treaties.

The U.S. is currently grappling with several such cases. One of particular concern relates to potential regulatory changes under consideration by Canada that are designed to impair U.S. exports of ultra-filtered milk to Canada. Such action would be in direct contrast to ongoing efforts to forge closer trade ties through TPP and the U.S.-Canada Regulatory Cooperation Council and would be met with strong opposition from the U.S. It is important to use TPP not only to remove the prohibitively high dairy tariffs in Canada but also to ensure that access is not restricted through non-tariff barriers.

Japan:

We very much support the addition of Japan into TPP and commend the administration for its decision to welcome Japan's participation. We welcome the opportunity for the U.S. to negotiate a comprehensive trade agreement with Japan.

Japan is already a major global dairy importer. Last year it purchased $284 million dairy products from the U.S., making it our 5th largest market, despite extremely high tariffs for its major dairy commodities and cumbersome regulatory requirements for many dairy products. We expect that our exports will complement dairy production in Japan, thus allowing for greater access for U.S. dairy products, while maintaining a healthy Japanese dairy producer community. While increased export potential for our products to Japan is significant, the U.S. would face stiffer competition in that market from other TPP partners that would also gain access such as Australia and New Zealand. As a result, Canada is still viewed as providing the most significant potential gains for the U.S. dairy industry.

Vietnam:

Vietnam is currently our 8th largest market and the U.S. sold $140 million in dairy product to that country last year. Vietnam has its own domestic dairy industry yet relies heavily on imported products to supply a sizable dairy processing sector in that country.

Applied tariffs are not extremely high in this market with rates ranging from 0% - 15% for products most typically exported by the U.S. This therefore limits the impact of an FTA. However, Australia and New Zealand, major dairy exporting competitors already have an FTA that includes Vietnam and so the U.S. dairy industry has welcomed this opportunity to remove a tariff advantage that otherwise would favor exporters from Oceania. Export gains to Vietnam as a result of TPP will be important but are expected to be on a much smaller scale compared to the potential in Canada and Japan.

Malaysia:

Malaysia is currently our 9th largest market and the U.S. sold $133 million in dairy product to that country last year. Malaysia is heavily reliant on dairy imports for most of its dairy usage.

Applied tariffs are set at zero for virtually all dairy products most typically exported by the U.S. and bound rates are also generally quite low. This therefore limits the impact of an FTA. However, we welcome this opportunity to lock in the applied rates and to remove the remaining tariffs for products not currently set at zero. Australia and New Zealand's FTA with ASEAN also included Malaysia so TPP presents a welcome opportunity to ensure this does not provide Oceania with an advantage moving forward. Export gains to Malaysia as a result of TPP are likely to be relatively limited given the very open dairy market that already exists.

- **Meaningful Reform of New Zealand Dairy Policies and Treatment of U.S.-New Zealand Dairy Trade**

  Significant reform is needed in the New Zealand dairy sector to address the excessive level of market concentration and advantage to one firm that New Zealand's government policies have created. These are a significant concern to our increasingly world-class suppliers seeking to compete against New Zealand here in the United States and overseas.

  TPP should address the anti-competitive New Zealand dairy industry structure as vital precursor to any expansion of U.S.-New Zealand dairy trade. Reducing the level of market concentration afforded one dairy company due to government policies is very much needed.

  Just over a decade ago, the New Zealand Dairy Board (NZDB), an export state trading enterprise, was abolished in name. In its place, the government permitted a company to form that united 96% of the dairy industry in New Zealand. Typically a merger that yielded such a high level of market concentration would not be permitted under anti-trust regulations – that would be the case in the U.S. and it was the case in New Zealand as well. Special legislative exemption had to be passed by the New Zealand government in order to permit the consolidation of the market to such extreme levels.

  This company effectively inherited the customer contacts and business relationships that had been established by the NZDB since there was virtually no other New Zealand competition for those established contracts. The New Zealand government granted this new entity exclusive access for several years to the lucrative tariff-rate-quota licenses allocated to New Zealand in the Uruguay Round (such as for access to the U.S., Japanese and EU dairy markets). For a country forced to export 95% of its milk production, access to the best export markets is critical and helped to provide an assurance of high returns for at least a portion of its sales to the new company. Although the export licenses are no longer granted solely to this one firm, the government's system for allocating them advantages the market leader and reinforces the early preference since it is based on market share levels.

  This favoritism by the New Zealand government gives its leading dairy firm a distinct advantage over not only its domestic competitors but also international ones, including U.S. dairy companies. This preferential position is not the result of market forces, but rather of government policy designed to benefit one firm at the expense of others. There are a few other dairy companies now in New Zealand and, though they are talented, global players, the U.S. dairy industry feels confident it can compete with them on a level playing field. Yet, these few firms share between them the roughly 10% of the New Zealand milk market that is not controlled by the country's dominant firm. This hardly constitutes robust competition and, as once determined by its own government panel, constitutes a *prima facie* case of an overly concentrated market. The legacy advantages enjoyed by this one firm due to the benefits bestowed upon it, particularly at its creation and in its early years of operation, continue to hang over the market and hinder fair competition against this firm.

  Such levels of market concentration and government preference for one firm would perhaps not be a significant trade concern were these conditions present in a country with less influence on global dairy trade. However in this instance, where one company controls well over 1/3 of global dairy trade in an otherwise highly diffuse international marketplace, it poses a tremendous concern to those serious about using TPP to pursue more workably competitive global markets. It also corrects the understatement often made by New Zealand officials that their country is just a "small country in a corner of the world" trying to compete amongst larger suppliers.

The motives behind this level of government support are clear when one recognizes that dairy exports contribute almost one-quarter of New Zealand's total export receipts and about 7% of its gross national product (GNP). Such policies created and now favor a national champion who can reap the benefits accruing from the ability to offer to foreign buyers such a highly consolidated supply source.

New Zealand may not be in direct violation of its WTO commitments. However, neither are U.S. tariffs in violation of WTO commitments. But in the context of an FTA, trade concerns resulting from government activity are entirely relevant issues to be tackled at the negotiating table.

New Zealand may prefer not to pursue additional reforms in its single largest economic sector, but all TPP countries are being asked to undertake new commitments designed to improve trading conditions throughout the region and to reduce the impact of government policies on the marketplace. New Zealand should be no different.

- **Ambitious and Enforceable TPP SPS Commitments**

USDEC has been among the large number of U.S. agricultural sectors that have put a high priority on securing a high-standard SPS chapter in TPP. As U.S. dairy exports have grown in recent years, we have encountered more and more unjustified SPS barriers in foreign markets. This drove a strong interest in our membership in using TPP to try to raise the bar in this area by building upon existing WTO SPS commitments in a way designed to drive greater predictability and transparency in TPP agricultural trade.

This is a serious interest for our industry and many throughout the U.S. food and agriculture spectrum, but we believe it is also of interest to other TPP countries who likewise want to ensure that negotiated access translates into real access unimpaired by the use of unjustified barriers to food and agricultural trade.

TPP is meant to serve as a platform for U.S. agreements moving forward and to set a high bar for what is expected of its participants. That makes it critical that it address the real-world challenges plaguing U.S. agricultural exports. That is why USDEC and others have championed the inclusion of obligations that go beyond the WTO SPS Agreement – often termed "WTO-plus" – on issues like risk assessment, risk management, transparency, border checks/laboratory testing and facilitating trade through regulatory coherence measures. In addition, we believe that significant value could be added to both SPS and TBT commitments through the inclusion of a Rapid Response Mechanism (RRM) to help improve trade facilitation and resolve shipment-specific issues.

It is our understanding that TPP SPS negotiations are quite advanced and have proceeded smoothly but that a major question remains outstanding: whether or not those WTO-plus elements in TPP will be enforceable or not. Without the ability to incentivize compliance with SPS obligations, there is great concern that TPP partners will not take their obligations in that area seriously, particularly when doing so may be politically challenging. That is why enforcement applies to virtually all other areas of an FTA – to ensure that the parties to the agreement are given strong incentives to abide by its terms even when facing domestic pressure to do otherwise.

Enforcement measures such as dispute resolution do not force a country to comply against its will; that would violate national sovereignty and would be impossible since each country retains control over its own borders. But what effective enforcement measures would provide is a strong incentive towards compliance in recognition that unjustified SPS measures can impair the value of a country's concessions just as strongly as the re-imposition of high tariff would. Just as TPP is expected to provide its members legal recourse in the case where a country revokes a tariff concession granted in the agreement, it must also ensure that legal recourse is available if a country is flouting its SPS commitments and thereby blocking access through non-tariff measures.

We recognize that some have charged that those advocating for enforcement of TPP SPS provisions are too cavalier with respect to U.S. food, animal and plant safety issues. We believe those charges are entirely unfounded. Contrary to concerns expressed at the time of its negotiation, the WTO SPS agreement has not upended U.S. efforts to ensure a safe food supply and robust agricultural sector. We believe that the effort in TPP to build further upon that international foundation would yield the same result. U.S. regulators have been an active part of the TPP process; this is not something being foisted upon the U.S. The TPP SPS chapter has been negotiated with full-fledged involvement from the U.S. from the very beginning.

This issue has gained even greater significance now that the U.S. is prepared to launch FTA talks with the European Union. A wide variety of U.S. agricultural sectors, including dairy, have had significant, lasting challenges with EU SPS measures that are viewed by the U.S. as unjustified. The precedent set in TPP will be important as the U.S. moves into Trans-Atlantic negotiations on these critical issues.

Attached as part of my testimony is a copy of a letter on this issue that was sent last week to White House Deputy National Security Advisor for International Economic Affairs, Mike Froman. The letter was signed by USDEC and more than 50 other U.S. food and agricultural organizations and stresses the need for enforcement of TPP SPS provisions.

- **Preservation of the Use of Common Food Names**

In the past several years, use of many common food names has come under greater attack, particularly by European producers of these products. Many well-known names for cheeses, meats and other foods trace their origins to Europe, but thanks to generations of emigration and trade, these products are now made and enjoyed throughout much of the world. This has greatly increased the popularity of certain cheeses such as parmesan, romano, feta and others to the commercial benefit of European and non-European producers.

However, the EU has been working in recent years to monopolize usage of these terms and resisting efforts to clearly identify which names have already entered into wide-spread common usage. This is being done through use of the EU geographical indication (GI) system and EU efforts to negotiate exclusive use of many EU GIs through its FTAs. For instance, the EU-Korea FTA forbids the use of the terms gorgonzola, feta, asiago and fontina by non-EU suppliers. U.S. companies have had to decline sales opportunities due to these restrictions. Well-established product names play a vital role in communicating to consumer the type of product being offered and in providing sourcing flexibility to buyers who want to list these products on their packaging or menus.

This has erected a form of non-tariff barrier against U.S. cheese exports to a growing number of countries and created considerable uncertainty regarding what terms will remain in free global usage going forward. Even terms for which there is an internationally recognized Codex standard such as cheddar or mozzarella are not safe at this stage, given current efforts in the EU to create GIs for names that have active Codex standards, despite an overhaul of those standards in just the past decade.

USDEC believes it is important to use the opportunity provided in TPP to set more reasonable guidelines for the use of common food names. Our organization is not opposed to well-designed GIs such as Gouda Holland which clearly protect the full GI term but also clearly spell out that the common portion of the GI ("Gouda" in this case) remains available for free usage by anyone. We would like to see this model adopted more consistently by the EU and by other countries in order to find a way to provide GI protection that does not infringe on the rights of other producers to use names that have long been in common usage in many areas of the world.

The names under most direct attack are commonly used in the U.S. and elsewhere around the world by small and medium sized cheese companies that often were founded by immigrant families. As a country of immigrants, we have welcomed the introduction to our country of traditions from immigrants' home countries. In fact, it is what has helped create such a robust market here in the U.S. Drawing upon home-country traditions to create family businesses here in America has been a natural part of that process. These companies are not seeking to prohibit competition from European producers of similar product types; they are simply trying to continue offering their products for sale alongside those from Europe and other areas of the world.

This issue takes on even greater significance now that the U.S. is poised to enter into the Trans-Atlantic negotiations since market restrictions related to excessive GI regulations are most prevalent in the EU market itself. It is our hope that TPP sets a good precedent to build off of in order to preserve market opportunities for our products in the TPP region and also to lay a strong foundation for any discussion on this issue with the EU directly.

As you can see, the opportunities are considerable, but the challenges are equal. We have a tremendous opportunity to make significant in-roads in opening markets, ensuring that those markets remain open by preventing non-tariff barriers and securing the protection of common food names so we can sell those products into those new markets. USDEC looks forward to continuing to work with members of this committee in pursuit of the above-mentioned priorities in order to maximize the likelihood of arriving at a final TPP agreement that could actually be beneficial for the U.S. dairy industry.