

**Comments by the National Milk Producers Federation  
And the U.S. Dairy Export Council  
Regarding Investigation No. TPA-105-001  
“Trans-Pacific Partnership Agreement: Likely Impact on the U.S. Economy and on  
Specific Industry Sectors”  
December 22, 2015**

Our organizations submit these comments in response to the International Trade Commission’s investigation No. TPA-105-001, seeking to analyze the likely economic impact of the Trans-Pacific Partnership Agreement on the U.S. Economy and on Specific Industry Sectors. The National Milk Producers Federation (NMPF) and the U.S. Dairy Export Council (USDEC) appreciate the opportunity to present their views on this important report.

NMPF is the national farm commodity organization that represents dairy farmers and the dairy cooperative marketing associations they own and operate throughout the United States.

NMPF develops and carries out policies that advance the well-being of dairy producers and the cooperatives they own. NMPF’s member cooperatives produce the majority of the U.S. milk supply, making NMPF the voice of more than 32,000 dairy producers on national issues. International trade is one of those issues and in recent years it has been one of the most important to our industry. NMPF works closely on international trade issues with the USDEC, whose partnership between producers, proprietary companies, trading companies and others interested in supporting U.S. dairy exports, has contributed greatly to the success of the industry.

The U.S. Dairy Export Council (USDEC) is a non-profit, independent membership organization that represents the global trade interests of U.S. dairy producers, proprietary processors and cooperatives, ingredient suppliers and export traders. Dairy Management Inc. founded USDEC in 1995 and, through the dairy checkoff program, is the organization’s primary funder. USDA’s Foreign Agricultural Service provides export activity support, and membership dues fund the Council’s trade policy and lobbying activities.

## **Introduction**

Trade has become a vital growth factor for our industry. Our nation has gone from exporting dairy products valued at less than \$1 billion in 2000 to exporting a record \$7.1 billion in 2014, an increase of 625%. That reflects not just a tremendous jump on a value basis but also a dramatic increase in the proportion of U.S. milk production that’s finding a home overseas.

Fifteen years ago we were exporting roughly 5% of our milk production, now we’re at three times that level, even as overall U.S. milk production has continued to grow. That means that the equivalent of one day’s milk production each week from the entire U.S. dairy industry ultimately ends up overseas, making exports integral to the health of the dairy industry at large.

As we detailed in our comments to the USITC regarding Investigation Number 332-555, well-negotiated free trade agreements have played a critical role in helping support these positive trends for our industry.

Access to new markets that lead to increasing dairy exports does not benefit just dairy producers. USDA's Economic Research Service (ERS) estimates that each billion dollars of U.S. dairy exports generates 20,093 jobs at the milk production level and that \$2.76 dollars of economic output are generated for each \$1.00 of dairy exports. It is remarkable that, while for agriculture as a whole each billion dollars in exports generates 5,780 jobs, in the dairy sector each billion dollars in exports generates over three times as many jobs. Thus, the \$7.1 billion that we exported in dairy products in 2014 supported more than 142,000 U.S. jobs at the production level. Additionally, according to the ERS multipliers, those exports generated nearly \$19.6 billion in additional economic activity at that level.

At the manufacturing level, where the milk is turned into cheese and other processed dairy products, ERS estimates that each billion dollars of exports generates 3,150 jobs. So, our exports in 2014 supported 22,300 jobs at the manufacturing level. This, in turn, generated additional economic activity of nearly \$25 billion.

Exports account for approximately 31.7 billion pounds of U.S. milk, equating to the milk from 1.4 million cows. As global demand for dairy continues to rise, U.S. dairy exporters are moving to meet the challenge by making the right products with the right packaging and the right specifications for each customer. The U.S. is now the world's leading single-country exporter of skim milk powder, cheese, whey products and lactose, thereby benefiting millions of customers in hundreds of countries around the world.

### **TPP Commentary:**

At the outset, it is useful to take stock of the unusual nature of the TPP agreement, particularly as it relates to dairy trade dynamics not encountered by the U.S. in prior free trade agreement negotiations. While holding tremendous potential, the make-up of this agreement's participating partners also presented considerable challenges to arriving at a clearly beneficial outcome for America's dairy industry.

The U.S. has not previously concluded a regional free trade agreement of this nature. Although the U.S. - Central America FTA was a regional agreement, the collection of neighboring countries had more similarities than differences in terms of trade interests of the U.S. vis-à-vis those of the Central American parties. In addition, when that agreement was negotiated, the U.S. did not face the same type of conclusion timeline concerns as became relevant in the TPP context.

In contrast to this, in its initial stages TPP included two of the U.S.'s largest global dairy competitors while the remaining participating markets offered new export opportunities ranging

from marginal to nonexistent. Despite this, the U.S. dairy industry supported TPP from the outset and advocated from the earliest stage about the importance of including additional trading partners in the agreement – particularly Japan and Canada, as well as additional Southeast Asian nations – in order to create the degree of export trade opportunities necessary to create net trade gains for the U.S. dairy industry. In addition, we worked hard with U.S. negotiators to develop ground-breaking new commitments to address nontariff concerns that were beginning to emerge for our industry. Further below we detail that work on the sanitary and phytosanitary chapter as well as on the intellectual property chapter's geographical indication provisions.

Along the way, NMPF and USDEC also actively supported Trade Promotion Authority (TPA) as an important tool for forging strong trade agreements and opening new opportunities to U.S. dairy exports. We shared a common goal with presumably all private sector TPA proponents: a TPP agreement that moved the ball forward in meaningful ways our industry. Throughout this lengthy and at times quite challenging process, that has remained our underlying goal.

As it became clear just how entrenched Japan and Canada were in resisting substantial dairy market access openings, the task facing U.S. negotiators was clearly quite challenging. The U.S. dairy producers and processors were fully prepared to be just as forthcoming as those two major dairy consuming nations. But, reflecting the reality that the United States was already one of the world's largest dairy product *importers*, we were not willing to see our market traded off to major competitors while the two most shielded dairy markets were permitted to largely block meaningful new access to U.S. dairy products. That type of one-way street surely could not be viewed as compatible with the TPA charge that: "The principal negotiating objective with respect to agriculture, set forth in subparagraph 2(b)(3), includes the directive by Congress to obtain competitive market access opportunities for U.S. agricultural exports substantially equivalent to opportunities afforded foreign exports in U.S. markets..."

Based on our ongoing review of the available information, it appears that our industry has successfully avoided the type of disproportionate one-way street that we were deeply concerned could have resulted under this agreement. On an A through F grading scale for TPP, it was long clear the agreement would not score an A; our assessment to date indicates that the result is also not an F however. Determining whether this agreement is one that merits the dairy industry's support and recommendation for Congressional passage however, is a more challenging evaluation given the complexity of the agreement's ultimate outcomes on dairy.

As such, the U.S. dairy industry's final analysis of the multifaceted TPP text remains underway. The TPP dairy provisions are arguably the most complex the U.S. has negotiated in an FTA to date and trade impacts for our industry require analysis of not simply one-directional trade with one or two trading partners but rather a multi-faceted analysis of how trade is likely to shift across the region in light of the agreement's complicated new provisions, both with respect to imports and exports. Our industry has also submitted several clarification and implementation issue requests to the Administration, the outcome of which could also influence the agreement's dairy impact.

Despite still being in the process of conducting an economic analysis of TPP's dairy impacts, NMPF and USDEC believed it was important to provide comments to USITC in order to assist in its TPA-mandated analysis of the results of TPP. Our comments are therefore aimed at providing input to USITC regarding various important aspects of the agreement as they relate to dairy trade and to highlighting key areas that should not be overlooked as USITC conducts its economic analysis of the agreement.

### **Key Non-Tariff Elements in TPP:**

The two most important non-tariff achievements of this agreement are its sanitary and phytosanitary (SPS) chapter and the intellectual property chapter's geographical indication (GI) provisions. Both areas establish ground-breaking new commitments that should help keep in check the prospect for TPP countries to erode existing and future market access opportunities for U.S. dairy exporters through unjustified and sudden regulatory determinations. The due process improvements in both areas represent notable accomplishments of which the U.S. should rightfully be proud. They are not perfect – as hard-fought new language on trade commitments rarely are – but they are key advances compared to today's status quo regarding the potential for the abrupt imposition of inappropriate and protectionist-motivated SPS and GI barriers to trade.

Another important non-tariff element of the negotiations is the role played by the agreement's rules of origin (ROO). Particularly in negotiations such as TPP in which multiple countries are part of a regional agreement and tariff differentials exist, ROO will be critical in providing or limiting access to TPP partners to accurately capture the intent of the negotiations.

### **SPS Chapter:**

Out of a recognition of the growing impact that SPS measures were having on agricultural trade, USDEC and NMPF helped spear-head the agricultural industry's effort to advocate for "WTO-plus" SPS provisions. The goal throughout that process was to strengthen the existing WTO SPS commitments in order to address the escalating threat that unwarranted and sudden SPS measures were beginning to pose to U.S. agricultural exports. On the whole the TPP SPS chapter makes significant strides forward in addressing this critical issue and we view it as a very positive element of the agreement.

TPP is the first U.S. trade agreement to include rules and disciplines on SPS measures that go beyond those contained in the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) in the World Trade Organization (WTO). Nearly all of the "WTO-plus" provisions are fully enforceable through the TPP dispute settlement mechanism. Below is a summary of the most significant provisions in the SPS chapter.

Science and risk analysis: The section of science and risk analysis contains provisions that clarify and strengthen the obligations Parties have under the WTO. Those

provisions require Parties to base regulatory measures that affect trade on a risk assessment that is “appropriate to the circumstances of the risk at issue and takes into account reasonably available and relevant scientific data.” They oblige Parties to take into account the excellent standards, guidelines and recommendations on risk analysis developed by relevant international organizations. In cases where more than one risk management option is available that would achieve the regulatory objective and that is technically and economically feasible, a Party is obliged to choose the option that is not more trade-restrictive than necessary to achieve the objective. In addition, the chapter includes requirements that increase transparency in the risk analysis process and prevent unnecessary delays.

Equivalence: The provisions on equivalence are more detailed and specific than those in the WTO SPS Agreement. They require Parties to “apply equivalence to a group of measures or on a systems-wide basis” to the extent feasible and appropriate, and they establish procedures for handling requests from exporting Parties for equivalence determinations. Provisions on audits later in the chapter bolster the equivalence section by requiring that audits be “systems-based and designed to check the effectiveness of the regulatory controls of the competent authorities of the exporting Party.” The section on certification recognizes that “different systems may be capable of meeting the same sanitary or phytosanitary objective.”

Import checks: The section on import checks also expands significantly on disciplines in the WTO SPS Agreement. It requires that checks be risk-based and that procedures be transparent. Parties must provide upon request information on testing procedures. Tests must be conducted “using appropriate and validated methods” in a laboratory that operates in a manner consistent with international standards. In cases where a Party restricts imports due to an adverse result of an import check, the Party must: 1) notify promptly the importer, the exporter or the exporting Party regarding the reason for the restriction and the status of the affected goods; and 2) provide an opportunity for a review of the decision.

Transparency: TPP Parties are required to notify other Parties of all proposed SPS measures that may affect trade and to make public: 1) the proposed measure; 2) the legal basis for the measure; and 3) written comments the Party received on the measure. Unless a proposed measure is urgent or is intended to facilitate trade, a Party must allow at least 60 days for comment on the proposal. A Party must notify other Parties when an SPS measure is finalized. If the final measure has been substantively altered from the proposal, the Party must publish an explanation of the substantive revisions and of objective and rationale of the measure. If feasible and appropriate, a Party should provide at least six months between the date of publication and the date on which the measure takes effect.

Cooperative Technical Consultations (CTC): The Chapter establishes a consultation mechanism that is intended to provide a means of resolving SPS problems



expeditiously. A Party that fails to find a solution through the CTC has recourse to TPP dispute settlement.

### ***Geographical Indications Provisions in Intellectual Property Chapter:***

At the time of TPP's launch, the European Union's shift from a purely multilateral effort to limit competition via inappropriate abuse of geographical indications (GIs) to a primary bilateral approach to this goal had already commenced. As such, USDEC and NMPF worked jointly with the dairy industries in Australia, New Zealand and Mexico to establish the importance of addressing this emerging type of trade barrier and formulating tools to begin to tackle it more effectively.

Prior to TPP, U.S. FTAs were virtually silent on the issue of GIs with the primary relevant text simply focusing on the first-in-time, first-in-right principle as it relates to registered trademarks vs. subsequently filed GIs. There was in particular a vacuum regarding the critical question of how countries should consider applications for GIs and how the issue of common or generic usage of a term should factor into that process in order to avoid negatively impacting the rights of stakeholders in the country of application as well as other trading partners throughout the TPP region. The TPP GI provisions break new ground by tackling these topics and for the first time establishing an equitable international model for how to approach the issue of GI registrations that differs from the fundamentally flawed EU approach where it is now effectively horse-trading protection for specific GIs in exchange for gains for its trading partners in other areas such as market access.

The TPP's reminder that GIs are a type of intellectual property and as such should be subject to similar types of due process procedures required of other types of IP is a fundamentally important element. This will be relevant as the U.S. continues to build upon this text to further tackle the EU's aggressive agenda to limit competition from other suppliers in common food categories. We view the TPP GI text as an important starting point for future work on the issue of GIs and common food names. It does not resolve this matter since it does not directly block the EU from inappropriately restricting the use of common food names important to global trade, but it does chart the course for addressing this topic in a much stronger direction. Below is a summary of the most significant provisions in the GI section.

***Registration, opposition and cancellation:*** A Party to the Agreement is required to publish all applications for registration and to establish procedures for opposition and cancellation. Grounds for opposition include 1) the GI is likely to cause confusion with a trademark; or 2) the GI is a common name in the territory of the Party.

Requirements are different regarding GIs protected pursuant to future international agreements (e.g., trade agreements with the EU or the Lisbon Agreement for the Protection of Appellations of Origin and Geographical Indications). In addition, a Party is required to: 1) publish information regarding registration procedures; 2) publish a list of

terms under consideration for registration, along with information regarding whether protection is being considered for translations or transliterations of the term or for individual components of compound GIs; 3) allow a reasonable period of time for opposition; and 4) inform other Parties of the opportunity to oppose. These heightened due process procedures are designed to help balance to a certain degree the benefit that GI applicants get by the international agreement's typical ban on the cancellation of GIs, despite the importance of cancellation provisions in most IP systems as a valuable check against mistakes made or information omitted during the IP approval process or subsequent non-usage of a registered term.

With respect to other agreements – i.e., those that are concluded before, are ratified before, or that enter into force before TPP – a Party is required to: 1) publish a list of terms under consideration for registration, along with information regarding whether protection is being considered for translations or transliterations of the term or for individual components of compound GIs; 2) provide an opportunity for comment and a reasonable period of time for submission of comments; and 3) inform other Parties of the opportunity to comment. Although this provisions does not permit the unwinding of countries' poor past decisions on GIs (such as Canada's decision in its FTA with the EU to impose new restrictions on the use of several generic terms including feta, asiago, muenster and others), it acts as an important stop-gap measure to address activity taking place between the close of TPP talks in October 2015 and the agreement's later implementation date.

Guidelines for determining whether a term is a common name: In determining whether a term is a common name, a Party must “take into account how consumers understand the term in the territory of that Party.” The Agreement lists factors a Party may consider in this context. Those criteria include: 1) whether the term is used to refer to the type of good in question in sources such as dictionaries, websites, etc.; 2) how the good is “marketed and used in trade in the territory of that Party;” and 3) whether the term “is used in relevant international standards . . . to refer to a type or class of good in the territory of the Party.” We consider these provisions to be an important step in the right direction and will be looking to continue to build upon the language moving forward to further strengthen the use of objective criteria relevant to evaluating the common usage status of a term such as the term's use in tariff schedule, production globally outside the applicant region, etc.

Multi-component terms: The Agreement requires that common names that are components of compound GIs not be protected – i.e., Parties must allow their continued unrestricted use. This is an important advancement, particularly when coupled with the provisions regarding the registration of GIs via international agreement that are referenced above.

GI Side Letters: In addition to the GI commitments in the text of the agreement, USTR's complementary work to secure side letters with several TPP parties believed to be in

active or imminent trade negotiations with the EU helps to further guard against the erection of inappropriate GI barriers to U.S. exports during the interim period between TPP's closure and its presumed later implementation date.

### ***Rules of Origin***

Rules of origin are a fundamental element of all free trade agreements designed to ensure that access into markets is provided to the intended exporters. In TPP this area of the agreement is even more important because the benefits of the agreement should be focused on the TPP parties, rather than providing significant benefits to non-Parties. Additionally, ROO serve an important function even amongst TPP members in light of the tariff differentials in market access packages between various countries in TPP. For dairy trade in particular well-designed ROO are important to ensuring that the flow of trade benefit solely those countries that secured a specific tariff advantage during negotiations, not other Parties.

It is essential that the USITC incorporate in its economic analysis the agreement's degree of flexibility in rules of origin and assess the possibility for transshipments or other arrangements that could encourage producers in certain TPP countries with more limited dairy access to use preferential access provided to other TPP partners as a means of circumventing the intent of the agreement.

### **Market Access and Related Evaluation Factors:**

As noted above, analysis on the dairy Market Access elements of the agreement remains underway. The dairy tariff lines number several hundred across numerous countries of interest in the TPP region. Adding to the complexity of providing a clear verdict on the impact of the agreement is the fact that NMPF and USDEC are in the midst of pursuing certain implementation issues with U.S. negotiators. The results of those discussions could have meaningful impacts on the final assessment of TPP's impact on dairy.

Below we would like to highlight a number of factors that are relevant to our assessment of TPP's impact on the U.S. dairy industry and that we urge the USITC to take into account in addition to the assessment of the impact that new export access will have for the U.S. dairy sector:

### ***Relevant Economic Factors***

- Impacts on U.S. Sales in Existing FTA Partner Markets: A relevant factor to consider is the degree of erosion of preferential FTA-created access for U.S. dairy exports into Mexico and Peru due to TPP's expansion of access to those markets for two major competitors to the U.S. dairy industry: Australia and New Zealand.



For example, dairy exports from the United States to Mexico are currently unrestricted by market access measures as a result of the full implementation of the North American Free Trade Agreement (NAFTA). Mexico has made new dairy product market access concessions to most of its other TPP partners in the form of concessions under CSQ-MX1 through CSQ-MX8. Although the United States dominates Mexican dairy imports due to proximity, a common land border, and established business relationships, these concessions will cause Mexican dairy product imports of New Zealand and Australian origin to become more competitive with U.S.-sourced product in the Mexican internal market. A similar, although smaller, effect will take place with respect to U.S. dairy exports to Peru as a result of concessions Peru has made to other TPP partner countries.

- Degree of Dairy Exports to the U.S. Expected from Canada: The U.S. is currently one of Canada's largest dairy export destinations, shipping hundreds of millions of dollars' worth of dairy products here annually. During the TPP negotiations NMPF and USDEC aggressively advocated for a significant expansion in bilateral trade with Canada, indicating our preference for fully open access. In the end, TPP instead resulted in more modest improvements in the degree of new access to Canada's consumers (as opposed to the existing level of imports by Canadian processors destined only for re-export outside of Canada). However, as part of that process the U.S. granted Canada a more generous market access package than we secured from Canada. It is our understanding that this was done with the expectation that Canada was unlikely to fully use that access, but we view it as an essential element of the USITC's responsibility to assess the likelihood of that trade developing over time through new schemes developed by the Canadian government.

This is an area where domestic policy considerations must be taken into account in order to properly evaluate the economic outcomes of the TPP agreement. Canada operates a supply management program for dairy that has the effect of supporting internal milk and dairy product prices at levels well in excess of those prevailing in the United States. A standard economic model might well predict that imports into the U.S. from Canada will be minimal under this new access, since the new access Canada granted to its TPP partners is not sufficient to fundamentally alter the historic misalignment of U.S. and Canadian dairy prices. However, Canada operates a Special Milk Class Permit Program (SMCPP), which was created by the Canadian Milk Supply Management Committee (CMSMC) in 1995 to provide eligible further processors, distributors and animal feed manufacturers with the means to access Canadian manufactured dairy ingredients at prices that will allow them to remain competitive in the marketplace. The system effectively allows eligible Canadian further processors to purchase Canadian-origin dairy ingredients at mostly U.S.-equivalent prices in order to favor internal milk suppliers.

To illustrate, a significant application of SMCPP system is in the confectionery industry, where a requirement to purchase the key dairy ingredient for milk chocolate manufacture, whole milk powder, at higher Canadian prices would make Canadian confectioners uncompetitive with U.S. imports, which generally do not face the same high import tariffs on finished products that more traditional products do in the Canadian marketplace. Special

Class permits to purchase the necessary dairy ingredients in Canada at U.S.-equivalent prices would therefore not undercut the price of confectionery items in the Canadian domestic market, nor would they reduce the returns to Canadian dairy processors and dairy farmers in the long run because the alternative would be for Canadian confectionery manufacture to shift to the United States for export to Canada and hence cause the complete loss of that market to the Canadian dairy industry.

- Impact of US Tariff Elimination on Milk Powders Granted to New Zealand & Australia: In TPP the U.S. agreed to eliminate tariffs on milk powders exported by Australia and New Zealand to the U.S. Milk powders are one of the major dairy commodities traded globally and can serve as a milk replacement option in a variety of food manufacturing uses. Particularly if this access is coupled with a potential approval of Grade A status for New Zealand's dairy sector, a goal New Zealand has worked hard to achieve throughout the course of the TPP process, it will be important for USITC to calculate the impact this decision could have on the U.S. dairy market and the degree to which imported milk powder could in time displace domestic milk usage as an ingredient in certain products.
- Impact of US Tariff Elimination Granted to Japan: Contrary to past practice, in TPP the U.S. opted to ultimately eliminate U.S. dairy tariffs for all Japanese exports despite not having reciprocity for this approach from Japan. The USITC should evaluate the likelihood of Japan utilizing this access in the future (10 to 20 years following implementation), particularly given the strong contrast this treatment poses with the tight limitations Japan retained on important dairy imports such as milk powders and butterfats. It could also be relevant to assess whether this type of disproportionately generous treatment for imports from a country restricting U.S. exports establishes a precedent that could have an impact on subsequent stages of TPP dairy negotiations.
- Impact of US Tariff Elimination on Specific Cheeses Granted to Canada, New Zealand & Australia: The U.S. opted to eliminate tariffs on 2 cheese lines currently subject to TRQs and that annually see considerable global imports. These are 04069097 for "Miscellaneous cheese" for Canada and New Zealand and 04069048 for Swiss/Emmental cheese for Australia. USITC should not only assess the capacity for increases under these lines as the tariffs are phased out based on existing product mixes, but also evaluate the potential for shifts in manufacturing capacity over time to take advantage of these new opportunities. This is particularly relevant for New Zealand, a country which exports virtually all of its dairy production. This impact is compounded by New Zealand's legislated provisions to exempt a "national champion" from conventional anti-trust metrics and constraints thereby facilitating an unusually powerful and demonstrated capacity to make plant investments to capture lucrative global opportunities.
- Impact on US Exports Given TPP Competition from NZ and Australia: Unlike most other recent U.S. FTAs, TPP includes significant dairy competitors. As a result, the U.S. will not win all the new access for dairy that TPP creates. A critical element of the TPP dairy

assessment must be how much of the new access the U.S. is likely to secure, in the face of competition for those openings with two of our largest global competitors.

- Impact on TPP Results Given Likelihood of EU FTAs in TPP Region: Although the EU is not a party to TPP, it has been carefully negotiating its own agreements with many TPP partners. It has completed negotiations with Canada and Singapore, reached an agreement in principle with Vietnam and has other talks underway in the region with important markets such as Japan. The likelihood of these agreements implementing during the early stages of TPP's implementation should be factored into USITC's analysis. In the past, the vast majority of EU FTAs with countries that established a prior trade agreement with the U.S. have largely mirrored the U.S. terms of access. Therefore for FTAs not yet concluded in the region – such as with Japan – this should be viewed as a highly likely outcome.
- Likelihood of Non-Tariff Barriers Arising: Useful as the SPS, TBT and GI provisions in TPP are, the USITC will need to assess the likelihood for potential market access granted under the agreement to be ultimately constrained due to regulatory limitations such as standards designed to thwart trade or inappropriately broad GI protections.
- Safeguard Provisions Implementation: The agreement permits the U.S. to apply safeguards on products for which the U.S. eliminates tariffs. In the past, there has not been a consistent U.S. approach to how quickly and regularly such safeguards are implemented. It would be important to the evaluation to determine whether the U.S. government would actually apply them as soon as the relevant volumes have been met. We urge USITC to seek clarification from the Administration on this point, given its impact on the economic analysis. The utility of a safeguard is greatest when it is swiftly and automatically implemented.

In addition, the structure of the economic analysis itself is important. There are several techniques that may be used to perform an economic evaluation of TPP. These modeling approaches include but are not limited to: baseline modeling with dependencies across economic sectors, gravity models of bilateral trade flows, and computable general equilibrium models. However, while many of the generally accepted trade models adhere to micro- and macro-economic theories of competition, they often perform poorly when evaluated using empirical data because they lack individual tariff line level analysis and cannot adequately capture forward risks to commodity-level, country-level, or global supply, demand, or policy conditions.

The risks in commodity markets are multifaceted. First, supply and demand conditions for commodities are highly seasonal and can vary significantly as a result of adverse weather conditions. Second, since commodities are generally accepted to be a homogeneous good, optimal trade flows are conditional on economic variables such as exchange rates, GDP of the trade partners, transportation costs, demand elasticities, and relative prices of the commodities. Finally, geopolitical and other policy factors may significantly impact the ability of a country to export or import. These factors are often ignored in highly aggregated models.

However, these dairy commodity level effects are critically important for modeling dairy trade flows as dairy products are continuously produced, depend on the supply and price of feed grain inputs, highly perishable, can be sourced from a number of dairy producing countries outside of the TPP, and may be subject to policy initiatives designed to protect domestic markets. For these reasons, a highly aggregated trade model will not adequately capture dairy trade flows. Instead, a highly disaggregated tariff line simulation approach with variables capturing forward risks to the economic sector is needed to properly evaluate multilateral dairy commodity trade flows.

Such an approach would focus on estimating the change in import volumes and values at the individual tariff line level, preferably at the 10-digit level for dairy products that would result from market access concessions at that level of trade data disaggregation. This approach is understandably of particular interest to marketers and other stakeholders within affected industries, perhaps more so than to policymakers. It uses historic trade data by country of origin, including quota fill rates for market access concessions that expand permitted volumes at lower, within-quota tariff rates for items subject to tariff-rate quotas. Impacts of tariff-only concessions or concessions to open or expand within-quota permitted volumes should be estimated based on historic or projected import unit values, levels of tariff reduction, and importing country demand elasticities. Concessions that are plurilateral in application, as are many in the TPP, also require historic importer market share data. Finally, to evaluate forward risks due to systemic or global economic shocks, as well as policy risks, stochastic elements should be modeled.

As demonstrated, a highly disaggregated simulation approach eschews use of general economic variables and economic interconnections such as those that characterize optimization, regression, or general equilibrium models in exchange for obtaining more product-specific qualitative and quantitative information. A model of dairy trade should include both analytical and qualitative components. Additional imports into the United States of dairy products and products containing dairy components, as well as additional imports of such products of U.S. origin into TPP partner countries, need to be estimated. Conducting such analysis for dairy and dairy-containing products is complex due to the particularly wide variety of products in this category, compared with other commodities, such as grains. HTS headings 0401 through 0406 plus 2015 include a large number of both dairy products for immediate consumption as well dairy-containing ingredient products. HTS headings 1517, 1702, 1704, 1806, 1901, 2106, 2202, 2309 and chapter 35 also include a large number of dairy-containing ingredient products. To provide a complete analysis, all of these products should be considered.

No matter the type of model employed it is important to capture the temporal and spatial arbitrage opportunities that may arise as a result of the TPP. A static model with deterministic elements may not capture long run economic incentives to alter domestic policies, product mixes, or trade flows arising from the reduction of tariff and non-tariff barriers to trade. Results of a trade model that is deterministic in nature and does not include these dynamic elements are likely to overestimate the potential benefits to the U.S. dairy sector.

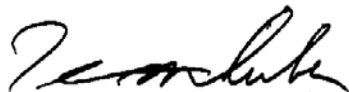
**Conclusion:**

TPP is a unique type of trade agreement in its ambition and its complexity. It involves a similar level of complexity to the prior multilateral Uruguay Round trade agreement, yet without employing a formulaic approach to tariff reductions and eliminations. It brings together several existing U.S. FTA partners, in some cases further extending the market access packages made under those agreements, and to that regional collection adds several new trade agreement partners. A broad hope exists that the TPP will ultimately expand to include additional countries, many of which currently have relatively high dairy tariffs, thereby growing its global impact over time. (Certainly from a U.S. market access perspective this expansion would be most concretely useful if those additional countries are not ones with which the U.S. already has FTAs in place.)

As referenced above, the agreement also breaks new ground in multiple areas important to U.S. agricultural exports – specifically in its SPS chapter and the IP chapter’s GI provisions. At the same time, the complexity of the trading partner relationships in TPP yielded in some cases quite complicated market access results that require careful analysis in order to understand their full impact.

As the USITC continues its analysis of these results, as well as the accompanying non-tariff elements, we are happy to provide support and answer questions to help shed light on TPP’s impact on the U.S. dairy industry. We appreciate the opportunity to provide comments on this important issue to the USITC. Thank you.

Sincerely,



Thomas M. Suber  
President  
U.S. Dairy Export Council  
2101 Wilson Blvd, Suite 400  
Arlington, VA 22201



James Mulhern  
President and CEO  
National Milk Producers Federation  
2101 Wilson Blvd, Suite 400  
Arlington, VA 22201