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To the United States Senate Committee on Finance
March 3, 2016

Free Trade Agreement Implementation: Lessons From the Past

I am Jim Mulhern and I am here this afternoon representing the National Milk Producers Federation (NMPF). I appreciate the opportunity to express the views of America's dairy farmers on the issues our industry has encountered in the implementation of prior U.S. free trade agreements (FTAs).

NMPF develops and carries out policies that advance the well-being of dairy producers and the cooperatives they own. The members of NMPF's 31 cooperatives produce the majority of the U.S. milk supply, making NMPF the voice of more than 40,000 dairy producers on Capitol Hill and with government agencies.

<u>Executive Summary</u>

Diligent implementation of U.S. free trade agreements (FTAs) is a vital component to ensuring their effectiveness. Past experience in the dairy industry has demonstrated to us the clear value in strong engagement with our trading partners to foster compliance with their obligations to the U.S.

In some cases this type of engagement has yielded quite positive results such as with Korea prior to Congressional consideration of the U.S.-Korea FTA and subsequently during the early stages of implementation. In other countries such as Canada there is in contrast a pervasive pattern of actively seeking to thwart dairy trade obligations that must merit a unique approach in order to effectively ensure that current market access opportunities are not continually eroded and that future trade opportunities can in practice be realized. Another pervasively problematic challenge our industry has faced are the trade barriers various countries are erecting as a result of geographical indication (GI) provisions in their FTAs with the European Union. The U.S. has rightly recognized that a strong focus on even smaller markets is vital to sending the right message to our trading partners that the U.S. rejects inappropriate GIs that impair the use of common food names.

Based on past experience, we believe that it is clear that the greatest window of opportunity for influencing how countries will implement their obligations to the U.S. is during the period prior to Congressional approval of an agreement. Action during this window not only ensures that Congress has a clear understanding of how the agreement is intended to work in practice, but it utilizes the strongest point of leverage the U.S. possesses: whether or not we will decide to put in place a strengthening of our trade ties with the FTA partner.

Given that the U.S. has recently concluded FTA negotiations with a large group of important trading partners (the Trans-Pacific Partnership) and is working to try to conclude an agreement with the EU, we believe that this hearing is an excellent opportunity to ensure that we carefully examine how past U.S. actions during the implementation and pre-implementation stages have helped to shape the impact of our prior trade agreements.

Background

Our nation has gone from exporting less than $1 billion in 2000 to exporting over $5.2 billion in 2015, an increase of 435 percent. (Sales in 2014 even greater at over $7 billion before retrenching during a global dairy recession last year as noted below.) It is not coincidental that the enormous growth over this period occurred when the U.S. began negotiating market-opening free trade agreements and the Uruguay Round took steps to reduce export subsidies and implement the first SPS agreement. These agreements lowered and ultimately removed tariffs and in many cases they gave our products a preferential advantage over other supplying countries. They also helped remove technical and regulatory barriers to our trade. Over that period, our exports of dairy products to FTA partners grew by 489 percent as compared to 384 percent to non-FTA countries.

We must acknowledge that dairy exports last year temporarily dropped from the record $7.1 billion achieved in 2014. This was due in large part to a significant drop in global prices for milk powders and cheeses. In addition, the increased value of the dollar and the strong global milk supply have contributed to the decline in prices. But it is also worth noting that, while our exports to non-FTA countries contracted by 32 percent, they fell by only 20 percent to our FTA partner countries.

Our FTAs have created important new market access opportunities for us and we have worked very hard through our market development efforts to ensure that we are taking full advantage of them. Two to three decades ago our industry feared trade agreements. Now, we fear that if we fail to take advantage of such agreements to tear down foreign barriers to our products and effectively enforce the terms of U.S. agreements, we will lose out to competitors who are themselves cutting FTA deals around the world.

However, negotiating these trade deals is only part of the job. We have found that in a number of cases it has been necessary to work just as hard to ensure that the market access terms of the agreements are not subsequently undermined, or even violated entirely, by governments under pressure from domestic producers to keep imports at bay.

This has been a full-time and, regrettably, not always entirely successful undertaking, as I will outline here. But I must also point out that of the 20 U.S. FTAs now in place, many are working well for dairy with little or no compliance problems.

Canada

Canada gets top billing as the FTA partner that has not only kept its old barriers, but erected the most new impediments to dairy access negotiated in a free trade agreement, in this case it is the 1989 U.S.-Canada Free Trade Agreement and later the North American Free Trade Agreement (NAFTA). The examples I am providing below are not all-inclusive, but are representative of the types of efforts the Canadian government has engaged in, and is likely to continue to engage in, to shield its industry from the import access it committed to allow in our trade agreements.

Cheese Standards:

In 2007 Canada altered its cheese standards in order to more tightly restrict the range of permissible ingredients in standardized cheeses sold in Canada. The regulatory changes placed percentage limits on the amount of non-fluid dairy ingredients used in standardized cheeses that could be incorporated in the product from non-fluid sources.

These changes were prompted by pressure from Canadian dairy farmers to find a way to restrict imports of U.S. milk protein concentrates (and to a lesser extent other dried protein imports such as casein/caseinates). Canada undertook a WTO Article 28 tariff renegotiation to allow it to raise tariffs on imports from other sources, but NAFTA prevented this from applying to products from the U.S. The new cheese standards were explicitly discussed by the Canadian legislature as providing a way to also limit imports of these products from the U.S.

Our industry and the U.S. government undertook ample efforts to prevent this action, arguing that it was an impairment of concessions granted the U.S. under NAFTA, but we were ultimately unsuccessful in preventing the changes from taking effect. The changes have adversely affected not only opportunities for imported ingredients but also imposed additional requirements on imported cheeses, since all cheeses sold in Canada were required to document compliance with the requirements.

Yogurt Standards:

Canadian dairy farmers have more recently been encouraging their government to put in place similar restrictions with respect to yogurt. Again, the primary goal of this action would be to restrict the ability of Canadian yogurt manufacturers to make use of imported dairy products, particularly those that could be exported under low to zero duty tariff-lines secured by the U.S. under NAFTA. These have not yet been adopted, but it is something we continue to monitor.

Ultra-Filtered Milk Requirements:

Canada has also begun consideration of how to further restrict other U.S. dairy imports through such standards. In response to complaints by Canadian dairy farmers about growing imports of ultra-filtered milk, which is currently unrestricted in use in standardized Canadian cheeses, the government is reportedly considering a few possible options.

One is to administratively determine that U.S. exports of 85% protein level ultra-filtered milk are "diafiltered milk," rather than unrestricted ultra-filtered milk. Since "diafiltration" is simply one possible step in the ultra-filtration process and it does not result in an entirely different product, the final product is still ultra-filtered milk. If Canada adopts this measure it would clearly be solely for the purpose of evading its NAFTA obligations.

The other option the Canadian government may be considering is to arbitrarily cap the level of protein in ultra-filtered milk that is allowed at unrestricted levels in standardized cheeses. Imposition of such a limit would have no science-based health or safety justification. The only grounds for such a change could be to force a tariff classification change in such a way that the product currently entering Canada under duty-free NAFTA status is no longer permitted and would be allowed entry only at a prohibitively high tariff level.

In addition to cheese standard revisions aimed at impairing these U.S. imports, the province of Ontario has recently approved a special milk class for ingredient usage that is designed directly to force out competition from U.S. imports. This is just the latest in a series of narrowly targeted milk classes that have been created over the past few years specifically in order to displace imports. Although Canada is not alone in having different classes for milk usage and it is not our view that milk classes are in and of themselves problematic, the way Canada has utilized its milk class system is unique.

Canada's milk class system is regularly evolving in order to constrain imports. Canada's "Special Milk Class Permit Program" was created in 1995 and provides lower-priced fluid milk to Canadian processors for use in certain narrowly defined groups of products. The way in which Canada is operating its milk class pricing system suggests an intent to erect trade barriers.

Tariff Reclassification:

In 2013 Canada enacted a law that reversed multiple rulings by the Canadian Border Services Agency (which had been upheld by Canada's International Trade Tribunal) that imports of a food preparation product containing mozzarella, pepperoni, oil and spices were being properly imported from the U.S. under the appropriate duty-free tariff line (1601.00.90.90). This law was in direct conflict with multiple Canadian Customs rulings that determined that the product was correctly classified. By reclassifying the cheese portion of the products from that tariff line into one with a duty of over 200%, the intent and effect of the legislation was to block all imports of these food preparation products from the U.S. This action thereby impaired the value of U.S. market access secured for that tariff line under NAFTA.

Limiting "Cross-Border" Shopping:

Although the Uruguay Round of multilateral trade agreement under the World Trade Organization (WTO) is not an FTA, it is worth noting that in that agreement, Canada obligated itself to provide a TRQ to allow access for 64,500 MT of fluid milk (0401.10.1000). But Canada then banned commercial shipments from making use of this TRQ. To our knowledge, Canada does not track cross-border shoppers in order to ensure compliance with its WTO obligation but instead simply asserts that cross-border shoppers between the U.S. and Canada fill this TRQ. Our industry continues to believe this is a grievous distortion of the access Canada committed to provide for fluid milk. Similarly, Canada restricts access to its 484 MT TRQ for ice cream to imports in retail size containers, meaning that ice cream mix for further processing in Canada is not permitted to enter under that TRQ.

We note these Uruguay Round compliance issues here since they help to illuminate a consistent and deeply problematic pattern of Canada systemically working to undermine the value of concessions that it has granted in prior agreements. Due to Canada's well-documented strategy of erecting regulatory barriers to impair the full utilization of U.S. dairy market access, we have serious concerns about whether Canada will comply with future trade obligations to which it has committed itself.

Almost immediately upon the close of Trans-Pacific Partnership (TPP) talks, Canada announced that it would be taking steps that appear designed to take with one hand what they committed to provide with the other. Canada announced the introduction of several subsidy programs intended to help ease the burden of transition for its producers. We do not take issue with Canada's right to create these domestic support tools but we do strongly object to the accompanying pledges to take measures to further constrain dairy imports.

For instance, the previous government pledged to exclude supply-managed products from the Government of Canada's Duties Relief Program and the new government has not yet signaled an intention to preserve this access. A large portion of current U.S. dairy exports to Canada enter under the current Duties Relief Program whereby a processor is able to import dairy ingredients duty-free provided that the final product in which they are used is subsequently exported. Elimination of this program would create substantial disruption in U.S.-Canadian trade and underscore industry concerns that the TPP access Canada has committed to provide may not translate to truly new sales opportunities compared to the pre-TPP status quo.

It is critical that the U.S. formulate this year a much stronger strategy than has to date been in place throughout the implementation of NAFTA (and the Uruguay Round) in order to curb Canada's consistent and intentional impairment of the value of dairy concessions to the U.S. Without this, dairy trade with our northern neighbor will continue to be much more volatile than should be reasonably expected and U.S. companies will be hesitant to depend upon reliable access to the market openings Canada has committed in trade negotiations to provide.

Colombia

Colombia has overall provided to be a reliable and responsive FTA partner, although some issues have arisen over the course of the U.S.-Colombia FTA. One of those issues currently still under discussion is detailed here; another relates to restrictions on U.S. exports of asiago and feta, both of which have been blocked as a result of the EU-Colombia FTA. Although these limitations on commonly produced U.S. cheeses have restricted the range of opportunities for U.S. exporters in Colombia, Colombia has also taken some helpful steps to clarify that U.S. companies can continue to ship products such as parmesan and provolone. These types of clarifications have been critical in clearly establishing for U.S. companies the range of permitted cheeses that can continue to be shipped to Colombia under our FTA with that country, despite GI-driven restrictions in Colombia's agreement with the EU.

Risk Categorization and Associated Import Requirements

Colombia has implemented risk categories through INVIMA Resolution 719 of 2015 as a basis for new import requirements. Ministry of Health Decree 539 of March 12, 2014 establishes numerous new requirements for high risk foods, including plant registration with INVIMA and the inspection of facilities intending to export to Colombia. Colombia did not notify the WTO and accept comments from trading partners before this decree was issued, and the implementing regulations corresponding to this decree risked closure of the Colombian market in September 2015. The strong relationships built through the U.S.-Colombia FTA, however, were successful in helping swiftly respond to this threat and permitting trade to continue. In response to industry concerns, USDA's Foreign Agricultural Service and the Colombia government moved quickly to head off the tremendous trade disruption that abrupt imposition of this implementing regulation would have caused for U.S. exports and as a result additional time for a more careful examination of the plant registration requirements was granted.

At this stage Colombia has indicated its intention to develop new implementing requirements and notify them to the WTO, but dairy remains at risk for burdensome requirements which could again have the potential to close the market as long as it remains in the high risk category. We must note that the criteria that Colombia has used to assign risk were not compliant with Codex risk category principles and Codex guidelines, and also ignored OIE and Codex guidance on the impact of heat treatment on dairy products. Colombia placed all dairy products in the high risk category regardless of processing or packaging. The U.S. has challenged these risk categories. We appreciate the Administration's work with Colombia to ensure that shipments under the FTA can continue without undue burden and that regulations reflect a recognition of the high level of food safety assured by U.S. dairy regulations and oversight.

Mexico

In contrast to Canada, our other NAFTA partner, Mexico, has been much less inclined to use back door means to negate commitments undertaken in our trade agreement. And where problems did arise, particularly during the implementation period while tariffs were being eliminated, our government was generally been able to resolve them. As a result, with limited exceptions, trade in dairy products is now operating fairly smoothly. We consider Mexico not only to be our best foreign market but also a very good trading partner. This situation has not resulted accidentally, however; it is the result of considerable hard work over the years by the U.S. to enforce NAFTA commitments when problems arose and actively work to help establish today's much smoother trading conditions.

One element that does merit review is the sometimes excessive documentation requests from Mexico regarding Rules of Origin. Although we very much support the importance of rules of origin in FTAs, the requirements for meeting these rules must be clearly outlined and not unduly burdensome. Overly invasive requests can work to the detriment of U.S. companies and undermine market access. Lack of sufficient oversight however can be similarly harmful. Towards that end we encourage U.S. Customs to investigate butterfat shipments from Mexico into the United States to verify that the product is actually from Mexico and not a transshipment.

<u>Peru</u>

Peru has also been a relatively reliable trading partner since the implementation of the U.S.-Peru FTA. U.S. exports have grown and trade problems are quite infrequent in this market. With that said, some issues have arisen.

The GI restrictions cited above in Colombia are also present in Peru and impose regrettable limitations on the value of Peru's concessions for cheese in its FTA with the U.S. This over-arching issue is detailed further below.

Another issue of concern has been the reports by U.S. companies that Peru may not be fully complying with U.S. regulations for and the U.S.-Peru FTA's rules of origin and standards of identity for evaporated and condensed milk. We would appreciate an analysis by U.S. Customs and the Food and Drug Administration to determine whether or not Peru's shipments of this product are in keeping with the terms of the FTA as well as U.S. standards of identity set by FDA. Careful enforcement of the provisions of our agreements – both for imports and for exports – are critical to upholding confidence in the bargains struck with our trading partners.

<u>South Korea</u>

Although the Korea-US Free Trade Agreement (KORUS) has been in place only since 2012 and full free trade is still years away, it has played an important role in opening up more export opportunities for many U.S. companies and has already helped expand U.S. dairy product shipments to that market. Dairy exports to Korea in 2015 totaled over $305 million, more than double the average of the three full years prior to KORUS, despite being down from 2014.

We believe that KORUS is a good example of how the U.S. could deal successfully with an FTA partner's market access sensitivities regarding dairy products and had hoped it would serve as a useful model for our efforts in the Trans-Pacific Partnership (TPP) negotiations with Japan and Canada.

Still, a few issues have arisen that required assistance from our government to help ensure that the terms of the agreement were being honored. Korea's response to these concerns to date has been encouraging and we hope that a similarly successful way forward can be found on a current in-process concern.

TRQ Administration:

For instance, early on we and other sectors had concerns about how Korea was administering the auction system it used to manage certain dairy tariff rate import quotas (TRQs). The initial auctions were not very successful in fully filling the quotas granted to the U.S. under KORUS. The Administration engaged extensively with Korea to understand why this was occurring and explore ways to ensure that the auction was not interfering with market demand for U.S. dairy products. USTR and USDA's prompt and sustained work in this area was critical to ensuring effective implementation of this vital avenue of KORUS agricultural access. As a result, the process has greatly improved and we are currently satisfied with how it is operating. We will continue to monitor it, however, to ensure that problems do not recur.

Organic Certification:

Another issue that has been successfully resolved involved imports of organic products generally and, for us, organic dairy products in particular. In late 2013, Korea announced its intention to begin enforcing organic certification regulations adopted in 2008 but which were not previously enforced. These regulations would have halted exports of organic products while exporters attempted to comply. Successful efforts by USDA and USTR, however, resulted in adoption of an organic equivalency agreement that ensured continued access to the Korean market for these high-value products.

Rules-of-Origin:

Similarly, the Administration worked extensively to address a pattern of overly burdensome rules-of-origin requests for U.S. agricultural exports from the Korean Customs Service. We worked with our exporters to ensure that they provided to Korean Customs information necessary to comply with the KORUS rules of origin requirements and FAS, together with other U.S. agencies, worked to ensure that Korean Customs stopped demanding overly invasive and burdensome information in a manner designed to impede trade. If left unresolved, this issue could have led to serious disruptions in KORUS market access. But prompt and sustained U.S. work with Korea appears to have established a more reasonable approach to documenting rules of origin issues while still ensuring that the product is fully in compliance with the terms of KORUS.

Inequity Vis a Vis New Zealand's FTA:

There is another KORUS-related issue that we are currently pursuing, as a result of more favorable treatment granted to New Zealand for cheddar cheese under the New Zealand – Korea FTA and an unusual staging of the tariff elimination for U.S. cheddar cheese under KORUS. New Zealand negotiated a tariff and TRQ phase out for cheddar cheese that occurs in year 7 of their agreement, which was implemented at the end of 2015. Under KORUS the tariff for this product is eliminated in year 10 of our own FTA. Year 7 of the Korea-New Zealand FTA and year 10 of KORUS are both 2021. However, due to how the timing of the tariff elimination is structured in the New Zealand agreement vs. under KORUS, New Zealand cheddar will be subject to a lower tariff in the critical final two years prior to the elimination of the tariff for all suppliers.

In 2019 New Zealand will enjoy a tariff almost 40% less than that U.S. exporters will pay under KORUS (10.3% vs. 16.8% for the U.S.); in 2020 this gap will grow such that New Zealand cheddar will face a tariff approximately 1/3 the size of that paid by U.S. exporters (5.1% vs. 14.4% for the U.S.). While not strictly a compliance issue, we do not believe that U.S. and Korean negotiators intended that such a situation should arise and we hope that the phase out for the quota and the tariff on U.S. cheddar cheese can be aligned to avoid this problem in order to avoid undermining the market share the U.S. has established under KORUS.

Geographical Indication Requirements

A final concern in Korea relates to Korea's implementation of restrictions on the use of generic names for certain dairy products as a result of Korea's FTA with the EU. The EU insisted that Korea adopt rules that prevent the use of these "geographical indications" (GIs) by any country other than those in the EU. The Administration made excellent use of the period prior to the implementation of KORUS to secure a very clear understanding from Korea regarding the scope of protection for the numerous multi-term GIs (e.g. Mozzarella di Bufala Campana) that were on the list of GIs included in the EU-Korea FTA. This written clarification was essential in ensuring that KORUS market access opportunities for various cheeses were preserved. We were not able, however, to restore access for several U.S. cheeses directly banned by the terms of the EU-Korea agreement (asiago, feta, fontina and gorgonzola). U.S. exporters have faced increasing enforcement against shipments of these products over the past year.

While stressing that my industry's overall experience with KORUS to date has been positive, the residual GI-driven restrictions in Korea have in practice undermined the value of the cheese concessions granted under KORUS and the same problem is spreading around the world through the EU's many other FTAs, as I describe in detail below.

<u>Geographical Indications in EU FTAs Undermine the Value to Dairy of U.S. FTAs:</u>

In a nutshell, the EU has been using its market-size muscle to lean on countries around the world to block imports of products from countries that allow the use of product names the EU inappropriately seeks to reserve for itself. The EU-Korea FTA and its impact on our KORUS agreement was the first indication of what has turned into a massive world-wide problem for us and for other dairy-producing countries.

We very much appreciate the work of Chairman Hatch and Senator Wyden, as well as the many members of this committee and throughout Congress, who have expressed serious concerns about this issue and have helped shine a spotlight on the impacts of the EU's activities. For those who may not be as familiar with some of the details of this issue, let me provide a little background.

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 both European and non-European producers.

However, the EU has been working in recent years to monopolize usage of many of these terms, while resisting efforts to clearly identify which names have already entered into wide-spread common usage. This is being done through use of the EU's geographical indication (GI) system, which is aimed initially at keeping such products out of its own market. It is now also being done on the global level, however, through EU efforts to negotiate exclusive use of many EU GIs through its free trade agreements, including with many U.S. FTA partners, and through multi-lateral efforts within the World Intellectual Property Organization. This greatly hinders effective competition with EU products in those markets, as well as in the EU market, since U.S. companies are prohibited from accurately labeling their products.

For instance, as noted above, the EU-Korea FTA forbids the use of the terms gorgonzola, feta, asiago and fontina by non-EU suppliers. It also required Korea to register the EU GIs automatically; that is, stakeholders with an interest in the Korean market had no opportunity to present arguments that the GIs at issue were in fact widely used generic names or otherwise should not have been protected in Korea. Even the EU provides a case-by-case opposition procedure, something it prevented Korea from adopting as part of their FTA. U.S. companies have had to forego sales opportunities in Korea due to these restrictions.

After its initial success in the EU-Korea FTA, the EU has busied itself expanding that model to many other markets around the world, including countries with which the U.S. has FTAs, such as Peru, Colombia, Canada, Central American countries and Singapore. U.S. engagement with these countries on this issue has been mixed, with some having provided assurances similar to those provided by Korea for multi-term GIs, while others continue to flout U.S. efforts to obtain sufficient clarity regarding the scope of protection they have granted to GIs registered under their FTA with the EU. After extensive U.S. outreach, some countries such as Guatemala and El Salvador have chosen to do the right thing and preserve access for many key U.S. exports but others such as Costa Rica have introduced harmful new restrictions on the use of certain common names.

Other countries such as Nicaragua and Morocco have to date not published any information regarding which components of multi-term GIs are subject to restriction and which can continue to enjoy common usage. Morocco has compounded this problem significantly by proposing to grant protection to all EU GIs en masse despite any apparent individual examination of each GI and no public opportunity for comment on these new trade restrictions. Across all EU FTA markets, restrictions on U.S. exports of asiago, feta, fontina and gorgonzola are proliferating, even where these markets are also U.S. FTA partners.

As noted earlier, the case of Costa Rica has been particularly concerning. In that country the government interpreted its trade commitments as requiring it to restrict the use of parmesan and provolone, despite the fact that the applied-for GIs were "Parmigiano Reggiano" and "Provolone Valpadana". This was done despite the fact that even the EU does not currently restrict use of "provolone" and the Central America-EU FTA clearly permits a country to decline to restrict use of generic terms such as parmesan and provolone which were both used by the local industry for decades and more recently by U.S. exporters under CAFTA.

The EU has also included GI requirements in FTAs it has negotiated with several members of the Trans-Pacific Partnership (TPP), i.e. Canada, Peru, Singapore and Vietnam. Of these, the agreement with Vietnam provides the greatest clarity to date regarding the scope of protection for multi-term GIs yet it too commits to a ban starting in 2017 on new U.S. exports of asiago, feta, fontina and gorgonzola. The EU is also pursuing GI commitments in its ongoing negotiations with Japan, Malaysia and Mexico.

Of course, we are also in the middle of negotiations on an FTA with the EU – the Transatlantic Trade and Investment Partnership (TTIP) – and it is abundantly clear that EU producers and politicians expect their negotiators to deliver an agreement that imposes strict EU GI rules on the United States. Our industry is even more adamant in its expectation that our negotiators should only come to an agreement on GIs with the EU if it simultaneously rejects restrictions in the U.S. market on common names, addresses the trade barriers erected against U.S. exports to third country markets and restores access into the EU for key U.S. exports such as parmesan and feta, labeled as such.

I want to make it entirely clear that we are not opposed to legitimate GIs. Having an avenue to protect GIs is an existing international obligation and the U.S. complies with that obligation by permitting the registration of both U.S. and foreign GIs through our trademark system. In fact, the EU already has a number of GIs registered in the U.S. system. They have available to them all the same enforcement opportunities as do U.S. companies, many of which are small or medium size operations themselves.

In other words, we have no problem with the existing registrations in the U.S. – or elsewhere around the world – of names such as "Provolone Valpadana" or "Parmigiano Reggiano". What we oppose is the EU's effort to effectively license to itself names that are commonly (and globally) used to identify a type of cheese. Production of such cheeses outside the European region to which the EU wants to provide a monopoly often represents a very sizable portion of global production, a clear indication that the name is not a term unique to one corner of the world. In some cases the names were even used generically in the EU until the EU decided to bestow just one country the permanent claim to them. (This was the case for parmesan and feta, which were produced by many European countries until roughly a decade ago when the EU made its final decision to award sole use within the EU of those generic names decides to Italy and Greece respectively.)

The EU's approach to restricting common food names through the use of GI registrations abuses a good concept in order to impose trade barriers against competitors. This has no place in TTIP or any other trade agreement. In forcing its trading partners to adopt the same trade-restrictive GIs in recent FTAs, the EU has turned FTAs, which are supposed to expand trade, into tools for discriminating against third countries to gain unfair market shares.

This is a major issue for our industry and it will continue to be so as long as new U.S. and EU FTAs are negotiated and implemented and the EU continues using GI's as a means of protectionism.

Conclusion

We look forward to working with the members of this committee to address implementation issues in free trade agreements and we will continue to collaborate closely with USTR and USDA to resolve problems as they arise. Active enforcement of not only the clearly enunciated commitments in an FTA but also the overall value of the package provided under that trade agreement is absolutely critical to upholding confidence in those deals. Agreements on paper mean little without the threat of strong enforcement measures behind them.

Based on past experience, we also believe that it is clear that the greatest window of opportunity for influencing how countries will implement their obligations to the U.S. is during the period prior to Congressional approval of an agreement. Action during this window not only ensures that Congress has a clear understanding of how the agreement is intended to work in practice, but it utilizes the strongest point of leverage the U.S. possesses: whether or not we will decide to put in place a strengthening of our trade ties with the FTA partner.

Where trading partners have demonstrated a consistent flouting of their trade commitments to us in certain sector – as is the case with Canada and dairy – additional and specifically-focused measures are needed to curtail this problem. Canada's consistent behavior in creatively finding new ways to constrain trade is reminiscent of another potential U.S. FTA partner – the EU. It is in part because of our past experience with Canada that we believe it is essential for the U.S. to secure clear dairy-specific results from the EU as part of TTIP in order to help try to guard against the type of shifting requirements that have proved to be so problematic with one of our oldest FTA partners. We are deeply concerned that the goal of concluding TTIP this year is not compatible with the type of high-quality dairy-specific result needed on nontariff issues given the lack of concrete progress towards that goal.

If the U.S. lets major trading partners evade their commitments to us through complex regulations that are nonetheless intentionally designed to negatively impact U.S. exports, we run a high risk that this emboldens other countries to similarly impair the letter and/or the spirit of their commitments to us. As an industry that exports $5 to $7 billion a year, this is a dynamic the U.S. dairy industry simply cannot afford to see develop. When a country has demonstrated a sustained commitment to limiting trade, the U.S. must adopt uniquely targeted approaches to hold that trading partner to account.

That is also why U.S. actions with other major countries – even when not FTA partners – is very important. Russia undertook several obligations upon joining the WTO. Its current ban on many U.S. agricultural products, including dairy, has created severe upheaval in global markets and is not in keeping with its WTO commitments. In a similar vein, the EU is not currently an FTA partner, yet it too is bound by existing WTO obligations, including the Agreement on Technical Barriers to Trade. Its continued moves toward the imposition of restrictions on more and more common names runs directly counter to its obligations under that agreement.

NMPF believes U.S. enforcement of both WTO obligations and existing FTA obligations is vitally important to ensuring the future faithful adherence of our FTA partners with their commitments. Without this, U.S. companies cannot be assured of the value of U.S. FTAs which would seriously undermine support for those future agreements.

I appreciate the opportunity to testify here today on this issue and look forward to continuing to work with this committee, as well as with the Administration, on the important issue of faithful FTA implementation.