Written Testimony by the

National Milk Producers Federation

to the International Trade Commission

Concerning *the U.S.-Trans-Pacific Partnership Free Trade Agreement: Advice on Probable Economic Effect of Providing Duty-Free Treatment for Imports Investigation*

Investigation Numbers TA-131-034 and TA-2104-026

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The National Milk Producers Federation (NMPF) appreciates this opportunity to provide testimony on the proposed Trans-Pacific Partnership (TPP) trade agreement between the United States, New Zealand, Australia, Peru, Chile, Vietnam, Singapore and Brunei. 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.

The constituency represented by NMPF has a substantial interest in any discussion of modifications to existing U.S. preference programs or consideration of the creation of new preference programs. The U.S. dairy industry is the second largest agricultural commodity subsector, as measured by farm cash receipts, generating approximately $35 billion in farm receipts from sales of milk in 2008 and accounting for approximately 10% of total farm receipts. There were over 57,000 licensed dairy farms in the U.S. in 2008. On average, each of these had milk sales of $600,000, supporting some 25 jobs and $3.75 million in economic activity from their suppliers through their farms to the dairy plants that process their milk. In total, the American dairy industry supports, directly and indirectly, over one million full-time jobs and $140 billion in economic activity, not to mention retailers, restaurants, and other food manufacturers, who all rely on dairy products to do business.

The United States is also one of the world's largest and most attractive markets for the sale of milk and dairy products. Last year the U.S. imported approximately 3.4 percent of its domestic production of these products, measured on a milk solids basis, and exported roughly 9.3 percent. According to USDA, the total value of U.S. dairy imports, which includes some non-dairy constituents, was nearly $2.2 billion in 2009 while exports totaled nearly $2.3 billion. These figures are lower than those in 2008 – imports totaled nearly $2.8 billion while exports totaled nearly $3.8 billion – given the dramatically altered global supply and demand balance situation we faced last year; however it is telling that even in the face of such a difficult competitive situation, the U.S. dairy industry's exports for 2009 still slightly exceeded those in 2006.

NMPF Position on TPP FTA Concept

NMPF believes it is critical that all U.S.-New Zealand dairy trade be excluded from the TPP FTA. There are severe anti-competitive practices (detailed below) at play in New Zealand that grossly distort the U.S.-New Zealand trading relationship, as well as New Zealand's ability to influence global dairy markets. Given this unfortunate and unique role that New Zealand's dairy industry enjoys, any expansion of dairy trade between the U.S. and New Zealand would impose considerable economic harm on U.S. dairy producers, as well as on many in the U.S. dairy processing sector.

Our position seeking exclusion of U.S.-New Zealand trade in dairy products from the TPP is not a reflection of our overall trade beliefs and agenda. NMPF has been and remains a strong supporter of balanced trade initiatives. Rather, our position here is a unique response to a unique situation. It is important to make clear that NMPF is not opposed to the overall TPP FTA concept. Although we do not believe this is the best avenue to bring about expanded trading opportunities with the most significant Asian economies, we do not oppose the attempt to pursue new trade relationships in an area of the world where FTAs involving other countries are rapidly proliferating.

It is particularly unfortunate, however, that at this stage the vast majority of significant markets involved in the TPP FTA are ones with whom the U.S. already has an FTA. This is the case for Australia, Chile, Singapore and Peru, leaving only New Zealand, Vietnam, and Brunei as the countries with which we would be creating new trade agreements. If anything, this agreement therefore has the potential to undermine the gains made in some areas of U.S. trade agreements.

For instance, currently the U.S. has an FTA with Peru, but New Zealand and Australia do not. Certainly efforts on our part to help the major dairy exporting powers of Australia and New Zealand gain access to the Peruvian market only undermines the benefits granted to the U.S. as part of the U.S.-Peru FTA. This eroding of U.S. preferential access into the Peruvian market should be clearly accounted for in ITC's analysis.
For example, in May 2006, the ITC estimated that the U.S.-Peru FTA would nearly double Peruvian dairy imports from the U.S., from $8.1 million to nearly $15 million. However, had this ITC analysis included equal access for Peruvian imports from Oceania as afforded imports from the U.S., the results would likely have been significantly different. Moreover, in years prior to implementation of the U.S.-Peru FTA, U.S. market share on a product weight basis increased from 7 to 17 percent during 2004–08. However, in 2009, the first year of implementation of the U.S.-Peru FTA, U.S. share dropped to 10 percent. This demonstrates that changing market conditions can rapidly erode benefits of a bilateral FTA when the differences in market access between the U.S.

and other global suppliers is limited, as will be the case if New Zealand and Australia are provided similar access to the Peruvian market via the TPP FTA.

What would be significantly more beneficial to the U.S. dairy industry and our prospects for increased exports would be to swiftly address the issues of concern (including one quite important to U.S. cheese exports) in the U.S.-South Korea FTA and move without any further delay to Congressional approval of this very valuable trade agreement. ITC's own assessment indicated the significant economic importance of the U.S.-Korea FTA and estimated an increase in the U.S. GDP upon passage of the U.S.-South Korea FTA to be $10.1 - $11.9 billion.

NMPF's own assessment of the benefit of that agreement (provided we are able to fully make use of the negotiated cheese access – a point now called into question by terms in the EU-Korea FTA) indicated an average annual benefit to U.S. dairy producers of approximately $300 million over the first several years of the agreement. We find the TPP – a deal that will essentially only open up additional opportunities in a few additional countries with relatively small markets – unlikely to rival the U.S.-Korea FTA. This is certainly quite true for the dairy industry and for the vast majority of American agriculture, but given the economies involved it would seem likely to be the case for our economy as a whole as well.

As stated earlier, NMPF fully agrees with USTR's assessment of the critical nature of Asia to America's trade future. But the most significant near-term prospect for increased export opportunities for our dairy industry and American agriculture as a whole is the U.S.-Korea FTA. We urge the Administration to redouble efforts to resolve key issues of remaining concern in this agreement in order to open up new markets for our products in this major Asian economy and to avoid U.S. exporters being left behind in the wake of the EU-Korea FTA and ongoing negotiations with both Australia and New Zealand. We encourage ITC to make note of the relative benefits of engaging various Asian-Pacific economies as it performs its analysis and commentary on the merits and weight of the TPP.

Importance of U.S.-New Zealand Dairy Trade Exclusion and Dairy Market Dynamics

In order to avoid dramatic economic harm to the U.S. dairy industry, it is vital that all U.S.-New Zealand dairy trade be excluded from the TPP. Our industry faces a very unique anti-competitive situation in New Zealand. One company, Fonterra Co-operative Group Limited (Fonterra), controls over 90% of the milk produced in that country, meaning that we are essentially pitted against a monopoly power.

New Zealand as "Forced" Exporter:

New Zealand's dairy industry is extremely export-driven. Per the most recent FAS GAIN report on New Zealand's dairy industry, its milk production in the most recent marketing year (MY 2008/2009) was a record 16.6 million metric tons, up 9% over the prior marketing year. Although such strong gains in milk production do not occur every year in New Zealand, its industry clearly continues to expand over time and that same FAS report notes the country's potential for continued milk expansion over the next 10 to 15 years.

In addition, storage capacity constraints, pooled payment procedures, and capital constraints incentivize New Zealand's exporters to maximize sales of each season's production within the current accounting year. The impact of these constraints on global prices was demonstrated during the 2008/09 milk production season. As New Zealand's milk production rapidly recovered from drought, soft global demand slowed sales. Company owned storage capacity was insufficient to handle the increasing inventories and additional storage space had to be leased. So, rather than continue to incur increased storage costs, production was aggressively priced to increase sales and maximize the amount of the 2008/09 season's production that would be sold during the current accounting year.

Historic Preferences Created Current Global Power Position:

Further exacerbating this lopsided competitive position, Fonterra has had the benefit of being created less than a decade ago from the ashes of New Zealand's old State-Trading Enterprise, the New Zealand

Dairy Board, and has long enjoyed exclusive access to New Zealand's lucrative export licenses to high-value tariff-rate quota controlled markets. Although legislation was put in place to try to temper somewhat the dramatic competitive advantage enjoyed by Fonterra, it still enjoys the market advantages created by having been granted these exclusive rights by their government over the past few years.

In fact, despite the country's small size, the dairy exporting powerhouse of New Zealand already controls approximately extremely disproportionate shares of global dairy trade. As Fonterra boasts on its website: "[We are] the world's leading exporter of dairy products and responsible for more than a third of international dairy trade." This extraordinary level of control reaches as high as 40 - 46%, however, for certain heavily traded dairy products such as whole milk powder (40%) and butter/anhydrous milkfat (46%). These figures do not even take into account the widely expanded scope of control that Fonterra enjoys through its investments and business partnerships with a number of dairy industries around the world.

Fonterra's strong domestic advantages and overwhelming export focus have helped drive these partnerships. Thanks to this, Fonterra has been able to expand aggressively into foreign partnerships to control growing areas of milk production around the world in order to maintain its position as the preferred company supplier. One such recent example is an investment in three dairy farms in China. Two new facilities would be opened that would be similar in size to a facility opened in 2007 with approximately 3,300 milk cows on about 85 acres, currently valued at approximately $14 million. Others investments include: nearly 100 percent ownership of Saprole, one of the leading dairy manufacturers in Chile; a 50/50 partnership with Nestles in Dairy Partners America that operates manufacturing facilities in Brazil, Argentina, Venezuela, Colombia, and Ecuador; and Fonterra Australia which operates 12 manufacturing facilities in Australia.

These investments enhance Fonterra's near monopolistic control of New Zealand milk supplies to the global dairy market. As a result, its ability to increase revenue at the expense of U.S. dairy producers via monopolistic-style price discrimination by shifting products from low-value markets to the high-value U.S. market is likely to increase under a TPP FTA that provides New Zealand with increased access to the U.S market. Fonterra's ability to price discriminate stems specifically from its operating practice of making export sales to a wide variety of international buyers at a variety of returns per unit of milk utilized, with additional sales being made for increasingly lower returns, to the extent necessary to sell all of its members milk production during any specific year. The returns from these sales are then paid to its member producers at an average, uniform rate per unit of milk production. Thus no particular volume of milk production controlled by Fonterra competes with any other volume within its entire operating control. In contrast, U.S. companies producing dairy products are much more atomistic with respect to selling those products in world markets. None can afford to export products for much less than the competing price in the U.S. domestic market, and so excess production and inventories can only be cleared at the margin through a reduction in the domestic price, which reduces prices received by all dairy farmers.

Review of average unit values of New Zealand exports adds further support to the claim that Fonterra's nearly monopolistic control of New Zealand raw milk supplies provides it with the ability to use monopolistic-style price discrimination in the global market. During 2009, the export unit value of New Zealand's exports to the U.S. averaged $4,065 per metric ton. Among the top 20 destinations for New Zealand dairy exports, only exports to Japan had an export unit value greater than $4,000 ($4,051 per metric ton) and only exports to Vietnam exceeded an average export unit value of $3,000 per metric ton (these export unit values exclude fluid milk exported under HTS 0401). Increased access to the U.S. market via a TPP FTA would allow New Zealand access to additional U.S. product categories. As discussed earlier, evidence strongly indicates that Fonterra would use this new opportunity to shift product from low-value markets to the high-value U.S.

market, enhancing its revenue stream. As a result, returns to U.S. dairy farmers would be expected to decrease as domestic production was diverted to lower-value markets outside the U.S. However, such opportunities would likely be limited because the low-value foreign markets which thereby became available would be of lower value than the U.S. market could return, even at the reduced price levels those markets would experience due to increased supply from New Zealand. Moreover, all of the benefits attributed to lower duty rates would not necessarily accrue to consumers because of Fonterra's ability to price discriminate through supply control would allow it to extract some of these benefits as increased revenue.

In addition, benefits associated with the diversion of U.S. products to third country markets vacated by New Zealand exports diverted to the U.S. market under the TPP FTA could be overestimated. New Zealand's 2009 exports were at least 100 metric tons less than the 2005–09 average in 37 countries. New Zealand's total exports to these countries were 97,907 metric tons less than the 2005–09 average. Among these 37 countries, U.S. exports were at least 100 metric tons greater than the 2005–09 average in only eight, or a total difference from the 2005–09 average of 11,667 metric tons. In other words, during 2009, U.S. exports replaced decreased New Zealand exports in third country markets at a 12 percent rate. Furthermore, if greater than average exports to third-country markets where the U.S. currently has FTA in place are removed, then the replacement rate is only 7 percent.

Even considering 2008, a year where U.S. exports increased substantially in response to drought related supply shortages from New Zealand, U.S. exports did not directly replace all exports losses by New Zealand. Again considering countries to which New Zealand exports were at least 100 metric tons less than the 5-year average (2004–08), New Zealand exports decreased by 249,664 metric tons. U.S. exports to the corresponding markets increased by 166,270 metric tons for a 67 percent replacement rate. However, when market where the U.S. has FTA's in place are removed,

the replacement rate drops to 43 percent. Therefore, analysis that evaluates the benefits of increased U.S. exports to replace New Zealand exports diverted to the U.S. market resulting from a TPP FTA should be carefully considered.

New Zealand's range of control over dairy markets world-wide could only be expected to grow further beyond its already dramatic levels if it is granted access to one of the world's largest markets for dairy products.

The level to which the early advantages given to New Zealand's largest dairy company and their remaining influence have altered global dairy trade, as well as the ability of Fonterra to control dairy product sourcing from a wide range of countries, is extremely troublesome to the U.S. dairy industry as U.S. negotiators consider expanding access to the U.S. dairy market for New Zealand. Fonterra's ability to make sure strong use of its preferences in order to leverage a strong global supplier position is also a detriment to U.S. exports as our industry seeks to compete in other markets against such an unnaturally strong player.

Dim Prospects for Significantly Improved New Zealand Competition:

New Zealand is currently reviewing this bedrock competition legislation for its dairy industry, the Dairy Industry Restructuring Act, which helps foster at least some small degree of competition from other dairy companies in New Zealand. A proposal currently exists to tilt the requirements under DIRA further against competition, however, by increasing the payment rates required of independent processors to Fonterra, the dominant industry player. In addition, recent FAS reports estimate that – if certain competitive benchmark provisions are left unaltered – DIRA is likely to expire entirely within roughly the next two years. So even the minimal regulatory measures that New Zealand currently has in place to help stimulate some limited level of competition in that country's dairy sector will likely soon be abolished.

Fonterra will clearly fight any drop in its control over New Zealand's milk supply every step of the way, however. In fact, two of the minor "competitors" in New Zealand's monopolistic dairy industry (Kaimai Cheese Co Ltd and Grate Kiwi Cheese Co Ltd) had to take Fonterra to court to enforce their rights under the Dairy Industry Restructuring Act. The New Zealand courts ultimately ruled against Fonterra, saying it must supply regulated milk to Kaimai Cheese Company and Grate Kiwi Cheese Company.

U.S.-New Zealand Trade Imbalance:

These anti-competitive advantages play a strong role in the entirely one-sided trading environment in dairy products between the U.S. and New Zealand. Over the past six years, New Zealand has exported on average more than $637 million worth of dairy products to the U.S. each year, reaching a peak in 2008, as global prices remained high, of $719 million. The growth experienced by New Zealand over this period from an already impressive starting point of $492 million in 2004, thereby almost doubling in just a half dozen years.

Last year, the value of New Zealand sales to the U.S. declined by 17 percent, during a time when global dairy prices generally decreased by 50 percent or more, diving to very low levels compared to recent years. The volume of imports into the U.S. from New Zealand of key commodities that currently face tariff-rate quotas rose by nearly 60 percent in 2009 compared to 2008. Milkfat-based products dominated these imports, accounting for 87 and 90 percent of the total in 2008 and 2009 respectively. Meanwhile, total cheese imports from New Zealand increased by more than 11 percent.

By way of comparison, over the last six years the U.S. has exported an annual average of a negligible 5,526 metric tons valued at less than $6 million to New Zealand. It reached a high of $11.4 million in 2009 as New Zealand imported small amounts of lactose from the U.S. to correct its structural shortfall in this ingredient which is primarily used to standardize skim milk powder for export. This

dramatic trade imbalance would only be further exacerbated by the inclusion of U.S.-New Zealand dairy trade in the TPP FTA.

Some have suggested that because the U.S. dairy industry has become a significant exporter, that therefore it is in its own interest to avoid seeking an exclusion in an FTA. We agree that the U.S. has expanded exports and became more competitive in recent years when we faced relatively high global prices and an environment undistorted by the European Union's dairy export subsidies. Last year our industry also did an admirable job under the circumstances of maintaining exports against heavy European export subsidies (with much more limited assistance from the U.S.'s Dairy Export Incentive Program) and considerably lower global prices throughout most of 2009.

However, the uniquely anti-competitive situation in New Zealand whereby one single company is permitted to control over 90 percent of the country's milk production and more than 40% of global dairy trade in key product areas creates a unique market advantage. Given that situation, our industry believes there is simply no alternative to address these exceptional circumstances aside from a total exclusion of all U.S.-New Zealand dairy trade under this TPP.

Impact of Inclusion of U.S.-New Zealand Dairy Trade in TPP

The negative impact of these additional imports from New Zealand on the U.S. dairy industry would be tremendous. Our estimates are that milk prices received by producers would drastically drop and gross revenues received by U.S. dairy farmers would plunge by a cumulative $20 billion over the first 10 years of the FTA if U.S. dairy restrictions on exports from New Zealand are fully phased out in the TPP FTA.

These negative impacts would result from increased imports from New Zealand of the principal dairy products whose importation is currently restricted by tariff-rate quotas (TRQs), including nonfat dry milk (skim milk powder), dry whole milk (whole milk powder), butter, anhydrous milk fat (AMF), and various

types of unprocessed cheeses, HTSUS subheadings 0402.10, 0402.21, 0405.10, 0405.90, and 0406.90, respectively. These products comprise three of the four primary dairy products whose U.S. domestic wholesale prices directly determine, through the use of product price formulas, the prices that dairy processors pay dairy farmers for milk under the U.S. Federal Milk Marketing Order system (namely, nonfat dry milk, butter and cheese) as well as close substitutes for these three products in food processing. Prices paid by dairy processors under the Federal Order system directly determine the prices received by farmers producing about two-thirds of the milk marketed in the United States. Federal order prices also strongly influence prices received by farmers producing the remainder of the milk, either under analogous state milk marketing orders or in unregulated regions adjacent to area regulated under a federal or state milk marketing order.

The quantitative impact of the resulting increased dairy imports into the United States was determined using a dynamic equilibrium model of the U.S. dairy industry, adapted from the U.S. dairy industry model used by the Food and Agricultural Policy Research Institute (FAPRI), with four-year distributed lag impacts for milk supply response. The resulting impact was a cumulative loss of about $20 billion in cash receipts by U.S. dairy farmers during this period. If so requested by the Commission at the upcoming ITC hearing, NMPF is willing to provide additional details related to the calculations and assumptions underlying our economic analysis on a Confidential basis.

An important factor to note is that, as stated, the $20 billion impact cited here is the estimated impact on the U.S. dairy producer sector arising from open U.S.-New Zealand dairy trade under an FTA. NMPF recognizes that the ITC examines the impact on the total economy due to change in dairy trade regulations. This is explicitly not what NMPF has analyzed; we have assessed this aspect of the agreement from the standpoint of the tremendous economic harm it would impose on American dairy farmers and on the many U.S. dairy processors relying primarily on U.S. milk to create their quality dairy products, rather than using/preferring imported dairy ingredients.

A large quantity of dairy farmers, totaling several thousands of them, mostly smaller and medium family farms, would be forced out of business by the end of this period, and the industry would undergo very significant consolidation. Following a period of adjustment, the U.S. domestic market would be supplied by considerably fewer, larger farms and by a greatly expanded volume of imports from New Zealand.

This major adjustment will also adversely affect manufacturers, which use raw milk as their main ingredient. The lack of milk supply and the large quantities of already processed products will force hundreds of processors out of business with the consequently loses of jobs primarily in rural areas of the United States. It is noteworthy that many dairy processors – particularly those relying most strongly on fresh U.S. milk for their production of dairy products as opposed to imported ingredients – are also strongly opposing expanding U.S. trade with New Zealand.

End users of dairy products will be the primary beneficiaries by simply importing large quantities of dairy products for further processing. And in fact, within the realm of dairy processors, the inclusion of U.S.-New Zealand dairy trade would have additional important negative repercussions through the defacto encouragement of greater usage of imported dried dairy products instead of the use of fresh, U.S. milk. This would disadvantage those sectors of the American dairy processing industry that have made a commitment to sourcing fresh milk as a key quality ingredient in their dairy products.

Bottom Line: U.S.- New Zealand Dairy Relationship

Although we would certainly very much like to see a different situation, it's simply a reality that nothing can be done to make the New Zealand market as large and as appealing to U.S. exporters as the U.S. market is to New Zealand's exporters. The inclusion of U.S.-New Zealand dairy trade within the TPP FTA would only give New Zealand access to the richest and one of the largest dairy markets in the world.

Due to the exceptional anti-competitive structure of the New Zealand dairy industry and the entirely lop-sided nature of the dairy trading relationship between the U.S. and New Zealand, NMPF and dairy producers across the country are united in calling for the exclusion of U.S-New Zealand dairy trade from the TPP FTA. Some may recall that NMPF urged the maintenance of U.S. over-quota tariffs for imports from Australia when the U.S.-Australia FTA was taken under consideration by the TPSC. We are not seeking a similar form of treatment here within the TPP FTA for U.S.-New Zealand dairy trade because, as noted above, New Zealand's dairy industry presents such a unique and anti-competitive situation that unprecedented measures are called for to address this situation. Simply put, we can envision no achievable way of creating a balanced situation and level playing field for dairy products in a trade agreement between the U.S. and New Zealand.

Maintenance of the Existing U.S. FTAs' Agricultural Market Access Provisions

A considerable amount of hard work went into the negotiation of the U.S. FTAs with countries that would be a part of the TPP FTA. Our agreements with Chile, Singapore, Australia and Peru were very carefully calibrated to take into account the particular concerns and sensitivities of each of our trading partners in order to maximize U.S. export opportunities while also providing strong benefits to our FTA partners in order for them to win passage of the agreement in their own countries. As the hard-working staff at USTR and FAS are well aware, these types of negotiations are not easily done.

Nor is Congressional passage of U.S. FTAs easily won. NMPF lobbied strongly for the passage of the Chile, Singapore and Peru FTAs – we joined with many other agricultural sectors and business groups to convince Congress of the merits of these agreements, as they were negotiated. Now it is proposed that the agricultural market access provisions of those agreements might be reopened. This would fundamentally alter the very delicate balance of concessions contained within those agreements. In our view, such an outcome is highly likely to yield a negative result for our industry.

Singapore's dairy tariffs are already at zero, giving us nothing to be gained by reopening this agreement. The

Chilean FTA is largely phased-in at this stage with many dairy tariffs already at zero and only one year remaining before the rest are ultimately eliminated. The Peru FTA was only very recently negotiated and we firmly believe that our negotiators obtained the best possible outcome on dairy products that was to be had while maintaining an adjustment period to allow for gradual industry adjustments to a situation of ultimately open trade. We are very satisfied with the terms of the Peruvian FTA and believe its first year in effect, 2009, operated smoothly.

Finally, the construction of the Australian FTA was very carefully considered and arrived at in order to be able to secure its approval by the body charged with ultimate responsibility for our trade agreements – Congress. NMPF is extremely opposed to altering its agricultural provisions – or those of any of the other existing U.S. FTAs – in any way as part of this exercise. We strongly urge our negotiators to respect the good work that has already been done on the existing U.S. FTAs by leaving their market access provisions untouched.

Maintenance of the Existing Country-Specific Agriculture Rules of Origin

Since NAFTA, the U.S. has used the same rules of origin (ROO) for dairy products in its FTAs. These rules of origin are a critical piece to ensuring that the concessions negotiated through and FTA flow solely to the countries participating in the agreement and not to third-party countries. Essentially, the dairy ROO require dairy products benefiting from the terms of the FTA to be made from milk produced in the FTA partner country. There are a few exceptions to this simplistic description, but they are extremely limited and primarily within the processed products category areas such as products falling into HTS Chapters 18 and 19.

It is vitally important to ensure that these standard dairy ROO are used in the TPP FTA **and** that the precedent of applying these on a country-specific basis be maintained. It would dramatically undermine the effect of the unique concessions granted in each U.S. FTA party to the TPP if dairy ROO were to be applied as a whole to the entire TPP group of countries rather than to each individual trading partner within the regional pact.

Detailed rules of origin are absolutely essential to ensuring that our industry knows what it is agreeing to and who we will actually be trading with when entering into an FTA. Without stringent country-specific agricultural ROO in the TPP, Australia and New Zealand would be free to use our other trading partners as platforms to funnel dairy products into the U.S., despite any restrictions the agreement may apply (as we are strongly advising in these comments) to exports from those countries directly to the U.S.

Prioritization of NTB and SPS Barriers Before Market Access

What is more difficult to assess in advance economically, but would genuinely have an impact in many of these markets is the resolution of important sanitary & phyto-sanitary (SPS) barriers and non-tariff barriers (NTBs). These types of issues frequently create strong impediments to trade – sometimes erecting larger barriers than the tariffs themselves. This is certainly the case when tariff have either already been addressed through a pre-existing Free Trade Agreement or have unilaterally been set at low levels by a country (as is the case for much of Oceania's agriculture).

We are aware that the existing U.S. FTAs did not fully resolve all agricultural SPS and NTB barriers with our trading partners. It is high time that this situation be remedied by using this opportunity to fully address those unresolved issues that are not technically a part of the FTA but whose resolution is critical to ensuring that U.S. exporters can take full advantage of whatever is ultimately negotiated.

Additionally, in the case of New Zealand its agricultural tariffs are extremely low already. For instance, their dairy tariffs range from 0 to 6.5% and those are among the highest of the country's agricultural tariffs. Little can be won in terms of unleashing even only marginally greater U.S. agricultural trade flows without addressing the various SPS and NTB issues of concern with New Zealand. As detailed above, of particular importance to our industry is genuinely addressing the near-monopolistic control that one firm in New Zealand has over its dairy industry.

Points Regarding the Additional Two New Trading Partners:

Vietnam:

While NMPF welcomes the addition of Vietnam to the TPP group of countries, and looks forward to full elimination of tariffs on dairy trade with Vietnam, it is questionable whether the TPP would create any significant additional net trade preferences for U.S. dairy exports to the attractive Vietnam market. This is because most of Vietnam's dairy product imports come from TPP member countries. In 2008, the United States, New Zealand and Australia accounted for 39 percent, 22 percent and 14 percent, respectively, of Vietnam's total imports the major dairy products, measured on a milk equivalent basis. Thus, about three quarters of all dairy imports are from TPP member countries, who would all enjoy the same negotiated tariff preferences.

Exports of U.S. dairy products to Vietnam totaled $85 million in 2009, the last full year of data. Although sales last year were down significantly, reflecting the challenging global dairy dynamics of last year, Vietnam remains an important market for U.S. dairy exports. Products of particular importance in this country include skim milk powder, lactose and the range of various whey products. However, we would also hope to see improved access for U.S. cheese exports, as well as the remainder of U.S. dairy products, in an agreement with Vietnam.

Vietnam's applied tariffs for products of greatest export interest to the U.S. are relatively low, generally ranging from 0% - 20%. However, Vietnam does have leeway currently to increase its rates up to higher bound levels in many cases. In the case of other products such as ice cream, rates can range as high as 40%. Clearly, both the rates of most economic importance and the much higher rates on the remainder of Vietnam's dairy products would need to be an issue of focus in a TPP FTA negotiation. However, in terms of significant positive impact, the prospect of greater exports is not anticipated to be extremely large given the advantageous rates currently applied to the products of greatest U.S. export importance and – as stated above – the fact that the TPP would also open access in that country for two of our largest

global competitors (Australia and New Zealand).

As with any U.S. FTA, the inclusion of Vietnam-specific dairy rules of origin is essential to the creation of a satisfactory trade agreement.

Brunei:

We have not made much mention of Brunei in our comments above, nor have we calculated an impact on this proposed FTA from the inclusion of Brunei. This is due to the relative size of the Brunei economy and very limited number of consumers. We have no concerns with a trading relationship with Brunei. We look forward to working with our negotiators to craft a market access agreement with Brunei that would cover the full range of U.S. dairy products.

In Closing

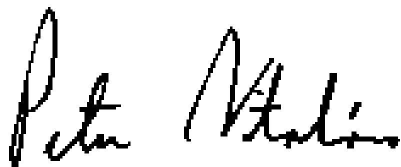
We believe that each trade agreement must be individually evaluated. Just as several Congressional leaders have indicated that we must address some of the concerns certain groups of their constituents hold regarding the labor and environmental provisions in some of our pending FTAs, we have our own very serious concerns with aspects of this agreement. Some of those in Congress currently weighing in on how we set our trade policy have occasionally taken votes against past FTAs that they believed were unbalanced for various reasons. This does not make each of them reflexively anti-trade any more than NMPF's position on the U.S.-New Zealand dairy-related provisions of the TPP FTA means that we are not still the same firm supporters of balanced trade and the importance of pursuing good FTAs.

Finally, it is important to note that if fully open dairy trade with New Zealand is a part of the final TPP agreement, it is extremely unlikely that a total net export increase for U.S. production agriculture could be arrived at, given the existing agreements and the mix of countries currently involved in this endeavor. Although this is not the lens through which the ITC evaluates agreements, this overall agriculture impact is important to many

others that typically play key roles in FTA approval discussions.

Thank you for the opportunity to provide comments on this issue of such considerable importance to U.S. dairy producers.

Sincerely,



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