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"Connecting Cows, Cooperatives, Capitol Hill, and Consumers"

TESTIMONY BEFORE THE COMMITTEE OF AGRICULTURE

MARCH 11, 2010

PRESENTED BY JOHN WILSON OF DAIRY FARMERS OF AMERICA

ON BEHALF OF THE NATIONAL MILK PRODUCERS FEDERATION

Chairman Peterson, Ranking Member Lucas, and Members of the Agriculture Committee: thank you for the opportunity to testify about the importance of expanding U.S. agricultural trade to Cuba. My name is John Wilson and I am the Sr. Vice President of Marketing & Industry Affairs for Dairy Farmers of America (DFA) and I also serve on the Board of Directors for the National Milk Producers Federation (NMPF).

Dairy Farmers of America is a dairy marketing cooperative that serves and is owned by dairy farmers in 48 states. DFA is one of the country's most diversified manufacturers of dairy products, food components and ingredients, and is a leader in formulating and packaging shelf-stable dairy products. Our cooperative's success is built on the success of its producer-members, who raise their dairy herd, and their families, on family farms across the nation.

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. I am offering this testimony on the behalf of NMPF's nation-wide membership. DFA is also a member of the U.S. Dairy Export Council, which has long worked jointly with NMPF on issues relating to expanding U.S. dairy exports, including to the Cuban market.

I would like to begin by expressing strong appreciation to the many members of this Committee that worked tirelessly with DFA and NMPF over the past year to address a dire price-cost squeeze throughout the producer community. That catastrophic situation was brought on in large part due to an abrupt decline in export market demand beginning in mid-2008.

That shortfall in export demand was brought on due to an ill-fated combination of cyclically high prices that began to weaken demand just at the onset of the global economic crisis, combined with a resurgence of milk supplies in Oceania as New Zealand and Australia's drought problems abated. This combination of events contributed to a sudden imbalance whereby global demand fell significantly short of available supplies. Because the U.S. market had gradually increased production to respond to the international market signals being sent in recent years that indicated higher demand for U.S. dairy products, U.S. producers found the rug pulled out from under them when such a significant portion of the market for U.S. milk evaporated in the latter part of 2008.

In addition to the strong efforts by this Committee and by the U.S. Department of Agriculture to help support dairy producers' economic recovery this past year, NMPF believes that efforts to help regain the ground lost in 2009 in U.S. participation in the global dairy market are essential to helping stimulate further recovery in the dairy sector and to putting the U.S. dairy industry on a firmer footing going forward. It is because of this that NMPF supports measures designed to expand U.S. dairy exports and offer positive net trading opportunities to America's hard-working dairy producers.

One such item that would be a positive step in the right direction for the dairy industry pertains to expanding agriculture trade to Cuba. Cuba is a market where we should be a natural preferred seller due to our strong proximity advantages, but regulatory hurdles imposed by our own government have thwarted our ability to best supply this market. A June 2009 International

Trade Commission Updated Study on U.S. Agricultural Sales to Cuba found that doing away with all of the financing and travel restrictions on U.S. agricultural exports to Cuba would have boosted 2008 dairy sales to Cuba from \$13 million to between \$39 and \$87 million and increased our market share that year from a mere 6% to a much more respectable 18 to 42 percent. Although current legislation would not extend that far and NMPF is not actively seeking an end to the ban on extending credit to Cuba, these figures clearly suggest that easing the agricultural trade and the overall travel restrictions now in place would yield impressive gains for U.S. dairy exports.

In NMPF's view there are two critical sides to the coin in terms of stimulating greater dairy product sales to Cuba. The first involves unnecessary technical and regulatory barriers to greater sales, introduced either by the prior Administration's interpretation of the 2000 Trade Sanctions Reform and Export Enhancement Act (TSREEA) or by TSREEA itself. The second pertains to abolishing the restrictions on Americans' rights to travel to Cuba. The latter is relevant because greater travel to Cuba by American tourists would be expected to significantly boost sales of U.S. agricultural products to that country as well as to improve the ease with which our members could make the necessary in-person connections to better conduct business with Cuba.

Because it addresses both these critical sides of the equation, NMPF and its members, as well as both dairy producers and processors in the U.S. Dairy Export Council, are extremely supportive of the newly introduced Travel Restriction Reform and Export Enhancement Act, H.R. 4645. In our view, this bill, sponsored by Chairman Peterson and Representative Moran, provides the best prospect for addressing the most significant issues hindering greater sales of U.S. agriculture products to Cuba. As mentioned earlier, expanding U.S. dairy exports, particularly in a way that provides net benefits to American dairy farmers, is viewed as a key ingredient to helping restore profitability in our dairy industry.

Technical/Regulatory Issues of Concern:

TSREEA allowed for the export of agricultural products, including dairy, to Cuba. This enabled us to sell dairy products – primarily nonfat dry milk but also other products - to a new market. The peak years for our industry were in 2004 and 2005 during which approximately \$30M of dairy products were sold each year before further restrictions on agricultural sales came into effect.

TSREEA requires payment of “cash in advance” in order to ensure that no credit is extended to the Cuban government. NMPF agrees with this legislative intent and is not disputing the clear desire of Congress and of many throughout America to not extend credit to the Cuban authorities.

Under the first several years of TSREEA, products were exported using procedures normally followed when selling on payment terms commonly known as “cash in advance,” as required in the original Office of Foreign Asset Control (OFAC) regulations. Specifically, the procedure entailed (1) shipping the product from a U.S. port, and (2) advising the Cuban buyer of its shipping status (an “on-board” bill of lading is prepared by the shipping company). At this point,

the process began for full payment in advance of the buyer having ownership of the product. Once full payment is received, the “on board” bills of lading - the shipping documents that allow the buyer to gain control of the product – were released to the buyer. It is important to note that under this commonly used international trading practice, the Cuban buyer did not gain control and ownership of the product until payment was made. This practice fully complied with the spirit and the letter of TSREEA.

In 2005, however, OFAC “redefined” the meaning of the “cash in advance” requirement in TSREEA in a way that dramatically impacted future contracted sales and violated the express intent of Congress to encourage non-credit agricultural sales to Cuba.

In effect, the new OFAC ruling required cash payments from Cuba before the U.S. commodities could even leave the U.S. port. Although a letter of credit option was also permitted as another payment avenue, the overall impact was to add further complexity and cost to making the sale.

That regulatory change dramatically impacted future contracts of dairy products with Cuba. This was seen by a drop in sales of U.S. dairy products to Cuba of more than half the following year (to \$13 million in 2006). Rather than growing as global U.S. dairy exports did between 2004 and 2008, sales to Cuba since then have ranged from minimal (e.g. approximately \$1 million in 2007 and approximately \$3 million in 2009) to only half of peak sales in prior years (e.g. \$16 million in 2008 when global demand was quite tight and so Cuba was likely driven to seek out alternative sellers).

NMPF urges Congress to act to clarify the intent of Congress with respect to the “cash in advance” requirement before further opportunities are foregone in Cuba. We greatly appreciate the clarity provided by Congress in the FY 2010 Omnibus Appropriations bill on this point and are looking forward to a rule being issued by OFAC on this matter. However, while very welcome, the appropriations process only provides resolution and clarity for the length of the fiscal year. As a business that frequently enters into supply contracts over long periods, this uncertainty is not helpful to securing business. Therefore, we believe strongly that a more permanent resolution in statute is required. That is why the inclusion of this element in the Travel Restriction Reform and Export Enhancement Act is so critical in our view.

Along similar lines, we applaud the Travel Restriction Reform and Export Enhancement Act’s addressing the unnecessary cost involved in TSREEA’s “direct banking” provision which requires routing of payment through a third-country bank to conduct agricultural trade. This prohibition against allowing direct payments to be made to U.S. banks for agricultural sales serves no useful purpose in our view. It merely makes sales transactions more complicated and costly due to the fees charged for these additional transactions. We agree with Chairman Peterson and Mr. Moran that it is time for Congress to eliminate those TSREEA regulatory measures that have been found to serve no useful purpose, are not in keeping with the spirit of TSREEA, and have served only to make sales more costly without serving a logical policy goal (such as the direct banking provisions).

It is clear that we are now among the least-preferred of suppliers given these technical and regulatory impediments to U.S. agricultural sales to Cuba. The U.S. should be actively working to expand agricultural exports – in line with the long-standing goals of many bipartisan

Congressional leaders and with the President's recently stated aim to double U.S. exports over the next several years.

Americans Traveling to Cuba:

NMPF believes that permitting all Americans to travel to Cuba without restriction would provide an additional boost to U.S. sales of dairy products to Cuba. Eliminating travel restrictions to Cuba would open up new opportunities for our members to more easily travel to Cuba to further encourage sales of U.S. dairy products there. Additionally, wider travel by the American people to Cuba would stimulate greater sales of dairy products in that dairy-importing nation. This would benefit America's dairy industry through greater sales opportunities but would also bring our policy with respect to Cuba more in line with how the U.S. treats other countries, including dictatorships and repressive regimes that surely rival the Cuban government's oppressiveness and humanitarian violations.

Rather than being a sanction on Cuba, the ban on travel by Americans is a restriction placed by our own government on American citizens. The U.S. government does not restrict travel to any other country, including state sponsors of terrorism like Iran, Syria, and Sudan, as well as North Korea, Burma, and Uzbekistan. Additionally, although the travel ban is very strongly supported by an extremely vocal and active minority in the U.S., recent public opinion polls show that 64 percent of Americans¹ and two-thirds of Cuban-Americans² support the freedom of U.S. citizens to travel to Cuba.

NMPF strongly supports an end to the restrictions on Americans' ability to travel freely where they choose. That is why we are so pleased to see the Travel Restriction Reform and Export Enhancement Act marry action related to American travel with the technical changes necessary to better facilitate non-credit sales of agricultural products to Cuba.

Conclusion:

We respectfully ask the members of this committee and others in Congress to support the Travel Restriction Reform and Export Enhancement Act which will greatly improve American agriculture's ability to provide the Cuban people and those Americans wishing to travel to Cuba with the nutritious and safe foods that we produce in such abundance here in the United States. The U.S. dairy industry firmly believes that it is critical that we work to expand opportunities for our dairy exports to allow our dairy producers, as well as their dairy manufacturing partners, to grow and prosper. Improving our ability to export to Cuba by doing away with many of the barriers the U.S. government has erected to us in that market is a very important step in the right direction.

¹ According to the CNN/Opinion Research Corp. poll conducted April 3-5, 2009, 64 percent of the 1,023 Americans surveyed by telephone thought the U.S. government should allow citizens to travel to Cuba. And 71 percent of those polled said that the U.S. should reestablish diplomatic relations with Cuba.

² According to the 2009 Bendixen & Associates poll, Two-thirds of Cuban and Cuban American adults - 67 percent - support the lifting of travel restrictions for all Americans so that they can also travel to Cuba freely.