**Testimony from James Jacquier**
**Board Member – National Milk Producers Federation**
**House Subcommittee on Livestock and Foreign Agriculture**
**On U.S. Agricultural Trade: Stakeholder Perspectives**
**Tuesday, March 10, 2020**

Chairman Peterson, Ranking Member Conaway, Representative Hayes and members of the Committee, thank you for inviting me to testify on U.S. Agricultural Trade from a Stakeholder's Perspective. My name is James Jacquier. My wife, Jennifer, my son Colby and I operate LaurelBrook Farm, a fourth generation, 1,500-cow dairy in East Canaan, Connecticut alongside my brother, my father and my two nephews. I serve as Chairman of the Board for Agri-Mark, a dairy cooperative comprised of 850 farm families across New England and New York.

I am testifying today on behalf of the National Milk Producers Federation, for which I serve as a Board of Directors and Executive Committee member. My cooperative, Agri-Mark, works closely with the National Milk Producers Federation and the U.S. Dairy Export Council on issues related to international trade. 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 national voice of dairy producers. 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 U.S. Dairy Export Council 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.

<u>Testimony Summary</u>

Maintaining our trade relationships and expanding market access for U.S. dairy products is vital to the strength of the domestic dairy industry and the economic health of rural America. Congress and the U.S. government must work together to expand equitable trade relationships with key dairy trade partners, creating greater market access for the high-quality milk and dairy ingredients produced by the U.S. dairy industry.

To achieve these goals, the U.S. government must focus on the following priorities:

- Pursue free trade agreements (FTA) that allow our industry to grow exports and reject agreements that do not benefit the U.S. dairy industry or U.S. agriculture.
- Give careful and proactive attention to the implementation and enforcement of negotiated trade agreements, particularly USMCA.
- Pursue a focused and global strategy designed to uproot the European Union's misuse of geographical indications (GI) that create de facto barriers to trade.

- Ensure that overly onerous and unfounded technical barriers to trade and/or unjustified sanitary and phytosanitary requirements do not impede access for U.S. dairy exports to foreign markets.
- Removal of all retaliatory tariffs on dairy in China so that the U.S. dairy industry can reap the full benefit of the Phase One agreement.
- Further expand dairy market access into Japan through the completion of a comprehensive agreement that builds upon the strides made in Phase One.
- Reject any agreement with the EU that does not fully eliminate all agricultural non-tariff barriers.
- Secure an agreement with the UK that fully addresses technical and tariff impediments to streamlined and consistent access to the UK market, including GIs.

<u>Importance of Trade to U.S. Dairy</u>

America's dairy industry is an economic force that employs nearly 1 million Americans, contributes more than $64 billion in tax revenue and adds about $620 billion to the U.S. economy.[1]

Trade is essential to the health of the dairy industry. America's dairy farmers and processors have established themselves as the world's preeminent suppliers of high-quality dairy products, exporting more than $6 billion in dairy products in 2019 to customers around the world. Nearly 15% of U.S. milk production last year was exported overseas in the form of a wide variety of dairy products from cheese to ice cream to milk powder.

Our industry manufactures high-quality Made-In-America products that are beloved by consumers across the globe. In fact, just last year, a cheese from the U.S. won "Best in the World" at the World Cheese Awards for the first time ever. It's clear that our dairy products can compete toe-to-toe and win against any country.

Importantly, these exports drive growth across the U.S. economy. Dairy exports alone create more than 85,000 U.S. jobs and have a nearly $12 billion economic impact. [1]

Unfortunately, trade disputes and uncertainty in the global marketplace have exacerbated the prolonged rural recession that has gripped the heartland and America's dairy industry has been among the hardest hit. Dairy farmers and processors have found their livelihoods under threat and the communities and economies that depend on these producers are at risk. U.S. Department of Agriculture reports that the U.S. lost more than 6,000 dairy farms over the last two years, representing a 15% decline in dairy farm numbers over that period.[2]

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[1] https://medium.com/dairy-exports-mean-jobs

[2] USDA's National Agricultural Statistics Service reports there were 40,199 licensed dairy herds in 2017 and 34,187 in 2019. The average two-year loss rate prior to 2017 was less than 8 percent, starting in 2003.

As a farmer myself, I know first-hand what this means to me and my bottom line. When our exports increase, I, and all my fellow dairy producers, benefit. And when our exports are impeded or we give up market share, the effect is ultimately felt by the farmer in the price we receive.

The U.S. dairy industry sees many reasons for optimism for U.S. dairy exports, but it is essential that Congress and the U.S. government take a proactive approach to tearing down both tariff and nontariff trade barriers that hinder U.S. exports and put America's farmers at a disadvantage to our competitors. Our future is dependent on creating market demand for the milk we produce through continued growth in sales to foreign markets.

Impact of Non-Tariff Barriers to Trade

The tremendous role that tariffs play in impacting U.S. exporters' ability to ship to a foreign market is widely recognized. Tariff constraints such as Japan's rate of up to 35% on milk powder imports or India's tariffs of 30% on cheese imports are understood to impede the ability of American agriculture to fully meet the demand that exists for those products. Comprehensive trade agreements, particularly with carefully chosen partners, are a very important avenue for tackling these challenges given their ability to deliver across-the-board tariff eliminations for U.S. exports.

An area that is often less recognized for the outsized role it plays in impacting the prospects of U.S. exporters is that of justified nontariff barriers to trade. Yet nontariff barriers can range from the burdensome to market-blocking and, for some products in certain markets, play a role that can dwarf even that of tariffs in determining the feasibility of shipping to that market. My comments below provide examples of that, ranging from EU policies that have driven a $1.6B dairy trade deficit to USMCA provisions that are essential to reaping the full rewards of the valuable agreement to China commitments that open up the potential for new companies and products to access that market.

While my testimony here provides a glimpse of some of those trade impediments, a fuller accounting can be found in the dairy industry's submission last year to the U.S. Trade Representative's Office.[3] Week in and week out, our industry is working with USDA and USTR to help guard against the creation of nontariff barriers to trade that would impede or even upend our ability to keep dairy products flowing smoothly into key markets. Some of those challenges currently include India's dairy certification mandates, Indonesia's moratorium on the approval of new dairy facility registrations, proposed cheese standard compliance testing in Mexico that's more burdensome for imports than for Mexican products, lengthy delays in dairy facility questionnaire reviews in Costa Rica, and numerous others.

[3] https://www.nmpf.org/wp-content/uploads/2019/11/Comments-NMPF-USDEC-National-Trade-Estimate-NTE-10.31.2019.pdf

However, one type of nontariff barrier to trade has become a pervasive problem in virtually every significant U.S. export market due to it being wielded as a policy tool by governments intentionally seeking to dampen competition from the U.S. – that is the abuse of geographical indications (GIs) to restrict the use of common food names. Given the global and growing nature of this challenge, my testimony provides below a summary of this unique form of nontariff trade barrier.

Misusing Geographical Indicators (GIs) to Erect Barriers to Trade

As noted above, while removing tariffs weighing on dairy exports is a priority for the U.S. dairy industry, nontariff barriers can be just as problematic and therefore require equal attention by trade officials. Yet, one area that has become a significant barrier confronting U.S. export opportunities products in recent years has been the misuse of GIs by the European Union. GI protections are used to describe specialized products made in a specific region in order to protect the unique nature of that product. However, GIs were not meant to restrict the generic names by which millions of consumers recognize some of their favorite foods; use of GIs to create this result must be firmly rejected as the protectionist and anti-trade policy that it is.

The U.S. dairy industry does not object to the protection of proper GIs, such as "Parmigiano Reggiano". But the EU has been aggressively seeking to confiscate generic terms that derive from part of the protected name or are otherwise in common usage – such as parmesan, mozzarella, feta and romano. The threat to common food names is not constrained to dairy but extends to other products as well, such as meat names like black forest ham and bologna, as well as common descriptive terms for wine such as vintage and chateau, or the use of common wine grape varietal terms.

The EU's GI campaign is as deliberate as it is destructive. It impacts each of the markets I will address further in my comments below. If the EU is successful in blocking U.S. exports of common food names, U.S. food producers will be severely harmed, and consumers will no longer recognize familiar products. We appreciate the actions the U.S. has taken so far to protect American jobs as well as the legitimate rights of our food manufacturers, farmers and exporters; however, combating the EU will require continued vigilance, a coordinated U.S. interagency effort focused on preserving U.S. market access opportunities, and a pragmatic, results-oriented approach to combating the EU's trade-distorting approach to this topic.

To most effectively resist the EU's insistence on imposing barriers to fair competition in trade negotiations, the U.S. government must use all tools at its disposal to boldly advance on common name safeguards in the strongest manner possible. Transparency and due process obligations have helped guard against restrictions on common food names and should remain part of the U.S. toolkit in tackling this challenge. However, in order to truly provide market access certainty for U.S. exporters and avoid the constant risk of further encroachment of bad-faith GIs, a more proactive and expansive approach is necessary.

The U.S. government must secure firm and explicit trade commitments assuring the future use of specific generic food and beverage names targeted by EU monopolization efforts and rejecting the use of GIs as barriers to trade in products relying on common names. USMCA's common food name provisions set a strong precedent and that language affirmed market access rights for a non-exhaustive list of commonly used product terms. The U.S. government must make it a policy objective to further expand upon this successful framework in other trade negotiations to ensure that safeguards for American-made common food name products are strengthened, cloaked barriers to trade are rejected, and legitimate IP protections preserved.

<u>New U.S. Dairy Negotiating Priorities Focused on Key Markets</u>

The prospect of keeping existing sales and achieving additional growth requires a forward-leaning posture by the U.S. government and active negotiation with key dairy export markets to avoid ceding ground to our competitors. The U.S. dairy industry supports the negotiation of FTAs that help level the playing field for American dairy products and allow our industry to grow exports and invest in expanding dairy jobs.

*Southeast Asia*

U.S. dairy producers and businesses have worked hard to make advancements in Southeast Asia and believe increased sales throughout Asia are key to the industry's future success.

Unfortunately, America's biggest dairy export competitors – Europe, New Zealand and Australia – have negotiated FTAs with partners in Southeast Asia or are in the process of doing so, leaving the U.S. as the only major supplier that will be left without an FTA. The tariff advantages provided by these FTAs may in some cases price alternate suppliers out of the market, including the U.S. This has put the U.S. dairy industry at a distinct disadvantage, and we are at risk of seeing our competitiveness erode in this important market region.

U.S. focus would be most effectively invested in expanding American inroads into key and growing markets throughout Southeast Asia, particularly Vietnam.

*Vietnam*

In 2019, the United States exported $170 million in dairy products to Vietnam, making this market the 8$^{th}$ largest U.S. dairy export destination in 2019. A developing economy and changing food trends in Vietnam have fueled a demand for dairy that cannot be met by their domestic industry alone.

The U.S. dairy industry urges the U.S. government to pursue an FTA with Vietnam and the subsequent removal of all dairy tariffs on U.S. exports to ensure that Vietnam has access to a long-term, consistent supply of competitively priced dairy ingredients. A successful FTA will ensure that the U.S. secures equal or better access than that given to our competitors under Vietnam's existing Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and EU trade agreements.

The one nontariff area of concern with this market relates to the impacts of the EU-Vietnam FTA on U.S. exporters' abilities to sell common name foods in Vietnam. The EU-Vietnam FTA imposes restrictions on the use of several commonly produced products, while also containing useful clarifications relating to several compound terms of commercial importance to the U.S. Another notable element of this FTA was a grandfathering clause that clearly allows exporters who established use of asiago, fontina, and gorgonzola in the Vietnam market prior to Jan. 1, 2017 to preserve future access rights to that market. It is vital to ensure that the grandfathering commitments that were provided for are upheld and that EU interests are not permitted to use Vietnam's trademark system to undermine these results. In addition, more remains to be done to safeguard the use of other common terms in this major dairy market moving forward.

*United Kingdom*
The UK dairy market is a prosperous one with a significant segment of its dairy consumption coming from imports, representing strong potential to expand U.S. market share. However, numerous tariff and non-tariff barriers imposed by the EU have long hindered U.S. dairy exports to the UK. These include bans on the use of several common cheese names due to EU geographical indication policies and certification-related challenges (existing and looming) that overly complicate our industry's ability to consistently and simply ship product to Europe. The UK's exit from the EU presents an opportunity to move beyond the EU's complex trade policies which act as major disincentives to U.S. exports.

In principle, the U.S. dairy industry supports a comprehensive U.S.-UK trade agreement; we see opportunities to use trade negotiations to incentivize the UK to import more dairy products from the U.S across a broad spectrum of dairy products. To be most competitive, however, our suppliers must ultimately have an even playing field as compared to European suppliers to the UK market.

*Effective Utilization of U.S. Negotiation Efforts*
The U.S. doesn't have unlimited resources when it comes to negotiating new agreements. We must caution the U.S. government against investing limited negotiating resources in pursuing FTAs with trading partners, as this is unlikely to yield a net positive result for dairy products or agriculture exports.

Pursuing trade deals with countries that are not serious about confronting and reforming their nontariff barriers harming fair trade would sap valuable negotiating time that would be better spent pursuing trade agreements with larger agricultural importing markets. As an example, the EU seems unwilling to address the unjust tariff and nontariff trade barriers driving the massive dairy trade deficit between our nations, severely limiting the benefits of an FTA and making them a dubious candidate for the valuable time and efforts of USTR.

In addition, any agreement that does not fully eliminate trade barriers hindering U.S. exports and take action to guard against future ones must be rejected by the U.S. In terms of the EU, the complex web of unscientific and protectionist import policies that the EU specifically designed to prevent U.S. imports must be dismantled. The dairy industry has five priorities that must be addressed in order to reach a satisfactory trade agreement:

- Remove EU-imposed restrictions on common cheese names in Europe and other U.S. export destinations while rejecting EU efforts to impose their GI policies and restrictions on the U.S. market.
- Recognize the safety of America's dairy products and production system, including the removal of existing unscientific regulations that are blocking U.S. exports.
- Establish enforceable commitments for sanitary and phytosanitary standards and technical barriers to trade that provide enhanced certainty to U.S.-EU agricultural trade.
- Simplify and streamline border administration measures for tariff rate quota management and licensing procedures.
- Eliminate dairy tariffs in a coordinated manner for butterfat and ingredients, provided the nontariff barriers described above are addressed.

Maximizing Dairy Benefits of Negotiated Trade Deals

Over the past year, the U.S. has achieved several key trade wins essential to the U.S. dairy industry, including passage of USMCA, a Phase One Japan Deal, a Phase One China Deal and important advances on tariff and nontariff barriers that have hindered trade. Maximizing the benefits to dairy in these trade deals will require a focused government effort, particularly with respect to follow-though by our trading partners related to the non-tariff provisions of those agreements. These non-tariff elements are just as critical to the success of our trade agreements as are tariff commitments given their potential to dramatically alter the competitiveness of U.S. exports to foreign markets or in some cases determine whether the products can even enter the market.

*United States-Mexico-Canada Agreement*
USMCA makes tremendous strides to modernize trade rules and facilitate the smooth flow of U.S. dairy products throughout North America. America's dairy farmers, manufacturers and exporters are grateful for this new agreement that we hope will bring increased certainty to the U.S. dairy industry by preserving access to our largest export market (Mexico), addressing Canada's discriminatory Class 7 dairy pricing policy, expanding critical market access and defending common cheese names, among other accomplishments.

If Canada and Mexico implement USMCA in keeping with the expectations established during negotiations, it will strengthen exports of high-quality U.S. dairy products and secure real benefits for our industry. Under USMCA, U.S. dairy exports will ultimately increase by more than $314 million a year, according to the U.S. International Trade Commission. These dairy sales will have a positive effect on American farmers, bolstering dairy farm revenue by an additional $548 million over the first six years of implementation.

However, these benefits will only be fully realized if our trading partners adhere faithfully not just to the letter of their commitments under USMCA, but to their spirit as well. Congress must work proactively with USTR and USDA as they work with Canada and Mexico to outline U.S. expectations regarding how they will implement and enforce key USMCA provisions to ensure that a less than fulsome approach to implementation by either trading partner does not undermine the full intent of USCMA's dairy provisions.

Canada, in particular, has a long history of intentionally using policy tools to manipulate its access commitments and protect its tightly controlled dairy market. In light of this clear track record, the U.S. dairy industry strongly encourages the U.S. government to engage early and actively with Canada to lay out U.S. expectations for how key dairy provisions in USMCA will be implemented, to later carefully evaluate any dairy proposals issued by Canada and ultimately to hold Canada strictly responsible for abiding by the intent of this new trade treaty. Areas of critical importance include those outlined to the USITC in late 2018 such as:

- Ensuring the reclassification of products after the end of Class 7 is done appropriately to genuinely reflect their end use, as called for by the agreement;
- Enforcing export surcharges on skim milk powder, milk protein concentrate and infant formula as outlined in the USMCA and preventing the proceeds from being redistributed to the Canadian industry;
- Avoiding trade quota administration in Canada in a manner that discourages full market access granted to the U.S. under the agreement; and
- Making sure Canadian market access under the USMCA is provided in addition to the access to which Canada already agreed to.

USMCA also established ground-breaking precedents intended to strengthen safeguards that protect U.S. companies' rights to use common food names, including two side letter agreements with Mexico that provide clear market access assurances for U.S. common name dairy products. The importance of stringent enforcement of these agreements and clear implementation of the commitments has come into sharp focus as Mexico and Europe move toward implementation of the trade agreement they reached in 2018 that included various GI restrictions. It is essential that the U.S. government proactively engage in addressing and then subsequently carefully monitor the terms achieved in USMCA to fully protect common name products.

Lastly, the U.S. must monitor government actions that may run counter to the intention of USMCA to provide for smooth trade flows and transparent operations. It would be unacceptable for either Mexico or Canada to institute new nontariff trade barriers in response to U.S. efforts to facilitate trade by implementing USMCA.

Congress and the Administration worked extremely hard to ensure that USMCA would be a robust agreement that moves the interests of American agriculture, as well as other sectors of the U.S. economy, forward. To fully capitalize on that investment, a proactive approach to our trading partners' implementation efforts is critical.

*Japan Phase One*

U.S. dairy farmers applauded the strides made for dairy in the Phase One U.S.-Japan Trade Agreement as they will help stem the erosion of U.S. market share in this key market, especially for cheese, whey, and lactose products.

However, more remains to be done in order to maximize opportunities in this top five U.S. dairy export market for U.S. dairy farmers and processors. The dairy industry is urging U.S. trade negotiators to swiftly pursue and complete a comprehensive agreement that builds upon the strong foundation of the Phase One deal and delivers the complete range of market access opening and assurances necessary to ensure that U.S. dairy products can best compete. A 2019 U.S. Dairy Export Council study found that if the U.S. has at least the same market access as its competitors, the U.S. could roughly double its share of the Japanese market over the next 10 years, underscoring the necessity of a Phase Two agreement.

Given the importance of the U.S. market to Japanese exports, the terms of trade offered by Japan to U.S. exports should not just meet but exceed those granted to its less valuable customers. This includes addressing remaining gaps and inequalities in market access granted to our competitors by the Japan-EU and CPTPP agreements that leave U.S. dairy at a disadvantage. Moreover, any comprehensive agreement also must protect common cheese names and include effective disciplines for applying sanitary and phytosanitary measures that are science-based and enforceable.

*China Phase One*

China is the world's second largest importer of dairy products and a critical market for the U.S. dairy industry. The Phase One trade agreement with China made important advances on nontariff issues and regulatory restrictions harming U.S. dairy trade[4]. However, the U.S. government's work with China is not complete until the retaliatory tariffs against all U.S. dairy exports are fully lifted.

Prior to the imposition of retaliatory tariffs, the U.S. had been expanding its market share of China's rapidly growing import market at a rate of 10 percent per year over the past decade. Although the dairy market in China continues a strong trajectory of growth with tremendous potential, recent gains for U.S. dairy exports have been reversed by the waves of retaliatory tariffs imposed by China.

The U.S. dairy industry was already at a disadvantage because of the free trade agreements Australia and New Zealand share with China, but now the additional burden of retaliatory tariffs has allowed these nations, as well as the EU, to further expand their market share at America's expense. The U.S. dairy industry is committed to the Chinese market, but once hard-earned

[4] Summary of dairy-related results: https://ustr.gov/sites/default/files/files/agreements/phase%20one%20agreement/Phase_One_Agreement-Commodity_Fact_Sheet-Dairy_and_Infant_Formula.pdf

market access is lost, it will be difficult to recover or find another market as pivotal for U.S. dairy exports as China.

On February 19, 2020, China's Tariff Committee of the State Council announced it will open a process for companies registered to conduct business in China to apply for retaliatory tariff exemptions to encourage imports and help fulfill China's purchasing agreements under the Phase One trade deal. China published a list of nearly 700 U.S. products, including several dairy tariff lines, for which they are specifically inviting requests from companies in China to eliminate tariffs. Although the products cited on the list are expected to garner favorable consideration from Chinese authorities, the Chinese government has confirmed that it will also consider applications for other items not on the list as well. The latter is very important for our industry in light of the fact that not all dairy products were cited on the list published by China.

This is encouraging news and bodes well for future efforts to lift tariffs; however, the U.S. dairy industry would prefer that China provide relief across the entirety of the harmonized tariff schedule and encompassing all dairy products to ensure all U.S. dairy exporters can take full advantage of tariff relief.

It's imperative that Congress work with the Administration to press for removal of all retaliatory tariffs on dairy so that the U.S. dairy industry can reap the full benefit of the Phase One agreement and be placed once again on a path to continued export growth in this market. If both the tariff and nontariff barriers to trade that remain outstanding are not imminently addressed, it will have damaging and lasting effects on U.S.-China trade.

<u>Conclusion</u>

The U.S. dairy industry recognizes the importance of expanding overseas market opportunities in order to bolster our farmers, processors and manufacturers here at home. We have worked hard to establish the U.S. as a reliable supplier of safe and nutritious products to meet growing foreign demand for high-quality American dairy products, and we want to be able to capitalize on these extensive efforts through improved access to these markets.

The U.S. government has made strides over the past year to break down trade barriers and finalize trade deals in key markets for U.S. dairy; well-negotiated trade agreements can be highly beneficial to our industry if they are fully implemented in good faith and properly implemented. Continued growth and economic security for the domestic dairy industry will require the U.S. government to focus negotiating efforts on markets with noted benefits for U.S. dairy and push to dismantle GI barriers with renewed focus.

I appreciate the opportunity to provide comments on these important issues to this committee. Thank you.