

**Testimony from Allan Huttema, Chair – Northwest Dairy Association/Darigold  
United States Senate Committee on Finance  
On *Implementation and Enforcement of the United States – Mexico – Canada Agreement:  
One Year After Entry into Force*  
July 27, 2021**

Chairman Wyden, Ranking Member Crapo, and members of the Committee, thank you for inviting me to testify on *Implementation and Enforcement of the United States – Mexico – Canada Agreement: One Year After Entry into Force*. My name is Allan Huttema, and I am a dairy farmer from Parma, Idaho. My dairy career started in 1991 in Chilliwack, British Columbia under the Canadian supply management system. I moved to Everson, Washington in 2003, where I started a 500-cow dairy, and then to our currently location in Parma in 2010. Together with my wife Mary Jo, and two sons, Christopher and Jeremy, we operate an 800-cow dairy and crop approximately 500 acres of corn and triticale for silage. I currently serve as chair of the Darigold and Northwest Dairy Association board, as well as board member for the National Milk Producers Federation (NMPF), the latter of which develops and carries out policies that advance the well-being of dairy producers like myself and the cooperatives we own.

NMPF's member cooperatives produce the majority of the U.S. milk supply, making NMPF the voice of more than 32,000 dairy producers on national issues. International trade is one of those issues and in recent years it has been one of the most important to our industry. NMPF works closely on international trade issues with the 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 and the thousands of workers who are supported by dairy exports throughout the supply chain.

Testimony Summary

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. USMCA made tremendous strides to modernize trade rules and facilitate the smooth flow of U.S. dairy products throughout North America, but the benefits of USMCA will only flow if Canada and Mexico properly implement the agreement. This will require proactive monitoring and enforcement of USMCA implementation, including through enforcement actions such as that taken against Canada's administration of its tariff rate quotas for dairy products.

While the U.S. Trade Representative's recent initiation of USMCA dispute settlement proceedings over Canada's allocation of dairy tariff-rate quotas (TRQs) is a welcome step, additional monitoring and enforcement efforts must also focus on Canada's implementation of its commitments on Class 7 pricing and export surcharges on Canada's dairy protein exports, as well as on Mexico's proliferation of ill-intended regulations that are aimed at disrupting trade. Close attention must also be paid to Mexico's implementation of USMCA provisions on geographical indications (GIs).

USMCA's GI provisions can and should serve as a valuable foundation to respond to the threat posed by the EU's efforts in various markets to restrict U.S. dairy competition by denying U.S. producers the right to use common food names.

While USMCA represents an important step in maintaining and expanding export opportunities for U.S. dairy, it should be followed by active negotiation of additional trade agreements with key export markets and aggressive efforts to level the playing for dairy exports.

### USMCA

The U.S.-Mexico-Canada Trade Agreement builds on the most important trade agreement – the North America Free Trade Agreement (NAFTA) – for America's dairy farmers and businesses. NAFTA resulted in U.S. agriculture's strongest and most important trade relationship, growing to over \$40 billion in exports, including \$1.9 billion in U.S. dairy exports. Canada and Mexico now take 27% of all U.S. agricultural exports and over 30% of U.S. dairy exports, providing critical farm income to America's farmers and ranchers.

In 2017, the prior Administration threatened to withdraw from NAFTA, putting at significant risk the economic viability of U.S. agricultural and dairy exports. That threat, which resulted in a public outcry from U.S. agriculture, was able to be turned into a negotiation to improve on NAFTA and to address remaining market access barriers.

For example, NAFTA had failed to provide preferential access for U.S. dairy exports into Canada. Dairy is the most protected and one of the politically strongest sectors in Canada. In the USMCA, the United States prioritized getting improved access for U.S. dairy into Canada and to fixing distortions in Canada's milk pricing policies that undermined U.S. dairy exports to Canada and other countries. The results included Canada establishing tariff rate quotas (TRQs) solely for U.S. exports, worth an estimated \$300 million as well as important changes to Canada's distortions in its milk class pricing system. This was the first time U.S. dairy exports received preferential access into the Canadian market.

Mexico was also negotiating with the European Union in 2017, which could have completely prohibited certain cheese sales into Mexico. The EU was demanding that Mexico protect certain geographical indications for cheeses even though U.S. exporters sold those cheeses (e.g., "feta," "parmesan," etc.) into Mexico. The United States used its leverage in USMCA negotiations to minimize the negative impact of any EU-Mexico agreement on GIs, obtaining Mexico's commitment to allow certain common cheese names to continue to be used in the Mexican market.

Negotiations with Mexico and Canada on dairy were some of the hardest issues to tackle. The close coordination between the U.S. dairy industry and U.S. negotiators enabled outcomes that benefit America's dairy farmers and exporters. While the results may not be everything that the U.S. dairy industry sought, USMCA's improvements over NAFTA are important, providing opportunities for new markets in Canada and protecting U.S. access into Mexico. The U.S. dairy industry welcomes the hard work of U.S. negotiators and the broad bipartisan support from Congress in supporting U.S. dairy interests and passing USMCA.

## Importance of Trade to U.S. Dairy

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.<sup>1</sup>

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 \$6.5 billion in dairy products in 2020 to customers around the world. Approximately 16% 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, in 2019, a cheese from the U.S. won "Best in the World" at the World Cheese Awards for the first time ever. It is 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.<sup>1</sup>

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. The U.S. Department of Agriculture reports that the U.S. lost more than 6,000 dairy farms from 2017 to 2019, representing a 15% decline in dairy farm numbers over that period.<sup>2</sup>

When our exports increase, all 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 prices they receive.

Free trade agreements have played an indispensable role in increasing U.S. exports. For example, before NAFTA was implemented in 1993, the United States exported just \$618 million worth of dairy products, less than 10 percent of the current figure. Dairy product exports to countries with which we have an FTA have grown by \$2.14 billion in total since their respective implementations. In terms of volume, that is equivalent to 1.4 billion gallons of milk, greater than what Michigan, the 6<sup>th</sup> largest U.S. milk producing state, produces in one year.

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<sup>1</sup> <https://medium.com/dairy-exports-mean-jobs>

<sup>2</sup> [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.](#)

USMCA built on this success, making 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.

### Canada

In this regard, NMPF and USDEC applaud U.S. Trade Representative Katherine Tai's May 25 decision to initiate USMCA dispute settlement proceedings over Canada's dairy TRQ administration. We also wish to express our appreciation to the Finance Committee for its support of this critically important step.

Canada has not administered its TRQs fairly, as required by its USMCA obligations. Unfortunately, this is consistent with Canada's long history of undermining its market access commitments to protect its tightly controlled dairy market. Canada's TRQ system discourages full utilization and valuation of agreed upon quantities. For example, the system allocates up to 85 percent of each TRQ to Canadian processors who have little incentive to import and fails to allocate TRQs in the quantities that applicants request. Further, up to only 15 percent of the TRQs are allocated to distributors and zero is administered to retailers. USMCA dispute settlement is the right course of action to address these unfair restrictions.

The decision to pursue dispute settlement also delivers a strong message against the erection of future barriers in Canada and other markets as well. Our trading partners need to know that failure to meet their agricultural trade commitments with the United States will result in robust action to defend U.S. rights.

In this connection, we urge Congress to work proactively with USTR and USDA as they monitor Canada's implementation of other dairy related USMCA provisions, such as those eliminating Canada's discriminatory Class 7 dairy pricing policy and requiring export surcharges on dairy protein exports like skim milk powder, milk protein concentrate, and infant formula. Here as well, Canada's actions have given cause for concern. Canadian exports of milk protein isolates (MPI) and certain skim milk blends manufactured under the new Class 4a have been increasing

in a manner that seems designed to evade USMCA disciplines. USTR and USDA should move quickly to deploy the dairy consultation tools laid out in USMCA's Agriculture Chapter to address this concern and to ensure that Canada's other policies comply with USMCA disciplines affecting trade in milk proteins.

## Mexico

Vigilant monitoring and aggressive enforcement will also be necessary with our other USMCA partner, Mexico. Mexico is the largest export market for U.S. dairy products, and the U.S. trade relationship with Mexico is of the utmost importance. Unfortunately, of late there has been a proliferation of poorly designed Mexican regulations that have been disrupting trade, eroding the U.S.' role as a reliable supplier.

For example, Mexico has introduced new standards for milk powder (NOM-222) and cheese (NOM-223) in January 2020. Despite being in force for less than a year, a rule making process to amend these regulations will begin later this year for both. From the outset, an update of these regulations so close to their entry into force with the purpose of adding additional obligations for the industry is against the good regulatory practices provided for under the USMCA.

There are many concerns with the proposed amendments to the milk powder standard (NOM-222), which has a huge potential to disrupt trade. A prohibition on using milk powder as raw material for fluid milk, as well as limitations on a certain class of milk powder for production of dairy products (e.g., yogurt, cream, or cheese) will not only make dairy products extremely expensive for Mexican consumers but will discourage significant number of exports into Mexico. Additionally, the proposal includes new requirements for additional information not related to the product discriminates against US product.

Similarly, there are a number of concerns with proposed amendments to the cheese standard (NOM-223) that not only will make imports of cheese from the United States more difficult but will also create an issue with national treatment since our products will be treated differently than the Mexican products.

The U.S. should pursue discussions with Mexico treating this surge in regulatory and customs enforcement issues as a collective concern, and not simply as one-off issues. We need to restore smooth and predictable trading conditions with Mexico to ensure that the U.S. and Mexico remain an integrated market and the promise of USMCA is fulfilled.

Another area bearing close monitoring and, if necessary, enforcement is Mexico's implementation of USMCA provisions on common cheese names and geographical indications (GIs). Regrettably, Mexico has acceded to the European demands to prevent the use of common food names through the imposition of illegitimate GIs. Living in Idaho, I recognize the importance of defending the rights of specific regions like Idaho to protect compound names like "Idaho potatoes." However, common cheese names like "parmesan," in addition to certain meat as wine terms that indicate a type or method of production, been in the public domain for

centuries and are considered as generic. 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.

Mexico undertook important commitments to the United States through USMCA side letters on cheese common names<sup>3</sup> and prior users,<sup>4</sup> to protect from the abusive and illegitimate actions from the European Union during the Mexico – EU free trade agreement negotiations. We need to ensure that Mexico implements these provision in a manner that fulfills and recognize the market access gain in NAFTA and USMCA.

### Misusing Geographical Indications to Erect Barriers to Trade

To provide some perspective, I live in Parma, Idaho. According to the EU commission, I could never call anything Parma despite that my town has had that name since 1904 when it was incorporated. The United States need to stop Mexico’s deteriorating approach to GIs. It is symptomatic of broader efforts that the EU has been pursuing for some time to limit U.S. competition through imposition of GI provisions in EU FTAs with U.S. trading partners. As stated above, the U.S. dairy industry does not object to the protection of proper GIs, such as “Parmigiano Reggiano.” However, 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,” “feta,” and “asiago.” The threat to common food names is not constrained to dairy but extends to other products as well, such as generic meat terms 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. 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.

The USMCA side letters on common names and prior users offer a potential bulwark against EU efforts by listing specific cheese names that the United States will be permitted to continue to use and by ensuring that U.S. companies will be recognized as “prior users” of common food names and therefore entitled to continue to use them. 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. The alternative

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<sup>3</sup> [https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/MX-US\\_Side\\_Letter\\_on\\_Cheeses.pdf](https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/MX-US_Side_Letter_on_Cheeses.pdf)

<sup>4</sup> [https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/MX-US\\_Side\\_Letter\\_on\\_Prior\\_Users.pdf](https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/MX-US_Side_Letter_on_Prior_Users.pdf)

would be continued erosion of U.S. market access as the EU continues efforts to erect barriers to our products in third markets.

### Building on USMCA in Key Markets

While USMCA is a significant step forward towards continued dairy export growth, by itself it cannot achieve this goal. That will require a forward-leaning posture by the U.S. government and active negotiation of additional trade agreements with key export markets, both to level the playing field for American dairy products and to allow our industry to grow exports and invest in expanding dairy jobs. The United Kingdom, Southeast Asia, Japan, and even China present valuable opportunities.

#### *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 that overly complicate our industry's ability to ship product consistently and simply 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.

#### *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, particularly as our tariff disadvantage exacerbates with ongoing dairy tariff phase-outs our competitors enjoy.

U.S. focus would be most effectively invested in expanding American inroads into key and growing markets throughout Southeast Asia, particularly Vietnam. Vietnam was the 8<sup>th</sup> 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.

#### *Japan*

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 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 build upon the Phase One deal and deliver 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.

### *China*

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<sup>5</sup>. 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, growing by 10 percent a 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. Once hard-earned market access is lost, it will be difficult to recover or find another market as pivotal for U.S. dairy exports as China. We therefore urge that Congress work with the Administration to press for removal of all retaliatory tariffs on dairy.

### *Enforcement*

Just as new trade agreements will be critical to expanding export opportunities and jobs for U.S. dairy farmers, insisting on a level playing field across the board, including through enforcement of existing agreements, will be essential to securing and maintaining market access for U.S. dairy. The decision to pursue dispute settlement with Canada over its TRQ administration sends exactly the right message, but other trading partners need to get that message as well. Notably, the EU's misuse of GIs is just one of the many barriers the EU is constantly erecting to our products, all while benefitting from wide-open market access here in the United States. This imbalance of opportunities is not right, and it cannot continue.

### Conclusion

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<sup>5</sup> 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](https://ustr.gov/sites/default/files/files/agreements/phase%20one%20agreement/Phase_One_Agreement-Commodity_Fact_Sheet-Dairy_and_Infant_Formula.pdf)

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.

USMCA represents an indispensable step towards maintaining and expanding export opportunities for U.S. dairy, albeit one requiring vigilant monitoring and aggressive enforcement. USMCA also represents a foundation that should be built upon through efforts to pursue additional trade agreements in key markets and to dismantle trade barriers including GIs, in order to ensure continued growth and economic security for the domestic dairy industry and, in turn, my family business.

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