

**Comments by the
National Milk Producers Federation
and the
U.S. Dairy Export Council
to the Office of the United States Trade Representative
Concerning a Proposed U.S.-Japan Trade Agreement**

**Docket Number: USTR-2018-0034
November 26, 2018**

The National Milk Producers Federation (NMPF) and the U.S. Dairy Export Council (USDEC) appreciate this opportunity to provide comments on a proposed U.S.-Japan Trade Agreement. 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. USDEC is a non-profit, independent membership organization that represents the export trade interests of U.S. proprietary processors, milk producers, dairy cooperatives, and export traders. The Council's mission is to increase the volume and value of U.S. dairy product exports.

Summary:

NMPF and USDEC are pleased that the United States is moving forward with trade talks with a new trading partner, especially with Japan. Japan is a critically important market for U.S. dairy producers, ranking fourth among U.S. export markets with exports valued at almost \$300 million last year. However, our market share in Japan is at risk as our competitors will be receiving the benefits of the soon-to-be implemented Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the EU-Japan Economic Partnership Agreement (EU-Japan EPA). We therefore urge the Administration to swiftly begin negotiations and pursue early results.

With regard to U.S. interests and priorities, we have strong concerns about the language reflected in the Joint Statement of the United States and Japan of September 26, 2018 (Joint Statement) that appears to suggest a ceiling on the level of agricultural ambition before talks have even begun. For our industry this type of outcome would be particularly problematic due to Japan's refusal in its prior economic partnership agreements to provide significant market access in the dairy category and in particular for milk powder and butterfat. Prejudging the outcome of trade negotiations on agriculture should not be accepted here nor should it be pursued in other markets in the future; the results of an FTA should be determined through the course of negotiations with the U.S. working to achieve the high-standard, market-opening outcomes outlined under Trade Promotion Authority and secured in most prior U.S. trade treaties for agriculture.

As such, we urge the Administration to use the U.S.-Japan trade talks to secure a better outcome than that contained in the CPTPP or in the EU-Japan EPA for each tariff line, so that we can achieve larger TRQ volumes and shorter tariff phase-out period than were negotiated previously.

Japan Dairy Market Access

As noted above, we have strong concerns about the text of the Sept. 26th US-Japan Joint Statement which appears to suggest the acceptance of a ceiling on the level of agricultural ambition before talks have even begun. For our industry this is particularly troublesome due to Japan's refusal in its prior economic partnership agreements to provide significant market access in the dairy category and in particular for milk powder and butterfat. Prejudging the outcome of trade negotiations on agriculture should not be accepted here nor should it be pursued in other markets in the future; the results of an FTA should be determined through the course of negotiations with the U.S. working to achieve the high-standard, market-opening outcomes outlined under Trade Promotion Authority and secured in most prior U.S. trade treaties for agriculture.

As such, we urge the Administration to use the U.S.-Japan trade talks to secure a better outcome than that contained in the CPTPP or in the EU-Japan EPA for each tariff line, so that we can achieve larger TRQ volumes and shorter tariff phase-out period than were negotiated previously. In no situation and at no point in time should the U.S. enjoy less favorable access to the Japanese market than our competitors in the EU, New Zealand and Australia. In some cases, this may involve expediting tariff phase-out periods to ensure that as the CPTPP and EU-Japan FTA are implemented, the timing of the commencement of the U.S.-Japan trade agreement does not put U.S. exporters at any disadvantage and instead seeks to prioritize a deeper opening of the Japanese market.

Further, to the extent that the U.S.-Japan Trade Agreement falls short of full liberalization with respect to Japanese market access for U.S. dairy products, any new market access for Japanese dairy products into the United States should be on a ton-for ton basis for each product category. This was a shortcoming of the Trans-Pacific Partnership in which the United States open their markets to certain countries while Canada and Japan kept theirs closed; that type of outcome should not be repeated.

Japan's market for imported dairy products is tightly restricted in most product areas. Japan's out of quota tariffs for key trade staples such as nonfat dry milk, whey and butterfat are particularly high and its tariffs for other products constitute a significant check on the demand that exists in the Japanese market for a variety of quality and affordable imports. In addition to tariffs, Japan maintains a complex quota system for several of its dairy products which it uses to allocate its in-quota quantities according to designated uses.

For certain key product TRQs, Japan's Ministry of Agriculture, Forestry and Fisheries appoints the Agriculture & Livestock Industries Corporation (ALIC), a state-trading enterprise owned by the government, with the sole responsibility to decide and control which dairy items should be imported at various quantities and when by examining the market situation. It is our understanding that ALIC accepts bids from importers in the commercial sector and decides which importer to eventually allocate the quota to in a process that appears dramatically influenced by which bids will generate the highest mark-up, a result that raises costs to end-users and consequently blunts demand.

Additionally, Japan also makes active use of its World Trade Organization sanctioned safeguards to restrict access for certain products not sufficiently protected by the tariff levels alone. These WTO

safeguards are often triggered at astonishingly low levels of imports by volume and add an additional barrier to accessing the Japanese market. We urge an exemption for U.S. goods from these safeguards under the Agreement.

In summary, Japan's dairy tariffs as a whole are high and its system of specific tariffs, tariff-rate quotas, quotas for specific uses, and safeguards results in a situation where accessing the Japanese dairy market is extremely difficult. It is very challenging for many exporters to make sense of the Japanese dairy market restrictions and how they all interact with one another. Establishing significantly expanded access in a manner that is significantly less complicated than the current system is a high priority for NMPF and USDEC.

Protection of Commonly Used Food Names

NMPF and USDEC urge USTR to incorporate and further build upon the advances made in the United States-Mexico-Canada Agreement (USMCA) with respect to commonly used food names and geographical indications (GIs).

Most notably, those provisions establish a new due process system for countries considering GIs that provides those opposing a GI with greater tools to object to a term's restriction. Japan's GI system incorporates many of these provisions but it will be important to make further improvements to it in order to most effectively safeguard the interests of common name users. Another important element of the USMCA that should be carried forward with Japan is its non-exhaustive list of commonly used cheese names that may not be restricted moving forward. We urge the negotiation of a similar yet expanded list in the U.S.-Japan Trade Agreement in order to provide market certainty to U.S. exporters.

In addition, the USMCA very helpfully clarifies that those "prior users" eligible for continued use of certain common names under the EU-Mexico FTA include economic actors from all portions of the supply chain: producers, importers, exporters, marketers, and distributors. A similar provision should be included in the U.S.-Japan Trade Agreement to address the use of the "prior users" language in the EU-Japan EPA. We also urge the incorporation of language in the U.S.-Japan Trade Agreement that reaffirms that prior users are defined as those that made use of a term "before the date of registration/designation of the GI" (i.e. the date on which the decision to protect the GI was announced or the date on which its protection implemented into force), as Japan notified the WTO was its intent this year. Finally, the USMCA also mandates that the parties try to reach a "mutually agreeable solution" before recognizing any GIs under a trade agreement with another country. This provision as well should be included and bolstered in the U.S.-Japan Trade Agreement.

We also urge USTR to tackle Japan's ill-defined new labeling regulations that threaten to upend common marketing practices by blocking the use of various colors and common imagery on labels.

Sanitary and Phytosanitary (SPS) Chapter

The U.S.-Japan Trade Agreement should build on the SPS provisions of the U.S.-Mexico-Canada Agreement, which go beyond what the SPS chapter has previously contained in any past U.S. FTA.

Those provisions help provide for more transparency and more scientific grounding for countries' SPS rules while also creating a forum to resolve concerns that still arise.

Non-Tariff Market Access Considerations

Japan's market access restrictions detailed above are by far the most limiting constraints on greater U.S. dairy exports to Japan. However, there are some additional factors that limit or threaten access to the Japanese market that we believe merit inclusion in trade discussions with Japan as well.

- **Dairy Health Import Certificate**
Japan began to require a health certificate focused on animal health for dairy products in November 2017. The government of Japan is now considering adding public health attestations to the certificate. If the certificate is to be renegotiated, we urge agreement on the use of a single certificate containing both animal and public health statements, a preservation of market access while discussions are ongoing and a successful resolution to this key issue to ensure that access to the market is not cut off due to this shift in paperwork requirements.
- **Food Additive System**
Over time, the U.S. dairy industry has submitted several food additive petitions for the expansion of the usage of several food additives. The process has proven to be difficult and extremely time-consuming with very little transparency. We urge work with Japan to address this challenging and trade-restrictive system so that safe additives are permitted to be used in foods exported to Japan.

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

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