

**Comments by the National Milk Producers Federation
And the U.S. Dairy Export Council
Regarding the National Trade Estimate Report on Foreign Trade Barriers
Docket Number USTR-2014-0014
October 29, 2015**

Our organizations submit these comments in response to the notice of request for public comments concerning the National Trade Estimate Report on Foreign Trade Barriers (Docket Number USTR-2014-0014). The National Milk Producers Federation (NMPF) and the U.S. Dairy Export Council (USDEC) appreciate the opportunity to present their views on this important annual report.

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. milk producers, proprietary processors, dairy cooperatives, and export traders. The Council's mission is to build global demand for U.S. dairy products and assist the industry in increasing the volume and value of exports.

Listed here are some of the major trade barriers confronting our industry. This is not an exhaustive list of ongoing issues nor of border measures (e.g. tariffs, TRQs, etc) that are of concern to our industry outside of the context of an FTA. Rather, it is a summary of the highest priority issues we face in key markets, with an emphasis on those with which the U.S. has an opportunity to pursue changes given the negotiation of a trade agreement.

In order to most effectively organize our comments, they are laid out below primarily on a country by country basis. Two exceptions to that are where we address an issues that is either global or regional in nature. Those are listed here at the outset given their relevance to multiple markets.

GLOBAL: Geographical Indications (GIs) Wielded as a Non-Tariff Barrier to Trade

EU's Abuse of GI Threatening U.S. Export Opportunities in Multiple Markets

For the past few years, the European Union has been pursuing an increasingly aggressive bilateral strategy to restrict the use of common cheese names by non-EU producers through FTA negotiations and other international avenues. As it relates to commonly used terms, the EU's clear goal is to advance their own commercial interests for food products through advocating for wider use of GIs and an accompanying extremely broad scope of protection for those GIs. This is intended to award EU companies with the sole right to use many terms that have already entered into wide-spread common usage around the world. We view the EU's efforts as directly inciting its trading partners to violate their WTO commitments and in many

cases also violate their FTA commitments to the U.S. by impairing the value of concessions secured by the U.S. in its own negotiations.

We thank USTR, PTO and USDA for their active work on this topic of growing concern to the U.S. dairy industry. As the Administration moves forward with its work to tackle this issue as the truly global problem it is, we strongly encourage USTR to be examining the degree to which countries' GI-driven restrictions are in compliance with their existing WTO and FTA obligations to the U.S. The EU's actions put at risk hard-won U.S. market access opportunities in many markets and must be vehemently rejected as the protectionist measures they are. A key element to this is ensuring that our overseas FAS offices are fully integrated into efforts to combat these types of barriers to U.S. exports. We would encourage USDA to continue to examine how to better achieve this goal.

Below are a number of examples of the way in which this global phenomenon is manifesting itself across various countries. Note that these are examples rather than a comprehensive list of all countries in which the EU is actively working to erect barriers to U.S. exports:

- Canada: In its FTA with the EU, publically released this year, Canada elected to impose new restrictions on a number of generic cheese names. The fact that it also grandfathered existing usage (primarily by Canadian companies) helps demonstrate the generic nature of the impact varieties and why these new regulations should be viewed as inappropriate efforts to restrict imports and competition against both the grandfathered (primarily Canadian) products and EU imports to the Canadian market. We strongly reject Canada's actions as being inappropriate, particularly in the context of ongoing TPP negotiations. In addition, the other terms Canada protected were not even subject to Canada's standard IP review procedures – again reflected their political nature rather than the outcome of objective IP evaluations.
- Central America (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua & Panama):
 - Outcomes in this region to date have been mixed.
 - In some countries such as El Salvador and Guatemala, U.S. engagement with our FTA partners has yielded important clarifications regarding how those countries are treating common terms contained within certain multi-word GIs of particular interest to U.S. companies. We commend the Administration and our trading partners for their good work aimed at preserving most of the value of commitments contained in the CAFTA.
 - In other countries such as Honduras, Nicaragua and Panama, our FTA partners have yet to strongly indicate how they are interpreting EU GI registrations. We urge USTR and USDA to continue to insist on the importance of further clarifications from each of these countries, however the situation in these markets is not as concerning as the one the U.S. faces in Costa Rica.
 - In the most problematic country in the region – Costa Rica – the process remains underway. Costa Rica has in multiple cases disregarded standard



intellectual property considerations and has already clearly restricted several products (such as asiago, gorgonzola and fontina). We remain hopeful that the appeals process in Costa Rica for additional terms (provolone and parmesan currently) will correct the incorrect decisions arrived at in the initial examination stage that stood in stark contrast to the reality of the Costa Rican market.

- Costa Rica is a particularly important cautionary tale since in its initial GI rulings it determined that the EU could seize the sole right to use the generic terms parmesan and provolone despite the fact that the applied-for GIs were “Parmigiano Reggiano” and “Provolone Valpadana”. The latter pointed to the importance we believe exists of securing clear clarifications regarding the generic portions of specific multi-word GIs since even the EU does not restrict the use of provolone so Costa Rica’s preliminary decision to restrict its use underscored the risk U.S. exporters face without such clarifications.
- China: China and the EU are close to finalizing a GI agreement whereby each would agree to exchange protection for terms of interest to the other party. We are deeply concerned that this agreement will restrict current and future opportunities in the Chinese market for commonly produced types of cheese.
- Colombia: As part of the Colombia-EU FTA, Colombia restricted the use of several commonly produced U.S. cheeses if they are accurately referred to. This action negatively impacted the value of concessions granted to the U.S. under the previously negotiated U.S.-Colombia FTA. At the same time, however, Colombia also took very positive steps to address U.S. concerns by clarifying the scope of protection provided for several multi-word GIs. These clarification efforts were greatly appreciated and help to provide assurances to U.S. exporters regarding what types of products they can continue to ship under our own FTA with Colombia.
- EU: The EU continues to introduce new restrictions within its own market on the use of common food names. This year the EU published an application from Denmark for a GI for “Havarti” despite the existence of an international Codex standard for this commonly produced type of cheese. The EU, including Denmark, was extremely active in the Codex process of reviewing and recodifying international cheese standards that was finalized roughly a decade ago. This application follows on the heels of a GI application for “Danbo”, another term with a recently re-authorized Codex standard. We reject the EU’s efforts to continue to expand the range of commonly used terms facing monopolization attacks by various member states.
- Japan: The EU and Japan are involved in ongoing FTA negotiations that include provisions on GIs. We are very concerned that this agreement could restrict current and future opportunities in the Japanese market for commonly produced types of cheese. We fully expect that it is Japan’s obligation to preserve access for commonly



produced U.S. agricultural products which are the basis of ongoing TPP negotiations and moreover existing WTO commitments.

- Korea: As part of the EU-Korea FTA, Korea banned the import of several commonly produced U.S. cheeses if they are accurately referred to. This action negatively impacted the value of concessions granted to the U.S. under the previously negotiated U.S.-Korea FTA. A positive development of USTR's successful work to address part of the impact of the EU-Korea FTA's provisions, however, was a high degree of clarity secured from Korea regarding how it planned to treat common terms contained within multi-word GIs. We continue to believe this is a strong model to use moving forward given the importance of ensuring that discussions with our trading partners are specific enough to provide concrete clarity to U.S. exporters regarding what types of products are still permitted in each market.
- Malaysia: The EU and Malaysia are involved in ongoing FTA negotiations that include provisions on GIs. We are very concerned that this agreement could restrict current and future opportunities in the Malaysian market for commonly produced types of cheese. We fully expect that it is Malaysia's obligation to preserve access for commonly produced U.S. agricultural products which have been the basis of TPP negotiations for several years and moreover are part of existing WTO commitments.
- Peru: As part of the Peru-EU FTA, Peru restricted the use of several commonly produced U.S. cheeses if they are accurately referred to. This action negatively impacted the value of concessions granted to the U.S. under the previously negotiated U.S.-Peru FTA. NMPF and USDEC have urged the importance of securing assurances from the Peruvian government regarding the continued use of certain common names contained within multi-word GIs.
- South Africa: As detailed in comments submitted earlier this month to USTR, we believe that if South Africa retains its regulation proposed earlier this year to restrict the use of several commonly used food terms, it will be violating AGOA requirements obligations to make continual progress toward the elimination of barriers to U.S. trade by putting in place regulations that would directly erect new barriers to U.S. exports. In addition to South Africa's proposed restrictions on the use of several common terms, South Africa has also to date not provided clarification regarding how it plans to treat certain common names contained within multi-word GIs. Moreover, South Africa's actions were taken without providing the necessary notification to the WTO TBT Committee, thereby depriving the U.S. and other trading partners of the opportunity to comment at an earlier stage on South Africa's proposed regulation.
- Vietnam: As part of its ongoing FTA negotiations with the EU, in mid-October Vietnam put forward a proposal to restrict the use of many GIs of interest to the EU. USDEC and NMPF are still in the process of evaluating that list of names and its accompanying provisions to determine whether Vietnam's proposal would negatively

impact either the market access we currently enjoy or the expanded access we expect to secure through TPP negotiations. We fully expect that it is Vietnam's obligation to preserve access for commonly produced U.S. agricultural products which have been the basis of TPP negotiations for several years and moreover are part of existing WTO commitments.

- World Intellectual Property Organization (WIPO): Working through the Lisbon Agreement, a treaty within WIPO, European countries have driven forward an insular process aimed at dramatically expanding international protections for GIs. This process has entirely disregarded the negative trade impacts that are highly likely to result from an expansion of the Lisbon Agreement and the fact that those consequences will be felt by the WIPO membership at large, not solely those electing to join the Lisbon Agreement. We commend USTR & PTO's work to combat this threat and condemn the efforts of the WIPO Secretariat and Lisbon Agreement members to sideline the concerns of non-member WIPO countries by excluding them from equal participation in the Lisbon Diplomatic Conference that will be held to ratify the proposed changes.

We look forward to continuing to work with the U.S. government and others against the EU's efforts impose restrictions on competition for products that long-ago entered into common use in the U.S. and many other countries around the world. For the EU to seek to now monopolize those terms solely for its own benefit under the guise of intellectual property provisions is simply a disguised barrier to trade.

REGIONAL: Trans Pacific Partnership Negotiations SPS Chapter

Strong Disciplines on SPS Measures Needed

U.S. agricultural exporters are faced with numerous serious unwarranted trade barriers justified by other countries as necessary to protect health and safety. Frequently, U.S. exporters are faced with new measures that lack sound scientific backing, are imposed without sufficient notice, and are not eligible for adjustment to facilitate trade. Sometimes, after extensive effort by the U.S. government and private sector, trade has been restored though U.S. suppliers have had difficulty rebuilding lost market share. At too many other times, the new measures shut U.S. products out of foreign markets, reducing U.S. exports and cutting farm income.

NMPF and USDEC support work by the Administration to use the TPP negotiations to strengthen the current rules governing SPS measures in a WTO-Plus manner, thereby improving access for U.S. product into the current and future TPP members, and setting a

strong example for other countries to follow in multilateral and bilateral commitments on SPS measures.

As the U.S. now moves to bring TPP negotiations to a close we would like to also reinforce the critical importance of ensuring that SPS chapter commitments are legally enforceable. Such enforceability provisions are most important in any area that goes beyond or further clarifies the scope of existing WTO commitments. Without applying TPP dispute settlement provisions to TPP provisions that clarify or build further upon WTO commitments, those additional TPP clarifications and commitments are left without recourse to enforcement measures should countries choose to disregard their obligations. Particularly in this area of high importance to so many U.S. agricultural exporters, it's important that the TPP model get it right in order to establish grounds for smooth trading conditions throughout the TPP and set a strong precedent for U.S. FTAs to follow TPP.

COUNTRY-SPECIFIC ISSUES:

Canada

High Tariff Barriers; Pervasive Nontariff Barrier Attacks on U.S. Exports

USDEC and NMPF view TPP as a critical opportunity to secure comprehensive market access across the full range of U.S. dairy products into Canada. Canada's market for imported dairy products is tightly restricted in virtually all product areas. For virtually all dairy products, Canada's over-quota tariffs range from approximately 200% to slightly below 300%. In addition, Canada has WTO authorized safeguards on many dairy products in order to additionally ensure controls on these imports. TPP presents a unique opportunity to expand access for U.S. dairy products into this neighboring market.

Despite Canada's exorbitant tariff barriers, it is our third largest export market. A large portion of those exports, however, are in the form of the few product categories that face low (i.e. less than 10%) WTO tariff rates and for which the U.S. enjoys a 0% tariff under NAFTA. These instances, limited though they are in the Canadian dairy schedule, account for a large percentage of our exports to Canada on a value basis. Another significant avenue for U.S. exports of dairy products to Canada (particularly fluid milk products in the 0401 tariff schedule category) is Canada's Import for Re-Export Program (IREP). Under that program, Canadians processors are permitted to import certain products provided that the final product is then exported from Canada. In this sense, the exports are not as meaningful since sales under IREP do not ultimately remain in Canada and many may eventually re-enter the U.S. as processed products or enter other foreign markets where they then compete directly against U.S. dairy exports. Given this, the industry does not view use of Canada's IREP as genuinely providing open market access opportunities for our dairy industry.

Despite its excessive tariff and quota restrictions and strict controlling of imported products, Canada has been consistently working to undermine even the limited amount of access it has already agreed to provide through its NAFTA and WTO commitments. Several examples are listed below. Collectively, these reflect a pervasive problem whereby the Canadian government actively works to use legal and regulatory tools to undermine the value of concessions for products containing dairy that Canada has granted to its trading partners.

Through TPP we urge USTR to include measures aimed at ensuring that the dairy market access the U.S. negotiates with Canada is truly fully implemented. Necessary elements of this approach are: 1) a clear prohibition on any additional tariffs being applied to U.S. dairy imports beyond those clearly specified in the U.S.-Canada TPP dairy market access schedule, including both during the tariff phase-out period and after the tariffs are eliminated; 2) full recognition of each other's dairy regulatory and oversight systems; and 3) agreement that no changes in product standards for any dairy product will be allowed if the change would have the effect of restricting trade (in either the final good or dairy component ingredients) or would result in preferential treatment for domestic product.

We should note that no health certificate is currently required for the shipment of dairy products to Canada and that Canada has recognized the safe animal health status of the U.S. dairy herd through a specific notation in its Health of Animals Regulations (http://laws-lois.justice.gc.ca/eng/regulations/C.R.C.,_c._296/page-8.html#h-17). It will be important in TPP to secure an understanding that these conditions will remain in place moving forward (subject only to revision in the case of a significant new dairy-related food safety development or relevant animal disease status change). We must ensure that new barriers are not erected through use of unjustified certificate language requirements, as our industry has seen be done by other countries. Finally, it is important to ensure that we have a clear approval of the robustness of the U.S. food safety system in order to help significantly to forestall future possibilities for Canada to attempt to impose new and unjustified import requirements on U.S. dairy products.

Non-Tariff Barrier Examples:

- Last year on the Friday before Thanksgiving, Canada abruptly introduced a law that took effect one week later and reversed multiple rulings by the Canadian Border Services Agency that had found that imports of a food preparation product containing mozzarella, pepperoni, oil and spices were being imported legally from the U.S. under the appropriate duty-free tariff line (1601.00.90.90). These rulings were upheld by the Canadian International Trade Tribunal. Despite that clear guidance regarding the compliance of this product with Canada's international trade commitments, on Nov. 25, 2013 the Canadian legislature tabled a Ways and Means motion to amend the Canadian Custom Tariff by revising the Supplementary Notes in Chapter 16 of the schedule to the Customs Tariff. The effect of the Motion was to commercially nullify all exports of the food preparation products from the U.S. to Canada by reclassifying the



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cheese portion of them into Chapter 4, as cheese, where they would be subject to a commercially unviable duty of more than 200%.

This action sent a chilling signal that the rules may shift at any moment to those seeking to exercise their lawful trade access rights into the Canadian market. The U.S. exporter had built its business in this product based on the Customs rulings issued by the Canadian government but despite those assurances, faced an immediate loss of market due to politically-driven pressure to revisit an objectively-determined customs classification ruling. The fact that Canada would take such an action while simultaneously negotiating TPP calls into question Canada's commitment to smooth U.S.-Canadian trade relations.

- **Creation of New Milk Classes Specifically in Order to Thwart Imports:** One of the more troubling developments in the past few years has been an increasing level of creation of new special milk classes that are specifically targeted and designed to compete against imports of products that have made in-roads into the Canadian market. These special pricing classes are put in place by the Canadian Milk Supply Management Committee (CMSMC), whose voting members are provincial boards and provincial governments and which is responsible for policy determination and supervision of the provisions of the National Milk Marketing Plan. Use of these pricing classes has been wielded to the detriment of U.S. suppliers of a variety of dairy or dairy-containing products. Moreover, the threat of new classes directly aimed at crowding out imports remains a strong threat discouraging innovation and additional efforts to access the Canadian market. We encourage USTR to stress the inappropriateness of these actions that are specifically implemented in order to thwart imports and impair the value of concessions to trading partners, including to the U.S. under NAFTA.
- **In 2008 Canada implemented revised cheese standards that further restricted opportunities for U.S. dairy imports of both cheese and dairy ingredients.** The revised standards permit the use of dried dairy ingredients (which tend to be imported) only once the minimum casein content established in the regulations is met with fluid milk products. The internal discussions in Canada leading up to this change make clear that it was intended to limit the growth in the use of imported ingredients, particularly those from the U.S., in Canadian cheese-making. Canada's standard revisions remain clearly in violation of its international trade obligations under the World Trade Organization (WTO) and the North American Free Trade Agreement as its regulations impair the value of important rights granted to the U.S. under those agreements.

Canada reportedly is now considering further bolstering its efforts to impair U.S. import access by imposing additional restrictions on the use of ultrafiltered milk in Canadian cheese-making. Canada has not yet introduced a specific proposal but reports continue to suggest that the government is contemplating additional regulatory steps – including the prospect of milk class or promotional programs – that would negatively impact U.S. sales of this product. We appreciate USTR & USDA's attention to this

standards-related issue and urge a focus on avoiding further negative impacts to U.S. dairy exports, particularly for ultrafiltered milk.

- In the Uruguay Round negotiations, Canada obligated itself to provide a TRQ to allow access for 64,500 MT of fluid milk (0401.10.1000) but then banned commercial shipments from making use of this TRQ. Instead, Canada simply asserts that cross-border shoppers between the U.S. and Canada fill this TRQ. Our industry continues to believe this is a grievous distortion of the access Canada committed to provide for fluid milk. Similarly, in the case of the access provided for ice cream (2105), Canada restricted the entire 484 MT TRQ it established for ice cream as eligible to be filled solely by ice cream in retail containers, thereby prohibiting access for any bulk/ingredient ice cream products. Given this history, it is vital to explicitly establish that all new access negotiated for any U.S. dairy products into Canada must be fully open to any form of commercial shipments that meet the current applicable tariff code definition.

China:

Plant Registration Requirements – Ensuring Equitable Terms of Access

Over the past few years China has rapidly climbed in ranking as a U.S. dairy export market destination. Last year it leaped into the number 2 spot with purchases of \$706 million. Our industry sees tremendous potential in this market. In order to maximize that potential, however, it is critical for the U.S. government to work cooperatively with China in pursuit of reasonable and WTO-compliant regulations that allow for smooth trade in dairy products.

USDA and FDA have worked extensively with China over the past several years regarding its implementation of Decree 145, which requires the registration of facilities shipping to China. This process has worked smoothly for most but not all U.S. dairy exporters. Some companies lost access to the Chinese market for a period of several months. We appreciate China's recent proposal for how to develop a path forward for those companies that had facilities blocked from shipping to the market for a considerable period of time. USDEC is working closely with USDA and FDA to help facilitate swift compliance by U.S. companies with this new pathway in order to restore trade for the impacted companies.

As this process moves forward and further discussions with China take place regarding U.S. compliance with Decree 145 and other regulations, it is absolutely vital that USDA and FDA closely coordinate activities in order to address reasonable food safety-related requirements from China in a timely way.

Ecuador

Blatant Disregard for WTO Commitments

Although U.S. dairy exports to Ecuador are relatively limited at only approximately \$3 million last year, we would like to flag our serious concerns with Ecuador's decision to directly flout its WTO commitments in such a blatant manner through resolutions COMEXI 585-2010, MAGAP 299-A-2013, COMEX 116-2013 and COMEX 019-2014. These resolutions impose numerous restrictions on imports, including a pre-shipment inspection requirement with no means to comply. The regulations also indicate that the government will not authorize imports of foreign products that compete with locally manufactured products, should these be available, or in the case where Ecuador judges that the imported products' quality is not equivalent to that of national ones.

As further indication that these regulations are illegal and direct barriers on trade rather than driven by legitimate regulatory aims, Ecuador has negotiated exceptions to its import restrictions for key trading partners such as Peru, Colombia and most recently the European Union (through the newly completed EU-Ecuador FTA). Due to their egregious nature, Ecuador's actions should be viewed in the context of the signal that the U.S. chooses to send to other countries that might consider adopting similar regulations.

European Union

We note that we have provided very detailed information to USTR through the TTIP input process on EU barriers to U.S. dairy exports along with our recommendations for how best to address the challenge we face in accessing this major market. Some key points are reemphasized here, but our earlier TTIP comments reflect the most inclusive version of those issues. Given the number of issues at play in U.S.-EU dairy trade, we firmly believe that a comprehensive system-approval approach is needed to address both the types of current issues listed below and guard against trade barriers that may be introduced in the future such as certification requirements related to the sourcing of dairy products from the offspring of cloned animals.

Border Measures, Tariffs and Import Licensing

EU tariffs for dairy products are quite high in many cases. We welcome the opportunity to eliminate these rates in TTIP, in concert with removing non-tariff barriers to trade, in order to create a more level playing field across the Atlantic.

Even more daunting than the level of the tariffs, however, is the complexity of many of the related import measures. For instance, the EU's import licensing procedures have proven to be unduly burdensome and complex, thereby inhibiting companies from taking advantage of even in-quota opportunities that do exist in the U.S.'s dairy tariff schedule. In addition, the

EU's system of variable duties for processed products adds another layer of complexity and uncertainty to shipping to the EU.

- **Tariff Form: Inconsistent Duties for a Given Tariff Code**
The EU's system of variable duties for processed products adds another layer of complexity and uncertainty to shipping to the EU. Although ultimately elimination of tariffs is the goal (as detailed above), that is likely to take place over a period of years. In the meantime, we would like to see greater predictability by moving away from the EU's use of its Meursing Code to determine a total tariff for various composite/processed products. This complex method of determining the total tariff on numerous composite goods is based on the amount of four compositional parameters: milk fat, milk proteins, starch/glucose, and sucrose/invert sugar/isoglucose. The duty charged in the EU on the composite product depends on the ranges of these products in the EU's Meursing Code.
- **Port Inspection Issues**
Inconsistent inspection practices across the EU's border inspection personnel (BIPs) have caused difficulties in the trade of dairy products. We would expect BIPs to sample products in a way that leaves their integrity intact, but we this in not always be the case. Instead of making a small slit in a bag of dried dairy products and covering that slit in its entirety with a BIP sticker, some BIPs rip open the bag and then attempt to seal it by wrapping the entire bag in tape. When the customer receives the shipment, he or she may reject the bag because it is not properly sealed and the product may be contaminated. In other cases, multiple cheeses from the same lot and case were taken for testing, and given the nature of the retail packaging, this sampled cheese could not be delivered to the customer. We urge consistent inspection practices that ensure that any BIP sampling does not compromise the integrity or significantly disrupt the quantity of imported products.

Export Subsidies

- Over decades and most recently in 2009, the EU has made use of its massive export subsidy allowances to tremendously distort world dairy markets. Under its WTO commitments, the EU is permitted to spend over 1 billion Euro a year on dairy export subsidies: 724 million on other dairy products, 346 million on cheese, and 298 million on skim milk powder. When activated, use of these government subsidies makes it more difficult for U.S. exporters to compete in global markets.
- We should seize the opportunity TTIP offers to secure a commitment to abandon their use entirely, regardless of market. In the context of the Doha WTO negotiations, the EU was already prepared to forego use of its export subsidies by the end of this year, as was the U.S. We should capitalize on this willingness to abandon use of export subsidies by both major players in this area and include such a commitment as part of the TTIP. This would be a significant achievement on a bilateral basis but also a

symbol of how direct U.S.-EU trade talks can benefit the global trading system at large as well.

Certification Requirements

- **Somatic Cell Count issue**
For decades, the U.S. provided certification assurances on this quality (not food safety) parameter to the EU based on testing of comingled milk. A few years ago the EU insisted on shifting this to a farm by farm testing approach despite the fact that it is the comingled milk that actually is used, not solely milk from individual farms. Compliance with this revised requirement is quite an onerous record-keeping exercise and is unnecessary from a food-safety perspective.
- **FMD-related assurances**
The EU regulations state that the HTB certificate is to be used for countries not at risk for FMD and the HTC certificate is to be used for countries that are at risk for FMD. However, there are two HS codes on the HTC certificate that are not on the HTB certificate, and discussions on this point with the EU to date have not produced results. Some ports look only at the HS codes in the certificate notes and therefore demand the HTC certificate for certain products. However, the U.S. does not issue this certificate based on our FMD status.
- **Requirement for APHIS inspection precludes food grade sales for feed use**
Feed facilities must be inspected annually by APHIS and the facilities must be included on the SANCO list of approved establishments. These requirements essentially block U.S. exporters from spot sales of food-grade product in the feed market, a common practice in other markets.
- **Excessive requirements for colostrum**
The EU's animal health requirements for colostrum for animal feed are extremely burdensome. As a result, the U.S. has not been permitted to ship colostrum to the EU for several years.
- **Date Stamping Issue**
The EU requires the health certificate to be dated prior to shipment. EU auditors of the U.S. system are aware that AMS issues certificates based on an inspection system and does not have inspectors physically stationed at each plant at the time the container loads. Despite this, the EU has refused to allow for flexibility in the implementation of this requirement as it relates to U.S. exports.
- **Container/Seal # vs. Ship Date Requirements**
The EU requires the container and seal numbers on the certificates, but also requires the certificate to be dated prior to shipment. To fulfill both requirements, exporters regularly obtain the certificate ahead of time and amend it once the container and seal

numbers are available. Officials at multiple EU ports have recently stated that this practice is inappropriate and that such amendments will face tougher inspections upon entry.

- **Composite Certificates: Shifting and Incompatible Rules**
The EU composite certificate for products containing both animal-origin and non-animal origin components has been in place since mid-2012, but there is still no EC guidance on this requirement. As a result, this lack of clarity has led to considerable confusion at the ports which results in shipping uncertainties. In addition, there are national treatment concerns with the sourcing of ingredients in the composite certificate. Ingredients are allowed from all EU countries, but are only allowed from third countries if they are FMD-free. The FMD distinction is inappropriate for ingredients that are properly treated according to the OIE recommendations for inactivation of FMD. If these countries are approved to ship to the EU directly, their ingredients should be allowed in composite products. As the U.S. government works to ensure that trading conditions are prepared for the possibility of a U.S. FMD case, we believe that it is important to resolve issues such as this.

India:

Requirements for U.S. Dairy Certificate

The U.S. dairy industry faces significant and long-standing market access barriers in the Indian market. NMPF and USDEC have been working for 11 years with the U.S. government to try to resolve this issue. It is our hope that the current efforts to resume discussions with India on a range of important trade issues do not neglect longstanding challenges simply because resolution has proven difficult in the past. It is precisely the point of a refreshed dialogue on all topics of interest to both sides – to explore whether it is possible to find a way forward in compliance with WTO obligations.

Since late 2003, the vast majority of U.S. dairy exports have been blocked from the Indian market due to India's dairy certificate requirements. Over the past several years, the prior Indian government demonstrated a repeated unwillingness to constructively work to resolve this issue and to ensure that all of its import requirements are based on sound science and comply with India's WTO national treatment obligations. Throughout that process, the U.S. provided considerable scientific data in support of our position, compromise solutions to address India's concerns, and information demonstrating that the vast majority of countries around the world accept our dairy products and recognize them as safe. It is our hope that India's new government will approach this issue through a fresh perspective that allows discussions to focus on the need to ensure that bilateral trade in dairy products can proceed smoothly and on a scientific basis.

Despite relatively high tariff and quota constraints, India, the second most populous country in the world with a population of more than 1 billion, presents a large and unrealized market opportunity for the U.S. dairy industry. USDEC has estimated that resolution of this issue could yield additional exports ranging from \$30 million to \$100 million after the U.S. dairy industry has been able to establish itself in the market, depending on the nature of the resolution and growth in the Indian market over the next few years. Resolution of this longstanding issue is critical to maximizing future export possibilities for our industry in that region of the world.

We urge the Administration to include discussions on dairy in all upcoming trade-related dialogues with India in order to actively pursue a path forward on this issue.

Israel

Expansion of Free Trade Agreement

The United States and Israel remain engaged in protracted negotiations designed to deepen the agriculture portion of the U.S.-Israel Free Trade Agreement (Agreement on Trade in Agricultural Products, or ATAP). These negotiations have made very little headway in recent years, however, and most U.S. dairy products under the FTA remain constrained by small tariff rate quotas (TRQs) and high out-of-quota duties. Many of these TRQs are filled or come close to being filled during the quota year. In addition, the allocation quantities are too small to be commercially meaningful.

We would prefer to see the U.S.- Israel FTA revisited and developed into the type of high quality agreement with few, if any, exceptions, which is the signature of all other U.S. FTAs. As part of the negotiations on ATAP, Israel should finally agree to provide fully free market access for dairy imports from the United States. This objective was included in the original U.S.-Israel FTA. The market potential for U.S. exports of cheese to Israel is particularly strong, but many other U.S. dairy product exports would increase significantly, as well, if the FTA allowed for duty free trade.

Japan

Tariff Levels

USDEC and NMPF have an interest in seeing meaningful and comprehensive market access across the full range of dairy products into Japan. 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. In addition, Japan maintains a complicated quota system for these and other dairy products which it uses to allocate its in-

quota quantities according to designated uses. Despite Japan's significant tariff barriers, it is still our sixth largest export market, totaling a record high \$303 million in 2013.

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.

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.

TPP offers an excellent opportunity to establish an import regime that is designed to facilitate trade access rather than hinder it. TPP talks also provide the chance to tackle various nontariff barriers concerns that USDEC and NMPF have provided information on to the U.S. negotiating team.

Kazakhstan

Plant Listing Requirement

Despite a Russian WTO accession commitment to ensure that Customs Union requirements complied with its access package, Kazakhstan (a Customs Union partner) continues to maintain a requirement that dairy facilities exporting to Kazakhstan be registered on a government-provided plant list. It is our understanding that Kazakhstan has committed to remove this requirement as part of its WTO accession process. That commitment – and establishing a protocol for swift action if it is ignored – will be critical to securing our support of Permanent Normal Trade Relations with Kazakhstan at the end of the accession negotiations process.

In the meantime, the U.S. must comply with existing requirements. In order to do so it is essential that the U.S. government move without delay to initiate the regulatory process

needed to create a plant list. It is unclear how long the remaining access process will take with Kazakhstan; U.S. exporters should not be forced to wait for that process to conclude in order to resume access to this market. Since the U.S. has just recently created a plant list for China, FDA should be able to move very quickly to initiate the regulatory process needed to establish such a list with Kazakhstan as well. This process has already been delayed for far too long and should not be postponed any further.

New Zealand

Monopoly Structure of Dairy Industry

The monopolistic structure of New Zealand's dairy industry, where one company controls approximately 90% of the milk produced in that country, poses a significant concern to the U.S. dairy industry. Both producers and a number of processors believe this situation poses a serious challenge to fair trading relationships both between the U.S. and New Zealand and in dairy markets throughout the world. This monopolistic structure grants an immense advantage of New Zealand dairy product exports. Moreover, very few companies in any economic sector have the level of market share that New Zealand has obtained through domestic policies. Such concerns present a serious challenge to our industry as we strive to compete against this international dairy power-house in world markets.

USDEC and NMPF have submitted ample information on this issue to USTR through the confidential advisory process as well as through public submissions including both the federal register process, ITC testimony and Congressional testimony. We refer USTR to these comprehensive submissions for further details.

Our industry is insistent upon the need to make use of the ongoing TPP negotiations to finally address this concern by pursuing approaches in TPP designed to address the level of market concentration afforded to one company in New Zealand.

Mexico

Unpasteurized Milk Imports

The U.S. has been blocked from exporting unpasteurized milk intended for further processing to Mexico since mid-2012. In response to U.S. concerns about this abrupt import ban, Mexico replied that it was conducting a risk assessment. Mexico has now had over two years to conduct that risk assessment; we believe it is long past time for the U.S. to insist that the market be reopened.

By way of background, the U.S. had shipped unpasteurized milk to Mexican dairy processors for many years without problem prior to the change in regulatory requirements in 2012.

Mexican processors pasteurized this milk upon receipt and used it both for drinking milk and to make value-added products, such as cheese. The value of unpasteurized milk imports into Mexico fluctuated greatly in the years preceding the market closure for this product since Mexican demand for it is based on the availability of domestically produced milk. Mexican processors use the U.S. exports of unpasteurized milk not to displace local production but rather largely to supplement it, particularly in times of production shortfalls in Mexico due to draught conditions or other factors resulting in lower milk production than normal by Mexican farms.

We urge USDA and APHIS to prioritize resolution of this issue in order to restore access to the Mexican market for the full range of U.S. dairy exports.

Russia

Plant Listing Requirement

In August 2014 Russia announced a ban on most agricultural imports from the U.S. This did not directly affect the market situation for U.S. dairy products, however, since Russia's market has been closed to U.S. dairy products for the past four years. Despite that, we note that Russia's outright ban on products from the U.S. and other major suppliers for purely political reasons appears to be in violation of its WTO commitments.

Prior to the 2010 market closure, Russia was an increasingly important market for U.S. dairy exports. In 2010, U.S. dairy exports had reached a high of \$81 million, making Russia the 11th largest market for U.S. dairy products that year. U.S. dairy exports to Russia in value terms increased more than 1,600% over the 2006-10 period. Russia remains one of the world's largest dairy import markets and, prior to the current broad Russian ban on Western imports, U.S. dairy companies continued to regularly receive inquiries of interest from Russia buyers. Russia imported \$2.9 billion from the world in 2013 excluding additional sizable sales from its Customs Union partner Belarus.

We commend the Administration for its successful resolution earlier this year of the long-standing dairy certificate issues. This was a very important step forward in the years-long efforts to re-open this market to U.S. dairy products.

Unfortunately, Russia's maintenance of a requirement that facilities shipping to Russia be registered on a government-assembled list prevented trade from resuming in the interim period between when the certificate disagreements were resolved this spring and when the Russian ban on U.S. agricultural imports took effect this August. This listing requirement – for both Russian and Customs Union imports – is in direct violation of the commitments Russia made upon joining the WTO just two years ago. We strongly support U.S. actions to both insist that Russia and its CU partners abide by the WTO commitments they have already made, particularly in the SPS arena, as well as to do what is needed in the interim to expand



export opportunities for U.S. dairy products under the current set of CU requirements. Although Russia now bans imports, it is not clear how long that ban will stay in place so the U.S. should use this period to prepare for the resumption of trade with Russia down the road.