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 2015-0014
October 28, 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 issue 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

The European Union continues to pursue an increasingly aggressive bilateral strategy to restrict the use of common cheese names by non-EU producers through its 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 by advocating for wider use of GIs and by insisting on an 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 bullying its trading partners into violating their WTO commitments and, where those countries have FTAs with the

U.S. Dairy Export Council
2101 Wilson Blvd., Suite 400
Arlington, VA 22201 • USA
PHONE 703.528.3049 • FAX 703.528.3705 • www.usdec.org

National Milk Producers Federation
2101 Wilson Blvd., Suite 400
Arlington, VA 22201 • USA
PHONE 703.243.6111 • FAX 703.841.9328 • www.nmpf.org

U.S, their commitments under those agreements, as well. The EU's approach has resulted in the impairment of the value of concessions obtained by the U.S. in those negotiations.

We thank USTR, PTO and USDA for their active work on this critically important topic on behalf of the U.S. dairy industry. As the Administration continues to move forward with its efforts to tackle this issue as the truly global problem it is, we urge USTR to examine the degree to which countries' EU-driven GI measures result in non-compliance with their 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 forcefully opposed 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 most effectively 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 agree to impose new restrictions on a number of generic cheese names. The fact that it also intends to grandfather existing usage (primarily by Canadian companies) helps demonstrate the generic nature of the impacted 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, and inconsistent with their NAFTA and WTO obligations. This is particularly the case as they were in the midst of TPP negotiations on both dairy market access issues and on the topic of geographical indications themselves. In addition, the other terms Canada protected were not even subject to Canada's standard IP review procedures – again reflecting the political nature of the decisions taken 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 clearly indicate how they are interpreting EU GI registrations, leaving open the risk of future disruptions to U.S. exports.

- 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 restricted several products (such as asiago, gorgonzola and fontina). Appeals on restrictions on the terms "manchego" and "fontina" have been rejected and earlier this year the Costa Rican government upheld its decision to block generic use of "parmesan" and "provolone." The facts of the situation do not match the outcome and for provolone the outcome is particularly mystifying since the EU itself does not restrict use of provolone within the EU. Furthermore, there is an international standard for provolone, which attests to its generic usage. We continue to pursue additional legal options on these names, as well as to pursue ongoing efforts to secure generic assurances regarding "mozzarella" and "romano."

China: As of the date of these comments, China is involved in ongoing negotiations with the European Union (EU) over an agreement on geographical indications and the EU is forecasting the conclusion of these talks by the end of 2015. NMPF & USDEC have deep concerns about the impact this agreement may have on U.S. exports to China and particularly on opportunities to continue to expand the range of U.S. products sold in this rapidly evolving market. As mentioned previously, the EU has a track record of utilizing trade agreements as a tool to block access into the markets of its partners to those agreements. It is our hope that China decides to uphold its existing international commitments when choosing what new commitments to make in its GI Agreement with the EU. We commend the U.S.-China Joint Commission on Commerce and Trade agreement in December 2014 as an important tool in working to secure such a result. As USTR and the Department of Commerce noted in their release regarding that agreement, "China also agreed to strong IP protections for products that use trademarks or common names like "parmesan" or "feta" cheese, which in recent years have begun to demonstrate a potential for rapid export growth vis-à-vis China." NMPF and USDEC see this understanding as a very positive step towards preserving U.S. market access opportunities in this growing market and look forward to China's execution of these commitments.

- 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. We also note with disappointment the continued refusal of the EU to take even minimal steps to reform its problematic GI system by providing full clarity about the scope of protection for specific compound GIs and for translations of all GIs.

- 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 including those the U.S. has secured expanded access opportunities for under TPP.

- 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. . U.S. exporters this year have begun increasingly reporting barriers to their sales of products restricted under the EU-Korea FTA such as asiago, fontina, gorgonzola and feta. 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 for multi-word GIs 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.

- Mexico: Mexico has seen a wave of GI applications in the past year through its membership in the WIPO Lisbon agreement. These include several cheeses that the U.S. is actively shipping to our NAFTA partner including asiago and gorgonzola. We will continue to work with Mexico and local producers to try to ensure that the use of common terms is not threatened and we urge the Administration to do likewise with its counterparts. Separately, the EU and Mexico are moving forward with their efforts to

build on a prior FTA pact between the two in 2000. We anticipate that GIs will be one of the topics on the table and we urge USTR to work with Mexican officials to avoid the introduction of new EU-instigated restrictions on generic names. Mexico is the largest market for U.S. cheese exports.

- Morocco: In January the EU and Morocco announced that they had reached agreement to mutually protect their GIs. In the broadest scope of a GI agreement to date, the EU and Morocco agreed to exchange protection for all GIs registered before January 2013. To our knowledge no opportunity was afforded outside interests to lodge opposition to any of these registrations or to seek clarifications. We are very concerned about the impact and uncertainty this agreement will create in the Moroccan market and we urge USTR to continue to work to address this market-restricting action by Morocco.

- Peru: As part of the Peru-EU FTA, Peru restricted the use of several commonly produced U.S. cheeses. 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 stressed the importance of securing assurances from the Peruvian government regarding the continued use of certain common names contained within multi-word GIs.

- Philippines: The latest round of Philippine draft GI regulations falls short of adequately protecting common food names particularly in light of its proposal to permit foreign GIs contained within FTAs to evade the GI evaluation system that would govern all other applications. The Philippine government appears to be examining the merits of this provision in particular as it considers how to best finalize these regulations. Particularly as discussion continues about the prospect of the Philippines ultimately joining TPP, we urge the Administration to continue to engage in the Philippine process to ensure that it does not result in rules that harm U.S. interests.

- South Africa: Last year, South Africa moved quietly to propose new restrictions on the use of a number of food names in connection with a list of GIs as part of its EU trade deal. We appreciate the U.S. government's steps over the past year aimed at securing clarity regarding how parts of a multi-word GI will be treated under that commitment. We also urge USTR to continue to pursue explicit protection of some generic names such as feta, which have been widely produced in South Africa for decades, making them clearly generic terms in that country. South Africa's action was 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, last year Vietnam put forward a proposal to restrict the use of many GIs of interest to the EU. USDEC & NMPF objected to the registration of several of those GIs and sought clarity regarding

the scope of protection for many multi-term GIs. Our goals has been to ensure that Vietnam does not take steps that would negatively impact the full range of market access opportunities currently available to us. Reports this fall from the EU indicate that Vietnam has opted to restrict usage of several terms of interest to the U.S., such as asiago, feta and others, moving forward. We thank the Administration for their extensive work with Vietnam on this issue and urge the continued engagement with them to preserve the maximum possible range of export opportunities for U.S. exporters.

- 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 despite the efforts earlier this year 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 was held to ratify the proposed changes. We remain deeply concerned that the revised Lisbon Agreement will give GI holders an unfair commercial advantage in markets around the world at the expense of common name users such as the many U.S. companies relying on these terms. We also commend U.S. Congressional leaders for urging fixes to a treaty that could limit the use of generic food names in export markets and impact the sales of cheeses, meats, wines and a wide range of other products.

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 thinly 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, in a way designed to improve access for U.S. product into the current and future TPP members, and set a strong example for other countries to follow in multilateral and bilateral commitments on SPS measures. We look forward to reviewing in detail the final results of the TPP SPS Chapter in order to gauge its likely effectiveness in achieving this goal.

COUNTRY-SPECIFIC ISSUES:

Canada

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

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 has secured a degree of newly expanded – although still tightly controlled – access opportunities for U.S. dairy products into this neighboring market.

Despite Canada's exorbitant tariff barriers, it is currently 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, exports under IREP may be meaningful for the companies that are operating in this restricted environment, but sales under IREP do not ultimately remain in Canada and many may eventually re-enter the U.S. as processed products. Given this, the industry does not view use of Canada's IREP as genuinely providing real 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.

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). 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.

Non-Tariff Barrier Examples:

- On the Friday before Thanksgiving in 2013, 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 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.

- 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.

- 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. TPP, if adopted, would address some of this shortfall in Canada's commitments by creating a new TRQ of 50,000 MT of fluid milk access (subject to certain end-product usage requirements). We encourage USTR to continue to pursue access for the remaining quantity in any subsequent agreement with Canada.

China:

Plant Registration Requirements – Ensuring Equitable Terms of Access

Over the past decade, China has become a critically important market for U.S. dairy exports. It is also one that continues to grow, given its rapidly expanding demand for dairy products. U.S. dairy sales to China have almost tripled over the last five years (2010 – 2014). Sales last year alone totaled $693 million, maintaining China's ranking as our 2nd largest export market since 2013.

Our industry sees tremendous potential in this market as demand for dairy products continues to expand in China. 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 items critical to U.S. exports to China. Work on various issue of major significance to U.S. exporters continues, most notably continued dialogue regarding Chinese plant listing requirements and evolving Chinese food safety regulations.

Starting in 2012 the Chinese Government began implementing Decree 145, which requires the registration of facilities shipping to China. USDA & FDA have worked closely with the Chinese Government since then to help ensure that this regulation would not result in the blockage of trade. This work has successfully maintained market access for most U.S. exporters, but some companies remain unable to ship certain dairy products to China.

The U.S. has already invested considerable time and resources into ensuring that the U.S. dairy supply chain can comply in a reasonable manner with Decree 145 so that American companies can continue shipping to this critical market. Within the past year that work included hosting a systems audit by Chinese authorities of U.S. dairy and infant formula facilities. The Chinese Government is currently seeking to ensure they have accurate information regarding which companies are shipping or immediately intending to ship these types of products to China. Additionally, the Chinese Government is seeking certification from U.S. authorities that U.S. dairy processing facilities meet Chinese hygienic requirements.

NMPF and USDEC appreciate the continued focus that FDA and USDA have brought to ensuring that market access is maintained and to restoring access for those companies currently unable to ship. As that work continues, we strongly encourage a high level of prioritization be maintained to complying with requests from China related to their implementation of this Decree, to the extent they are reasonable.

Colombia

Risk Categorization and Associated Import Requirements

Through INVIMA Resolution 719 of 2015, Colombia has assigned risk categories to foods, and intends to impose new requirements on foods depending on the category of risk. The criteria that Colombia used to assign risk was not compliant with Codex risk category principles and Codex guidelines, and also ignored OIE guidance on the impact of heat treatment on dairy products. Colombia placed all dairy products in the high risk category regardless of processing or packaging. The United States has challenged these risk categories, but at the time of publication has received no feedback from the Colombians.

Colombia intends to use risk categories as a basis for new import requirements. Ministry of Health Decree 539 of March 12, 2014 establishes numerous new requirements for high risk foods, including plant registration with INVIMA and the inspection of facilities intending to export to Colombia. Colombia did not notify the WTO and accept comments from trading partners before this decree was issued, and the implementing regulations corresponding to this decree nearly closed the Colombian market in September 2015 before they were pulled back. Colombia has indicated its intention to develop new implementing requirements and notify them to the WTO, but dairy remains at risk for burdensome requirements which could again have the potential to close the market as long as it remains in the high risk category.

Ecuador

Blatant Disregard for WTO Commitments

Although U.S. dairy exports to Ecuador are relatively limited at only approximately $2 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.

In addition to these NTBs, Ecuador began imposing an additional safeguard tariff of 45% on the import of most dairy products in March 2015 as a means to protect its balance of payments due to an unfavorable economic climate. The net effect of these tariffs is that Ecuador is now charging rates above their WTO bound commitments on many products. The WTO indicated in June of this year that 25 WTO members had shared their views on the surcharges, and some had claimed that the surcharges were causing a burden to their exports. While dairy exports to Ecuador had been nominal because of the policies noted above, the additional tariffs further complicate the ability of U.S. exporters to ship to this country.

U.S. Dairy Export Council
Ingredients | Products | Global Markets

NATIONAL MILK PRODUCERS FEDERATION

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.

To be entirely clear, we do not support in TTIP an approach that would seek to address only isolated cases given that the underlying problem is a continual shifting of requirements and a lack of certainty regarding what will be required moving forward. Within TTIP, only a systems-based revision of the requirements for U.S. dairy exports to the EU can adequately address these concerns.

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.

Export Subsidies

U.S. Dairy Export Council
Ingredients | Products | Global Markets

NATIONAL MILK PRODUCERS FEDERATION

- 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

The issues cited below are examples of the types of challenges the industry has seen arise related to EU dairy certification requirements. In the case of the SCC and date stamping requirements, the U.S. has, after considerable effort, found a way to manage these requirements in a workable manner. They are listed here as examples of the types of problems our industry has encountered in exporting to the EU, not as specific trade barriers in need of resolution at this stage.

- 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 required the creation of an extensive record-keeping exercise that was unnecessary from a food-safety perspective. <u>This investment has now been made in order to keep trade flowing, but it is a strong past example of the types of challenges that have arisen in exporting dairy to the EU.</u>

- 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 for animal feed 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. The U.S. has had to reform how it issues and stamps certificates in order to comply with the EU's demands. Numerous exporters have had to return containers to the U.S. when the certificate was not issued prior to shipment, making this paperwork requirement a costly and undue burden.

- 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. This practice is costly to U.S. exporters, as it forces them to pay for two health certificates for one shipment. In addition, officials at multiple EU ports have recently stated that this practice is inappropriate and that such amendments will face tougher inspections upon entry. Ireland has refused to accept amendments to add the container and seal numbers altogether. Here again, U.S. companies have worked to comply with this revised paperwork requirement, but still are challenged to provide documentation that the ports will find acceptable.

- 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. There has been some progress on this since the last NTE report. In 2015, the EU finally issued the long-awaited guidance document on composite certificate. This document does provide some clarity on the use of the certificates, but numerous questions remain, including the need for these certificates in the first place when there is only one-animal origin ingredient in the product and the shipment could just as easily be certified with the dairy certificate. There is still confusion among the BIPs, importers and exporters as to

when the dairy and composite certificate should be used, this lack of clarity has created issues at the time of import.

In addition, there are national treatment concerns with the sourcing of ingredients in the composite certificate. Ingredients from approved countries at risk for FMD can be shipped to the EU and utilized in composite products manufactured in the EU, but the composite certificate requires any ingredients incorporated in composite products in third countries to come from FMD-free countries. 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, whether they are produced in the EU or in third countries. 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.

- Cloning: The European Parliament overwhelmingly voted in September to ban the cloning of animals for use in food, as well as banning food from their offspring. It cited food safety, the welfare of animals and ethical concerns as reasons for the ban. The former is despite an EFSA finding that there are not food safety concerns related to this technology. If adopted, the legislation would broaden a Commission proposal prohibiting the cloning of animals in select species by broadening it to all farm animals, their offspring and their semen and embryos, as well as marketing and import of these. U.S. dairy exporters would almost certainly face the full loss of market in the EU due to the Parliament's requirement to certify that imported products aren't from cloned animals or offspring. The measure is currently before the EU Council. It is without scientific justification and, if adopted, would likely lead to a full loss of market for U.S. dairy products, which are not required to be traced or identified as from cloned animals, in light of the lack of food safety grounds for doing so. **This regulation is the best example of why an over-arching systems approach is what is needed under TTIP for U.S. dairy exports – to ensure that subsequent consumer-preference regulations unsupported by sound science do not negatively impact trading conditions.**

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 12 years with the U.S. government to try to resolve this issue. Current efforts to resume discussions with India on a range of important trade issues must include these longstanding problems. It is precisely the point of embarking on a refreshed dialogue on topics of interest to both sides – to explore whether it is possible to find a way forward on all such issues 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 course of these discussions, the U.S. has 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 prioritize 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

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.

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, if adopted, would take steps to improve these import conditions including through the reduction and elimination of certain tariffs. This access would not be universal however; butter and milk powder for instance saw only very minimal improvements under TPP.

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.

Russia

Plant Listing Requirement

In August 2014 Russia announced a ban on most agricultural imports, including dairy products, from the U.S., the EU and Australia. While this did not directly affect the market situation for U.S. dairy products, since Russia's market had been closed to U.S. dairy products for the prior four years, it did have a negative indirect on our trade, by forcing a shift of EU dairy exports into other foreign markets in competition with ours. Russia's ban on products from the U.S. and other major suppliers for purely political reasons appears to be in violation of its WTO commitments.

However, the reality is that if the ban were lifted tomorrow the U.S. dairy industry would still be cut off from the Russian market due to a facility listing requirement Russia applies in violation of its WTO accession commitments. To our knowledge the U.S. has not to date moved to bring a WTO dispute settlement case against Russia in response to this illegal measure.

Until the U.S. is prepared to take the necessary steps to seek removal of the Russian listing requirement, such as by pursuing a WTO case, we are forced to find ways to live with it. The most plausible option is to create a U.S. facility list that would allow for compliance with the Russian requirement while efforts continue to remove the measure. The U.S. needs to take the steps necessary to create such a list and we therefore reiterate our request that USTR and USDA work with FDA to initiate this lengthy process.

Prior to the 2010 market closure, Russia was an increasingly important market for U.S. dairy products. 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. We cannot afford to watch our key competitors at some point regain access to the Russian market while the U.S. remains shut out. We must use this period to ensure that we have taken all the steps necessary on our side to be prepared to resume shipping to Russia when the ban is ultimately lifted. We do not view such pragmatic preparatory efforts as incompatible with continuing to seek Russian compliance with its WTO obligations, including its commitment to abolish its listing requirement.