



**Comments Regarding Foreign Trade Barriers to U.S. Exports for 2020 Reporting  
by the National Milk Producers Federation  
and the U.S. Dairy Export Council  
Docket Number USTR 2019-0012  
October 31, 2019**

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-2019-0012). The National Milk Producers Federation (NMPF) and the U.S. Dairy Export Council (USDEC) appreciate the opportunity to present our 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.

Exports have become extremely important to the U.S. dairy industry. Last year we exported almost \$5.5 billion in dairy products worldwide. In 2018 the equivalent of one day's worth of milk production out of every six was turned into products that were exported all around the world. Those sales play an indispensable role in supporting the health of America's dairy farms as well as the manufacturing jobs of dairy processors. Impairing export sales therefore harms not only farmers, but also workers in companies supplying inputs and services, and downstream processing plant jobs, as well as in cities with large port facilities heavily dependent on trade.

U.S. trade agreements have had a beneficial impact on the U.S. dairy industry through the reduction or removal of both tariff and nontariff barriers to U.S. dairy products. To continue that job-creating trend that has benefited dairy farmers and manufacturers alike, our industry strongly encourages the retention of existing trade agreements and the pursuit of new ones as of the utmost importance.

We welcome the advancement of the U.S.-Mexico-Canada Agreement (USMCA) and the interim agreement secured with Japan. In addition, we emphasize the importance of continued negotiations on a comprehensive agreement with negotiations with Japan to secure the full range of provisions our industry needs to see in order to be successful in that market. In addition, we support the pursuit of new free trade agreement (FTA) partners including the United Kingdom and strongly urge a focus on Asian markets (e.g. Southeast Asia including Vietnam) as the Administration considers future FTA partners. **Agreements with Japan, other Asian markets and potentially the U.K. are critical for ensuring that our exporters can remain competitive in global markets.**

**As the U.S. evaluates new FTA partners, it is important to ensure that U.S. negotiating time is best concentrated on agreements likely to yield net agricultural benefits for the U.S. We strongly caution against sinking scarce U.S. resources into negotiations with countries unlikely to lead to net dairy and agricultural export gains for the United States.** To make the best use of limited U.S. government resources; the U.S. must focus those resources where they can yield the most benefits to American agriculture and exports, generating strong agreements that can ultimately secure broad Congressional support.



In addition, we view the removal of tariff and nontariff barriers to trade that constrain U.S. dairy exports through additional avenues beyond FTAs as also vitally important. Policies aimed at such pro-trade outcomes would drive further returns to our farm sector and rural communities across the country.

Listed here are some of the major trade barriers confronting our industry. This is not an exhaustive list of ongoing issues that are of concern to our industry. 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 in the years to come. In order to most effectively organize our comments, they are laid out below primarily on a country by country basis unless a common topic pertains to multiple regions.

## **COUNTRY-SPECIFIC ISSUES:**

### **Australia**

Australia is an important export market for U.S. cheese, thanks in large part to the U.S.-Australia FTA. Australia is in the process of considering GIs as part of its ongoing negotiations with the EU. There are several terms on that list of potential GIs that Australia should rightfully have rejected consideration of outright given their clear common usage status in Australia (e.g. parmesan, feta and others). We urge engagement with Australia to defend and safeguard our market access rights for common food names in this important U.S. cheese export market.

### **Brazil**

Brazil is a market with considerable potential for U.S. dairy exports yet one that presently poses significant challenges to entry for many of our exporters. Tariffs and non-tariff measures combine to make it a difficult market to fully penetrate. We would support trade discussions aimed at tackling those barriers to greater U.S. exports.

An emerging trade barrier in Brazil poses a serious concern to U.S. milk powder exports and the potential for future growth of those sales: Brazil is pursuing a law that establishes a minimum of 70% of the shelf life on milk powder imports (0402.10.10; 0402.10.90; 0402.21.10; 0402.21.20; 0402.29.10 and 0402.29.20). We are concerned that this new shelf life floor is intended to negatively impact imports and are unaware of any food-safety related issues that have arisen due to current requirements that would have necessitated this change. We urge work with Brazil to ensure that this is not used as a means to impair access to the market.

On another front, although U.S. exporters have benefited from the integration of an online system to grant automatic approval to products with a standard of identity, the system fails to efficiently facilitate a process for products that lack such a standard. Moreover, there is concern over registration issues for less “traditional” products such as micellar casein.

Further impediments to U.S. dairy exports to Brazil include a new system for import licensing that is significantly slowing the approval process. Import licenses have historically been processed within a three-



week timeframe but now may take up to two months for completion. In the frequent event of a technical malfunction, the importer is required to begin the licensing process again.

A new challenge that will impact U.S. opportunities in the market in the future is the EU-Mercosur agreement under which Brazil committed to impose restrictions on a number of common food names, awarding the EU geographical indication registrations even for terms in long-standing use in Brazil as generic terms. This limits competition and the opportunities for non-EU suppliers to fairly trade in this large dairy market.

We urge engagement with Brazil on these nontariff issues, as well as on tariff barriers, to expand and facilitate access for U.S. dairy products to this significant dairy market.

### **Chile**

Chile is an important market for U.S. dairy exports, totaling \$75 million last year due in large part to the success of the U.S.-Chile FTA's removal of tariff and nontariff barriers. Retaining competitiveness in this market requires preservation of our FTA with Chile and avoidance of the imposition of new tariff or nontariff barriers.

Although U.S. dairy exporters enjoy favorable market access in Chile as a result of the FTA, some technical barriers to trade pose a concern from time to time. For instance:

- Chile is negotiating an expansion of its FTA with the E.U. In that process, the EU is seeking to nullify and impair the market access rights negotiated by the U.S. in our own FTA with Chile through the creation of geographical indications (GIs) for commonly used food terms. It is critical to ensure that the U.S. preserves the market access opportunities for the full range of food and agricultural products benefiting from the terms of the U.S.-Chile FTA.
- Chile notified to the WTO proposed legislation that would: a) restrict the labeling of certain dairy products made with reconstituted/recombined milk in a way that would contradict Codex standards and b) impose an onerous form of country of origin labeling requirements for dairy products in a manner that would mandate the tracking and labeling of excessively detailed origin information.
- Chile does not allow for use of natamycin, a natural mold inhibitor, in grated, shredded or sliced cheese. Despite international consensus and Codex approval to allow for human consumption of natamycin, Chile continues to reject cheeses that test positive for the preservative in these types of cheeses.

NMPF and USDEC encourage the Administration to monitor and address nontariff trade barriers in Chile that discourage U.S. exports.



## China

Over the past decade, China has become a critically important market for U.S. dairy exports. Sales last year alone totaled nearly \$500 million, ranking China the third largest export market for U.S. dairy products, despite the dire impact of retaliatory tariffs in the second half of 2018.

Although the dairy market in China continues a strong trajectory of growth, recent gains for U.S. dairy exports have been reversed by the waves of retaliatory tariffs imposed by China in connection with the U.S. Section 301 investigation of Chinese practices related to technology transfer, intellectual property, and innovation. Export volumes fell by 43 percent in the year following imposition of tariffs by both sides. A study commissioned by USDEC and conducted by Informa Agribusiness Consulting found that U.S. economic output in relation to the dairy industry could fall by \$12.2 billion through 2023 if these retaliatory tariffs persist. Products now subject to Chinese tariffs include milk, cream, yogurt, butter, whey, cheese, milk albumin, lactose, infant formula and ice cream, among others.

Our industry sees tremendous potential in this market as demand for dairy products continues to expand in China. But this potential will be thwarted in the absence of an early agreement with China that will remove tariffs and again place our dairy farmers on a path to continued export growth. The U.S. dairy industry is committed to the Chinese market, but once market access we've been building for years is lost, it will be hard to recover and hard to find another market as pivotal for U.S. dairy exports as China.

While Chinese retaliatory tariffs are the most pressing impediment to dairy trade with China, it remains important 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 in order to maximize the ultimate potential of the Chinese market. We appreciate China's past commitment to constructive engagement with the U.S. government on several dairy issues and China's willingness to pursue creative paths forward to preserve trade. USDA and FDA have worked extensively with China over the past several years regarding items critical to U.S. exports to China, including agreement on a dairy certificate a few years ago and the establishment of a Memorandum of Understanding in 2017 between the U.S. Food and Drug Administration and China's Certification and Accreditation Administration of the Peoples Republic of China (CNCA) that addresses China's Decree 145 requirements.

### *Plant and Product Registration Requirements*

The successful conclusion of that MOU in 2017 was a major accomplishment following years of extensive work by both the U.S. and China to find a resolution and ensure that most of the industry (although not all U.S. dairy companies) could continue to ship product in the interim. Unfortunately, despite the terms of this MOU, China has not regularly updated its list of approved plants. We urge a continued focus on ensuring that updates to the plant list be conducted in a timely manner in order to preserve and establish those opportunities that remain in this dairy-deficit market.

Additionally, no high-risk product applications (fluid milks) have been approved since the MOU has been in force; there has been a lack of transparency on part of the Chinese government as to why these applications have been rejected or what information needs to be provided so that they may be accepted. This is especially true for Extended Shelf Life (ESL) milk products. Currently, ESL does not have a



standard of identity in China, and therefore, it does not have a separate questionnaire/application for CNCA. One must choose between the pasteurized milk application or the sterilized/modified milk application. The discrepancy lies in that if you choose the:

1. Pasteurized milk application: the ESL product is ultra-pasteurized, and may be rejected because of this; the time/temperature relationship does not match pasteurization and the reviewer may believe the product should be classified as sterilized;
2. Sterilized/modified milk application: the ESL product may get rejected in this case because it is not aseptically packaged, or it may not be fortified as required by the Chinese standard.

The ESL product falls in a gap of regulatory requirements and it remains unclear how to secure access for this product to the market.

Another critical factor is work by both governments with industry to resolve issues related to plant listings and detained shipments from U.S. companies operating in a good faith effort to comply with China's requirements. This work, intended to iron out residual plant listing issues in order to fully normalize trade and ensure that eligible U.S. dairy exporters can access the China market, remains extremely important to minimize trade disruptions.

#### *Tariff Constraints*

Two key dairy trading competitors have FTAs with China: New Zealand and Australia. Those FTAs provide significant quantities of duty-free dairy product access to the Chinese market in ways that make it very challenging for U.S. dairy exporters to compete on a level playing field in China, particularly during the portions of the year in which duty-free safeguard quantities are permitted. For instance, this year New Zealand enjoys duty-free access for up to 162,482MT of skim milk powder and duty-free access for up to 6,157MT of cheese while US exporters must pay the full MFN rate of 10% and 12% respectively for all the SMP and cheese they ship to China. While the phase-out period for Chinese dairy tariffs as a result the Chinese FTAs with New Zealand and Australia continue, the disadvantage for U.S. exporters is exacerbated, particularly with the added burden of retaliatory tariffs levied on U.S. exports.

#### *Erection of De Facto Barriers to Trade Through Misuse of Geographical Indications*

Another key factor of interest for our industry in this large and expanding market is the topic of geographical indications (GIs). Dairy suppliers from around the world are largely at the outset of developing cheese demand in China. U.S. suppliers deserve an equal opportunity to help introduce Chinese consumers to high-quality cheeses commonly produced in the U.S. The EU should not be permitted to hamper competition from the U.S. by enticing China into tilting the playing field squarely in the Europeans' direction and against U.S. cheese suppliers through its "100 for 100" GI negotiations with China.

In 2017, our industry submitted detailed comments to China urging that it reject GI applications for multiple common name products (feta, asiago, gorgonzola) and establish clear protections for generic terms at risk of being restricted by compound GI names, including "parmesan, mozzarella, prosciutto, grana, romano and cheddar" in light of GIs under consideration in the process for Parmigiano Reggiano, Mozzarella di Bufala Campana, Prosciutto di Parma, Prosciutto di San Danielle, Grana Padano, Pecorino Romano, and West Country Farmhouse Cheddar. Should China choose not to preserve generic use of these common names,



that decision would have harmful consequences on U.S. export opportunities and our capacity to expand sales to this rapidly evolving market in the future.

Through the U.S.-China Joint Commission on Commerce and Trade, the two nations have repeatedly affirmed the understanding that product names are not eligible for GI protections if they are in common use. China and the United States also confirmed that this applies to all GIs, including those protected under international treaties. It is our expectation that these commitments the U.S. has secured in past few years must be drawn upon to ensure that access to one of the most important cheese export growth markets in the world will not be restricted as a result of an EU-China GI agreement.

### **Colombia**

Last year, we exported \$72 million worth of dairy products to Colombia, ranking it in our top 20 dairy export markets. Over just a six-year period, growth of this market reached almost three times what was exported in 2013. With MFN rates approaching 100 percent for certain dairy products, the U.S.-Colombia FTA has been instrumental to the U.S. dairy industry's growth in the Colombian market and we strongly support it.

Moreover, the FTA has been critical to ensuring that U.S. suppliers do not slip behind our major global competitors. Just a few years after the U.S.-Colombia FTA was implemented, the European Union put in place its own FTA with Colombia. Were we to lack preferential access to this market, European dairy suppliers would be very well positioned to seize market share from U.S. companies that would be then forced to pay much higher – and in some cases quite variable – tariff levels.

Although U.S. dairy exporters enjoy favorable market access in Colombia as a result of the FTA, some technical barriers to trade are emerging that threaten those sales. We urge the Administration to work with Colombia on addressing these issues including the following concerns:

- Late last year Colombia issued a regulation that would require mandatory plant inspections by Colombian health officials for all dairy importers. For countries that have entered an FTA with Colombia, the decree permits systems recognition upon the request of the exporting country. This is a reasonable and valuable accommodation, however, the implementation procedure for this system of recognition has yet to be established and as such the U.S. has been stymied in making use of this avenue that would be critical to retaining smooth access to the Colombian market. U.S. exporters require a U.S.-Colombia systems recognition process to streamline plant registration and remove the need for onerous and duplicative inspections.
- This year Colombia notified the WTO of its intention to impose upper limits of sodium in foods. If enacted, the restriction could impact the imports of butter and several cheese varieties, including cream cheese, farmers cheese, and mozzarella, among others. In addition to having unmerited impacts on trade, mandatory limits could have unintended food safety consequences, as salt serves as an important antimicrobial to mitigate pathogen risk.





- As part of the Colombia-E.U. FTA, Colombia restricted the use of certain common food names such as feta and asiago. This action impaired the value of concessions granted to the U.S. under the U.S.-Colombia FTA. At the same time, however, Colombia also took positive steps to address U.S. concerns regarding other names by clarifying the scope of protection provided for certain multi-term GIs. Steps to provide strong certainty regarding U.S. market access rights for key products produced in the U.S. are needed.

## **Ecuador**

U.S. dairy exports to Ecuador face significant market access challenges. As the U.S. begins to forge refreshed relations with Ecuador we urge work on addressing these barriers to trade. There are multiple import license requirements that appears to have been impacting dairy imports:

- Comexi Resolución 585 of September 16, 2010 lists the products for which the importer must obtain a prior import license from the Ministry of Agriculture, Livestock and Fisheries (MAGAP). In practice, this has amounted to a de facto ban on certain dairy products.
- Resolución 299-A of June 14, 2013 from the Sub-secretary for Trade of MAGAP lists non-automatic import license requirements for additional agricultural goods. This regulation clearly states that import licenses are not automatically granted and that the determination is based on whether there is sufficient domestic production.
- Prior Authorization: Resolución 019 of 2014 requires imports of processed food to obtain prior Ministry of Agriculture Authorization as of October 9, 2014. Previously only Ministry of Health authorization had been required.

## **European Union**

The United States' trade deficit with the European Union in dairy was a remarkable \$1.65 billion in 2018. This is despite the fact that the U.S. is itself a major dairy exporter.

Clearly, many EU member countries are important dairy producers and exporters, but this does not fully explain why the EU exported \$1.8 billion in dairy to the U.S. while the U.S. exported only approximately \$144 million to them given the large variety of dairy ingredient areas in which the United States is a leading supplier to many markets around the world.

The United States has become a significant net exporter of dairy products to the world, as well as to most individual countries. Indeed, we export considerably more to such far away markets as Indonesia and Vietnam than we are able to export to the 28 European Union nations combined. As illustrated below, U.S. exports to the European Union are limited by a wide range of measures and practices that make sales in the EU market unduly complicated, costly, or even illegal.



Given the number of issues at play in U.S.-EU dairy trade, we firmly believe that only a comprehensive system-approval approach that guards against future unscientific and protectionist import requirements could address both current challenges and guard against trade barriers that may be introduced in the future given the European Union's track record on agricultural issues. Achieving this result is the only way to address the dramatic trade deficit the U.S. has in dairy trade with the EU.

Due to the European Union's habitual use of policy tools to impede U.S. competitiveness, we believe that U.S. engagement with the EU should be focused on insisting on resolution of those entrenched trade barriers that make access for U.S. products to the EU market so challenging. As the Administration considers its trade engagement with the EU, we would not support any approach likely to result in an exacerbation of the present exorbitant dairy trade deficit with the EU.

In addition to the barriers in its own market, the EU's intentional global efforts to impede competition from U.S. companies in third-country markets (as detailed below) are particularly galling given its tremendous reliance on the United States as a destination market. These tactics should be part of any engagement on trade matters with the EU.

#### *Country of Origin Labeling (COOL) Targeting Dairy*

Beginning in 2016 and continuing through 2019, several EU member states have introduced or are in the process of implementing country of origin labeling requirements that specifically target dairy ingredients. This trend is noted here in our EU section given that it is proliferating across a variety of EU member states and in ways that do not appear to be fully in keeping with internal EU regulations on labeling. To date, Finland, France, Italy, Lithuania, Romania, Greece, Portugal, and Spain have pursued dairy COOL regulations.

With respect to the basis for the regulations, it is noteworthy that in most countries dairy ingredients are being singled out for this onerous regulation rather than being included as part of a larger effort encompassing most foods. Coming as these regulations did following a time of challenging dairy prices and an oversupply of milk within the European Union in the wake of its 2015 removal of dairy quotas (coupled with the 2015 Russian market closure), the motives of these regulations are naturally quite suspect. This is all the more so the case, given that the European Union has consistently maintained that the same food safety regulations govern dairy production in all member states, calling into question what genuine basis these regulations serve aside from aiming to discourage consumers from purchasing imported products or products using imported ingredients.

Mandatory COOL for dairy ingredients is likely to reduce flexibility in the choice of ingredients as EU processors may be less inclined to source ingredients outside the country in which they operate given higher tracking and compliance costs, thus potentially negatively affecting trade with non-EU countries.

An additional puzzling omission from the scope of some of the regulations is the outright exemption for Protected Geographical Indications (PGIs). Although Protected Designations of Origin (PDOs) are required to be sourced entirely from within the applicant region and as such would be naturally identifying the source of the inputs as a matter of requirement, PGIs are not required in principle to source inputs from a specific geographical region. Therefore, their exclusion appears to create a favored class of products





without a basis justifying that differentiation.

We believe significant concerns exist with these COOL for dairy ingredients regulations and that by their very nature of singling out one type of input – which to date has not been a source of any widespread food safety concern within the European Union (in contrast to past regulations targeting meat, which arose from internal meat food safety oversight issues), and which the Commission itself argues is produced under a harmonized set of regulations throughout the European Union – the regulations should be viewed with a high degree of suspicion as simply serving to incentivize the use of local milk and other dairy ingredients at the expense of dairy ingredients from other trading partners or even other member states. This type of intentional discrimination should not be tolerated.

#### *Border Measures, Tariffs and Import Licensing*

EU tariffs for dairy products are quite high in many cases. Moreover, in-quota tariffs are not set at levels designed to easily allow for access of those quotas. For instance, in-quota rates for various cheese TRQs are set at approximately 70 – 100 Euros per 100 kg, rather than at relatively negligible levels such as 0% or 5% in order to foster utilization of the TRQ quantities.

Even more daunting than the level of the tariffs, however, is the complexity of many of the related import measures. For instance, the European Union'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 United States' dairy tariff schedule. Moreover, the European Union maintains variable duties for processed products, creating time consuming administrative complications for U.S. dairy exporters.

- *Tariff Form: Inconsistent Duties for a Given Tariff Code*  
The European Union's system of variable duties for processed products adds another layer of complexity and uncertainty to shipping to the European Union. 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 European Union on the composite product depends on the ranges of these products in the European Union's Meursing Code. The complexity of this formulation provides an added challenge to those seeking to export these products to the European Union.
- *TRQ Licensing Administration*  
Over the years, U.S. exporters have reported considerable difficulty with utilizing the European Union's TRQ administration process. The way in which TRQs for dairy are administered has led to considerable challenges for U.S. companies in amassing commercially viable quantities of the TRQ.

#### *Certification and Additional Access SPS or TBT Compliance Requirements*

The issues cited below are **examples of the types of challenges** the industry has seen arise related to EU dairy certification and related forms of access compliance requirements. In the case of somatic cell count



(SCC) and date stamping requirements, the United States has, after considerable effort, found a way to manage these requirements in a manner that has permitted trade to continue. They are listed here as examples of the types of problems our industry has encountered in exporting to the European Union. **Our industry’s fundamental challenge remains overly prescriptive EU requirements that mandate assurances of compliance with EU regulations rather than an over-arching recognition of the safety of the U.S. dairy food safety system.**

- *Anti-Microbial Resistance “Reciprocity” Requirement*

In January 2019, the EU published Regulation 2019/6 as proposed legislation to restrict use of certain antimicrobials in their food system. Our primary concerns with the proposal focus on the EU’s over-reach on veterinary drugs and commonly-used antimicrobials. The policies that the European Commission decides to impose within its own territory is for EU regulators to decide. However, the limitations noted in this regulation will not only apply to EU producers but rather aim to dictate animal care practices to all EU trading partners as well, a step that far exceeds what measures are WTO-permissible for the EU to undertake in the absence of a clear indication of a food safety risk posed by imports not complying with the EU’s preferred approach to addressing anti-microbial resistance in the EU population. It is not up to one trading bloc to dictate animal care practices to all other sovereign nations around the world.

A reciprocity clause in the regulation would effectively impose EU hazard-based antibiotic use measures on milk producers in countries that export to the EU, including the United States. The impact will be severe, as veterinarians in countries wanting to export to the EU will lose their capacity to determine the best options available to prevent, control, and treat animal disease, including options vetted by the science-based risk assessment process for global food safety standards established by the Codex Alimentarius Commission (Codex). This may result in negative consequences for food safety, public health, and animal health and welfare. Third countries may be impacted directly because food operators may not be able to use products they currently use, including those deemed safe and effective by national competent authorities. In the case of dairy cattle, there are several negative consequences anticipated from this legislation for the most common disease in cows (mastitis) and in calves (diarrhea) if EU 118 restricts use of WHO antibiotics deemed medically important by the WHO.

We are very concerned that reciprocity is another indication of the EU’s non-science-based approach to undermining the WTO’s rules-based system and of wielding access to its market to drive changes in the production practices of its trading partners that are not lawfully up to the EU to dictate. Such a blanket ban on imports of products with differing AMR regulations is incompatible with a 'risk analysis' approach to controlling the spread of antimicrobials. As such, the EU would be at risk of contravening the principles of the SPS agreement.

- *Restrictions on Chlorate*

This year the EU proposed draft legislation that would establish maximum residue limits (MRLs) for chlorate, a substance that is formed as a byproduct resulting from the use of chlorine disinfectants in food and drinking water processing. These uses lead to detectable residues of chlorate in food products. This regulation was proposed without regard for the widespread use of chlorine as an important disinfectant to safeguard public health. Within the regulation, a proposed



MRL for milk is set at 0.02 mg/kg with an allowance of ( $\pm$ ) 1 mg/kg for other dairy products. We are concerned that the draft MRLs for dairy products are not achievable and question the scientific basis upon which the regulation was established.

- *Certificate Date Requirement*

The European Union requires the health certificate to be dated prior to shipment despite the lack of a basis for mandating this from countries utilizing systems-based food and animal health system oversight. (we note that the EU itself has the former type of program). The Agricultural Marketing Service (AMS) issues certificates in the U.S. based on an inspection system and does not have inspectors physically stationed at each plant at the time the container loads. Despite the Commission's recognition of the U.S. system during systemic audits, the European Union has refused to allow for flexibility in the implementation of this requirement as it relates to U.S. exports.

- *Somatic Cell Count Issue*

For decades, the U.S. provided certification assurances on this quality (not food safety) parameter to the European Union based on testing of comingled milk. Following a lengthy history of trade devoid of any charge that this approach had led to food safety problems, the European Union then later insisted on shifting this requirement to a farm-by-farm testing approach. This is despite the fact that it is the comingled milk that is used to produce the product ultimately sold. Compliance with this revised regulation required the creation of an extensive record-keeping exercise that was unnecessary from a food-safety perspective. This investment has now been made in order to keep trade flowing, but it is a good past example of the types of challenges that have arisen in exporting dairy to the European Union.

- *Requirement for Animal and Plant Health Inspection Service (APHIS) Inspection*

This requirement 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 European Union's animal health requirements for colostrum for animal feed are extremely burdensome. As a result, the United States has not been permitted to ship colostrum for animal feed to the European Union for several years.

- *Composite Certificates: Shifting and Incompatible Rules*

The European Union composite certificate for products containing both animal-origin and non-animal origin components has been in place since mid-2012. Since its creation, there has been considerable confusion surrounding the appropriate uses of this certificate. While questions still remain and we remain of the view that the introduction of this certificate has overly complicated trade in relatively low-risk products, we note that the European Union did take a positive step forward in 2015 when it issued guidance on certification of composite products, and also in 2016, with the issuance of a Commission Implementing Decision that further clarified for which products certification is required.



There remain, however, 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 European Union and utilized in composite products manufactured in the European Union, but the composite certificate requires any dairy ingredients incorporated into composite products in third countries that are free from FMD to also come from FMD-free countries. The FMD distinction is inappropriate for ingredients that are properly treated according to the World Organization for Animal Health (OIE) recommendations for inactivation of FMD. If these countries are approved to ship to the European Union directly, their ingredients should be allowed in composite products, whether they are produced in the European Union 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*

We have been pleased to see that there has been no movement on the issue of cloning within the European Union in recent years. Given the fervor of the debate on this topic within the European Union in prior years, however, and the serious proposals that were being contemplated relatively recently that would have had very damaging trade impacts, we note our concerns with this issue should it re-emerge or should U.S.-EU trade discussions commence in earnest on agricultural trade issues.

In the fall of 2015, the European Parliament overwhelmingly voted 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. Had it been adopted, the legislation would have prohibited imported products from the offspring of cloned animals. U.S. dairy exporters would almost certainly have faced the full loss of market in the European Union due to the Parliament's insistence that imported products be certified to assure that they are not from cloned animals or offspring. The measure was without scientific justification and would have led to severe trade disruptions. We are gratified that at this stage it has not proceeded but urge the U.S. government to continue to monitor the situation on this topic. This regulation is a strong example of why an over-arching systems approach, coupled with forward-looking assurances guarding against the imposition of consumer-preference issues, is what is needed to truly open this marketing for U.S. dairy exports.

### *Geographical Indications*

The European Union continues to pursue an increasingly trade-restricting and protectionist bilateral strategy of restricting 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 European Union's clear goal is to advance its 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 widespread common usage around the world. Numerous examples are referenced in other country-specific sections of these comments; below is just one example of the continual challenges this issuing is posing in the EU market itself as those restrictions



continue to expand:

- The EU has moved to flout its WTO commitments by disregarding Codex cheese standards that the EU and its member states played a very active role in developing and updating only a decade ago. Specifically, in 2017 the EU registered a GI for danbo cheese and reportedly is poised to approve a GI for havarti cheese as well, **despite the existence of Codex production standards for these widely produced types of cheese.** Outside of Denmark, the United States is one of the primary producers of havarti while South America is a significant producer of danbo. The non-Danish production of these products was a key factor when Codex reevaluated its cheese standards to determine which to retain and update slightly over a decade ago – a process in which the EU and Denmark heavily participated.

These moves are in direct contradiction to the intent of these standards to provide consistent standards in order to facilitate trade. At a 2007 Codex meeting that was critical in finalizing the updating of the Codex cheese standards (including havarti and danbo), **the Codex Committee on Food Labeling recognized that: “...section 7.2 of the draft cheese standards [providing for country of origin/manufacturing labelling requirements] preserves the generic nature of the names of these cheeses and promotes equitable labelling requirements.”** Likewise, **the International Dairy Federation**, a formally recognized Codex Observer organization in which EU member states are highly active, **noted at that same meeting: “...the variety names have become generic; therefore, the variety names are no longer associated with any particular geographical origin.”** Despite all of this, the European Union has chosen to push forward with the establishment of GIs for these products, thus preventing their use by any other producer and upending the work that was devoted to these Codex standards.

There are examples of EU GIs that have not proven to be problematic in practice because of the reasonability of the GI applicants and their EU member state government. One strong example of this alternate path has been the United Kingdom. For instance, the United Kingdom has multiple GIs registered for types of cheddar, a generic type of cheese that long ago took its name from the town of Cheddar, England (*e.g.*, GIs exist for Orkney Scottish Island Cheddar and West Country Farmhouse Cheddar). Those GI registrations, however, make clear that use of the generic term cheddar is preserved.

As we have urged for years, the European Commission (EC) should adopt this successful model for GIs that allows for the protection of unique multi-term regional specialties while clearly preserving continued generic usage of the product type. Had the European Union followed this model for other GIs such as “feta,” by requiring the Greeks to submit a GI for “Greek Feta,” rather than suddenly deciding the widely used term “feta” was the sole property of Greece, the Commission could have advanced its GI goals much more successfully and without the consequent harmful impacts on other trading partners. The fact that the EC has deliberately chosen not to adopt this successful UK-style GI model indicates its express intention to continue to use its GI system to unfairly use government dictates to eradicate competition for its producers around the world.

We reject the European Union’s continued efforts to monopolize the use of common names and its failure to provide the proper restraint on applications that would run afoul of existing trade commitments. We also note the European Union’s continued refusal to take even minimal systemic steps to provide clarity





regarding the scope of protection for compound GIs or regarding translations and transliterations through its application process. This ambiguous and overly broad scope of protection creates challenges for generic users within the European Union and is augmented when trading partners in turn aim to implement their similarly broad yet vague FTA commitments with the European Union.

We view the European Union's efforts as bullying its trading partners into violating their WTO commitments and, where those countries have FTAs with the United States, their commitments under those agreements as well. The European Union's approach has resulted in the impairment of the value of concessions obtained by the United States in those negotiations and has led to unjustified technical barriers to trade in many cases. As the U.S. government continues to move forward with its efforts to tackle this issue as the truly global problem it is, we urge the Administration to examine the degree to which countries' EU-driven GI measures result in non-compliance with their WTO and FTA obligations to the United States.

We look forward to continuing to work with the U.S. government against the European Union's efforts to impose restrictions on competition for products that long-ago entered into common use in the United States and many other countries around the world. For the European Union 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.

### **Gulf Cooperation Council**

The GCC bloc of countries is a very important trading region for U.S. dairy exports. Collectively, the countries accounted for \$168 million in U.S. dairy exports last year with Saudi Arabia and the United Arab Emirates (UAE) representing \$78 million and \$49 million of that total, respectively. Maintaining uninterrupted access to these markets is of critical importance for U.S. dairy exports.

We appreciate the efforts the GCC has taken to align with the Codex General Standard for Food Additives (GSFA), recognizing it as "the single authoritative reference for food additives." However, there are several instances where the GCC is in disharmony with Codex standards in terms of permitting food additives widely used in cheese production, notably curcumins and annatto. As clearly recognized in the GSFA, both food additive provisions found in the GSFA and those contained in Codex commodity standards should dictate food additives that may be used in standardized products. The GCC's proposed changes to the Technical Regulations applied to Additives Permitted for Use in Foodstuffs do not include curcumins and annatto, among other widely used food additives that are permitted under the Codex General Standard for Cheese.

#### *Oman*

- *Technical Regulations Requiring Conformity Assessment*  
In July 2019, the Omani government issued ministerial decision "For Issuing the Technical Regulation for the Conformity Verification System", as notified through G/TBT/N/OMN/397. This draft regulation is vague and does not provide details on the scope of the conformity assessment regulation for imports. If the intention is to cover all products, including foods, we urge the USG to negotiate for the exclusion of dairy products. We believe any requirement to impose mandatory testing to obtain a certificate of conformity is more trade-restrictive than necessary to fulfill the





desired safety guarantee. Rather than demand that designated third parties test all goods for conformance with GCC requirements, we urge the government of Oman to instead continue accepting certificates of analysis (COAs) from manufacturers and/or exporters that contain test results for their products. These COAs should provide any needed assurance on the compositional aspects of the goods shipped.

### *Qatar*

- *New Shelf Life Requirements*

In May 2019, Qatar issued a draft regulation that imposes new shelf life requirements on various dairy products in a manner that appears to be clearly designed to shelter a new domestic dairy firm and hinder imports:

- The regulation spells out new rules for long life milk (UHT), requiring imports to have a maximum shelf life of 3 months from the date of manufacture. UHT milk usually has shelf life of at least six months. The regulation also requires imports to have a maximum shelf life of 80% of shelf life remaining (approximately two months and two days) at the time of import. UHT milk is often sold in retail containers directly to the public without undue delay upon import. If the product has shelf life remaining at the time of import, it would be safe for consumption.
- Additionally, the regulation imposes new shelf life requirements on all kinds of white cheese.
  - As stipulated in the regulation, white cheese imports are required to have a maximum shelf life of 45 days from the date of manufacture. This 45-day shelf life requirement is unrealistic as it groups together different types of “white cheese” which have different shelf life requirements, and many “white cheese” varieties, like cream cheese, generally have a maximum shelf life greater than 45 days. “White cheese” is not a type of cheese, it is simply a color of cheese, a factor that does not impact the cheese’s shelf life. Instead, the shelf life depends on several factors, including processing (i.e. aging), intrinsic characteristics (i.e. moisture content), packaging, and storage.
  - Moreover, white cheese products with a shelf life of more than 3 months (long life cheese products) must have a minimum of 80% of their shelf life remaining at the time of entry into Qatar. This 80% minimum shelf life requirement would be one of, if not the most restrictive, shelf life requirements internationally for long life cheese products, and is far higher than the GCC’s voluntary shelf-life requirement of 50% for frozen cheese.
  - We encourage the Qatari government to repeal this regulation. Alternatively, if the regulation cannot be repealed, we strongly recommend amending the regulation to address the trade barriers it has erected.

### *Saudi Arabia*

- *Processed Cheese Standards*

Exemplifying the disharmony prevalent between the GCC bloc of countries, Saudi Arabia has implemented its own domestic legislation that outlined the general requirements for importing food into Saudi Arabia, some of which have been previously rejected by other GCC members. Within the last year, the Saudi government has moved forward to finalize a regulation that is based off a



processed cheese standard from Codex that is now defunct. This regulation is expected to go into effect in January of 2020.

- *Upper Salt and Sugar Limits*  
This year, the Saudi government introduced draft regulations regarding sugar and salt limit guidelines in food. Many U.S. cheeses exported to Saudi Arabia contain salt content higher than the proposed upper limit. Salt serves as an important natural preservative and unreasonable upper limits on content could hinder U.S. exports to the region. Other products include sugar (e.g. yogurt) and yet provide valuable nutrition to consumers due to their nutrient-rich nature. Caps on salt and sugar levels, particularly those imposed without allowances for nutrient-rich foods, are not an effective way to increase overall nutrition levels.
- *Front of Pack Labeling Requirements*  
Saudi Arabia introduced this year front of pack labeling requirements (later deemed to be voluntary) that would have mandated warning labels for foods deemed to be high in salt, fat or sugar. A primary concern with the way in which this regulation has been drafted is that it could misrepresent nutrient-rich foods since nutrient rich and nutrient poor foods of the same category could carry identical warning labels. Even as work on this pursues a voluntary route, we are urging pursuit of an approach to labeling that is better designed to support good nutritional outcomes by recognizing the benefits of nutrient-rich foods like dairy products.

It is paramount that the GCC countries move forward with transparency and a trade-facilitative approach so that exporters can be confident that they know of and can comply with all new demands and supplies of high-quality, safe food can continue to be provided to their consumers. We urge the U.S. government to secure acceptance of the standard AMS sanitary certificate for dairy exports from the United States.

Moreover, we note the challenge for U.S. exporters when countries embark on regional initiatives and individual initiatives at the same time with overlapping and conflicting requirements. Saudi Arabia, as part of the GCC, has declared its intention to implement the GCC Import Guide, which covers such issues as health and Halal certification. At the same time, Saudi Arabia established regulations governing imports, including certification, in its domestic territory in a way that may be more onerous than the GCC Import Guide calls for. Whether Saudi Arabia proceeds alone or with the GCC trade bloc, requirements must be clearly defined and clarify whether the domestic or regional regulations take precedence wherever contradictory requirements exist.

We support U.S. government work with the GCC countries, as a bloc and individually, to address the harmful trade impacts that would result from implementation of the Guide and commend their good work in keeping this important market open to date. As that work proceeds, we urge the U.S. to ensure it is providing sufficiently detailed information to GCC countries regarding how the U.S. dairy food safety system operates and its consistently high results with the goal of securing approval by GCC countries of the continued use of the current AMS-issued standard dairy sanitary certificate.



## **India**

Last year the U.S. exported \$48 million worth of U.S. dairy products to India, a fraction of the potential opportunity that we see in this market were U.S. exports not held back by artificial barriers to trade, namely the Indian dairy health certificate. Although Indian dairy tariffs are a hindrance to trade, India's refusal to work in good faith to negotiate a viable health certificate for dairy products is by far the largest hindrance to U.S. exporters seeking to meet the growing dairy demands in this market.

Despite relatively high tariff and quota constraints, India, the second most populous country in the world with a population of more than 1.3 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 needed in order to maximize future export possibilities for our industry in that region of the world.

Since late 2003, most U.S. dairy exports have been blocked from the Indian market by these certificate requirements. Over the course of these long-running discussions, the United States has provided considerable scientific data documenting the safety of U.S. dairy products, multiple compromise solutions to address India's concerns, and information demonstrating that many countries around the world accept our dairy products and recognize them as safe. These products are the very same ones Americans safely consume on a daily basis. Despite this, India persists in refusing access for U.S. dairy products due to unscientific import requirements.

This year USTR concluded that India is not fully complying with its GSP obligation to "provide equitable and reasonable access to [its] market" and in response, revoked India's GSP eligibility – a step that we strongly supported in light of India's actions on dairy. For the reasons set out in more detail in our 2018 submission as part of that GSP review, we urge USTR to address India's impediments to U.S. dairy products in order to create a viable pathway for dairy trade before restoring its GSP benefits.

## **Indonesia**

In 2018, we exported \$165 million in dairy products to Indonesia, ranking it among our top 10 export market destinations and our 3<sup>rd</sup> largest market for skim milk powder in addition to being an important market for U.S. whey exports. Indonesia remains a valuable trading partner and we welcome their actions to respond to concerns articulated about some of their regulations impacting trade. We would strongly support a trade agreement with Indonesia in order to address tariff levels for dairy products in this critically important dairy market.

We commend USTR's decision last year to initiate a GSP review of Indonesia's compliance with its obligations under that program and were appreciative of the opportunity to submit comments through that process regarding regulations we believe pose a concern to market access for U.S. dairy products. At this stage, the concerns that we highlighted as part of that GSP review in Indonesia appear to have been addressed.



### *Halal Regulation Revisions*

Indonesia has been reviewing and making changes to its halal certification program. It is not yet known whether companies that currently work smoothly with U.S. exporters will continue to be permitted to conduct halal certification nor is it yet known whether new requirements may be more challenging. A regulation issued in mid-October appears to lay out a viable pathway, but it is too early to tell whether issues may arise as this advances. At this stage, we note this issue as simply an area to monitor given its critical importance to accessing this market and the importance of implementation in determining any shift in impact on U.S. exporters.

Many U.S. dairy exports have successfully completed the existing process to get their products halal-certified for export to Indonesia. Our industry has no objection in principle to halal certification as a tool to help ensure that consumers are able to purchase the type of products they seek. It is important however to ensure that halal certification regulations remain viable and reasonable to meet, just as they are today in Indonesia for dairy.

### *Plant Registration Fee Issues*

In order to export to Indonesia, dairy plants are required to register with the government on an approved list. Two concerns exist with respect to this requirement with the first posing by far the largest concern and impact to trade:

- Exporters are allowed only 1 week (and sometimes less) to make a payment upon receiving notice that Indonesia has completed a paperwork review of their registration submission. This excessively tight timeframe can be very difficult for exporters to meet. If they are unable to make the payment within the very narrow window granted to them, they are then barred from shipping products from the plant in question until the next open period for applications (typically a wait of 3 – 6 months). This has a serious impact on U.S. exporters ability to reliably service the Indonesian market with the products needed by this dairy-deficit country.
- In addition, the plant registration fee amounts now to nearly \$1100. Although plant registration fees are not inherently unacceptable, the level of this fee is disproportionately high compared to other markets that require plant registrations and appears to far exceed any direct Indonesian government costs that would be incurred from the registration of an individual dairy facility.

### *Health Protocol*

Indonesia's Ministry of Agriculture has recently communicated an urgency to negotiate and complete a health protocol regarding dairy trade between the Indonesian and U.S. governments. We are confident in the food safety levels of U.S. dairy products and our track record of safe shipments to Indonesia bears this out. It is essential that negotiations on such a protocol do not upend trade nor block new entrants to the Indonesian market from the U.S. from shipping safe U.S. dairy products while discussions between the governments on a protocol take place.



### *Erection of De Facto Barriers to Trade Through Misuse of Geographical Indications*

Indonesia is involved in FTA negotiations with the European Union. In keeping with recent practice, the European Union is expected to be pursuing the registration of a long list of GIs and a broad scope of protection for those terms. We are concerned that an eventual agreement could restrict current and future opportunities in the Indonesian market for commonly named products.

### **Israel**

Last year, the United States exported \$14 million worth of dairy products to Israel. The U.S.-Israel Trade Agreement is an important tool in making these sales possible given tariff levels for dairy products that can range up to 212 percent. We have for many years sought to deepen this trade agreement in order to create a true “free” trade agreement rather than be constrained by the limited access currently provided under the Agreement on Trade in Agricultural Products, or ATAP. Most U.S. dairy products under the FTA remain constrained by small TRQs and high out-of-quota duties.

We prefer to see the U.S.- Israel FTA revisited and developed into the type of high-quality agreement the U.S. has with most of its FTA partners on agriculture. As part of that process, Israel should finally agree to provide full market access for all 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**

Japan ranks third among our export markets for dairy products, valued at \$270 million in 2018. Our trade relations have been positive. Japan’s sizable dairy tariffs have presented the largest barrier to greater U.S. exports to date.

### *Free Trade Agreement*

Japan maintains high tariffs on dairy imports. A comprehensive trade agreement between the United States and Japan offers an opportunity to substantially reduce these tariffs to the benefit of our dairy sector and many others in agriculture. For instance, Japan’s out of quota tariffs on skim milk powder are 29.8% + 396 ¥/kg and its out of quota tariffs on butter are 29.8% + 985 ¥/kg to 29.8% + 1,159 ¥/kg (depending on butterfat content). Tariffs on other products such as cheese, whey and others likewise constrain the opportunities U.S. exporters could otherwise meet in this key dairy market.

We commend the progress made in trade agreement negotiations with Japan in order to expand market access for U.S. dairy products and to help mitigate the risk of our companies slipping behind as Japan implements CPTPP and its FTA with the EU. The first stage agreement will help increase U.S. market access and significantly improve our competitive position for numerous dairy products against other suppliers to the Japanese market. To ensure the full range of products produced in the U.S. dairy industry



sees commercially meaningful benefits from an agreement with Japan and that the U.S. is not at a disadvantage to any other supplier, and to ensure that the use of common cheese names is safeguarded in Japan, we strongly urge the Administration to swiftly commence the second stage of negotiations (pursuit of a fully comprehensive agreement) with Japan in order to accomplish that objective.

### *Geographical Indications*

In its FTA with the EU, Japan granted GI status to a number of cheeses produced in the U.S. including feta, asiago, gorgonzola and fontina, and in its implementation regulations crafted an overly narrow prior use period that undermined U.S. companies' ability to export these products to Japan and ultimately to maintain the possibility of future reassessment by Japan of whether those GI registrations were correctly granted. We continue to urge an adjustment to the time period covering prior use to align it with the date of Japan's final decisions on the submitted GI applications – a period we have seen utilized in many other markets that have negotiated with the EU.

In addition, we emphasize the importance of establishing explicit safeguards for the use of common food names in Japan. U.S. exporters welcomed the positive steps Japan took to reject restrictions on a number of common names (e.g. parmesan, romano, bologna, etc.) yet there exists a constant risk that those advances could evaporate in the future. To provide market access certainty, it is essential that the U.S. secure clear confirmations preserving U.S. companies' rights to continue to use those terms in the future as well.

### **Korea**

Korea was our fourth largest dairy export market in 2018, valued at \$291 million. All major dairy suppliers have FTAs with Korea, one of the world's biggest cheese importers. The U.S.-Korea (KORUS) FTA has allowed us to maintain our export share in that market. Without it, U.S. cheese exports to Korea would be subject to the pre-FTA tariff of 36 percent, while all our key competitors could keep shipping millions of pounds of cheese duty-free. All three of our competitors' FTAs ultimately fully eliminate cheese tariffs, in addition to providing ample access for a wide range of other dairy products. We strongly support KORUS and commend the Administration's preservation of this critical FTA.

Even with the best of trading partners, issues at times arise that merit resolution.

- One such topic of concern relates to Korea's regulatory approach to frozen cheese imports. Not long ago, Korea pursued regulatory changes to its Food Code and Livestock Code to merge the guidance documents. A positive result of this was that Korea added provisions to the Food Code that allow for the thawing of frozen cheese and butter in Korea. However, the regulations required U.S. exporters to secure agreement from domestic competitors to thaw the products in their facilities.

This requirement to thaw in a licensed Korean dairy facility should only be mandated if the thawed dairy product is going to be further processed (e.g. sliced, diced, etc.) and/or otherwise materially changed before distribution and sale. Food safety practices have demonstrated that proper/safe within package thawing occurs when product is slowly tempered, at  $\leq 5^{\circ}\text{C}$ . U.S. dairy companies





should be permitted to work with Korean importers and/or cold storage warehouses to properly temper product (in existing packaging), from frozen to a refrigerated state. We urge Korea to slightly modify the draft regulations to expand the locations in which defrosting may take place particularly if the product remains sealed throughout that process.

- Should the opportunity arise to again discuss tariff issues with Korea, we would urge action to address a temporary yet impactful discrepancy between KORUS and New Zealand FTA terms that will be placing U.S. cheese exporters at a disadvantage for a period of time. Subsequent to the conclusion of KORUS, New Zealand negotiated a tariff elimination phase-out of the Korean tariff for cheddar cheese (a key U.S. export) that takes place more quickly than the U.S. phase-out. As a result of this asymmetry, New Zealand cheddar cheese will reach zero before U.S. cheddar cheese. That disconnect in the tariff level began in 2018 and by next year, the tariff paid by New Zealand suppliers to Korea will be almost 67 percent lower than the tariff paid by U.S. suppliers to Korea for cheddar cheese.
- Korea will be implementing new certificate requirements for dairy products in the near future. We encourage the U.S. and Korean governments to work together to find a mutually acceptable certificate to allow trade to continue to flow unimpeded.
- Korea has provided both positive and negative examples of how countries may handle the issue of geographical indications. As part of the EU-Korea FTA, Korea banned the import of several commonly produced U.S. foods if they were labeled using their common names, a move that has negatively impacted U.S. exporters. For other products, U.S. exporters have benefited from the clear agreement reached in prior years between the governments of the U.S. and Korea, which provides clarity regarding the status of several common names contained in multi-term GIs. The understanding regarding multi-term GIs has allowed the U.S. to capture most of the intended benefits of the FTA, although the remaining single-term restrictions have curtailed some of the opportunities that U.S. companies had hoped to develop in this market. Currently the EU is pursuing additional GI restrictions in Korea; to avoid more limits on U.S. exporters' market access opportunities in this FTA partner market, we strongly urge the need to secure explicit recognition of U.S. exporters' rights to use common food names moving forward.

## **Malaysia**

In 2018, the U.S. exported \$101 million in dairy products to Malaysia. Our trade relationship is positive yet our exports could grow with better market access such as through a FTA that eliminated Malaysia's dairy tariffs. As such, we strongly support the pursuit of an FTA with Malaysia.

Malaysia is involved in FTA negotiations with the EU. In keeping with recent practice, the EU has proposed in this context the registration of a long list of GIs. We are very concerned that an eventual agreement could restrict current and future opportunities in the Malaysian market for commonly produced products. We urge the Administration to secure explicit recognition of U.S. exporters' rights to use common food names moving forward.



## Mexico

Last year we shipped \$1.4 billion worth of dairy products to Mexico, up from just \$124 million in 1995. For much, if not all, of this we have NAFTA to thank. That is why we see the close of USMCA discussions and their preservation of the duty-free terms of dairy trade under that agreement as so important. Our comments with respect to USMCA, including Mexico-specific portions of the agreement, are captured below under the USMCA section in the Regional Issues area of these comments.

We commend the Administration's resolution this year of Mexico's retaliation on cheese that was levied in response to U.S. steel and aluminum tariffs. The lifting of tariffs by both the U.S. and Mexico on this topic was restored the value of our critical trading relationship with Mexico and paved the way for positive consideration of USMCA.

Because of our trade agreement with Mexico and Mexico's commitment to a mutually beneficial trading relationship, at present we have generally had a quite positive trading relationship. Our organizations have worked to forge a partnership with the Mexican dairy industry to expand dairy consumption in a way that benefits both countries. Our goal has not been to displace Mexican products, but rather to broaden overall demand for dairy in Mexico to the benefit of all our producers. Since 1994, Mexican milk production has increased considerably, which has helped meet the ever-increasing demand of Mexican consumers and visitors to Mexico while at the same time continuing to provide market opportunities for American producers as well. Together, we have grown consumption at a reasonable price for both the Mexican and U.S. consumer.

Notwithstanding that, there remain some issues that are relevant to preserving and/or maximizing U.S. dairy exports opportunities in our largest export market:

- *Congressional Resolution Seeking the Imposition of Import Barriers to Milk Powder*  
Mexico is our top market for U.S. milk powder exports. In August the Mexican Congress passed a resolution directing its Ministries of Economy, Agriculture and Health to examine ways in which to discourage the import of milk powder including (but not only) through the imposition of a new tariff on imports. Shockingly, considering the clear trade violation that such steps would pose, the Ministry of Agriculture spoke in favor of the Resolution. It is essential that the U.S. ensure that Mexico abide by its trade commitments and reject calls – by its Congress or industry – to use trade-illegal tools to restrict trade in dairy products.
- *Front of Pack Labeling Regulations*  
Mexico is advancing work on front of pack labeling requirements that would mandate warning labels for foods Mexico deems to be high in salt, fat or sugar. A primary concern with the way in which this regulation has been drafted is that it could misrepresent nutrient-rich foods since nutrient rich and nutrient poor foods of the same category could carry identical warning labels. The draft also requires a warning sign based off a uniform reference range regardless of the typical portion size consumed. We are urging pursuit of an approach to labeling that is better designed to support good nutritional outcomes by recognizing the benefits of nutrient-rich foods like dairy products.



- *Revisions to Product Standards for Skim Milk Powder and Cheese*  
In 2018, Mexico spent considerable time developing new technical regulations for key dairy categories, namely milk powder and cheese, as well as revising its yogurt regulation. Collectively, milk powder and cheese represent the majority of U.S. exports to Mexico and therefore successful resolution of these standard revisions has been of the utmost importance to our industry. Mexico published the final regulations related to this process in the *Diario Oficial* on January 31, 2019. However, although Mexican authorities have outlined the procedures for submitting test reports for domestically-produced milk powder, they have not as of the time of these comments provided detailed procedures for how to submit test reports for imported products, nor is the laboratory registration active. Also as of the time of submission, a conformity assessment procedure for cheese has not yet been published for public comment. As this process proceeds, it is critical to ensure that these processes are finalized in a manner designed to preserve trade flows in safe dairy products.
- *Erection of De Facto Barriers to Trade Through Misuse of Geographical Indications*  
In 2018, the EU and Mexico reached an agreement in principle on a new agreement that incorporates GI provisions. As it seeks to do through all its FTAs, the European Union sought to use that process to impose *de facto* barriers to trade and competition on various common name products that the European Union falsely claims as GIs. As noted below, we commend USMCA for ensuring that a non-exhaustive list of products will be safeguarded from future restrictions and for the side letter establishing a broad definition of grandfathering rights for the use of certain terms. Diligent oversight of both commitments will be essential to ensuring their full benefit.

With that said, several names will be restricted as part of the Mexican-EU agreement or through Mexico's participation in the WIPO Lisbon Agreement. Collectively, these impact U.S. producers of asiago, feta, fontina, gorgonzola, gruyere, munster and neufchatel cheeses, thereby nullifying and impairing prior market access rights granted by Mexico to the U.S. under NAFTA and under the WTO agreement. We believe that the USMCA provisions mandating new due process procedures for GIs will be helpful in the future in preventing the registration of additional GIs in a manner that bypasses objective consideration of the merits of those applications – as was unfortunately the case with Mexico's registration of EU and Lisbon Agreement GIs.

As Mexico implements changes to its intellectual property regulations, USMCA provisions noted above that relate to GI and common food name issues must be appropriately accounted for in those regulatory improvements.

- *Access for Raw Milk for Pasteurization*  
Despite open and smooth access to Mexico for the vast majority of the \$1.4 billion in dairy exports shipped there each year, the United States has been blocked from exporting raw milk for pasteurization to Mexico since mid-2012. In 2012, Mexico changed its regulatory requirements for this product which cut off trade. Prior to that, Mexican processors had pasteurized this milk upon receipt and used it both for fluid drinking milk and to make value-added products, such as cheese. Mexican processors used the U.S. exports of raw milk for pasteurization not to displace local production, but rather to supplement it, particularly in times of production shortfalls in Mexico due to drought conditions or other agricultural factors. We encourage the United States to restore



access for this product to the Mexican market.

### **Morocco**

Last year the U.S. exported over \$18 million worth of dairy products to Morocco. The U.S.-Morocco Trade Agreement is an important tool in making a wider range of sales opportunities possible in this market and we strongly support it.

We are particularly interested in ensuring that Morocco does not restrict access to the cheese market opportunities made available through this FTA by imposing unjustified GI provisions that restrict the use of products the U.S. produces and wishes to retain the rights to export to Morocco, now and in the future. In January 2015, Morocco and the EU announced that they had reached an agreement on GIs. The agreement, which is broader in scope than any previous agreement of its kind, requires each party to protect all GIs that were registered in the other party before January 2013. We urge the Administration to secure assurances regarding the types of products the U.S. will continue to be permitted to ship to this FTA partner and to preserve the value of the market access package that the U.S. negotiated with Morocco.

### **Peru**

Last year the U.S. exported over \$57 million worth of dairy products to Peru. The U.S.-Peru Trade Agreement is an important tool in making these sales possible and we strongly support it.

On another front, as part of the Peru-EU FTA, Peru granted protection to commonly produced U.S. products and products that were generic in Peru such as feta and asiago. For instance, the feta sold in Peru was not typically sourced from Greece, but rather from other markets. This action violated WTO rules and impaired the value of concessions granted to the U.S. under the U.S.-Peru FTA, which pre-dated the EU agreement. We remain concerned by the impact of these actions on the U.S. ability to fully recognize the benefits of this FTA.

### **Philippines**

Last year we shipped almost \$246 million worth of dairy products to the Philippines, ranking it squarely among our top 10 markets. The Philippines has to date been a strong trading partner and we urge pursuit of an FTA with this country in order to eliminate tariffs on U.S. dairy exports. It has been a reliable market for U.S. dairy exports, yet we face heightened competition due to the ASEAN-New Zealand – Australia FTA that provides better access for Oceania to this critical market than it does to the U.S.

Related to nontariff trade barriers, we commend the Philippines' deliberative and considered process to date of carefully evaluating changes to its GI regulations. Like in the U.S., there are numerous Philippine companies that would also suffer from overly broad GI restrictions that negatively impacted the use of common names and distorted trade. We applaud the U.S. government's engagement to date with the Philippines including the recent commitment secured via the TIFA process that guarantees the Philippines



will not automatically recognize GIs via a trade agreement. As work proceeds, we urge continued engagement to ensure that GIs that would impact the use of common terms are rejected.

## **Russia**

U.S. dairy products have been excluded from the Russian market since the fall of 2010. That year, U.S. dairy exports had reached a high of \$81 million, making Russia the 11th largest market for U.S. dairy products at that point in time.

Prior to that abrupt market closure in 2010, Russia was a growing market for U.S. dairy exports. U.S. dairy exports to Russia in value terms increased more than 1,600% over the five-year period of 2006 – 2010. This reflected Russia's long-standing role as one of the world's largest dairy import markets, particularly for butter and cheese.

In the spring of 2014, the United States successfully concluded a key element of the work involved in seeking to reestablish access to the Russian dairy market when it reached agreement with the Russians on a revised dairy certificate. Russia's maintenance of a requirement that dairy 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 and when the Russian ban on U.S. agricultural imports took effect in August 2014.

We strongly condemn the Russian ban on U.S., EU, and Australian dairy imports. This ban has impacted U.S. dairy exports to other markets by forcing a shift of dairy supplies from the European Union into other global markets where those products have heightened competition for buyers. Russia's outright ban on products from the United States and other major suppliers for purely political reasons appears to be in violation of its WTO commitments.

However, if the ban were to be lifted, the U.S. dairy industry would still be cut off from the Russian market due to the facility listing requirement Russia is maintaining in violation of its WTO accession commitments. In light of this, the United States should initiate the process necessary to create a U.S. facility list that would allow for compliance with the *de facto* Russian requirement. We reiterate our request that USTR and USDA work with the FDA to take the steps necessary to start this time-consuming process.

## **Singapore**

Last year the U.S. exported \$70 million worth of dairy products to Singapore. The U.S.-Singapore Trade Agreement is an important tool in making these sales possible and we strongly support it. Singapore is a critical South-East Asian trading hub, making our agreement with Singapore quite important, not only to trade with this country, but also throughout the region.

We are particularly interested at this stage in ensuring that Singapore does not restrict access to the cheese market opportunities made available through this FTA by imposing unjustified GI provisions that restrict the use of common name products the U.S. produces and has negotiated the right to export to Singapore





now and in the future. This is particularly timely given that the ratification and implementation process for the EU-Singapore FTA continues to move forward. We urge the U.S. government to work with Singapore towards achieving those goals.

### **Switzerland**

Switzerland has expressed interest in negotiating an FTA with the U.S. We view it as deeply unlikely that Switzerland will be willing to genuinely open its market by fully addressing tariff and nontariff barriers and as such encourage the U.S. to focus its limited negotiating resources on other markets with greater potential to yield positive results for U.S. dairy exports and agriculture as a whole.

Moreover, Switzerland's approach to restrictions on common food names imperils both U.S. exports and sales in the U.S. market and remains a strong concern. A few years ago Swiss cheese makers, together with their French counterparts, filed for a U.S. trademark application for gruyere cheese. It is of course entirely appropriate that foreign rights holders should have access to the U.S. trademark system, just as U.S. trademark owners should have full access to foreign trademark systems. However, it is not acceptable when our trading partners abuse our intellectual property tools in order to erect barriers to competition and intentionally disrupt existing sales by multiple companies relying on generic use of common terms in our marketplace.

In response to this filing, U.S. companies and organizations have filed a challenge to that application pointing out that extensive generic use of the term gruyere in this country should have resulted in a rejection of the trademark. For instance, non-Swiss and non-French gruyere is found on the menus of at least 19 chain restaurants with 2,674 locations across the United States. At issue is the importance of preserving use of a term long used generically in this country in keeping with an FDA standard of identity for gruyere and used by multiple U.S. trading partners, given that a tariff code exists specifically for gruyere process cheese.

In addition to its predatory efforts to restrict use of this common term in the U.S. market and others internationally, Switzerland also appears to be seeking to restrict generic use of country terms. Given the fact that swiss cheese has long been a typical cheese variety in the United States, as well as in certain other foreign markets, this would be harmful to U.S. commercial interests and we urge strong rejection of any attempts to claw back use of terms that have already entered into common usage to describe a category of product, not the export location of the goods.

We see it as particularly concerning that Switzerland, while already benefiting significantly from access to this market and shielding its market from our own products through high tariff barriers, is intentionally working to use regulatory tools to impede fair competition from U.S. cheese suppliers here in the U.S. market and potentially abroad, as well.

### **Taiwan**

The U.S. ran a trade surplus with Taiwan in 2018, with exports totaling \$93 million. Taiwan's tariffs in the dairy sector are generally low to moderate, but improved access through a trade agreement would enable





even greater U.S. exports. We urge the U.S. to pursue avenues for reducing the burdens Taiwan tariffs place on U.S. dairy products including through the pursuit of an FTA or other avenues for tariff relief.

### **Thailand**

The United States exported almost \$35 million worth of dairy products to Thailand last year, despite sizable dairy tariffs in certain areas. Thailand's tariffs in the dairy sector are generally on the high end for Southeast Asia, ranging up to 40 percent. We urge the U.S. to pursue avenues for reducing the burdens Thailand's high tariffs place on U.S. dairy products including through the pursuit of an FTA or other avenues for tariff relief.

### **United Kingdom**

We support efforts to establish a solid foundation for U.S. dairy exports to the United Kingdom as it moves forward with its "Brexit" departure from the European Union. In 2018, the United States exported almost \$27 million in dairy products to the United Kingdom, trade that was constrained due to existing tariff and nontariff restrictions imposed on this market as a result of the EU's regime on both fronts. In addition to tackling tariff issues in a U.S.-UK agreement, the prospect of independence of the UK from the EU provides an opportunity for the establishment of a regulatory approach on GIs and trade in safe food and agricultural products that is more trade-facilitative while better aligning with the UK's historic role as a voice of reason on both these fronts within the EU. It is essential to ensure that the UK has sufficient independent leeway to negotiate regulatory issues in an FTA with the U.S. so that market access to the UK established under such an agreement would not be governed by the trade-restricting EU approach to such issues.

### **Vietnam**

In 2018, the United States exported \$145 million in dairy products to Vietnam. Vietnam's tariffs on dairy products are generally moderate, falling mostly in the 10 to 30 percent range. We urge the pursuit of an FTA with Vietnam and the removal of all dairy tariffs on U.S. exports. This is particularly important given that our major dairy competitors in that market have negotiated FTAs with Vietnam. New Zealand and Australia have an FTA already; the ratification process for the completed and signed FTA with the European Union is moving forward. Following that, next year the United States will be the only major dairy supplier to the Vietnamese market without an FTA, putting us at a distinct disadvantage. To bridge this gap in the interim, we urge the U.S. to work with Vietnam to explore the use of its system for unilateral tariff reduction.

One nontariff area of concern with this market relates to the impacts of the EU-Vietnam FTA on U.S. exporters' abilities to sell common name foods in Vietnam. The EU-Vietnam FTA imposes forward-looking restrictions on the use of several commonly produced products, while also containing useful clarifications relating to several compound terms of commercial importance to the United States. Another notable element of this FTA was a grandfathering clause that clearly allows exporters who established use of



asiago, fontina, and gorgonzola in the Vietnam market prior to Jan. 1, 2017 to preserve future access rights to that market. In order to preserve the value of this international commitment, it is critical that Vietnam confirms that it takes precedence over any actions in the trademark system – namely trademark registrations or applications for asiago, fontina and gorgonzola. We urge continued engagement with Vietnam to ensure that U.S. companies can access the maximum possible range of export opportunities in this market. It is vital to ensure that the grandfathering commitments that were provided for are upheld and that EU interests are not permitted to use Vietnam’s trademark system to undermine these results.

## **REGIONAL:**

### **U.S.-Mexico-Canada Agreement**

We strongly support passage of the U.S.-Mexico-Canada Agreement, particularly considering the improved certainty this will restore to U.S.-Mexico trade relations as well as the improvements the agreement makes in dairy trade with Canada. Although USMCA has not addressed the full range of Canada’s vast and complex web of dairy tariff and problematic nontariff policies, it has made key advances on both those fronts, as noted below in the Canada section.

- **Both Countries:**

We commend the Administration for the new language incorporated into USMCA that establishes strong and useful precedents in key rules-based areas important to agricultural trade that will not only help lend greater predictability and openness to North America trade but will also serve as a benchmark from which to build upon further in future U.S. FTA negotiations.

Particularly notable accomplishments in this area include:

- *Government to Government Consultations on GIs*  
USMCA includes an important new commitment specifying that the Committee on Intellectual Property Rights shall, upon request, “endeavor to reach a mutually agreeable solution before taking measures in connection with future requests of recognition or protection of a geographical indication from any other country through a trade agreement”. This requirement for consultations and the directive to work to arrive at solutions of mutual interest to the Parties is a much-needed and very welcome addition to the Administration’s ability to defend the interests of U.S. stakeholders against the predatory efforts of non-Parties to use trade treaties to erect barriers to trade in common product categories under the guise of GI protections.
- *Due Process Disciplines for Geographical Indications*  
The intellectual property chapter of USMCA establishes an important framework for beginning to introduce more transparency and due process procedures to the area of GI consideration and should help to mitigate against the inappropriate future registration of unwarranted GIs. It contains numerous provisions that collectively establish a basic structure on the topic of GIs from which the U.S. can build further in FTA negotiations to come. As the Agreement’s commitments are implemented, the U.S. will need to strongly guard against the approval of GIs that may result from compliance with the narrow letter of the process requirements outlined in



the GI Section yet fail to reflect the intent of the Article to prevent the registration of GIs that restrict the use of commonly used terms.

○ *Enhanced Commitments Surrounding Sanitary & Phytosanitary Measures*

The WTO SPS Agreement was ground-breaking at its time and continues to be an essential part of the WTO Agreement. USMCA includes valuable new provisions aimed at bringing greater transparency and a strong scientific grounding to countries' SPS measures. This is an extremely important accomplishment and our exporters would benefit from its applicability in additional markets in future agreements as well.

● Mexico-Specific:

The certainty that USMCA will restore to our trading relationship with our largest dairy export market is one of the key benefits we see in this agreement. In addition to that, there were two critically important side letters secured with Mexico under USMCA that will be essential for preserving U.S. market access in our top market and for providing blue prints on which to expand in future trade discussions with other countries:

1. Side letter on market access pertaining to common cheese names.

- This letter establishes an impressive and ground-breaking precedent by providing clear market access assurances on a non-exhaustive list of commonly produced products. We strongly urge USTR to use and build further on this model with additional trading partners utilizing a more inclusive list of terms that reflects the full scope of commonly produced cheeses in the U.S. In addition, work with Mexico to ensure that this commitment is upheld will be important in the face of continuing efforts by European trading partners to limit competition by restricting the use of common food names.

2. Side letter defining the scope of “prior users” of commonly used food names.

- This letter establishes a very useful definition of “prior user” in the context of the EU-Mexico agreement to cover all actors in the supply chain. We urge similar clarifications with other trading partners and also stress the importance of ensuring that this commitment is upheld.

● Canada-Specific:

Canada's sustained and long-standing efforts to undermine access to its market and impair the value of trade concessions granted in NAFTA and the WTO for products containing dairy have long posed a very deep concern to our industry. USMCA makes important progress in tackling a number of those concerns. Most notably, the agreement will introduce new disciplines on Canada's use of its dairy pricing programs to intentionally distort trade (including through the elimination of Class 6/7) and will usher in an expansion of U.S. dairy access to the Canadian market.

With respect to pricing program reforms in USMCA, we believe the additional transparency and consultations required by USMCA will play a critical role both to policing compliance with the



terms of USMCA and to more fully assessing whether sufficient grounds exist to merit pursuit of a WTO Dispute Settlement case against Canada's abuse of those pricing policies to negatively impact both bilateral trade and most importantly global dairy markets.

A particularly critical additional element in this area are the export surcharges included in USMCA that are intended to discourage exports of Canadian SMP, MPC and infant formula beyond certain specified quantities. We urge the Administration to focus strongly on working out implementation of this element with Canada in order to ensure that those surcharges bring about the desired shift in behavior from Canada.

Another critical area requiring careful monitoring are the agreement's requirements on the reclassification of products Post Class 7 based on end use. These requirements must be appropriately carried out in keeping with the intent of the agreement to ensure that pricing for input products (e.g. ultrafiltered milk) is determined based on the pricing of the product in which it will be used (e.g. cheddar cheese, classified in milk class 3B; or yogurt, classified in milk class 2A, etc.).

In addition, Canada's tariff-rate-quota (TRQ) administration practices must not discourage full utilization of the market access quantities provided to U.S. producers. Moreover, it will be important to ensure that the end-use restrictions on certain TRQs do not unduly thwart the ability of U.S. exporters to fully fill the established TRQs. We very much appreciate the Administration's proactive work on this topic during Canada's 2019 TRQ administration consultation process and look forward to continuing to work together on this key topic area.

Our dairy sector is counting on the market access granted by Canada under USMCA being provided in addition to that already extended under earlier agreements and programs, including Canada's WTO commitments and Canada's existing levels of dairy imports under its Duties Relief Program and Import for Re-export Program. To that end, Canada must not cut back the existing scope or volume of dairy products that may be imported under these programs as it implements new USMCA market access. We strongly appreciate the USMCA provision designed to avoid backsliding by Canada on access to its market for products currently imported under the Duty-Relief Program or Import for Re-Export Program. Careful monitoring of the implementation of these programs under USMCA will be important yet the agreement's provision in this area is key guard against Canada giving with one hand while taking with the other.

Notwithstanding the critical progress made under USMCA in tackling with Canada's abuse of pricing policies to negatively impact dairy trade, we urge the Administration to hold open the possibility of needing to initiate a dispute settlement case against Canada on dairy should the important new disciplines in USMCA not ultimately prove able to curb Canada's harmful and trade-distorting approach to dairy trade.

As additional opportunities arise for engagement with Canada on dairy trade – such as in the context of WTO negotiations – we urge the U.S. to continue to look for ways to further address Canada's formidable dairy trade barriers, particularly Canada's 200 – 300% dairy tariffs. Recognizing that no agreement solves all concerns with a trading partner, as engagement with



Canada through USMCA or other forums continue, we urge USTR to continue to pursue opportunities to address the remaining nontariff policies that impact access to the Canadian market for U.S. products as outlined in our 2018 NTE submission.

### **Central America (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua & Panama) & Dominican Republic**

Last year the U.S. exported \$290 million worth of dairy products to the six Central American countries listed above and to the Dominican Republic. The U.S.-Central American-Dominican Republic Free Trade Agreement (CAFTA-DR) and the U.S.-Panama TPA are important tools in making these sales possible and we strongly support both.

Moreover, CAFTA-DR and the U.S.-Panama FTA have been critical to ensuring that U.S. suppliers do not slip behind our major global competitors; just a few years after the agreement was implemented, the EU put in place its own FTAs with the region. Were we to lack preferential access to this market, European dairy suppliers would be very well positioned to seize market share from U.S. companies that would be then forced to pay much higher – and in some cases quite variable – tariff levels.

#### *Costa Rica - Plant Registration*

Costa Rica's Ministry of Agriculture's National Animal Health Service (SENASA) requires manufacturers to register their plants via completion of a lengthy questionnaire, which includes disclosing proprietary information. Additionally, there is significant amount of redundancy in this plant questionnaire since SENASA also requests a competent authority questionnaire which already addresses the food safety concerns. Moreover, the total plant registration timeline can take up to more than six months to review and approve, putting new U.S. dairy exports to Costa Rica at a disadvantage. We urge a shift to a systems recognition for U.S. facilities.

#### *Product Registration*

The Central American countries all require product registration of foods before they can be commercialized in the country of registration. Panama's registration process for U.S. foods is straightforward because of provisions established through the U.S.-Panama TPA. However, in the other Central American countries, product registration can take up to six months to complete. For products produced outside the region, registrations must be completed individually in each country. There is a system in place now for the registration of domestically-produced products in each of these countries to be recognized in the other countries in the region, but this mutual recognition has not extended to foreign products. As part of its ongoing regional cooperation efforts, we urge the Central American countries to establish a system by which this mutual recognition of product registration can be extended to products produced outside the region so that a product only needs to be registered in one of the five member states of the Central American Customs Union. Such an effort would improve the efficiency of the registration process and lead to an elimination of redundancies.





### *Erection of De Facto Barriers to Trade Through Misuse of Geographical Indications*

The consequences in this region of the implementation of new FTAs with the EU have been variable. In some countries, such as El Salvador, Guatemala and Honduras, government officials have restricted the use of various single-term names of concern to the U.S. but have been willing to provide important clarifications regarding the treatment of common names that are components of certain multi-term GIs of interest to U.S. companies. In other countries such as Costa Rica and elsewhere in the region, a lack of clarity and politically-driven decisions have yielded potentially harmful uncertainty and we urge continued actions to bring these matters to resolution in order to preserve market access for U.S. exports.

We commend the U.S. government and our trading partners for their extensive work aimed at securing clarifications regarding the right to use several generic names in exports to countries in this region. Those efforts have helped preserve a significant portion of the value of market access commitments contained in our trade treaties with the region, which is very important to the industry given the U.S.' geographical advantage to these markets. We note the strong results secured with Honduras and urge continued pursuit of these types of clear market access preservation assurances with other countries in the region and in other markets.

### **GLOBAL:**

#### **Codex**

Codex standards are frequently referenced and utilized during negotiations for free trade agreements and relied upon in adjudicating dispute settlements by the World Trade Organization. This makes Codex a critical forum for both development of food safety guidance and for establishing a level, science-based playing field that facilitates international trade.

The US Codex office plays a critical role in formulating international, science-based food safety standards to be adopted by the Codex Alimentarius Commission (CAC). Robust Codex standards ensure greater transparency and safer food worldwide in the interest of consumers, producers and manufacturers. As the U.S. dairy industry's reliance on exports continues to increase, the need for a proactive, engaged and fully-resourced Codex office to advocate on the dairy industry's behalf is increasingly critical.

We recognize and commend U.S. leadership and laudable efforts demonstrated in advance of and during the July 2019 meetings of the Codex Executive Committee and CAC. Thanks to successful execution of the U.S. interagency Codex strategy developed under the leadership of USDA, the U.S. achieved an important outcome at those meetings that protects science-based Codex standards, ensures continued market access for U.S. food and agriculture exports, and preserves a powerful tool for challenging unjustified trade barriers. U.S. Codex advocacy also assured the adoption of a new Codex Strategic Plan for 2020-2025 that upholds Codex's mission to develop science-based food standards that protect health and promote fair practices in food trade.

The agriculture industry has repeatedly maintained that sound science must remain the foundation of all Codex standards. In order to see Codex abide by that principle, however, it is critical that the U.S. scientific



and technical staff who work on the development of international food safety standards are provided with sufficient resources and support from interagency partners, including amplification of outreach to additional foreign Ministries via those interagency partners. Robust communication and collaboration amongst the U.S. agencies that work to create and promote increased trade of U.S. agriculture products is essential. The U.S. Codex office must be fully equipped to defend the principles of sound science and protect U.S. interests abroad, working in concert and on a regular basis with like-minded countries, while retaining the food safety and scientific principles that have consistently underpinned U.S. positions in Codex.

In addition to the above over-arching priority areas, there are a number of ongoing or proposed work streams within Codex of high relevance to the U.S. dairy industry currently. Those include:

- Codex Committee on Food Import and Export Inspection and Certification Systems (CCFICS)
  - An effort to upend the long-standing and thorough Codex standard on equivalence determinations by creating a short-cut process to reach an equivalence determination without having undertaken the necessary due diligence in doing so, thereby risking negative impacts on U.S. food safety while also increasing the prospect of new equivalence requirements proliferating across export markets.
  - Work on “food fraud” that requires careful and narrow focusing of efforts to ensure it is squarely concentrated on food-safety related cases of intentional fraud and not misused to erect new barriers to trade in unrelated areas.
- Codex Committee on Nutrition and Foods for Special Dietary Uses (CCNFSDU)
  - The prospect of Codex ceding its independence through the potential incorporation of non-technical policy-related statements developed by outside by bodies. Such a step would pose important procedural concerns moving forward for Codex’s scientific integrity and independence in a range of committees; in this case it could intentionally discourage the consumption of nutritious dairy products by one and two-year-olds.
  - The prospect of incorrectly calculating protein levels in certain foods due to an overly restrictive and narrow directive issued by FAO to the committee of scientific experts conveyed this year to assess nitrogen conversion factor issues. Outside expert bodies are a critical tool in supporting the work of Codex, yet to fully achieve their intended purpose the relevant scientific information must not be cherry-picked but rather considered in full.
  - Potential development of Codex guidelines for nutrient profiling; work in this space must align with food based dietary guidance and ensure that the consumption of nutrient rich foods (e.g. whole, 2% and 1% milk; yogurt, cheese) are not discouraged, thereby unintentionally harming overall health outcomes rather than improving them.
- Codex Committee on Food Labeling (CCFL):
  - As with the potential development of Codex guidelines for nutrient profiling; Codex front-of-pack labeling (FOPL) guidance or any possible new work on “high-in” labeling must align with food based dietary guidance and ensure that the consumption of nutrient rich



foods (e.g. whole, 2% and 1% milk; yogurt, cheese) are not discouraged, thereby unintentionally harming overall health outcomes rather than improving them.

- Task Force on Anti-Microbial Resistance (TFAMR):
  - It is very important that Codex accomplish the objective of protecting human health by reducing the spread of antimicrobial resistance through the food chain. To do this, the U.S. must insist that Codex advance science and risk-based policies that are consistent with its scope, reflect robust risk-assessment, and are based on sufficient scientific data demonstrating benefits in protecting human health. Failure to do so will result in countries using AMR concerns to impose hazard-based, non-tariff barriers that will hurt exports of animal sourced foods, including U.S. dairy products. Codex should also ensure consistency with OIE guidelines and avoid onerous monitoring requirements, particularly on U.S. farmers, without risk-based justifications.
- Codex Committee on General Principles (CCGP):
  - The U.S. must ensure that this Committee, which is heavily dominated by one Codex region and being consulted on the role of science and risk assessment in Codex decision-making, is not empowered to undermine Codex's longstanding commitment to science. Allowing this Committee to push Codex away from fair, science and risk-based standard setting will result in promulgation of Codex standards harmful to U.S. dairy interests and make it more difficult to challenge unjustified trade barriers using WTO remedies.

### **World Health Organization (WHO)**

We urge the United States to continue advocating for WHO policies surrounding dairy production and consumption that are based on sound science, and recognizes the significant nutritional benefits from consuming dairy products, particularly for young children. Likewise, we urge a concerted effort to ensure WHO is not promoting international policies effecting dairy products that would constitute *de facto* barriers to trade and inappropriately discourage the consumption of nutritious dairy products by young children. This is beyond the WHO mandate and a direct affront on other international organizations (e.g., WTO).

In addition, we are concerned about the importance of preserving Codex's unique mandate over those issues within its competency areas. WHO and Codex each have unique roles to play. It is no more appropriate for Codex to dictate policy to the WHO on global health issues than it would be for the WHO to mandate Codex incorporation of all WHO decisions and documents within Codex's mandate areas. Codex is the standard-setting body for food products that has established a strong track-record of weighing the scientific evidence on various topics before arriving at consensus-driven standards based on that evidence. The WHO process, which is not transparent and tends to be more staff-led than member-driven, is quite different from that followed under Codex. It is critical that each body retain its unique mandate and independence moving forward.

### **Point of Contact:**

Shawna Morris; Vice President of Trade Policy; NMPF & USDEC; [smorris@nmpf.org](mailto:smorris@nmpf.org); 703-243-6111