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

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Dear Members,

After months of high-stakes negotiations, the United States and China signed a Phase One trade deal today.

The ink has barely dried on the document. But I wanted our members to have information as soon as possible. You are understandably wondering what this means for our industry, for your organization and our future exports to China.

Our staff here at USDEC, particularly our Trade Policy and MARA teams, have worked tirelessly and skillfully on behalf of our industry and deserve a great deal of credit for the provisions for dairy outlined in the Phase One agreement.

What follows is our analysis of that agreement on the day it was signed.

<u>Overview: Real advances on nontariff issues, but retaliatory tariffs still in place</u>

This Phase One deal makes important advances on nontariff issues harming U.S. dairy trade and promises Chinese purchases of U.S. agricultural products of at least $80 billion over the next two years. Out of that total, at least $32 billion will be in excess of the 2017 baseline level ($24 billion) of Chinese imports from the U.S.

This deal is a positive step towards resolving the trade tensions that had put dairy firmly in the crosshairs of an escalating trade war. However, many important elements that will impact trade with China remain to be determined. Most notably, no details have been publicly released that break down China's commitment to purchase additional products by agricultural sector.

In addition, the agreement does not address Chinese retaliatory tariffs; no information is yet available on whether or how China may ratchet down retaliatory rates to help meet its purchase commitments.

Given the importance of the Chinese market to the U.S. dairy industry, USDEC ensured that dairy was an essential part of the negotiations on nontariff challenges facing U.S. agricultural exports. USDEC harnessed the power of the ongoing discussions between U.S. and Chinese officials to make progress on regulatory restrictions and other nontariff barriers that have hindered U.S. dairy exports to China for years.

The nontariff barriers addressed by the deal

The Phase One deal with China makes progress on nontariff barriers important to U.S. dairy, such as:

<u>Tackling facility and product registration steps</u>

USTR estimates that the following facility and product registration reforms could result in an additional $250 to $300 million in annual dairy and infant formula exports to China above current levels.

- China will update its dairy facility list of those U.S. dairy plants authorized to ship to China within 20 business days of receiving a list from the U.S. Food and Drug Administration (FDA).
- China will recognize the U.S. system of oversight for dairy products as providing the same level of protection as China's, thereby eliminating the need for China-specific inspections of U.S. dairy facilities.
- China agrees to not require routine audits or inspections of U.S. dairy and infant formula products. However, China may still perform risk-based audits in coordination with the relevant U.S. competent authority, in accordance with international standards.
    - In keeping with this, the current requirement for an audit every two years by a third-party certifier is expected to be removed, pending official confirmation.
- China has committed to complete within 60 working days the approval process for imports of dairy permeate powder for human consumption, a process USDEC has been pursuing through various avenues since 2011 including securing a Codex standard and the subsequent submission by USDEC in 2017 of a formal application for this recognition.
- China commits to adhering to specified timelines when administering the product and facility registrations of U.S. infant formulas, and to ensuring the confidentiality of any trade secrets disclosed during the infant formula product registration process.
- China will not require on-site inspections or audits as a prerequisite to registering either a U.S. dairy or infant formula facility, although China will still inspect manufacturers for purposes of registering an infant formula product.
- Clarifies the market access requirements and regulations related to fluid milks, including fortified, pasteurized, extended shelf life and ultra filtered milks. This includes:
    - Allowing extended shelf life (ESL) milk produced in the U.S. to be imported and sold as pasteurized milk in China;
    - Allowing fortified milk and ultra-filtered milk produced in the U.S. to be imported into China and labeled as pasteurized modified milk (subject to China's National Food Safety Standards for both products);
- Eliminates "high-risk" questionnaire requirements for fluid milk producers to obtain their facility registration.

Creating new obligations regarding geographical indications and common food names

- China shall ensure that GIs under consideration by China as part of an international deal do not undermine U.S. market access for exports to China of goods using generic/common food names.
- In evaluating the generic nature of a GI application, China will use various sources of information including use online and in dictionaries, the existence of relevant standards (including Codex standards), use in marketing and trade in China and use for goods imported into China.
- China will not restrict the use of generic portions of multi-term GIs.
- China will publicly identify which portions of multi-term GIs are not restricted to help provide greater transparency.
- China will maintain the ability to oppose GI applications and to cancel registered GIs.

Promises of increased purchases of U.S. agricultural goods

- China has committed to purchasing and importing on average at least $40 billion annually of U.S. agricultural products, for a total of at least $80 billion over the next two years.
    - Beyond that, China will strive to import an additional $5 billion per year over the next two years.
    - For agricultural goods identified specifically in the agreement (Annex 6.1), China will purchase from the U.S. no less than $12.5 billion above the corresponding 2017 baseline amount in 2020 and no less than $19.5 billion above the corresponding 2017 baseline amount in 2021.
        - Dairy is included in this Annex in the “other agricultural products” category.
        - Those products cited individually in the Annex (oilseeds, cereals, cotton, meat, seafood) represent the categories of products China relies heavily on the U.S. to provide and cannot be very readily obtained from other suppliers.
    - Left to be fully resolved is how China will fulfill this commitment, including for dairy.

Enforcement via Bilateral Evaluation and Dispute Resolution Arrangement

- The Dispute Resolution chapter lays out an arrangement intended to foster the effective implementation of the agreement and to allow the parties to resolve disputes swiftly manner.
    - It creates regular bilateral consultations at both the principal level and the working level.
    - It also establishes procedures for addressing disputes related to the agreement and allows each party to take proportionate responsive actions that it deems appropriate yet with the goal of seeking to regularize resolution of disputes and resulting response measures.

- Captured in the agreement is a promise to not retaliate for remedial action taken in "good faith." However, if either party believes an action is taken in "bad faith," the deal notes that the party should withdraw from the agreement.

Conclusion: Work not complete until tariffs on all our exports fully lifted

Given that this Phase One deal does not resolve China's retaliatory tariffs, which remain the most pressing barrier to expanding market access in China, USDEC has made it clear to trade negotiators that their work with China is not complete until the retaliatory tariffs against all U.S. dairy exports are fully lifted.

USDEC will continue to work with our government, China's government and our members to finish the job by securing a removal of the remaining Chinese retaliatory tariffs against our exports.

Sincerely,

Tom Vilsack,
President and CEO
U.S. Dairy Export Council