

Comments
by the National Milk Producers Federation
to the U.S. Trade Representative's Office
Regarding Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute USTR-2019-0003
January 13, 2020

Comments

The National Milk Producers Federation (NMPF) once again commends USTR for implementing retaliatory action against the EU's ongoing non-compliance with the WTO ruling concerning European Airbus subsidies via the imposition of 25 percent *ad valorem* duties on 65 dairy tariff lines. Our organization appreciates the opportunity to use these comments to highlight dairy products that have been particularly susceptible to the EU's discriminatory and protectionist trade policies.

Summary:

With respect to the topics the Dec. 12th Federal Register notice invited comment on:

- NMPF urges the retention of all dairy tariff lines on the Annex I list of products currently subject to additional duties and no reduction in the current set of member states subject to retaliatory tariffs for those tariff lines as outlined in Annex I aside from the exception noted below in the footnotes^{1, 2}.
- NMPF recommends an increase of *ad valorem* duties to 100 percent on those dairy products listed in Group 1 below, all of which are currently subject to retaliatory tariffs.
 - We recommend an expansion of member state coverage for that HTS code in some cases to ensure that the member state cited in the far-right column of the Group 1 Table is captured.
- NMPF believes that for Chapter 4 dairy tariff lines, USTR's initial HTS and corresponding member state targets laid out in Annex I³ represented a very strong approach to incentivizing EU compliance with its trade commitments.
 - As such, NMPF does not support exchanging any of the Chapter 4 HTS lines or member state targets in Annex I for those in Annex II.
 - As noted above, we do support adding the tariff lines cited in Group 1 to the relevant member state corresponding to the GI restriction imposed on U.S. exports.
 - To achieve this, we support the proposals in Annex II to add France and Italy for the relevant Group 1 Table tariff codes from Section 6; and to add France to the relevant Group 1 Table tariff codes from Sections 9, 10, 12 and 14.

¹ We support the removal of retaliatory tariffs on imports from Ireland of products falling under HTS code 0406.90.46. We urge the retention of retaliatory tariffs on products entering under HTS code 0406.90.46 from all/any other member states.

² In addition, we do not oppose the removal of the UK from retaliatory tariffs following its exit from the EU.

³ With the exceptions noted in footnotes 1 and 2.

- If USTR believes subjecting additional Chapter 4 dairy HTS lines and/or member state targets cited in Annex II to retaliatory tariffs would be useful, however, we would support that approach.⁴
- As referenced in our October 2019 letter to President Trump (see attached), we would like to emphasize the vital importance of ensuring that dairy products from EU member states that have played a leading role in blocking U.S. exports of common cheese name products (e.g. Italy, Greece, Denmark) be fully retained on the retaliation list and that exports from those countries of the products specified in Group 1 below be subject to the higher 100% retaliatory tariff level given these countries' actions in intentionally fostering EU-created barriers to U.S. products.

Additional Specifics and Background

The imposition of retaliatory duties on a sizable number of EU dairy products is a clear indication that USTR will not hesitate to leverage WTO-compatible opportunities when EU trade-distorting policies threaten the ability of American dairy farmers to compete on a level playing field. The announcement of additional retaliatory action is welcome news for dairy producers facing a widening dairy trade deficit with the EU, a dynamic exacerbated by a complex web of EU trade barriers including ones especially intended to target our dairy exports not only to the EU but also to third-country markets around the world.

Most notable among the numerous trade-distorting policies that the EU regularly uses to restrict imports is the EU's aggressive pursuit of de facto trade barriers via the misuse of Geographical Indications (GIs). Europe has long blocked the importation of American-made cheeses by prohibiting U.S. food producers from exporting their products to the EU if they are accurately labeled and using commonly use terms such as asiago, feta, fontina, gorgonzola, gruyere, havarti, muenster, neufchatel, parmesan, romano. This thinly-veiled protectionist agenda of advocating for a wider use of GIs has the clear goal of advancing the EU's own interests while impeding American interests, both throughout Europe and within EU trade deals with third-party countries. To date, these protectionist EU GI policies, coupled with the actions taken by EU GI entities such the Consorzio del Formaggio Parmigiano Reggiano or the Consorzio del Asiago, among others, have impaired U.S. export opportunities in Canada, Mexico, Central America, Colombia, Peru, South Africa, China, Japan, Korea, Vietnam and Singapore. This is despite the U.S. providing a large and lucrative market to EU exports of those very same products to this country.

Given this clearly disparate treatment, as USTR evaluates candidates for heightened tariff levels of up to 100%, NMPF strongly recommends the prioritization of tariff lines under which these commonly-named cheeses are categorized, as well as the tariff lines for butter imports⁵ in light of its significant commercial value to the EU (Group 1 Table). The selection of cheese tariff lines facing EU GI restrictions for 100 percent retaliatory duties would send a very strong message that the United States will not tolerate the EU's efforts to block U.S. cheese imports while enjoying ample access to the large American market.

NMPF requests to reserve the right to withdraw our recommendation for tariff escalation on specific HTS line(s) under which the common names in question may fall if the EU or EU producer groups take concrete steps to reject unreasonable GI restrictions and commit to preserve the free use of certain common cheese names, as we did in 2019 between the first and second round of USTR-invited input on Airbus retaliation.

⁴ With the exception of imports from Italy of 0406.10.95 as detailed further in our comments.

⁵ Particularly butter from Ireland.

Last year our organization requested the omission of HTS code 0406.10.95 from Airbus retaliatory action in light of the historic agreement reached in August 2019 between the Consortium for Common Food Names and the Italian-based Consorzio Tutela Mozzarella di Bufala Campana that establishes the free use of the generic term “mozzarella” while supporting robust protection for “Mozzarella di Bufala Campana” as a legitimate GI. Mozzarella di Bufala Campana is one of the few products imported into the U.S. under HTS code 0406.10.95. We were pleased to see that although the October 2019 retaliation (outlined in Annex I) included this HTS code, tariffs were not assessed on imports of this product from Italy. Through these comments we reaffirm our support for either removing HTS code 0406.10.95 from the retaliation list or ensuring that retaliation against this HTS code continues to exclude Italy.

The CCFN-Consorzio Agreement made clear that not all EU producer organizations support the EU’s extremist approach to wielding GIs as barriers to trade. We believe that concrete actions to help drive change within the EU should be recognized in kind. Given the ample discretion USTR has to use in how to best exercise its WTO right to impose retaliatory tariffs, it is only fitting to recognize good-faith actions and focus retaliatory measures instead on bad-faith actors that have incentivized barriers to U.S. products such as the EU’s bans on parmesan, asiago, feta and other common names.

With that premise in mind, as well as the goal of spurring EU compliance with its WTO commitments and reforms to its trade-distorting practices such as misuse of GIs, NMPF strongly encourages USTR to 1) prioritize first and foremost increasing *ad valorem* duties to 100 percent for all dairy HTS codes in Group 1 Table below as well as any additional lines that may be needed to fully capture the relevant GI-related products; 2) secondarily prioritize retaining tariffs at a level no less than 25% for all dairy HTS codes in Group 2 Table below as these represent high trade value lines; and finally 3) retain tariffs at 25% for all dairy HTS codes in Group 3 Table below to help mitigate the risk of tariff diversion.

- **Group 1:** To ensure the cheeses facing EU GI restrictions are adequately captured, Group 1 below notes the country to that the EU has solely authorized to utilize the common name(s) relevant to that HTS code. EU butter exports⁶ to the U.S. are also a very important component of this grouping. Imposing tariffs on cheeses from these GI regions and on EU butter imports will maximize U.S. leverage in seeking to force EU compliance with its WTO obligations.
 - The tariff codes cited below are those that we believe are most likely to be utilized to import the following common cheeses and were part of the universe of tariff lines for which USTR sought input:
 - asiago, feta, fontina, gorgonzola, gruyere, havarti, munster, parmesan, provolone, romano
 - If the cheeses cited above can be imported under additional HTS lines, we would strongly encourage their inclusion as well at the 100% rate to help avoid tariff diversion.
 - Out of this grouping of products, we draw USTR’s attention to the particular importance of the highest permissible level of retaliatory tariffs on Parmigiano Reggiano from Italy. This GI consortium has played a notably vocal and aggressive role in working to choke off export opportunities for U.S. products.
- **Group 2:** This section captures HTS lines with notable levels of trade in order to maintain pressure on EU producers to advocate for changes to European Aircraft policies, given the large European commercial interest for these products in the U.S. market.
- **Group 3:** This section lists HTS lines with relatively low import volumes into the United States that are recommended for inclusion to prevent tariff diversion.

⁶ Particularly butter imports from Ireland.

- Although NMPF does not oppose the expansion of tariff retaliation to also encompass additional dairy products and/or a wider set of additional member state targets for those products outlined in Annex II⁷ if USTR believe this would be useful, we oppose any substitution on the retaliation list of Annex II Chapter 4 HTS line targets (of HTS lines or countries) for existing Annex I Chapter 4 HTS line targets (of HTS lines or countries).

Conclusion

We once again thank USTR for its recognition of and subsequent action on unfair trade policies that are deliberately engineered to hamper U.S. dairy exports to European countries as well as to third countries with which the EU has pursued bilateral trade agreements. The hard work the administration has committed to holding the EU accountable to its WTO obligations is to be commended.

USTR's decision to implement tariffs on the sizable number of dairy lines proposed to date sends a strong message that the United States will seize opportunities to address trade imbalances created by onerous and unnecessary technical barriers to trade. This dedication to ensuring a level playing field for American dairy producers in international markets has not gone unnoticed. NMPF is wholly supportive of USTR's goal to develop and preserve more equitable trading relationships around the globe and we look forward to working alongside you in that endeavor.

⁷ With the exception of HTS code 0406.10.95 from Italy and HTS code 0406.90.46 from Ireland.

GROUP 1:	HTS Subheadings recommended by USTR subject to EU GI restrictions and/or >\$30 million imported in CY 2018	Priority MS of Origin and/or EU GI
0405.10.10	Butter subject to quota pursuant to chapter 4 additional US note 6	Ireland
0405.10.20	Butter not subject to general note 15 and in excess of quota in chapter 4 additional U.S. note 6	Ireland
0406.10.54	Fresh (unripened/uncured) Italian-type cheeses from cow milk, cheese/substitutes cont or proc therefrom, subj to Ch4 US nte 21, not GN15	Italy
0406.10.68	Fresh (unripened/uncured) Swiss/emmentaler cheeses exc eye formation, gruyere-process cheese and cheese cont or proc. from such, not subj ..	France
0406.20.51	Romano, reggiano, provolone, provoletti, sbrinz and goya, made from cow's milk, grated or powdered, subject to add US note 21 to Ch.4	Italy
0406.20.53	Romano, reggiano, provolone, provoletti, sbrinz and goya, made from cow's milk, grated or powdered, not subj to Ch4 US nte 21 or GN15	Italy
0406.20.77	Cheese containing or processed from Italian-type cheeses made from cow's milk, grated or powdered, subject to add US note 21 to Ch. 4	Italy
0406.20.79	Cheese containing or processed from Italian-type cheeses made from cow's milk, grated or powdered, not subject to add US note 21 to Ch. 4	Italy
0406.20.91	Cheese (including mixtures), nesoi, o/0.5% by wt of butterfat, w/cow's milk, grated or powdered, not subject to add US note 16 to Ch. 4	Italy
0406.30.18	Blue-veined cheese (except roquefort), processed, not grated or powdered, not subject to gen. note 15 or add. US note 17 to Ch. 4	Italy
0406.30.51	Gruyere-process cheese, processed, not grated or powdered, subject to add. US note 22 to Ch. 4	France
0406.30.53	Gruyere-process cheese, processed, not grated or powdered, not subject to gen note 15 or add. US note 22 to Ch. 4	France
0406.30.55	Processed cheeses made from sheep's milk, including mixtures of such cheeses, not grated or powdered	Italy
0406.30.79	Processed cheese cont/procd from Italian-type, not grated/powdered, not subject to add US note 21 to Ch. 4, not GN15	Italy
0406.40.54	Blue-veined cheese, nesoi, w/cow's milk, w/butterfat o/0.5% by wt, subject to Ch 4 US note 17	Italy
0406.90.41	Romano cheese, nesoi, w/cow's milk, w/butterfat o/0.5% by wt, subject to Ch 4 US note 21	Italy
0406.90.42	Romano cheese, nesoi, w/cow's milk, w/butterfat o/0.5% by wt, not subject to Ch 4 US note 21, not GN15	Italy
0406.90.43	Reggiano, Parmesan, Provolone, and Provoletti cheese, nesoi, not from cow's milk, not subject to gen. note 15	Italy
0406.90.46 ⁸	Swiss or Emmentaler cheese with eye formation, nesoi, subject to add. US note 25 to Ch. 4	France
0406.90.48	Swiss or Emmentaler cheese with eye formation, nesoi, not subject to gen. note 15 or to add. US note 25 to Ch. 4	France
0406.90.56	Cheeses, nesoi, from sheep's milk in original loaves and suitable for grating	Italy
0406.90.57	Pecorino cheese, from sheep's milk, in original loaves, not suitable for grating	Italy and Greece
0406.90.68	Cheeses & subst. for cheese(incl. mixt.), nesoi, w/romano/reggiano/parmesan/provolone/etc, f/cow milk, not subj. Ch4 US note 21, not GN15	Italy
0406.90.72	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/ or from blue-veined cheese, subj. to add. US note 17 to Ch.4, not GN15	Italy
0406.90.74	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/ or from blue-veined cheese, not subj. to add. US note 17 to Ch.4, not GN15	Italy
0406.90.90	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/ or from swiss, emmentaler or gruyere, subj. to add. US note 22 to Ch.4, not GN15	France
0406.90.92	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/ or from swiss, emmentaler or gruyere, not subj. Ch4 US note 22, not GN15	France
0406.90.95	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/cow's milk, w/butterfat o/0.5% by wt, subject to Ch 4 US note 16 (quota)	Italy, France, Denmark, and Greece
0406.90.97	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/cow's milk, w/butterfat o/0.5% by wt, not subject to Ch4 US note 16, not GN15	Italy, France, Denmark, and Greece
0406.90.99	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/o cow's milk, w/butterfat o/0.5% by wt, not GN15	Greece

⁸ With the exception of imports of 0406.90.46 from Ireland.

GROUP 2:	HTS Subheadings recommended by USTR, with > \$1 million of imports from the EU-28 in Calendar Year 2018	'000 US\$	MT
0403.10.90	Yogurt, not in dry form, whether or not flavored or containing add fruit or cocoa	\$11,041	3,356
0404.10.05	Whey protein concentrates	\$8,965	2,687
0405.20.20	Butter substitute dairy spreads, over 45% butterfat weight, subject to quota pursuant to chapter 4 additional US note 14.	\$1,734	191
0405.90.10	Fats and oils derived from milk, other than butter or dairy spreads, subject to quota pursuant to chapter 4 additional US note 14.	\$2,050	573
0406.40.44	Stilton cheese, nesoi, in original loaves, subject to add. US note 24 to Ch. 4	\$4,464	384
0406.30.89	Processed cheese (incl. mixtures), nesoi, w/cow's milk, not grated or powdered, subject to add US note 16 to Ch. 4, not GN15	\$9,068	1,515
0406.90.16	Edam and gouda cheese, nesoi, w/cow's milk, w/butterfat o/0.5% by wt, subject to Ch 4 US note 20	\$37,194	6,461
0406.90.08	Cheddar cheese, nesoi, subject to add. US note 18 to Ch. 4	\$24,833	3,911
0406.90.12	Cheddar cheese, nesoi, not subject to gen. note 15 of the HTS or to add. US note 18 to Ch. 4	\$29,253	3,841
Total		\$128,602	22,919

GROUP 3:	HTS Subheadings recommended by USTR, with < \$1 million of imports from the EU-28 in Calendar Year 2018	'000 US\$	MT
0403.10.50	Yogurt, in dry form, whether or not flavored or containing add fruit or cocoa, not subject to gen nte 15 or add. US nte 10 to Ch.4	\$0	0
0403.90.85	Fermented milk o/than dried fermented milk or o/than dried milk with added lactic ferments	\$23	0.1
0403.90.90	Curdled milk/cream/kephir & other fermented or acid. milk/cream subject to add US note 10 to Ch.4	\$263	38
0405.20.30	Butter substitute dairy spreads, over 45% butterfat weight, not subj to gen note 15 and in excess of quota in ch. 4 additional US note 14.	\$60	5
0405.20.80	Other dairy spreads, not butter substitutes or of a type provided for in chapter 4 additional US note 1.	\$234	117
0406.10.28	Fresh (unripened/uncured) cheddar cheese, cheese/subs for cheese cont or proc from cheddar cheese, not subj to Ch4 US note 18, not GN15	\$0	0
0406.10.58	Fresh (unripened/uncured) Italian-type cheeses from cow milk, cheese/substitutes cont or proc therefrom, not subj to Ch4 US note 21 or GN15	\$19	1
0406.20.69	Cheese containing or processed from american-type cheese (except cheddar), grated or powdered, subject to add US note 19 to Ch. 4	\$0	0
0406.20.87	Cheese (including mixtures), nesoi, n/o 0.5% by wt. of butterfat, grated or powdered, not subject to add US note 23 to Ch. 4	\$0	0
0406.30.05	Stilton cheese, processed, not grated or powdered, subject to add US note 24 to Ch. 4	\$0	0
0406.30.28	Cheddar cheese, processed, not grated or powdered, not subject to gen note 15 or in add US note 18 to Ch. 4	\$24	11
0406.30.34	Colby cheese, processed, not grated or powdered, subject to add US note 19 to Ch. 4	\$0	0
0406.30.38	Colby cheese, processed, not grated or powdered, not subject to gen note 15 or add US note 19 to Ch. 4	\$0	0
0406.30.69	Processed cheese cont/procd fr american-type cheese (ex cheddar), not grated/powdered, subject to add US note 19 to Ch. 4, not GN15	\$0	0
0406.30.85	Processed cheese (incl. mixtures), nesoi, n/o 0.5% by wt. butterfat, not grated or powdered, subject to Ch4 US note 23, not GN15	\$16	15
0406.40.48	Stilton cheese, nesoi, not in original loaves, subject to add. US note 24 to Ch. 4	\$441	31
0406.90.14	Edam and Gouda, Described in general note 15 of the tariff schedule and entered pursuant to its provisions	\$0	0
0406.90.32	Goya cheese from cow's milk, not in original loaves, nesoi, not subject to gen. note 15 or to add. US note 21 to Ch. 4	\$0	0
0406.90.52	Colby cheese, nesoi, subject to add. US note 19 to Ch. 4 and entered pursuant to its provisions	\$0	0
0406.90.54	Colby cheese, nesoi, not subject to gen. note 15 or to add. US note 19 to Ch. 4	\$0	0
0406.90.78	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/ or from cheddar cheese, not subj. to add. US note 18 to Ch.4, not GN15	\$28	5
0406.90.82	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/ or from Am. cheese except cheddar, subj. to add. US note 19 to Ch.4, not GN15	\$351	82
0406.90.94	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/butterfat n/o 0.5% by wt, not subject to add. US note 23 to Ch. 4, not GN15	\$0	0
Total		\$1,459	305



National Milk Producers Federation

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Agri-Mark, Inc.
Associated Milk Producers Inc.
Bongards' Creameries
California Dairies, Inc.
Cooperative Milk Producers Association
Dairy Farmers of America, Inc.
Ellsworth Cooperative Creamery
FarmFirst Dairy Cooperative
First District Assoc.
Foremost Farms USA
Land O'Lakes, Inc.
Lone Star Milk Producers
Maryland & Virginia Milk Producers Cooperative Association
Michigan Milk Producers Association
Mid-West Dairyman's Company
Mount Joy Farmers Cooperative Association
Northwest Dairy Assoc.
Oneida-Madison Milk Producers Cooperative Association
Prairie Farms Dairy, Inc.
Premier Milk Inc.
Scioto Cooperative Milk Producers' Association
Select Milk Producers, Inc.
Southeast Milk, Inc.
St. Albans Cooperative Creamery, Inc.
Tillamook County Creamery Association
United Dairyman of Arizona
Upstate Niagara Cooperative, Inc.

October 17, 2019

The President
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President:

On behalf of America's hard-working dairy farmers and farmer-owned dairy cooperatives, we request that you put the needs of U.S. dairy farmers above those of Italian and European farmers by maintaining the Airbus case retaliatory tariff list's inclusion of various cheeses (including major EU priority products such as Parmigiano Reggiano from Italy), as you proposed earlier this month.

U.S. dairy farmers have commended your Administration's excellent judgment in including a large number of European cheeses, particularly Italian cheeses, on the WTO-authorized list of tariff retaliation prepared as part of the US WTO case against EU Airbus subsidies. Now, those dairy farmers and many U.S. cheese-makers that bear the brunt of discriminatory EU trade policies are counting on you to stay the course.

As NMPF outlined in testimony to the U.S. Trade Representative's Office earlier this year, the U.S. runs a \$1.5 billion dairy trade deficit with the EU due to various EU tariff and nontariff barriers, including EU bans on U.S. exports of many accurately labeled American-made cheeses. Rather than striving to produce a better product and compete with U.S. farmers head to head, too many European cheesemakers instead use the heavy hand of EU government regulations to outlaw competition at any price by banning U.S. exports of "parmesan," "asiago," "gorgonzola" and other cheeses to Europe.

The EU ships \$1 billion of cheese to the United States each year while we ship them only \$6 million, thanks to various EU trade barriers. How is it fair that they have ample access to our market while denying similar treatment to America's farmers? The simple answer: It's not. In fact, this is exactly the type of unfair treatment that you have so rightfully shone a spotlight on: generous access provided to our market while our trading partners maintain high barriers to U.S. products overseas.

The EU – and Italy in particular, given its leading role in barring our ability to sell many of our cheeses (e.g. parmesan and others) in Europe – is a prime example of this mistreatment of America's food producers. That is why dairy farmers across the country celebrated when your Administration included so many Italian cheeses, as well as other EU dairy products, on the intended Airbus retaliation list. We realize Italy and other EU

countries that take full advantage of the lopsided trading dynamic in dairy are upset at the idea of retaliatory tariffs, but the blame for that rests not with the U.S.: It falls squarely on the EU for failing to comply with its WTO commitments regarding Airbus subsidies.

U.S. dairy farmers make great milk which is turned into great cheese, fueling jobs in Wisconsin, Pennsylvania, Ohio, Michigan, Minnesota and many other large dairy-producing states across this country. On behalf of those American farmers, workers and companies, we thank you for sticking up for them. We respectfully ask you to maintain the full range of dairy lines included on the list your Administration published this month of WTO-authorized Airbus subsidy retaliatory tariffs. It was the right call then, and it's the right call now.

If EU countries do not want to pay those WTO-authorized retaliatory tariffs, they should spend less time complaining in Washington and more time in Brussels – urging changes to reform the EU's trade-violating policies that unfairly penalize U.S. companies while giving European ones an unfair leg-up over American-made products.

Sincerely,

A handwritten signature in black ink that reads "Randy Mooney". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Randy Mooney
Chairman

cc: Ambassador Robert Lighthizer, United States Trade Representative
Secretary Sonny Perdue, U.S. Department of Agriculture