

Comments and Request to Testify
by the National Milk Producers Federation to the U.S. Trade Representative's Office
Regarding Action Pursuant to Section 301: France's Digital Services Tax USTR-2019-0009
December 30, 2019

Request to Testify

With this notice, the National Milk Producers Federation requests the opportunity to testify at USTR's hearing on the topic of Action Pursuant to Section 301: France's Digital Services Tax (USTR-2019-0009) on January 7, 2020. NMPF's witness will be Peter Vitaliano, Ph.D., who serves as NMPF's Vice President for Economic Policy and Market Research.

Summary of Testimony and Comments

The National Milk Producers Federation has no position on the topic of the French Digital Services Tax. Our comments here focus solely on USTR's intention to use the Section 301 process to levy tariffs on products from France considering its findings of French non-compliance.

In light of that, NMPF commends USTR for the inclusion of dairy products in the preliminary list of French goods eligible for retaliatory measures in response to \$2.4 billion of damage that USTR has determined arises from France's digital services tax.

Given France's and the EU's long history of discouraging dairy imports via a complex web of trade barriers, the addition of French cheeses, yogurt, whey protein and butter on the list is entirely justified. Highlighting the disparity in dairy trade between our two countries, the U.S. imported nearly \$261 million of French dairy products but exported a total of only \$4 million of dairy products to France in 2018, per the U.S. Department of Agriculture. This is in spite of the fact that we are a trusted and proven dairy supplier to the rest of the world. When one notes a trade imbalance so disparate between two allies, both of which are significant exporters of the product in question, it is evident that something is amiss.

This disproportionate trade balance is largely a result of France's high tariffs and convoluted non-tariff barriers, established as part of the EU's trade mechanisms, that put American dairy producers at a clear competitive disadvantage. Most notably, France has been a strong proponent of the European Union's trade-distorting approach to Geographical Indications (GIs) in a manner that targets cheeses relying on common product names for restriction. The EU's prohibition on the use by U.S. food makers of commonly used terms such as muenster, gruyere and neufchatel, unfairly blocks U.S. companies from exporting their cheeses to France if they are accurately labeled using the same familiar terms that consumers know and love. This is despite the U.S. providing a large and lucrative market to French cheese exports to this country.

This thinly-veiled protectionist agenda of advocating for a wider use of GIs has the clear goal of advancing its own interests while impeding American interests, both throughout Europe and within EU trade deals with third-party countries. This is intended to award French companies with the sole right to use many terms that have long been in widespread common usage around the world.

Further, France has supported the EU's unscientific certification and compliance requirements. Mandated government-level assurances of compliance with EU regulations and certification rules for imports unduly burden commerce without a genuine food safety basis. These onerous and problematic standards are yet another example of trade distortion intended to keep American producers out of the French market.

Despite the American dairy industry being among the most efficient in the world, our farmers struggle to compete when high levels of European subsidies and non-tariff barriers prop up France's less efficient dairy producers.

This comes on the heels of a prolonged period of low prices and market instability that American dairy producers have had to grapple with in recent years. Per the U.S. Department of Agriculture, seven dairy farms in the U.S. went out of business daily in 2018. These economic hardships are only exacerbated by the unfair trade practices employed by the European Union – with the French officials taking an active role in aggressively growing their dairy product exports while erecting de facto trade barriers on American imports.

Considering this clear disparity of treatment, we encourage the U.S. to ensure that the tariff codes under which French cheeses with unreasonable GI protection fall are adequately captured on USTR's final retaliation list, in addition to the dairy product tariff lines already included. We believe France's strong commercial interests in the dairy market will pressure officials to address the concerns USTR has identified through its Section 301 process and recognize the vast inequity within the U.S.-France dairy trading relationship.

The National Milk Producers Federation supports the inclusion of all Subheadings of HTSUS Chapter 4 listed in the Annex to the notice of determination and request for public comments in the final list of products from France subject to increased duties in response to France's digital services tax. NMPF further recommends that additional ad valorem duties of 100 percent be imposed on the particular products imported from France under the subheadings cited below.

Specific Requests and Priorities:

- NMPF recommends inclusion in the final list in this dispute of the additional HTS Subheadings: 0406.10.64, 0406.10.68, 0406.20.81, 0406.20.83, 0406.40.20, 0406.40.40, 0406.40.70, and 0406.90.59, which are listed in Group 2 in the Addendum to these comments.
 - Most of these eight additional subheadings of HTS Heading 0406, under which fall most of the subheadings of HTSUS Chapter 4 included in the Annex to the notice of hearing, are very similar articles to those included in the Annex or relate to HTS Subheadings covering products which faces geographical indication (GI) restrictions on the use of common food names.
 - Although the United States imported no volume of product via lines 00406.10.64, 0406.10.68, 0406.20.81, 0406.20.83 in the past three years, NMPF supports their inclusion to mitigate any possible product diversion.
- Additionally, NMPF emphasizes the particular importance of including in the final list the following subheadings from USTR's proposed list in the annex: 0403.10.90, 0405.10.10, 0405.10.20, 0406.10.84, 0406.10.88, 0406.30.51, 0406.30.53, 0406.30.89, 0406.40.54, 0406.90.46, 0406.90.48, 0406.90.56, 0406.90.57, 0406.90.90, 0406.90.95, 0406.90.97, and 0406.90.99.
 - These subheadings, which are listed in Group 1 in the Addendum to these comments, together with the eight subheadings listed in Group 2, are of particular importance due to the large volume of imports into the United States from France in these HTS Subheadings and/or GI restrictions imposed by France on certain cheese varieties, such as muenster, gruyere, and neufchatel. France currently enjoys ample access to the U.S. market for these common cheese names while American producers are unjustly barred from selling the same accurately labeled products in France.

The average import trade value from France for calendar years 2017-2019, of the 25 subheadings listed in Group 1 and Group 2 of the Addendum to these comments is \$7.9 million. The effectiveness of imposing additional duties on these 25 subheadings, for the purpose of resolving the dispute in question, would therefore be broadly significant.

It is also important to include in the final retaliation list the remaining 10 HTS subheadings included in the USTR list in that are listed in Group 3 in the Addendum to these comments. The average import trade value from France during calendar years 2017-2019 for the subheadings listed in Group 3 is considerably less than that for the subheadings listed in Group 1 and Group 2.

Nevertheless, it is important that these 10 additional subheadings be included in the final list in order to prevent possible diversion of products in subheadings subject to additional duties into these 10 other subheadings.

Imposition of additional ad valorem duties of 100 percent on the particular dairy products in the 35 HTS Subheadings that NMPF recommends will not have an adverse effect upon U.S. stakeholders, including small businesses and consumers, due to the abundant supplies of dairy products that would be available to supply potential shortfalls of any particular affected product. The United States has the largest single country dairy industry of all the countries in the world. It manufactures virtually every conceivable type of dairy product and can supply them to all domestic markets. Imports from France of all subheadings under these 35 subheadings represent a small fraction of U.S. production of these products, which includes European-style products.

Including the 35 HTS subheadings that NMPF recommends be included in the final retaliation list in this dispute would be particularly effective due to the great importance of the dairy industry in France to its overall economy.

Should USTR be forced to narrow the list of tariff codes targeted for retaliation, NMPF urges USTR to focus on those tariff lines that will most strongly help to achieve USTR's goal of French compliance on tax policy issues through the commercial impacts that elevated tariffs would impose on French exports, namely those tariff lines with particularly notable levels of trade. These lines are identified in Group 1 and Group 2 below. Additionally, we urge USTR to ensure that the products that U.S. companies are directly barred from shipping to the French market if accurately labeled, such as muenster, gruyere, and neufchatel (in light of GI restrictions imposed on U.S. exports of these products), are contained in USTR's final retaliation list.

We again encourage USTR to supplement those high-priority lines with the remainder of its proposed dairy retaliation targets, namely those identified in Group 3, for the purpose of mitigating trade diversion from lines with greater trade volumes.

Conclusion

We thank USTR for their inclusion of dairy in this process. USTR's recommendation to implement tariffs on the numerous 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. American dairy producers support USTR's goal of ensuring fair trade in international markets, and we stand ready to work alongside you to develop and preserve more equitable trading relationships around the globe.

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ADDENDUM

		Average Imports from France During Calendar Years 2017-2019	
GROUP 1	HTS Subheadings listed in the USTR notice, with > \$1 million of average imports from France during 2017-2019 and/or Geographical Indication (GI) restrictions*	'000 US\$	MT
0403.10.90	Yogurt, not in dry form, whether or not flavored or containing add fruit or cocoa.	\$9,994	3,184
0405.10.10	Butter subject to quota pursuant to chapter 4 additional U.S. note 6.	\$9,792	1,444
0405.10.20	Butter not subject to general note 15 and in excess of quota in chapter 4 additional U.S. note 6.	\$3,996	607
0406.10.84*	Fresh cheese, and substitutes for cheese, cont. cows milk, nesoi, o/0.5% by wt. of butterfat, descr in add U.S. note 16 to Ch. 4, not GN15.	\$31	8
0406.10.88*	Fresh cheese, and substitutes for cheese, cont. cows milk, nesoi, o/0.5% by wt. of butterfat, not descr in add U.S. note 16 to Ch. 4, not GN15.	\$1	0
0406.30.51*	Gruyere-process cheese, processed, not grated or powdered, subject to add. U.S. note 22 to Ch. 4.	\$32	5
0406.30.53*	Gruyere-process cheese, processed, not grated or powdered, not subject to gen note 15 or add. U.S. note 22 to Ch. 4.	\$59	8
0406.30.89*	Processed cheese (incl. mixtures), nesoi, w/cow's milk, not grated or powdered, subject to add U.S. note 16 to Ch. 4, not GN15.	\$7,442	1,186
0406.40.54	Blue-veined cheese, nesoi, in original loaves, subject to add. U.S. note 17 to Ch. 4.	\$1,422	202
0406.90.46*	Swiss or Emmentaler cheese with eye formation, nesoi, subject to add. U.S. note 25 to Ch. 4.	\$18,167	4,160
0406.90.48*	Swiss or Emmentaler cheese with eye formation, nesoi, not subject to gen. note 15 or to add. U.S. note 25 to Ch. 4.	\$193	37
0406.90.56	Cheeses, nesoi, from sheep's milk in original loaves and suitable for grating.	\$12,988	1,501
0406.90.57	Pecorino cheese, from sheep's milk, in original loaves, not suitable for grating.	\$11,779	1,361
0406.90.90*	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/or from swiss, emmentaler or gruyere, subj. to add. U.S. note 22 to Ch. 4, not GN15.	\$317	44
0406.90.95*	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/cows milk, w/butterfat o/0.5% by wt, subject to Ch. 4 U.S. note 16 (quota).	\$22,776	2,797
0406.90.97*	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/cows milk, w/butterfat o/0.5% by wt, not subject to Ch. 4 U.S. note 16, not GN15.	\$3,029	240
0406.90.99*	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/o cows milk, w/butterfat o/0.5% by wt, not GN15.	\$89,451	10,284

		Average Imports from France During Calendar Years 2017-2019	
GROUP 2	HTS Subheadings not listed in the USTR notice, with > \$500,000 of average imports from France during 2017-2019 and/or Geographical Indication (GI) restrictions*	'000 US\$	MT
0406.10.64*	Swiss or Emmentaler cheese other than with eye formation, Gruyere-process cheese and cheese and substitutes for cheese containing, or processed from, such cheeses	\$0	0
0406.10.68*	Swiss or Emmentaler cheese other than with eye formation, Gruyere-process cheese and cheese and substitutes for cheese containing, or processed from, such cheeses	\$0	0
0406.20.81*	Grated or powdered cheese, of all kinds: Other, including mixtures of the above: Other: Containing, or processed from, Swiss, Emmentaler, or Gruyere-process cheeses.	\$0	0
0406.20.83*	Grated or powdered cheese, of all kinds: Other, including mixtures of the above: Other: Containing, or processed from, Swiss, Emmentaler, or Gruyere-process cheeses.	\$0	0
0406.40.20	Roquefort cheese, in original loaves.	\$3,827	299
0406.40.40	Roquefort cheese, not in original loaves.	\$735	49
0406.40.70	Blue-veined cheese, not subject to gen note 15 or add. U.S. note 17 to Ch. 4.	\$629	66
0406.90.59	Cheeses made from sheep's milk, nesoi.	\$1,867	287

		Average Imports from France During Calendar Years 2017-2019	
GROUP 3	HTS Subheadings listed in the USTR notice, with < \$1 million of average imports from France during 2017-2019	'000 US\$	MT
0404.10.05	Whey protein concentrates.	\$19	23
0405.90.10	Fats and oils derived from milk, other than butter or dairy spreads, subject to quota pursuant to chapter 4 additional U.S. note 14.	\$129	25
0406.10.95	Fresh cheese, and substitutes for cheese, not cont. cows milk, nesoi, o/0.5% by wt. of butterfat.	\$636	94
0406.20.10	Roquefort cheese, grated or powdered.	\$1	0
0406.30.48	Edam and gouda cheese, processed, not grated or powdered, not subject to gen note 15 or add. U.S. note 20 to Ch. 4.	\$0	0
0406.90.08	Cheddar cheese, nesoi, subject to add. U.S. note 18 to Ch. 4.	\$7	1
0406.90.12	Cheddar cheese, nesoi, not subject to gen. note 15 of the HTS or to add. U.S. note 18 to Ch. 4.	\$107	18
0406.90.16	Edam and gouda cheese, nesoi, subject to add. U.S. note 20 to Ch. 4.	\$8	1
0406.90.41	Romano, Reggiano, Parmesan, Provolone, and Provoletti cheese, nesoi, from cow's milk, subject to add. U.S. note 21 to Ch. 4	\$85	9
0406.90.42	Romano, Reggiano, Parmesan, Provolone, and Provoletti cheese, nesoi, from cow's milk, not subj to GN 15 or Ch. 4 U.S. note 21.	\$50	3