

**Comments and Request to Testify
by the
National Milk Producers Federation
and the U.S. Dairy Export Council
to the Office of the United States Trade Representative
Concerning a U.S.-United Kingdom Trade Agreement
Docket Number: USTR-2018-0036
January 15, 2019**

The National Milk Producers Federation (NMPF) and the U.S. Dairy Export Council (USDEC) appreciate this opportunity to provide comments on a proposed U.S.-United Kingdom (UK) Trade Agreement. In addition, we hereby request to testify on the proposed U.S.-UK Trade Agreement. Shawna Morris, Vice President of Trade Policy, will testify on the organizations' behalf at USTR's hearing on January 29th.

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. proprietary processors, milk producers, dairy cooperatives, and export traders. The Council's mission is to increase the volume and value of U.S. dairy product exports.

Summary:

In principle USDEC and NMPF support a comprehensive U.S.-UK Trade Agreement, provided that it can remove the numerous tariff and non-tariff barriers that have long hindered U.S. dairy exports to the European Union (EU) and as such to the UK. Although the UK will be outside the EU at the time of these negotiations, its degree of alignment with existing EU tariff and nontariff policies that impact agricultural trade with the U.S. is not yet fully known. To the extent that EU policies will continue to govern the UK trade and investment regime, the U.S.-UK negotiations would be stymied by the UK's lack of independence in these key areas unless it is clear that the UK will establish full independence over those matters prior to the implementation of a U.S.-UK Trade Agreement so that it would have the capacity to address U.S. trade concerns in those areas.

Despite the fact that the U.S. is a major global dairy exporter, selling \$5.5 billion worth of dairy products in 2017 to markets around the world, only \$7 million worth of dairy products were sold to the UK during that period. By contrast UK exports to the U.S. were more than 10 times higher, totaling \$76 million during the same year.¹

It is our hope that post Brexit, the UK – traditionally a champion of free trade and of a science-based approach to decision making – can forge its own regulatory environment in way that is more conducive to fair trade in safe food products than the current EU regime. If that is the path the UK pursues, we see strong potential to expand bilateral dairy trade and bring benefits on both sides of the Atlantic.

The UK currently imports a significant quantity of dairy products, overwhelmingly from the EU. For instance, out of a total of approximately 478,300 MT of cheese imported into the UK in 2017, all but roughly 2,000 MT came from other suppliers in the EU. Similar patterns dominate the UK's imports of butter and whey (total imports of 83,000 MT and 79,200 MT respectively for butter and whey with less than 1,000 MT of each coming from non-EU sources). While there are some imports from the Commonwealth Nations of Canada, Australia, and New Zealand,

¹ See HM Revenue & Customs, <https://www.uktradeinfo.com/Statistics/BuildYourOwnTables/Pages/Table.aspx?savedview=5276fdeb-e98a-4d8c-b3d0-35e8bd49bfcc>

currently there the UK imports very little from the U.S., a dynamic driven by disparities of market access opportunity created by the current tariff and nontariff policies, not a lack of interest nor availability of competitive product from the U.S.

In light of the fact that the UK market is a prosperous one with a significant segment of its dairy consumption coming from imports, valuable opportunity exists to use these negotiations to incentivize the UK to import more dairy products from the U.S. We see opportunities across a broad spectrum of products including the traditional dairy commodity staples of cheese, butter, whey and skim milk powder, as well as in more segmented areas of the market such as cream, yogurt and buttermilk, condensed milk and other products. To be most competitive, however, our suppliers must ultimately have an even playing field as compared to European suppliers to the UK market.

Given that access to the UK market is currently dictated by EU policies, our priority issues that demand resolution in negotiations with the UK largely mirror those identified for talks with the EU:

- Through separate and issue-specific discussions, remove currently imposed EU policy restrictions on the use of common cheese names in UK market through the misuse of geographical indications while also ensuring that a UK Geographical Indication (GI) system undertakes significant systemic changes from the present EU system in order for it to operate in a more equitable and WTO-compliant manner. Secure commitments from the UK that preserve the use of common food names in other U.S. export markets.
 - Existing trade-distorting EU policies on GIs, which are currently in place in the UK, have posed a particular challenge for U.S. companies exporting agricultural products that rely on commonly used names, including semi-generic, descriptive, and "traditional" terms. Some of those firms have largely built the markets for those products around the world and are now bearing the brunt of efforts by the EU to confiscate those markets for the benefit of their own food and beverage manufacturers. The UK should stand firmly with the US in rejecting this approach both in its own market and globally.
- Full recognition of the safety of the U.S. dairy product system for food and feed uses coupled with the removal of current requirements for multiple problematic certificates pertaining to UK imports of dairy products and commitments assuring that future trade restrictions unsupported by science will not be imposed on U.S. dairy exports. Examples of specific concerns are detailed in industry-specific filings submitted to USTR.
- Enforceable SPS and TBT commitments to provide enhanced certainty to all U.S.-UK agricultural trade, building further on those established in the U.S.-Mexico-Canada Agreement.
- Simplified and stream-lined border administration measures, particularly re: TRQ administration & licensing procedures.
- Rules of origin that focus the benefits of the agreement on the dairy sectors of the U.S. and the UK and do not allow for the EU dairy industry to utilize the UK as a processing hub for exporting EU milk to the U.S.
- Provided that the above nontariff concerns have been addressed, dairy tariff elimination that is handled in a coordinated manner (i.e., one that accounts for average dairy tariff rates governing access to the UK market being triple those in the U.S.).

Non-Tariff Barriers/Sanitary and Phytosanitary Rules

In addition to the significant tariffs applicable to U.S. dairy exports to the UK, additional significant obstacles to U.S. exports stem from the numerous non-tariff barriers in the EU import regime that currently governs U.S.-UK trade and that may persist for some period of time following the UK's withdrawal from the EU. With the UK's exit from the European Union, it is our hope that certain EU regulatory hurdles are not replicated in the post-Brexit UK regulatory regime relating to complex certification requirements unrelated to SPS obligations as well as restrictions not based on sound science.

The main objective in a U.S.-UK Trade Agreement should be a truly mutual and comprehensive recognition of our dairy safety systems. This would entail a simplified, streamlined program for permitting safe dairy imports that would replace the current multiple and complex certificates and associated requirements that continue to shift over time.

Equally importantly, it is essential that the trade agreement incorporates assurances that new barriers to dairy products will not be introduced unless genuinely required to address a new and scientifically supported threat to food safety. In this connection, the U.S.-UK Trade Agreement should build on the SPS provisions of the U.S.-Mexico-Canada Agreement, which go beyond what the SPS chapter has previously contained in any past U.S. FTA. Those provisions help provide for more transparency and more scientific grounding for countries' SPS rules while also creating a forum to resolve concerns that still arise.

In our comments regarding a potential U.S.-EU trade agreement that were filed with USTR in December 2018 we provided extensive detail on the various types of NTBs and SPS concerns that plague U.S. dairy exports to EU markets, including the UK at present. We refer USTR to those comments which were submitted via in response to Federal Register Notice USTR-2018-0035: <https://www.regulations.gov/document?D=USTR-2018-0035-0141>.

Common Food Names

Once the UK leaves the European Union, it is our hope that the UK will no longer be shackled to the EU GI system. The UK government has indicated that it will create its own regime to protect domestic and third country GIs. We believe there exists a great opportunity to design a fairer system than the one currently in force in the EU, one that adequately protects legitimate GI producers as well as users of common food names. Such an approach can be done in full keeping with the UK's approach to date for GIs for food products, which focuses on products with a very specific geographic designation included in a compound name. UK GIs, such as "West Country Farmhouse Mature Cheddar" or "Orkney Scottish Island Cheddar" are strong best-practice examples of how GIs can be protected without impinging upon the rights of others in the marketplace, in this case producers relying on generic use of the common name term cheddar.

In contrast to this balanced approach by the UK of clearly safeguarding the interests of both GI holders and generic term users, the EU's GI system has been plagued by continuous and unpredictable overreach into the domain of common food names. In past decades the EU has moved past the legitimate concept of protecting geographical names such as "Parmigiano Reggiano" to seek exclusive use of common terms such as "parmesan" or simply to claim ownership of a common name despite wide-spread use by other producers, as was the case for "feta" and "gruyere," among others. This name grab of products for decades considered generic has become a never-ending process, most recently extending to internationally standardized names (such as danbo and havarti, for which Codex production standards exist) as well as other cheeses widely produced around the world, including in the UK, such as halloumi. As the EU has always refused to provide clarity on which names it considers generic as well as the extent of GI protection, we believe that other common food names are at risk of being clawed back by certain producers as well.

We therefore believe that an essential condition of a future U.S.-UK Trade Agreement must be ensuring the possibility for U.S. producers to be able to export common name products such as “parmesan”, “feta” and other products to the UK labelled as such. Moreover, in order to avoid future unwarranted restrictions of common food names, the UK and the U.S. should agree on the following elements:

- Agree on a non-exhaustive list of names that the two parties consider generic and therefore cannot be claimed as exclusive to any particular producer or group of producers located in a specific region in the world.
- Design objective criteria to determine what constitutes a generic name in a manner that does not unduly burden existing generic users that seek simply to retain their rights to continue to market their products with commonly used terms;
- Establish a solid due process system for considering GI applications, clarifying whether protection is being considered for translations or transliterations of the term or for individual components of compound GIs, and providing an opportunity for comment and a reasonable period of time for submission of comments;
- Establish a more reasonably limited scope of protection that eschews the current EU “evocation” approach as being far too nebulous to provide commercial certainty to the marketplace.

Border Administration Measures

The UK’s exit from the European Union should also represent an opportunity to move beyond the currently overly complicated EU tariff regime and its complex system of TRQ administration and import licensing, which act as major disincentives to U.S. exports to the UK.

Should the U.S. and the UK agree on TRQs for specific dairy lines as part of their market access commitments, it is important that the UK not replicate the unduly burdensome and complex EU import licensing procedures that inhibit exporters, especially newcomers, from taking advantage of in-quota opportunities in the EU’s dairy tariff schedule. Any TRQs should be managed by a simplified and trade-facilitating method, rather than the complex EU import licensing system, which requires additional proof of trade, ceilings for applications linked to past import volumes, declaration of independence, transferability, amount of security, and other requirements. In particular, a chief problem has been the difficulty created by allotting relatively small quantities of a TRQ to a wide number of applicants, which in practice has led to considerable challenges for U.S. companies in amassing commercially viable quantities of the TRQ.

Moreover, for many product lines, particularly for composite products including those containing milk and other derivatives, the applicable tariff rate varies. The rate is calculated on the basis of the ingredients and weight of the products, using the so-called Meursing Table. The difficulty of calculating Meursing duties imposes an unnecessary administrative burden and creates uncertainty for exporters about the final tariff rate that will be applied on entry into the EU, including the UK, especially for those seeking to ship new products. The U.S. does not use a variable duty system.

Therefore, we would like to see greater predictability by ending the EU’s use of its Meursing Table and related additional codes to determine a total tariff on numerous composite products for dairy exports from the U.S. While the overall goal of the U.S.-UK Trade Agreement should be full tariff liberalization, if a movement to convert the Meursing Table rates to fixed rates per tariff line is not possible from the outset, then we strongly urge an

examination of the method of calculating these tariffs on processed dairy products, particularly with regard to the milk fat content.²

Tariff Barriers

Provided that a U.S.-UK Trade Agreement truly removes the non-tariff barriers hindering improved U.S. dairy access to the UK market, we support full tariff elimination on all dairy products over a reasonable time period in a way which reflects the current disparity between the tariff levels of the UK and the U.S. In-quota tariffs should be eliminated upon entry into force of the agreement to best facilitate use of both existing TRQs and new TRQs established under the agreement.

Without prejudice to negotiations at the WTO concerning the UK's post-Brexit schedule of commitments in the WTO, including the apportionment of dairy TRQs between the EU27 and the UK, it is important to underline that currently, U.S. dairy products entering the UK face tariffs that are on average three times higher than those imposed by the U.S. on UK dairy products.

Existing UK tariffs on whole milk powder, skimmed milk powder, whey products, butter and cheese are in fact prohibitively high. In many cases, even in-quota rates are extremely high³ which leads to very low usage⁴ of the existing TRQs. In contrast, U.S. in-quota dairy TRQs are set at minimal amounts.⁵

Given this starting point, in a future U.S.-UK Trade Agreement, dairy tariff removal should be handled in a coordinated manner to ensure that equitable tariff reductions achieve comparable market access at a given point in time. For instance, cutting a UK tariff of 90% in half over five years could still provide significant import protection, whereas cutting a U.S. tariff of 30% in half over the same period could result in substantial new imports. As a matter of equity, tariff incentives should thus be dealt with in alignment and out of recognition of the widely varying levels currently in place that provide a much lower tariff barrier to UK dairy exports than to U.S. dairy exports.

In sum, we believe key opportunities in the U.S. exist for U.S. dairy exports, provided the existing tariff and nontariff constraints on our sales can be tackled through the negotiations.

Thank you for the opportunity to provide input to USTR on this important issue.

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² A challenge is that the test method established in Commission Regulation 900/2008 for determining the milk fat in the final product may not generate accurate results when there is more than one type of fat present. This Regulation uses a factor of 25, which is the equivalent of assuming that milk fat has a butyric acid content of 3.45%. The same factor is applied to any dairy product, yet in reality butyric acid levels vary considerably.

³ For example, U.S. butter exports to the EU are subject to an in-quota duty of 26.3%. Further, the in-quota duty is 21% for various cheeses and 13.2% for SMP; this is rather high as in principle in-quota duties should be negligible.

⁴ For example, for Skimmed Milk Powder, the U.S. only fills 0.05% of the EU TRQ.

⁵ For example, the in-quota rate for EU butter and sour cream exported to the U.S. is 2.5%.