



**Comments Regarding Foreign Trade Barriers to U.S. Exports for 2021 Reporting
by the National Milk Producers Federation
and the U.S. Dairy Export Council
Docket Number USTR-2021-0016
October 26, 2021**

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-2021-0016). 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 over \$6.5 billion in dairy products worldwide, equivalent to approximately 16% of total U.S. milk production in 2020. 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 strong enforcement of existing trade agreements and the pursuit of new ones as of the utmost importance.

Beginning with the North American Free Trade Agreement (NAFTA) in 1994 and continuing on through the Phase I Agreement with Japan, FTAs have enabled U.S. dairy exporters to compete on either a more level playing field or at an advantage with international competitors in terms of tariff access, removal of non-tariff barriers and clear and consistent rules for trade. By way of perspective: in 1993, the year before NAFTA, the United States sold just \$618 million worth of dairy products overseas; in 2020, the U.S. sold \$3.5 billion to just its FTA partners.

We welcomed in 2021 the initiation of dispute settlement proceedings over Canada's failure to meet its U.S.-Mexico-Canada Agreement (USMCA) obligations on dairy tariff-rate quota (TRQ) allocations. Strong enforcement of existing trade agreements is critical to secure and preserve the market access the U.S. government has negotiated. To complement this important work, NMPF and USDEC urge USTR to heighten its focus on expanding market access opportunities for American dairy exports. **Agreements with key markets in which we compete head-to-head with other major dairy suppliers from the EU and New Zealand 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 United States and to position the United States to better compete against key competitors. 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 United States 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.

Additionally, we view the removal of tariff and nontariff barriers to trade, including the misuse of geographical indications (GIs) to restrict common food names, that constrain U.S. dairy exports as vitally important. These goals can be accomplished through FTAs or through other avenues of engagement with key trading partners. 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 organize our comments most effectively, 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 believe trade discussions aimed at tackling those barriers for U.S. exports should be pursued.

A developing 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 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. NMPF and USDEC are deeply concerned that the enumeration of “prior users” of terms restricted via the misuse of geographical indications in the text of the agreement sets a precedent that will exacerbate the EU’s effective monopolization of common food terms around the world. This is a blatant attempt to limit competition and opportunity for non-EU suppliers to fairly trade in this large dairy market.

We urge the USTR to pursue an agreement with Brazil that would address these nontariff barrier constraints and expand access for U.S. dairy products to this significant dairy market.

Chile

Chile is an important market for U.S. dairy exports, exceeding \$87 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 European Union. In that process, the EU is seeking to nullify and impair the market access rights negotiated by the United States 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 United States preserves the market access opportunities for the full range of food and agricultural products benefiting from the terms of the U.S.-Chile FTA.

- At the time of the preparation of these comments, 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 has to date not permitted the import of 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.

Canada

Canada has a long history of sustained efforts to undermine access to its market and impair the value of trade concessions granted prior dairy agreements. USMCA provisions are intended to make headway into this tightly restricted market. Most notably, the agreement is designed to 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 usher in an expansion of U.S. dairy access to the Canadian market. To realize those benefits, USMCA's provisions must be fully implemented and enforced.

NMPF and USDEC strongly welcomed USTR's initiation of a dispute settlement panel in May to address Canada's failure to implement dairy TRQ allocations that meet its USMCA obligations. Under Canada's current system, 80 – 85% of TRQ volumes have been granted to Canadian processors of those particular products covered by a TRQ; in contrast, 10 – 15% of the TRQs have been granted to distributors and none at all to retailers. Canada's TRQ administration procedures must be reformed to fully comply with their USMCA commitments. In addition to the TRQ allocation problems, we are also concerned that Canada has chosen not to levy penalties for insufficient filling of the dairy TRQs.

In parallel to the continued pursuit of Canadian compliance with its TRQ commitments, NMPF and USDEC urge USTR to work with interagency partners to closely monitor Canada's implementation of other dairy related USMCA provisions, such as those eliminating Canada's discriminatory Class 7 dairy pricing policy and requiring export surcharges on dairy protein exports like skim milk powder, milk protein concentrates, and infant formula. The latter is a particular cause for concern. Canadian exports of milk protein isolates (MPIs) and certain skim milk powder blends manufactured under the new Class 4a have been increasing in a manner that seems designed to evade USMCA disciplines. USTR should move quickly to deploy the dairy consultation tools laid out in USMCA's Agriculture Chapter to address this concern and to ensure that Canada's other dairy policies full align with the changes called for under the agreement.

In addition to these areas, we note that our industry 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 its new USMCA market access. We strongly appreciate the USMCA provision designed to avoid back-sliding 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 is important to ensure compliance with the agreement’s provision in this area and to guard against Canada giving with one hand while taking with the other.

China

Over the past decade, China has become a critically important market for U.S. dairy exports. Sales last year alone totaled over \$539 million, ranking China the third largest export market for U.S. dairy products, despite the harmful impact of China’s retaliatory tariffs in response to USTR Section 301 duties.

Our industry welcomed the conclusion of a U.S.-China “Phase One” economic and trade agreement in 2020 that resolved numerous regulatory impediments for U.S. dairy exports to the Chinese market. However, despite tariff exemptions for select products, retaliatory duties still place U.S. exports at a disadvantage when compared to our major trade competitors. While there remains tremendous potential in this market as demand for dairy products continues to expand, China has not prioritized purchasing significantly larger shares of its dairy needs from the U.S. to date. This is despite a commitment from Beijing for additional U.S. agricultural purchases, including dairy, that was enshrined in the trade deal. The U.S. dairy industry is committed to the Chinese market, but as market access we’ve been building for years continues to slip away to competitors, it becomes increasingly more difficult to recover.

As the 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 to secure a comprehensive trade result that ultimately eliminates all retaliatory tariffs on dairy HTS lines and, in the interim, to pursue targeted tariff relief for dairy. We appreciate China’s effective implementation of regulatory changes as outlined in the “Phase One” deal. We look forward to working with the USTR to strengthen the trade relationship between China and the United States and eliminate tariffs hindering the opportunity for growth of U.S. dairy exports in that market.

Tariff Constraints Beyond Retaliatory Duties

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 179,137 MT of skim milk powder and duty-free access for up to 6,788 MT 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, in addition to retaliatory rates currently in place.

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 still in the growth stage 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 U.S. has secured commitments from China in the U.S.-China “Phase 1” Agreement and in the U.S.-China Joint Commission on Commerce and Trade regarding the use of common food names. Yet despite this, U.S. exporters lack the certainty they need to develop this market with assurance that the demand they work to build will not later result in a windfall for their competitors should the EU prevail in seizing commonly used cheese terms. Clear safeguards establishing the rights of U.S. suppliers to use common terms are needed in order to provide that market certainty.

This becomes all the more urgent in light of the implementation last year of the EU-China “100 for 100” GI agreement (which includes restrictions on feta, asiago, gorgonzola and romano) and the agreement’s called-for follow-on of yet more GIs that include terms of commercial significance to the U.S. dairy industry.

Colombia

Last year, we exported \$124 million worth of dairy products to Colombia, ranking it as our 11th largest dairy export market. 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, an agreement we strongly support.

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.

In June, the Colombian Ministry of Commerce, Industry and Tourism formally announced the launch of an investigation on U.S. milk powder imports to determine if safeguard tariffs should be applied. Sparked by a vocal domestic industry, the investigation appears to be politically driven. NMPF and USDEC appreciate USTR’s recognition of the issue in an August minister-level meeting on trade issues and encourage continued engagement to ensure the safeguard investigation follows the specific procedures as enumerated in the U.S.-Colombia bilateral trade agreement and that trade is not disrupted.

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:

- In 2018, 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 systems recognition process to streamline plant registration and avoid the need for onerous and duplicative inspections. Further action on this regulation has been suspended due to covid-19 yet it remains an area of concern should action to advance the plant inspection requirement resume.

- In 2019, Colombia notified the WTO of its intention to impose upper limits of sodium in foods, with the first stage of implementation set to begin in September 2022. 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. To avoid additional restrictions in this market, steps to provide strong certainty regarding U.S. market access rights and explicit rights to use common food names for key products produced in the U.S. are needed.

Ecuador

U.S. dairy exports to Ecuador face notable market access challenges. We urge work on addressing these barriers to trade. One import license requirement in particular continues to unduly impact dairy trade: Resolution 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.

Egypt

Last year, the United States exported over \$76 million of dairy products to Egypt, a 68% increase from the previous year. Dairy exports in 2020 through August were also up significantly. The market represents promising growth capacity in the North Africa region for American dairy producers if exports can continue on their upward trajectory.

Unfortunately, new Halal requirements introduced this year are anticipated to impose a nontariff barrier that could seriously limit or altogether halt many exports to that market. In September 2021, the Egyptian government abruptly declared that all dairy exports must be certified as Halal, the certification must be completed by IS EG HALAL, the label or packaging must include IS EG HALAL’s mark, and shipments must include a Halal certificate issued by the exclusive certifier. IS EG HALAL is a company partially owned by the Egyptian government. Egypt failed to notify the WTO that this change was set to occur and has to date continued to fail to provide sufficient details regarding this requirement. U.S. dairy exporters

successfully halal certify their products to multiple markets around the world; halal certification in principle does not pose a concern. However, Egypt's approach to implementing this halal requirement acts as a nontariff trade barrier by mandating use of one firm as a condition for entry into the market, failing to provide a publicly available fee schedule that ensures prices are connected to the cost of providing the service by this partially government owned company, and failing to provide clear information in writing on the scope of requirements.

NMPF and USDEC urge USTR to reject this unwarranted requirement and work to secure more WTO-compliant halal certification procedures similar to those used for dairy in other markets.

European Union

The United States' trade deficit with the European Union in dairy was a remarkable \$1.4 billion in 2020 - even though 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 over \$1.5 billion in dairy to the U.S. while only importing approximately \$114 million from the U.S. given the large variety of dairy products 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 entire European Union of countries. 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 establishes a simplified and streamlined certificate and trading terms, while also guarding against future unscientific and protectionist import requirements would address both current challenges and trade barriers that may be introduced in the future given the European Union's track record on agricultural issues. These worries about future unwarranted impediments to trade being introduced are heightened due to the regulation changes seen this year and those being contemplated such as the EU's Farm to Fork strategy. Achieving this wholistic result is the only way to address the dramatic trade deficit the U.S. has in dairy trade with the EU and ensure a genuinely level playing field.

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 U.S. considers future 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 global anti-competitive tactics should be part of any engagement on trade matters with the EU.

Specific EU policies of concern are detailed below.

Certification and Additional Access SPS or TBT Compliance Requirements

The certification 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 at present. **Our industry's fundamental challenge remains overly prescriptive EU requirements that mandate assurances of compliance with specific EU regulations and various mandates that require the U.S. process for oversight to mirror that used in the EU.**

- *New Dairy & Composite Certificate Requirements*

In late 2020 the EU announced a myriad of changes to its import certificates for dairy, composite products, and other U.S. exports. As of the date of the preparation of these comments, it appears that the United States and EU have reached a resolution on how to implement the dairy relevant portions of these new requirements. However, securing that result was needlessly arduous and put hundreds of millions of dollars of trade in limbo for many months. The EU approach to increasingly insisting that its trading partners must mirror process requirements not simply outcome requirements fails to comply with its trade obligations and needlessly increases the volatility of supplying the EU market.

USTR should work to simplify the certification requirements for products destined for the EU market. We also urge a review of the long-standing veterinary equivalence agreement (VEA) between the U.S. and the EU. When put to the test this year the VEA failed to deliver any benefits to U.S. exporters in terms of cementing workable prior trading terms for accessing the EU market. At the same time, we presume that the agreement continues to benefit animal product EU exports entering the U.S. market. USTR should work with its interagency colleagues to address the dramatically disproportionate certification burden imposed on U.S. vs. EU exporters.

- *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; they have since continued to advance this trade-distorting and WTO-illegal regulation. 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 are 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.

- *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 EU 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 Burdensome Rules*
The European Union composite certificate for products containing both animal-origin and non-animal origin components was revised in late 2020 with changes introduced in 2021 for shelf-stable products (allowing a manufacturers attestation) and scheduled for early 2022 for non-shelf-stable products (requiring a composite certificate). The EU needlessly put trade at risk by refusing to provide clarity and flexibility for extended periods of time. The level of burden imposed on these products is woefully disproportionate to the level of risk posed by these processed food products. We remain of the view that certifying composite products overly complicates trade in relatively low-risk products and urge USTR to pursue simplified certification or the abandonment of any certificate requirement for these products.

More narrowly, 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. The new composite certificate slated to go into force in January 2022 does not resolve this national treatment issue. 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.

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.

Government-Financed Intervention Dairy Purchases Suppressing Global Prices

USDEC and NMPF are concerned with the potential for the EU to resume use of its intervention purchases of dairy products, namely skim milk powder (SMP) and butter, in a manner that unduly impacts global prices. In recent years, product stockpiles accumulated in 2016 and 2017 were released onto the global market in 2018 and 2019, suppressing prices and causing U.S. producers economic harm in two ways. First, the program depressed the global price of SMP below what it otherwise would have been in 2018 and 2019. This had an adverse impact on the U.S. farm value of milk. Second, the program allowed the EU to garner a higher global export market share and resulted in the U.S. and other SMP exporters realizing lower export market shares relative to what they otherwise would have been.

A resumption of the use of the EU intervention program in a manner that results in the subsequent exporting of large quantities of government-purchased SMP and butter at below-market rates onto the world market would prolong the challenging environment under which dairy sectors are operating worldwide. A renewed EU intervention program would artificially distort prices for an extended period and displace commercial competition just as the world begins to recover from the immediate impacts of the covid-19 pandemic. To tackle EU dairy support goals, we instead urge USTR to press the EU to adopt measures that further spur consumption within the EU and encourage its producers to implement appropriate production practices to adapt to market changes without artificially depressing global prices via the offloading of publicly stockpiled intervention purchases onto global markets at discounted rates.

Country of Origin Labeling (COOL) Targeting Dairy

Beginning in 2016, several EU member states moved forward with country-of-origin labeling requirements that specifically targeted dairy ingredients and there are active efforts to work to expand this policy to be EU-wide.

Mandatory COOL for dairy ingredients poses a concern for trade because it appears to be designed to reduce flexibility in the choice of ingredients as EU processors who as a result 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.

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.

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.

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 flouted 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, the EU registered GIs for danbo cheese in 2017 and havarti cheese in 2019, **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 \$186 million in U.S. dairy exports last year with Saudi Arabia and the United Arab Emirates (UAE) representing \$84 million and \$47 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, among other widely used food additives that are permitted under the Codex General Standard for Cheese. Additionally, while the GCC’s proposed changes will allow the use of annatto in ripened cheese and rind, at a maximum level of 25 mg/kg, the maximum level will only be half CODEX’s General Standard for Cheese’s maximum allowed annatto level of 50 mg/kg.

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

- *Shelf-Life Requirements*

Qatar has issued regulations that impose 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 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 minimum shelf life of 80% of shelf life remaining (i.e., no less than approximately two months and twelve 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. This impacts even products with a considerably long shelf-life such as frozen mozzarella for pizza usage. Given the reality of shipping times and the unscientifically narrow window this creates for trade, this barriers to exports has presented considerable problems.

We encourage USTR to work with 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 by aligning the shelf-life requirements with customary minimums that have a demonstrated relationship to food safety and quality.

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 two years, the Saudi government has issued a new standard for processed cheese that leaves out they key ingredient in processed cheese – emulsifying salts – even though the definition of processed cheese in this technical regulation notes that emulsifying salts are part of the manufacturing process. Several other additives that were previously allowed are also not included in this updated processed cheese standard. Aside from its technical limitations, this move towards national standards is a concern, particularly since the GCC has historically acted as a bloc.
- *Upper Salt and Sugar Limits*

In recent years, Saudi government proposed draft regulations regarding sugar and salt limit guidelines in food. The sugar regulation was declared voluntary, and the salt regulation is understood to also be voluntary and was not notified to the WTO. Even these voluntary regulations are a concern. 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 also has introduced a front of pack labeling scheme aimed at indicating those 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 follows 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 \$33 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 remains the largest hindrance to U.S. exporters seeking to meet the growing dairy demands in this market.

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 daily. Despite this, India persists in refusing access for U.S. dairy products due to unscientific import requirements.

In 2019, 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 continue to strongly support in light of India’s actions on dairy.

Last year India escalated its dairy trade barriers even further by for the first time extending its dairy certification requirement to Chapter 17 and 35 dairy products, thereby upending trade that has been taking place smoothly for many years without issue in the Indian market. This new extension of the dairy certificate to those additional products was done without advance public notice and upended established sales relationships. It illustrated further the volatile nature of the Indian market and the lack of dependable trading conditions even for products not previously impacted by India’s trade barriers.

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 2020, we exported over \$348 million in dairy products to Indonesia, ranking it as our sixth largest export market destination. Indonesia remains a valuable trading partner and we welcome their actions to date in response to concerns articulated about some of their prior regulations impacting trade. We would strongly support a trade agreement with Indonesia in order to expand access further for dairy products in this critically important dairy market.

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 October 2019 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 Issues

In order to export to Indonesia, dairy plants are required to register with the government on an approved list. Concerns exist with respect to how this requirement is carried out in practice including:

- Indonesia has failed to make notable progress on the registration of U.S. dairy plants in 2021, despite a waiting list of applicants. The time period involved with the process – from initial application submission to final approval to ship – remains far too long and unpredictable. Some of the challenge in the present system is due to the exactingly narrow deadlines in which companies have to make payments (see next point) while a broader concern is the multi-step evaluation process of plant registration reviews and the fact that these are conducted on at best a quarterly basis for only a small subset of plant applications at a time. Moreover, if problems are identified with an application’s details, the exporter is then forced to wait several months before the additional information is reviewed to learn whether their additional/revised information has resulted in approval or not. USDEC and NMPF urge USTR to work with its Indonesian counterparts and interagency partners to secure prompt approval of the pending applications and to streamline a process for facility registration in this key market.

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 \$9.4 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 seventh among our export markets for dairy products, valued at \$322 million in 2020. Our trade relations have been positive. Japan's sizable dairy tariffs have presented the largest barrier to greater U.S. exports to date.

U.S.-Japan Trade Agreement

USDEC and NMPF supported the implementation of the U.S.-Japan Trade Agreement that entered into force in January 2020. That agreement made progress in expanding market access for U.S. dairy products and has helped mitigate the risk of our companies slipping behind as Japan implements CPTPP and its FTA with the EU. While the deal secured imported tariff parity with our major dairy competitors on various whey, select cheese, lactose, and other dairy HTS lines, we urge USTR to pursue a comprehensive FTA that addresses our industry's remaining market access needs in this market (i.e., for milk powder and butter), as well as institutes the nontariff commitments necessary to help provide for dependable trading conditions in the future.

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.

Import Displacement Program

In response to demand and supply problems as a result of Covid-19, Japan implemented a new dairy support program, with a budget of five billion yen (\$45 million) for Japan fiscal year 2020 that incentivizes its dairy companies to substitute imported milk powders with domestic milk powders by paying dairy processors the price differential between domestic milk powders and imported milk powder. The program has been extended for Japan fiscal year 2021 with some modifications: (1) it covers skim milk powder and butter, but not whole milk powder, (2) has an additional budget of 1.7 billion yen (\$15.6 million), and (3) the payment per kilogram was lowered. The total budget for both programs equates to about \$61 million.

Japan has failed to notify this new program to the WTO either under the Agreement on Agriculture or the CVD Agreement, as it has not submitted 2020 subsidy notifications yet. Beyond this failure to notify, the program raises WTO consistency concerns. By conditioning the subsidy, in part, to substitute imported product with domestic product, it appears to be a "prohibited subsidy" under the Agreement on Subsidies and Countervailing Duty Measures. Article 3 of the WTO CVD Agreement prohibits the use of any subsidy "contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods." As a prohibited subsidy, injury determination is not needed under WTO rules. USDEC and NMPF urge the U.S. government to raise these concerns with Japan bilaterally and request cessation of the program.

Geographical Indications

In its FTA with the EU, Japan granted GI status to a number of cheeses produced in the United States, including feta, asiago, gorgonzola, and fontina. In its implementation regulations for these terms, Japan 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 remain dismayed that the time period covering prior use has not been aligned with the date of Japan's final decisions on the submitted GI applications – a period we have seen utilized in other markets that have previously 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.

Kenya

We support the pursuit of an FTA with the Republic of Kenya that establishes a strong precedent for open market access and elimination of non-tariff barriers in Africa. Market access restrictions for U.S. dairy product exports into Kenya center upon prohibitively high tariff rates and onerous non-tariff requirements for importers. The Kenyan government maintains these market impediments to protect its domestic dairy industry. We encourage the U.S. government to pursue an FTA that fully opens this market by:

- Eliminating all tariffs on U.S. dairy product exports;
- Removing current non-tariff barriers to U.S. dairy exports in this market; and
- Instituting concrete measures to guard against future unjustified restrictions on U.S. export opportunities including by creating a strong SPS chapter and safeguards for the use of common food names.

A fully comprehensive trade agreement with Kenya should serve as a template for future trade agreements with other African trading partners.

Korea

Korea was our fifth largest dairy export market in 2020, valued at \$371 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.

- 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. Since the FTA, the EU has pursued 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 2020, the U.S. exported \$157 million in dairy products to Malaysia. Our trade relationship is positive, yet our exports could grow with better market access such as through an FTA that eliminates Malaysia's dairy tariffs – a move we strongly support.

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 over \$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 effective implementation and strong enforcement of USMCA as so important.

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.

Unfortunately, of late there has been a proliferation of poorly designed regulations that are threatening to disrupt trade with Mexico. This has eroded the United States' role as a reliable supplier. The United States should pursue discussions with Mexico regarding the importance of restoring predictable trading conditions, treating the surge in regulatory and customs enforcement issues as a collective concern, not simply as one-off issues. Several areas of high concern are cited below.

- *NOM 222 Milk Powder Regulation Revisions*
Driven by domestic pressures seeking to support domestic milk producers, restrict imports, and create hurdles to U.S. dairy products, Mexico is considering multiple revisions to its milk powder regulation that would create barriers to dairy trade. Among the proposal under consideration are: (1) prohibiting the use of milk powder as a raw material for fluid milk; (2) mandating that only "extra grade" powder be used in the manufacture of other dairy products such as cheese, cream and yogurt; (3) creation of a four month commercialization window for powder despite the fact that the product's actual shelf life is 18 to 24 months; (5) ignoring Codex standards for certain specifications; and (6) mandating additional information through a conformity assessment procedure that exceeds what would be available in a test report.
- *NOM 223 Cheese Regulation Revisions*
Mexico claims it is revising its cheese regulation in order to address the problem of the use of non-dairy ingredients (e.g., vegetable fats) in cheese, yet its approach to do so would create burdensome new requirements for U.S. cheese and dairy exports to Mexico. Concerns related to the cheese regulation revisions include: (1) mandating that milk powder used as a cheese ingredient be extra grade; (2) mandating cheese be labeled as "imitation" if casein/caseinates or milk protein

concentrates are used as ingredients; (3) eliminating some ingredients and anticaking agents that are permitted under the current regulation and Codex Alimentarius standards; and (4) extending the scope of the regulation to include bulk and raw material cheese sales (in addition to retail sales).

- *Dairy Regulation Conformity Assessment Procedures (CAP)*

In parallel to the ongoing revisions to current dairy product regulations, Mexico has proposed to implement burdensome new compliance procedures with those regulations despite the final details of the underlying product regulations remaining in flux.

 - *Conformity Assessment Procedure (CAP) for NOM 223 on Cheese*

In late August 2021, Mexico published a proposed new conformity assessment procedure which they propose to require to for all imports to show compliance with the cheese regulation. This draft has slightly improved with respect to the previous version; however, it still contains a procedure to demonstrate fulfillment of the cheese regulation requirements that is unnecessarily burdensome considering the level of risk associated with the product. In addition, it is not possible to know how viable the CAP will ultimately be until the final details of the cheese regulation to which it relates are known.
 - *Conformity Assessment Procedure (CAP) for NOM 222 on Milk Powder*

Mexico intends to subject imported milk powder to additional requirements to verify compliance with its new milk powder standard. The proposal includes the need to submit test results and product information for each shipment to Mexico's Economia Ministry for pre-validation before import documents are presented to custom authorities. It is critical that any pre-shipment testing requirement be allowed to be done electronically and be handled swiftly in order not to delay trade.
- *Front of Pack Labeling Regulations*

In October 2020, Mexico's NOM 51 regulation took effect, manding the use of a new system of front-of-pack (FOP) labelling for pre-packaged food and non-alcoholic beverage products. Mexico's declared intent is to use the regulation to inform Mexican consumers about certain nutritional content of critical ingredients in various pre-packaged foods. The regulation requires the use of warning symbols for products deemed to be high in sodium, sugar, fat (saturated and trans), and/or calories. A key underlying concern with the regulation is that it misrepresents nutrient-rich foods since nutrient rich and nutrient poor foods of the same category will carry identical warning labels.
- *Geographical Indications*

We commend USTR's work to include a non-exhaustive list of products to be safeguarded from future GI restrictions in a USMCA side letter and for the additional side letter establishing a broad definition of grandfathering rights for the use of certain terms. Diligent oversight and enforcement of both commitments will be essential to ensuring their full benefit.

 - Common cheese names side letter: 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 United States. 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.

- “Prior users” side letter: 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.

Despite those steps, several common cheese names will be restricted as part of the Mexican-EU FTA and/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 United States under NAFTA and under the WTO agreement for those products. In addition to the critically important USMCA side letters, 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 that relate to GIs and common food name issues – including both relevant side letters – must be addressed in order to translate the USMCA text elements into clear regulatory guidance in Mexico.

- *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. This issue was not resolved during the USMCA negotiations, and we encourage the United States to restore access for this product to the Mexican market.

Morocco

The U.S. exported over \$14 million worth of dairy products to Morocco in 2020. The U.S.-Morocco Trade Agreement is a key tool in making a wider range of sales opportunities possible, which we strongly support.

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 United States 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 United States negotiated with Morocco.

Panama

Last year, the U.S. exported \$62 million worth of dairy products to Panama. The U.S.-Panama Trade Agreement is an important tool in making these sales possible and we strongly support it.

One of the most important elements in the FTA, aside from its tariff benefits, was the set of commitments made by Panama to in the SPS and Technical Standards section that establishes the following assurances:

- “Panama recognizes that the U.S. sanitary, phytosanitary, and related regulatory systems are equivalent to those of Panama for ... all other processed products, including but not limited to dairy products, intended for human or animal consumption;
- Panama further recognizes that the U.S. food safety regulatory system for all processed products, including but not limited to dairy products, intended for human or animal consumption is equivalent to Panama's regulatory system for those products, and shall not require, as a condition for the importation or sale of those products, approval of individual U.S. establishments by any Panamanian authority;
- Panama shall not require certification of individual shipments, including sanitary or phytosanitary certification, or import licensing or permitting, as a condition for the importation or sale of any processed products; and
- Panama shall not require any product registration as a condition for the importation or sale of any agricultural product of the United States that is accompanied by the appropriate export certificate issued by a U.S. authority; a Certificate of Free Sale issued within the last 12 months by a U.S. state, federal, or other authority; or a Supplier's Declaration on the manufacturer's or supplier's letterhead stationery attesting that the product is fit for consumption in the United States. For other agricultural products of the United States subject to product registration requirements of the Panamanian Food Safety Authority, Panama shall issue automatically, free of cost, and within one working day of receiving basic product information about a product, 3 a product registration statement containing a product registration number, which shall remain in effect as long as the information provided remains unchanged.

In light of the fact that Panama has eliminated the Panamanian Food Security Authority (AUPSA) and created the Panamanian Food Agency (APA) to execute the policies emanating from the Ministry of Agriculture (MIDA) and the Ministry of Health (MINSa) and to establish a new agency process (single window) for the verification and regulation of food imports, it will be critical to ensure that new regulatory

requirements are not erected that contradict the strong and clear protections the United States secured in our FTA specifically in order to ensure that as tariffs declined SPS/TBT barriers did not spring up to take their place in this market and deny access to U.S. exporters.

Peru

Last year, the U.S. exported over \$95 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. This action violated WTO rules and impaired the value of concessions granted to the United States 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. We urge pursuit of clear protections for common names in this market.

Philippines

Last year, we shipped over \$409 million worth of dairy products to the Philippines, ranking it as our fourth largest export destination. 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 process to date of carefully evaluating changes to its GI regulations. Like in the United States, 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, with an increase of 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. That mandate continues to block the limited number of dairy products not subject to the ban on U.S. products from entering the Russian market.

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. Russia's approach to facility listing remains a trade impediment and serious concern that will ultimately need addressed – separate and aside from any future action on the US/EU/Australian products import ban.

Singapore

Last year the United States exported over \$85 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.

Given Singapore's deeply pro-trade approach, trade concerns have been very limited. However, one area of concern is the impact on Singapore's cheese market opportunities from GIs inappropriately registered for protection due to their inclusion in the Singapore-EU FTA. While the Singapore IP system provides some tools for challenging those decisions, the exorbitant cost of that system has direct and negative impacts on the ability of stakeholders to defend their rights when IP examiners do not sufficiently carry out their responsibilities of clearly preserving generic terms.

Switzerland

Switzerland has expressed interest in negotiating an FTA with the United States. 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 successfully won a challenge to that application in 2020, pointing out that extensive generic use of the term gruyere in this country; that decision is now under appeal. 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 2020, with exports exceeding \$123 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 over \$74 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 United States 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, such as an MFN tariff reduction on dairy products.

United Kingdom

We support efforts to establish a solid foundation for U.S. dairy exports to the United Kingdom following its “Brexit” departure from the European Union. In 2020, the United States exported \$35 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. We urge USTR to resume FTA negotiations with the U.K.

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. In addition, should the U.S. resume FTA negotiations, USDEC and NMPF urge the inclusion of strong language regarding strong due process procedures for the determination of a term’s genericism when a GI application is being considered and the inclusion of a non-exhaustive list of common terms to be safeguarded from restrictions.

Vietnam

In 2020, the United States exported \$184 million in dairy products to Vietnam. Last year we strongly welcomed Vietnam’s decision to grant MFN tariff reductions on a number of dairy HTS lines, a step that helps narrow the competitiveness gap between the United States and other suppliers to this key market. To provide long term predictability and full tariff parity for our exports, 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 FTAs in place with Vietnam.

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:

Central America (Costa Rica, El Salvador, Guatemala, Honduras, & Nicaragua) & the Dominican Republic

Last year the U.S. exported \$236 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) is an important tool in making these sales possible and we strongly support both.

Moreover, CAFTA-DR has 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 CAFTA-DR countries all require product registration of foods before they can be commercialized in the country of registration. In some 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 CAFTA-DR 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 United States 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 FTAs 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 U.S. Codex office plays a critical role in formulating international, science-based food safety standards by coordinating and managing input of U.S. positions into 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.

The agriculture industry has repeatedly maintained that sound science and a risk-based approach must remain the foundations of all Codex standards. In order to see Codex abide by those principles, 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 science-based standard setting, risk assessment, 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. As the work begins over the next year to consolidate CCFICS guidelines on equivalence, the U.S. must guard against attempts to use this consolidation effort as another way to short-cut the traditional measure-by-measure equivalence process that have historically ensured U.S. food safety.
 - 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 for referencing in technical product standards non-technical policy-related statements developed by outside 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. The use of outside expert bodies was a critical step in supporting the work of Codex, yet the Committee must now interpret those recommendations in a way that continues to reflect the dual mandate of Codex—protecting health while facilitating fair practices in food trade.
 - 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) is not discouraged, thereby unintentionally harming overall health outcomes rather than improving them.
- Codex Statements of Principle:
 - The United States must ensure that Codex protects the critical “Statements of Principle on the Role of Science in the Codex Decision-Making Process and the Extent to which other Factors are Taken into Account” (Statements of Principle) from ongoing efforts to weaken or undermine them. The Statements of Principle enshrine Codex’s commitment to science-based decision making, but some Codex members, particularly from one Codex region, have demonstrated a commitment to undermining Codex’s longstanding commitment to science to change the rules to benefit the region’s producers and agenda. Allowing any erosion of the Statements of Principle would push Codex away from science and risk-based standard setting resulting in promulgation of Codex standards harmful to U.S. dairy

interests and making it more difficult to challenge unjustified trade barriers using WTO remedies.

World Health Organization (WHO)

Despite being recognized as a nutrient-dense food important in a healthy, balanced diet by the U.S. Dietary Guidelines, dairy production and consumption has been a frequent target of harmful WHO policies that are not based on sound science and fail to recognize 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).

We are also 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 different from that followed under Codex. It is critical that each body retain its unique mandate and independence moving forward.

Similarly, we note WHO's recent engagements in UN sustainability work, which warrant careful monitoring. WHO's core mandate relates to protecting health, yet staff within the organization seem increasingly energized to push that mandate to include environmental sustainability considerations in UN efforts to develop more sustainable food systems. In some cases, this includes recommendations that seek to reduce consumption of animal-sourced foods in conflict with abovementioned U.S. Dietary Guidelines and to the detriment of consumers who need greater access to healthy, nutrient-dense foods. It is essential that the U.S. monitor any increasing engagement by WHO in these environmental sustainability discussions and insist that WHO focus its energies, resources, and expertise on core mandate areas, not the ideological interests of certain staff members.

World Trade Organization (WTO)

USDEC and NMPF reiterate their support for U.S.'s continued membership in the WTO's rules-based global trading system that provides provisions to guard against arbitrary use of technical regulations or standards to block imports, such as actions associated with Sanitary and Phytosanitary measures that lack a clear basis in science and are protectionist in intent. At the same time, we also recognize the importance of reform to ensure a functioning appellate body does not step beyond the original intent of the WTO as agreed upon during the Uruguay Round.



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