



July 2, 2021

Andrea Malito
Senior Director for Central American and the Dominican
Republic
Office of the U.S. Trade Representative
600 17th St NW
Washington, DC 20006

**Comments by the U.S. Dairy Export Council & the National Milk Producers Federation
on Engaging with Central America to Address Root Causes of Migration to the United States**

Dear Ms. Malito,

The U.S. Dairy Export Council (USDEC) and the National Milk Producers Federation (NMPF) appreciate the opportunity to submit comments in response to the Office of the U.S. Trade Representative's request for input on identifying trade challenges within the U.S.-Central America-Dominican Republic Free Trade Agreement (CAFTA-DR) region.

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. U.S. dairy exports are critical to the economic health of America's 32 thousand dairy farmers and the thousands of American workers throughout the supply chain whose jobs are supported by the U.S. dairy industry.

Last year, the U.S. exported \$461 million worth of dairy products to Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua. CAFTA-DR has been a crucial in ensuring U.S. suppliers do not slip behind our major global competitors, particularly in light of the European Union Central American Association Agreement (EU-CAAA), signed in 2012. While the CAFTA-DR provides favorable dairy tariff rates to the U.S., concerns remain over certain nontariff barriers that threaten to limit the flow of U.S. dairy products to this important market.

Below are three actions USTR could take to solidify and improve access for US dairy exports to Central America that would strengthen our trade relations.



Need for Stronger Protections for Generic Terms

Opportunity exists to establish clear and lasting protections for the use of common food names in Central America to preserve the value of our market access rights under the FTA. We encourage USTR to proactively work to establish assurances of the rights of common name food producers exporting to the CAFTA-DR in the form of a mutually recognized list of generic terms to be protected in the future from bad-faith GI applications. This should build further upon the precedent first piloted in a side letter to the U.S.-Mexico-Canada Agreement (USMCA) that preserves the right of U.S. cheese producers to continue exporting their products that use generic terms.

Costa Rica – Plant Registration Process Changes Required

Costa Rica's Ministry of Agriculture's National Animal Health Service (SENASA) currently 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. Upon the agency's conclusion of questionnaire evaluation, exporters note there are always requests for additional information. Once this additional information is submitted, SENASA does not have a set timeline for responding. Exporters have reported response times exceeding two months for evaluating only a few additional questions or observations. Given this extended process, the total plant registration timeline can take up to more than six months total to review and approve, putting new U.S. dairy exports at a disadvantage. Anecdotally, several exporters have abandoned the process of pursuing approvals in Costa Rica due to the repeated requests for additional information, lack of transparency into the process and unnecessarily long wait times.

Most recently, Costa Rica issued a pre-export notification regulation to the WTO (G/SPS/N/CRI/237) in 2021 to formalize the requirements already in place. However, this proposal could also provide the opportunity for the Costa Rican government to enforce provisions that were not actively enforced before, such as their ability to conduct individual plant inspections. Other concerns with the WTO notification include a lack of clarity on whether several of the provisions apply to the competent authority approval or the individual plant approval, or both. Further, no products are noted as excluded from these requirements; as it currently stands, Costa Rica does not require registration of plants producing whey, casein, butter oil and sweet cream.

The notification regulation also notes that plant visits at either the country or plant's cost are a possibility if a documentary review is not sufficient, but there is no information in the regulation stating when an in-person inspection would be warranted and what qualifies as "sufficient." USDEC and NMPF support an audit in which the U.S. system is evaluated and a representative sample of plants inspected, but not plant-by-plant inspections, which the draft regulation appears to permit.



Costa Rica currently enforces a three-year validity period on both the competent authority approval and plant approval. It is unlikely that anything will change within a three-year timespan from a regulatory or plant operations perspective, so the information request becomes redundant. If the preferred approach of systems recognition is not feasible, USDEC and NMPF support competent authority approval to be granted once and plant registration validity extended to five years if all U.S. plants are not considered approved.

Product Registration – One Step Filing Proposal.

The Central American countries all require product registration of foods before they can be commercialized in the country of registration. In some of the 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. Duplicate filings are burdensome for U.S. exporters and variances in timing of approvals can delay product entry or approval of label changes.

As part of its ongoing regional cooperation efforts, USDEC and NMPF have been urging the Central American 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.

On behalf of the U.S. dairy industry and the thousands of workers supported by dairy exports, we appreciate USTR's attention to these trade barriers and look forward to providing support to the interagency effort to resolve these issues to ensure the flow of U.S. dairy exporters can continue unimpeded to these valuable markets.

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