



**Comments by the  
National Milk Producers Federation and the U.S. Dairy Export Council  
on the Proposed Fair and Resilient Trade Pillar of an  
Indo-Pacific Economic Framework  
Docket Number USTR-2022-0002**

April 11, 2022

William Shpiece  
Chair of the Trade Policy Staff Committee  
Office of the United States Trade Representative  
600 17<sup>th</sup> Street NW  
Washington, DC 20506

Dear Mr. Shpiece:

Our organizations submit the following comments in response to the request for Comments on the Proposed Fair and Resilient Trade Pillar of an Indo-Pacific Economic Framework (USTR-2022-0002).<sup>1</sup> The National Milk Producers Federation (NMPF) and the U.S. Dairy Export Council (USDEC) appreciate the opportunity to present their views on this important issue.

NMPF develops and carries out policies that advance the well-being of dairy producers and the cooperatives they own. The members of NMPF's cooperatives produce the majority of the U.S. milk supply, making NMPF the voice of dairy producers on Capitol Hill and with government agencies. NMPF provides a forum through which dairy farmers and their cooperatives formulate policy on national issues that affect milk production and marketing. NMPF's contribution to this policy is aimed at improving the economic interests of dairy farmers, thus assuring the nation's consumers an adequate supply of pure, wholesome, and nutritious milk and dairy products.

USDEC is a non-profit, independent membership organization representing the global trade interests of U.S. dairy farmers, dairy processors and cooperatives, dairy ingredient suppliers and export trading companies. Its mission is to enhance U.S. global competitiveness and assist the U.S. industry to increase its global dairy ingredient sales and exports of U.S. dairy products. USDEC and its 100-plus member companies are supported by staff in the United States and overseas in Mexico, South America, Asia, Middle East and Europe. Dairy Management Inc. founded USDEC in 1995 and, through the dairy checkoff program, is the organization's primary funder.

Exports have become extremely important to the U.S. dairy industry. In 2021 we exported \$7.75 billion in dairy products worldwide, equivalent to approximately 17% of total U.S. milk production that year. 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,

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<sup>1</sup> 87 Fed. Reg. 13,789 (March 10, 2022).

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 robust enforcement of existing trade agreements and the pursuit of new ones as of the utmost importance.

**NMPF and USDEC’s priority and strong preference is the pursuit of comprehensive trade agreements to establish lasting trade barrier reductions on both the tariff and nontariff fronts. Recognizing that the Indo-Pacific Economic Framework (IPEF) is not likely to be such an agreement, we nevertheless urge the Administration to seek to eliminate or reduce both tariff and nontariff barriers to U.S. dairy exports through the IPEF.**

**Eliminating or Reducing Tariff Barriers**

With regard to tariff barriers, we believe that comprehensive agreements that include tariff reductions and ultimately eliminations offer the most promising path for stable, long-term market access opportunities for dairy products. Our competitors are using those tools in a manner that fulfill their interests. For instance, New Zealand has agreements with most of the key dairy export destinations across Asia while the European Union either has agreements in place with those countries or is in ongoing negotiations with most of them. The table below shows just a few of the many tariff disadvantages U.S. dairy exporters already face in key Asian markets; ongoing EU FTA negotiations will build further on these disadvantages if left unaddressed.

	Cheese (0406)			Skim Milk Powder (0402.10)		
	MFN	New Zealand	Australia	MFN	New Zealand	Australia
Philippines	3-7%	0%	0%	0-1%	0%	0%
Thailand	30%	0%	0%	5%	5% (0% by 2025)	3% (0% by 2025)
Indonesia	5%	0-4%	0%	5%	0-4%	0%
Taiwan	5%	0%	5%	10%	0%	10%
Vietnam	5%	0%	0%	2-5%	0%	0%

At no time should the United States stop seeking additional market access for agriculture. The United States is a largely open market on many aspects of its economy and, as such, failing to pursue the same opportunities in other countries misses the premise of access equity.

However, as the U.S. government continues to pursue its Indo-Pacific Strategy in lieu of full negotiations on tariff elimination, the Administration should still seek Most Favored Nation (MFN) tariff cuts from our IPEF partners to help level the playing field with dairy suppliers from other countries that have negotiated free trade agreements – or are in the process of doing so – and who benefit from lower tariffs as a result. In this regard, our priority markets are Southeast Asia and Japan (since the “Phase 1” agreement with Japan did not include commercially meaningful improved market access for milk powder and butter, and certain gaps remain in tariff parity with other FTA suppliers). We are not seeking to revisit or modify existing FTAs in the region, and would view efforts to do so as counter-productive.

## **Reducing and Preventing Nontariff Barriers**

With regard to nontariff barriers, IPEF can make a significant contribution to advancing U.S. dairy market access priorities through commitments that address specific existing barriers and the potential for others to adopt similar barriers. In this regard, broad commitments such as USMCA-style chapters on sanitary and phytosanitary (SPS) barriers and technical barriers to trade (TBT) are useful but are not sufficient. To make meaningful headway, IPEF commitments need to focus on resolving existing issues and proactively guarding against specific future ones. Specific commitments are necessary to provide a predictable business environment and facilitate future trade.

## **Addressing Specific Existing NTBs**

U.S. negotiators have been successful using negotiations like IPEF to resolve longstanding barriers. The most significant specific, existing non-tariff barriers in particular markets in the region are in Indonesia and India.

- **Indonesia:** In order to export to Indonesia, individual dairy plants are required to register with the government on an approved list. This involves a long, slow, and unpredictable process. It is also unnecessary, since the United States has a strong regulatory system, and the facilities producing for export to Indonesia are the same ones making safe products for us to eat here at home throughout the United States. USDEC and NMPF urge the United States to press Indonesia in the IPEF negotiations to streamline the process for facility registration and work toward a broad approval of U.S. dairy facilities in light of the strength of the U.S. regulatory system overseeing dairy farming and manufacturing.

In addition to the long-standing facility registration challenges, some U.S. exporters have raised concerns regarding the impact of Indonesia's six month import permit validity window on shipments given the present shipping challenges and lack of predictability regarding when exports may ultimately arrive as a result. Flexibility to bring in product remains critical as export supply chain shipping issues remain in flux; establishing a more flexible system in the future would be beneficial.

- **India:** U.S. dairy exports to India have reached just a fraction of their potential because of Indian dairy health certificate requirements, which have blocked most exports since 2003. Since then, India has disregarded considerable scientific data documenting the safety of U.S. dairy products, rejected multiple compromise solutions, and ignored 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.

In 2020 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 (lactose and high protein 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.

USDEC and NMPF urge the United States to seek to address India's health certificate barrier in the IPEF negotiations. However, to the extent that India follows past patterns and is not forthcoming on this or other elements of U.S. trade priorities for IPEF, we urge that the United States does not reduce ambition to accommodate India. Rather than accept a lowest common denominator approach, it would be better not to include India in the trade pillar.

### **Proactive Commitments to Prevent Future Barriers**

The IPEF offers a valuable opportunity to obtain specific commitments to forestall introduction of new, foreseeable trade barriers.

- ***Common Name Protections:*** For example, IPEF can be used to negotiate lasting access in our export markets for U.S. products using *common food and beverage terms* (e.g., asiago, parmesan, bologna, chateau) to help blunt the European Union's efforts to gain protection for a large number of geographical indications and related restrictions through its trade negotiations. The European Union's clear goal is to advance its own commercial interests for food products by committing its trade partners to provide an extremely broad scope of protection for geographical indications, thereby awarding EU companies the sole right to use many terms that have already entered into widespread common usage around the world. In the IPEF negotiations, NMPF and USDEC urge the United States to build off of the approach taken in the USMCA cheese names side letter to expand the product scope and strengthen commitments that establish recognition for important generic terms and include an agreement not to restrict market access based on use of the terms.
- ***Prevention of Unwarranted SPS and TBT Barriers: Regulatory barriers*** such as Indonesia's facility listing requirement and India's certificate requirement could be headed off elsewhere were IPEF to include commitments to recognize the safety of the U.S. dairy system, mirroring the broad terms in the U.S.-Panama exchange of letters<sup>2</sup> regarding processed foods (expressly including dairy). Among other things, the exchange of letters exempts those products from any current or future facility listing requirements and disciplines certificate requirements. In the exchange of letters Panama recognizes that U.S. sanitary, phytosanitary, and related regulatory systems are equivalent to those of Panama for U.S. agricultural products and accepts the consequences of this through a number of specific disciplines in its application of various food inspection, registration, and certification requirements.

While a broad Panama-style set of comprehensive commitments would be ideal, agreement with our IPEF partners on elements of those commitments would help to overcome and head off the greatest hurdles facing U.S. dairy exporters.

- One such element would be a commitment to allow the use of the ***standard USDA Agricultural Marketing Service (AMS) sanitary export certificate for dairy***. This certificate includes animal and public health attestations on the U.S. herd and regulatory oversight, and AMS issues this standard dairy certificate to many countries around the world. While many markets allow use of this certificate (which we support

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<sup>2</sup> See <https://ustr.gov/sites/default/files/2006%20US-Panama%20SPS%20letter%20exchange%20Text.pdf>.

as reasonable), certificate requirements can change at any time. Disciplines in IPEF on this would guard against future problematic changes by memorializing use of the certificate. This commitment should be obtained from as many IPEF partners as possible, ideally all of them.

- Another element would be a commitment ***to exempt U.S. dairy exports from any import facility registration lists (present or future)***, for the reasons discussed above.
- Additionally, IPEF could help to avoid hurdles to U.S. dairy exports through a commitment to adopt a ***streamlined approach to any product registration process***. Creation of a binding set of guidelines that would inform product registration process (present or future) could head off future challenges by codifying key elements of a trade-friendly system such as commitments to utilize an automatic electronic registration process utilizing a simple, standardized form focused on allowing tracking of suppliers of relevant products.
- ***Combating Growing Restrictions on Formulated Milk Products:*** Sweeping restrictions preventing the marketing of U.S. exports of nutritionally fortified milk products for young children up to three years of age continue to emerge across the ASEAN region, including prohibitions on the use of brand names, legally registered trademarks, intellectual property (icons, logos, mascots and colors) and restrictions on eCommerce. Domestically produced substitutes commonly consumed by this age population are often excluded from the regulations and proposed legislation. The IPEF should include text prohibiting discriminatory restrictions that limit marketing and eCommerce or prevent the use of brands, trademarks and intellectual property contrary to WTO obligations.

### **Fostering Areas of Collaboration in Emerging Issue Areas**

IPEF will be ideally suited to promote alignment, coordination, and cooperation in the areas of international standards and sustainability. IPEF should be used to advance harmonization of domestic regulations with Codex Alimentarius Commission and OIE standards and should include commitments and mechanisms to foster routine alignment and coordination by IPEF partners with the U.S. government ahead of meetings in those and other international standard setting bodies to advance science and risk-based decision-making.

IPEF commitments and coordination mechanisms can likewise foster routine alignment and coordination by trading partners with the U.S. government in international organizations that are increasingly seeking to expand their influence over international trade and food and agricultural policies. IPEF parties can create a bloc of member states demanding accountability to good governance, transparency, and science-based decision making.

And IPEF should be used to explore ways to create and advance a common vision on agricultural sustainability, sustainable food systems, and food security. For example, IPEF partners can mutually recognize the important role that sustainable productivity growth, particularly sustainable livestock production can play in fostering more sustainable food systems. For instance, the U.S. has highly efficient and high-quality production practices, which have resulted in the lowest GHG emissions level in the world per gallon of milk. In addition, the U.S. was the first country in the world to have an internationally certified dairy animal care program. Establishing

an approach to sustainability that embraces these positive contributions would be a constructive step forward in the region.

### **Conclusion**

On behalf of the National Milk Producers Federation and the U.S. Dairy Export Council's 100-plus member companies, we appreciate the opportunity to provide comments on this important issue, and we remain available to provide any further clarification as needed. Should you have any questions, please feel free to contact Shawna Morris, whose contact information is provided below.

*Point of Contact:*

*Shawna Morris*

*Senior Vice President, Trade Policy*

*National Milk Producers Federation & U.S. Dairy Export Council*

*2107 Wilson Blvd, Suite 600*

*Arlington, VA 22201*

*Phone: 703-243-6111*