Comments by the National Milk Producers Federation and U.S. Dairy Export Council Regarding the Implementation of Section 338 of the Tariff Act of 1930 (Docket: ITC-2026-18385)

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Our organizations submit the following comments in response to the U.S. International Trade Commission's (USITC) Request for Comments Regarding Implementation of 19 U.S.C. 1338(g), published Sept. 9, 2026. 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 more than two-thirds 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. That policy work aims to improve 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 nonprofit, 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 help the U.S. industry increase its global dairy ingredient sales and exports of U.S. dairy products. USDEC and its 130-plus member companies are supported by staff in the United States and overseas in Mexico, South America, Asia, the Middle East and Europe.

Section 338 is a valuable resource for the United States to identify and address discriminatory treatment of U.S. products. U.S. dairy exporters can compete anywhere in the world, so long as they are granted a level playing field. With roughly 17 percent of U.S. milk production destined for foreign markets each year in the form of cheese, dairy proteins and other ingredients, ensuring that our trading partners do not impose discriminatory measures against U.S. exports. NMPF and USDEC encourage USITC to detail the measures below and recommend action to address the issues faced in Canada, the European Union, United Kingdom and in markets worldwide that impose discriminatory restrictions on U.S. common name cheeses.

Canada

NMPF and USDEC thanks the administration for recognizing Canada's discriminatory dairy practices and taking concrete action to address them. In Proclamation 11047 of July 20, 2026,[1] the President found that Canada discriminates against U.S. commerce by barring retailers from using its USMCA tariff-rate quota (TRQ) for cheeses of all types, while granting retailers access to the parallel TRQ for EU cheese under the Canada-EU Comprehensive Economic and Trade Agreement (CETA). The President imposed an additional 50 percent tariff on certain Canadian products, effective Aug. 19, 2026.

The retailer and other supply chain stakeholder exclusions are the product of years of Canadian maneuvering to limit the value of its USMCA dairy commitments. In December 2021, a USMCA panel ruled that Canada violated the agreement by reserving most of its dairy TRQ volumes for domestic processors. Canada responded in May 2022 with a revised allocation policy that made only minor adjustments to its policies while still expressly shutting out retailers and food service operators. By a narrow margin, a second panel declined to strike down that policy in November 2023. The practical result is that the vast majority of the USMCA TRQ quotas are channeled to Canadian processors, who have little incentive to import cheese that competes with their own products, while the retailers and restaurants best positioned to bring U.S. cheese to Canadian consumers remain locked out. EU exporters face no such barrier blocking them from engagement with Canadian retailers.

[1] Proclamation No. 11047, *Imposing Additional Duties To Offset Canadian Discrimination Against the Commerce of the United States with Respect to Dairy*, 91 Fed. Reg. 46653 (July 2026)

The proclamation's rationale is directly relevant to the Commission's inquiry. Canada denied U.S. goods the favorable treatment it extends to like EU goods, placing U.S. commerce at a disadvantage compared with the commerce of the EU and its member states. That disadvantage impedes market access and costs U.S. dairy producers and exporters commercial opportunities. We support the Administration's decision to use the leverage of Sec. 338 to bring Canada to the negotiating table and seek to negotiate a resolution to this long-standing USMCA implementation challenge.

The same discriminatory treatment logic applies to the geographical indications (GI) barriers described below.

European Union

The European Union's GI regime, and the restrictions it imposes through trading partners, squarely fit within the definition of discriminatory treatment. When a country lets certain European producers sell "feta," "gorgonzola" or "parmesan" under those names while barring U.S. cheese of the same type, it imposes on U.S. products a limitation that is not equally enforced on the like products of every foreign country, and it discriminates in fact against U.S. commerce.

NMPF and USDEC do not oppose protection of genuine, specific GIs. Compound names such as "Parmigiano Reggiano" and "Grana Padano" identify particular cheeses from particular places, and U.S. producers have no interest in using them. However, the European Union does not stop there. It uses those compound registrations, along with standalone registrations of terms like "asiago," "feta," "fontina," "gorgonzola" and "munster," to claim exclusive use of names that have described types of cheese for generations. Depending on the market, EU commitments can also bar qualified labels such as "feta-type" or "gorgonzola-style," translations, and terms merely similar to a protected name. The European Union has even registered "danbo" and "havarti," widely traded cheeses covered by Codex Alimentarius international standards, over the objections of the United States and other trading partners.

Trading partners do not have to accept these terms to protect legitimate GIs. El Salvador approved a GI for "Parmigiano Reggiano" while confirming that "parmesan" is generic. Colombia protected several compound GIs while confirming that their generic components, including "brie," "camembert," "emmental" and "provolone," remain free to use. These outcomes show that blanket restrictions on common cheese names are a choice, not a necessity. Where trading partners make that choice, the resulting restrictions are both unreasonable and discriminatory.

Those losses are already materializing market by market. Under the EU-Korea Free Trade Agreement, U.S. producers can no longer sell asiago, feta, fontina or gorgonzola in Korea under those names. Under the EU-Mercosur Agreement, the South American countries of Brazil, Paraguay and Uruguay restricted new sales of asiago, feta, fontina, gorgonzola and munster despite their extensive generic use in the Mercosur market. Exporters that keep access face costly relabeling and rebranding, and lose sales when consumers no longer recognize familiar products.

The Administration has delivered breakthrough results for U.S. cheesemakers through its Agreements on Reciprocal Trade. Agreements with ten countries to date, including Argentina, Bangladesh, Cambodia, Ecuador, El Salvador, Guatemala, Indonesia, Jordan, Malaysia and Taiwan, include unprecedented provisions guarding against the monopolization of common names, with lists of generic terms each partner has committed to protect. Once implemented, these commitments will help safeguard U.S. exporters' ability to market cheese under names recognized around the world.

Those gains, however, extend only to partners that have signed an Agreement on Reciprocal Trade, and they have yet to be fully implemented. The European Union continues to press its GI agenda in negotiations worldwide, and its existing agreements already restrict U.S. cheese in markets from Canada

to Chile. Agreement-by-agreement wins may not be able to by themselves keep pace with an EU strategy designed to lock in restrictions before the United States is at the table.

NMPF and USDEC urge the Administration to ensure that this common names model is built into every ongoing and future trade negotiation, and to use Section 338 as a complementary tool. A thorough Commission investigation, report and set of recommendations would give the President a factual record to act against countries that discriminate against U.S. cheese, both within the European Union and at its behest, and to rein in the European Union's efforts to export its discriminatory GI regime.

NMPF and USDEC strongly support the separate submission filed by the Consortium for Common Food Names (CCFN), which details these GI barriers and their impact on U.S. food and beverage exports more fully.

United Kingdom

The United Kingdom's Border Target Operating Model (BTOM) applies a regulation and condition to U.S. dairy that it does not apply equally to like products from competing suppliers. Under the BTOM, the United Kingdom has placed most dairy products from the European Union in its "low risk" category. It has also named Canada and New Zealand in its published risk tables as "low risk" for pasteurized and other non-raw dairy products. Those same products from the United States fall under the residual "all other permitted countries" category and are classed as "medium risk." Low-risk consignments are not obligated to be accompanied by export certification documents while medium-risk consignments are required to be accompanied by certification, increasing the risk of products being stopped for minor paperwork errors on those documents. U.S. dairy products therefore face heavier border controls than a product of the same type and comparable safety profile from the European Union, Canada or New Zealand.

The United Kingdom has offered no scientific basis for treating U.S. dairy differently. Its published BTOM methodology lists general factors such as disease status, hazard analysis and compliance history. However, the United Kingdom has refused to publicly release its evaluation of U.S. dairy, and it has identified no animal health or testing results indicating public health hazards that would set U.S. dairy apart from dairy from the European Union, Canada or New Zealand. NMPF and USDEC's understanding is that the higher U.S. ranking stems mainly from administrative and paperwork discrepancies, not from any genuine food safety risk in the products themselves. USDEC and NMPF urge USITC to use the authority Section 338 provides to designate this practice as discriminatory and address the issue by pressing the United Kingdom to reclassify U.S. dairy as low risk on the same terms it gives the European Union, Canada and New Zealand.

On behalf of the National Milk Producers Federation and USDEC's 130-plus member companies, NMPF and USDEC appreciate the opportunity to provide comments on these important issues, and we remain available to provide any further clarification as needed.

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