

**Comments by the National Milk Producers Federation
And the U.S. Dairy Export Council
Regarding the National Trade Estimate Report on Foreign Trade Barriers
Docket Number USTR 2016-0007
October 27, 2016**

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-2016-0007). The National Milk Producers Federation (NMPF) and the U.S. Dairy Export Council (USDEC) appreciate the opportunity to present their 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.

Listed here are some of the major trade barriers confronting our industry. This is not an exhaustive list of ongoing issues nor of border measures (e.g. tariffs, TRQs, etc) that are of concern to our industry outside of the context of an FTA. 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 given the negotiation of a trade agreement. In order to most effectively organize our comments, they are laid out below primarily on a country by country basis unless a common topic pertains to multiple regions.

COUNTRY-SPECIFIC ISSUES:

Canada

High Tariff Barriers; Pervasive Nontariff Barrier Attacks on U.S. Exports

Canada's market for imported dairy products is tightly restricted in virtually all product areas. For virtually all dairy products, Canada's over-quota tariffs range from approximately 200% to slightly below 300%. In addition, Canada has WTO authorized safeguards on many dairy products in order to additionally ensure controls on these imports. TPP has secured a degree of newly expanded – although still tightly controlled – access opportunities for U.S. dairy products into this neighboring market.

Despite Canada's exorbitant tariff barriers, it is currently our 2nd to 3rd largest export market (depending upon the year). A portion of those exports, however, are in the form of the few product categories that face low (i.e. less than 10%) WTO tariff rates and for which the U.S. enjoys a 0% tariff under NAFTA. These instances, limited though they are in the Canadian dairy

schedule, account for a large percentage of our exports to Canada on a value basis.

Another significant avenue for U.S. exports of dairy products to Canada (particularly fluid milk products in the 0401 tariff schedule category) is Canada's Import for Re-Export Program (IREP). Under that program, Canadian processors are permitted to import certain products provided that the final product is then exported from Canada.

The U.S. has been able to invest in new technology to export new products into Canada despite its excessive tariff restrictions as well as strict controlling of imported products. Given these developments, Canada has been consistently working to undermine even the limited amount of access it has already agreed to provide through its NAFTA and WTO commitments. Several examples are listed below. Collectively, these reflect a pervasive problem whereby the Canadian government actively works to use policy and regulatory tools to undermine the value of concessions for products containing dairy that Canada has granted to its trading partners.

Ultra-Filtered Milk Requirements and Current Abuse of Milk Class Pricing System:

A key focus area for Canada this year has been an active consideration and policy response regarding how to U.S. imports of ultra-filtered milk, a product which enjoys duty-free access under NAFTA and had seen growing sales in recent years.

This past spring, the province of Ontario approved a special Class 6 milk class for ingredient usage that is intentionally designed to force out competition from U.S. imports and provide a policy incentive for Canadian processors to use domestic dairy instead. This is just the latest in a series of narrowly targeted milk classes that have been created over the past few years specifically in order to displace imports.

Canada is not alone in having different classes for milk usage. However the way Canada has utilized its milk class system is unique and very problematic. Canada's milk class system is regularly evolving in order to constrain imports and in some cases provide export subsidies. Canada's "Special Milk Class Permit Program" was created in 1995 and provides lower-priced fluid milk to Canadian processors for use in certain narrowly defined groups of products. These special pricing classes are put in place by the Canadian Milk Supply Management Committee (CMSMC), whose voting members are provincial boards and provincial governments and which is responsible for policy determination and supervision of the provisions of the National Milk Marketing Plan. Use of these pricing classes has been wielded to the detriment of U.S. suppliers of a variety of dairy or dairy-containing products. The way in which Canada is operating its milk class pricing system suggests an intent to erect trade barriers.

Proposed National Ingredients Strategy

In July, an apparent deal was struck between Canadian processors and producers to agree on a new national ingredients strategy. The strategy was intended to take effect on November 1, 2016 but has at the time of this submission been postponed.



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Among other things, the proposed program would establish a new ingredient milk class to be priced at the lowest of the US, EU and Oceania price for solids-not-fat for 7 years. This below cost pricing will apply to the manufacture of skim milk powder (SMP), whole milk WMP, MPC, UFM and similar products as well as a number of other dairy ingredients. This newly introduced provision of below market price milk for the production of the listed dairy ingredients provides an incentive to substitute those ingredients for their imported counterparts. Another vital concern with this proposal is the prospect that new measures to enable the export of Canada's structural surplus of SMP at below the cost of production would drive a considerable expansion of SMP exports in a way that would violate Canada's WTO export subsidy commitments.

This new proposal would be deeply disruptive not only to bilateral trade with Canada but also to global SMP markets. It must be forcefully rejected by the U.S. government as a violation of Canada's obligations and directly counter to the market opening principles of the Trans-Pacific Partnership (TPP).

Duties Relief Program Threat

Immediately following the close of TPP negotiations last year, the Canadian government pledged to exclude supply-managed products from the Government of Canada's Duties Relief Program and this concept has continued to be discussed as a possibility this year. A large portion of current U.S. dairy exports to Canada enter under the current Duties Relief Program whereby a processor is able to import dairy ingredients duty-free provided that the final product in which they are used is subsequently exported. Elimination of this program would create substantial disruption in U.S.-Canadian trade and erode the ability of TPP to move the needle forward on access opportunities on a net basis compared to the status-quo situation in place currently.

Examples of Prior Market Restrictions Imposed by Canada

As noted above, Canada has displayed a habitual pattern of working to actively curtail dairy imports. Some prior examples of this deeply problematic and willful disregard for its trade commitments are listed below.

Cheese and Yogurt Standards:

In 2007 Canada altered its cheese standards in order to more tightly restrict the range of permissible ingredients in standardized cheeses sold in Canada. The regulatory changes placed percentage limits on the amount of non-fluid dairy ingredients used in standardized cheeses that could be incorporated in the product from non-fluid sources.

These changes were prompted by pressure from Canadian dairy farmers to find a way to restrict imports of U.S. milk protein concentrates (and to a lesser extent other dried protein imports such as casein/caseinates). Canada undertook a WTO Article 28 tariff renegotiation to allow it to raise tariffs on imports from other sources, but NAFTA



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prevented this from applying to products from the U.S. The new cheese standards were explicitly discussed by the Canadian legislature as providing a way to also limit imports of these products from the U.S.

Our industry and the U.S. government undertook ample efforts to prevent this action, arguing that it was an impairment of concessions granted the U.S. under NAFTA, but we were ultimately unsuccessful in preventing the changes from taking effect. The changes have adversely affected not only opportunities for imported ingredients but also imposed additional requirements on imported cheeses, since all cheeses sold in Canada were required to document compliance with the requirements.

Over the past few years, Canada has considered further restricting access to its market for inputs into cheesemaking by contemplating a shift in what types of products would be deemed to be ingredients for the purposes of the cheese standards definitions and thereby subject to a cap on their level of usage in cheesemaking.

In recent years, Canadian dairy farmers have been encouraging their government to put in place similar restrictions with respect to yogurt. Again, the primary goal of this action would be to restrict the ability of Canadian yogurt manufacturers to make use of imported dairy products, particularly those that could be exported under low to zero duty tariff-lines secured by the U.S. under NAFTA. These have not at this stage been adopted, but it is something we continue to monitor.

Tariff Reclassification:

In 2013 Canada enacted a law that reversed multiple rulings by the Canadian Border Services Agency (which had been upheld by Canada's International Trade Tribunal) that imports of a food preparation product containing mozzarella, pepperoni, oil and spices were being properly imported from the U.S. under the appropriate duty-free tariff line (1601.00.90.90). This law was in direct conflict with multiple Canadian Customs rulings that determined that the product was correctly classified. By reclassifying the cheese portion of the products from that tariff line into one with a duty of over 200%, the intent and effect of the legislation was to block all imports of these food preparation products from the U.S. This action thereby impaired the value of U.S. market access secured for that tariff line under NAFTA.

Limiting "Cross-Border" Shopping:

Although the Uruguay Round of multilateral trade agreement under the World Trade Organization (WTO) is not an FTA, it is worth noting that in that agreement, Canada obligated itself to provide a TRQ to allow access for 64,500 MT of fluid milk (0401.10.1000) but then also banned commercial shipments from making use of this TRQ. To our knowledge, Canada does not track cross-border shoppers in order to ensure compliance with its WTO obligation but instead simply asserts that cross-border shoppers between the U.S. and Canada fill this TRQ. Our industry continues to believe this is a

grievous distortion of the access Canada committed to provide for fluid milk. Similarly, Canada restricts access to its 484 MT TRQ for ice cream to imports in retail size containers.

We note these Uruguay Round concerns here since they help to illuminate a consistent and deeply problematic pattern of Canada systemically working to undermine the value of its trade concessions.

Overall

It is critical that the U.S. pursue an aggressive strategy to curb Canada's consistent and intentional impairment of the value of dairy concessions to the U.S. Among this approach must be a clear commitment to refuse to certify Canada as ready to implement TPP should this pattern of willful disregard for its dairy commitments remain in place such as through the maintenance of the Ontario Class 6 pricing program and the introduction of the proposal national ingredients strategy. Without this, dairy trade with our northern neighbor will continue to be much more volatile than should be reasonably expected and U.S. companies will be hesitant to depend upon reliable access to the market openings Canada has committed in trade negotiations to provide.

China:

Over the past decade, China has become a critically important market for U.S. dairy exports. It is also one that continues to grow, given its rapidly expanding demand for dairy products. Sales last year alone totaled \$452 million. In recent years China has ranked as the 2nd or 3rd largest export market for U.S. dairy products.

Our industry sees tremendous potential in this market as demand for dairy products continues to expand in China. In order to maximize that potential, however, it is critical for the U.S. government to work cooperatively with China in pursuit of reasonable and WTO-compliant regulations that allow for smooth trade in dairy products.

USDA and FDA have worked extensively with China over the past several years regarding items critical to U.S. exports to China. Work on various issue of major significance to U.S. exporters continues, most notably continued dialogue regarding the memorandum of understanding relating to China's plant listing requirements. It is critical that the U.S. government prioritize resolution of this issue on the necessary timeline and with the required creativity needed to arrive at a final MOU agreeable to both countries.

In addition, the topic of geographical indications (GIs) is a key factor of interest for our industry in this large and expanding market. Dairy suppliers from around the world at largely at the outset 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.

China's Plant Registration Requirements

Starting in 2012, the Chinese Government began implementing Decree 145, which requires the registration of facilities shipping to China. USDA & FDA have worked closely with the Chinese Government since then to help ensure that this regulation would not result in the blockage of trade. In May 2014, the first version of the China dairy plant list of registered U.S. facilities was published. Since then, China has updated the dairy plant list multiple times and permitted additional companies to correct listing errors.

This work by the U.S. government together with China has successfully maintained market access for most U.S. dairy exporters, and most U.S. dairy companies exporting to China have successfully registered their facilities. However, some companies remain unable to ship certain dairy products to China such, as fluid products or infant formula products. This remains a strong concern.

Of most significant concern, however, is the memorandum of understanding (MOU) with China's Certification and Accreditation Administration of the Peoples Republic of China (CNCA) to address China's Decree 145 requirements. It is critical that the U.S. government prioritize resolution of the MOU. As the competent authority charged with overseeing dairy food safety issues in the U.S., FDA plays a significant role in achieving this result and we urge FDA ensure that the necessary resources are devoted to resolving it expeditiously.

Equally important however, is FDA's collaboration with USDA. USDA is the agency charged with facilitating US agricultural exports and most attuned to trade disruption concerns. It is also in more frequent discussions with China regarding trade topics. The U.S. government must ensure that a fully transparent interagency discussion that provides for consultation and input by both involved agencies on this issue is taking place. This interagency cooperation and collaboration is essential to a successful outcome with China.

Colombia

Risk Categorization and Associated Import Requirements

Through INVIMA Resolution 719 of 2015, Colombia has assigned risk categories to foods, and intends to impose new requirements on foods depending on the category of risk. The criteria that Colombia used to assign risk was not compliant with Codex risk category principles and Codex guidelines, and also ignored OIE guidance on the impact of heat treatment on dairy products. Colombia placed all dairy products in the high risk category regardless of processing or packaging, an approach that is not scientifically aligned with the risk level posed by various dairy products, particularly the bulk of what is traded internationally.

Colombia intends to use risk categories as a basis for new import requirements. Ministry of Health Decree 539 of March 12, 2014 established numerous new requirements for high risk foods,

including plant registration with INVIMA and the inspection of facilities intending to export to Colombia.

Colombia did not notify the WTO and accept comments from trading partners before this decree was issued, and the implementing regulations corresponding to this decree nearly closed the Colombian market in the fall of 2015 before they were pulled back. At that time in 2015, Colombia indicated its intention to develop new implementing requirements and notify them to the WTO. In addition, Colombia acknowledged in those earlier discussions that it is possible to conduct a systems recognition rather than requiring overly onerous plant by plant inspections which would be incompatible with continued smooth trading conditions.

In December, 2015 MINHEALTH published a draft Decree intended to replace Decree 539 and shared it nationwide for public comments. Colombia again committed that this new Decree would be notified to the WTO. Particularly important, this draft included a paragraph which considered the recognition of other countries' food safety systems in order to avoid individual plant inspections abroad.

Despite these assurances, at this stage, Colombia has still not notified Decree 539 to the WTO and has not progressed in further examining the avenue of system recognition. Moreover, on September 30, 2016 INVIMA published a new Circular containing a guidance on how INVIMA plans to inspect plants abroad without providing for information on how a system recognition process would be pursued. If not resolved, this new requirement is likely to close the Colombian market given the unfeasibility of individual plant by plant inspections of all suppliers.

We support ongoing work by the U.S. government to address this concern and ensure that a way forward be found with Colombia that focuses on genuinely high risk products from high risk shippers while providing a trade-friendly pathway for established trading partners with a strong record of food safety compliance. Colombia has long been a good trading partner; we urge the Colombia government to take the necessary steps to address this issue and provide for a workable resolution to this serious concern.

Ecuador

U.S. dairy exports to Ecuador face significant market access challenges. There are two primary policies that are impacting imports and those areas are listed below. We are concerned about the flagrant disregard for its WTO commitments that Ecuador is demonstrating.

Certificate of Conformity

Comex Resolución 116 of November 19, 2013 requires a certificate of conformity for imported products to prove compliance with Ecuador's compositional standards. To date, Ecuador has not issued implementing regulations so that exporters and importers can comply with this requirement. Dairy companies selling cheese to fast food chains in Ecuador have reported that their importers advised they could no longer import their products

Import Licenses

There are multiple regulations with import license requirements that appear to be impacting dairy imports:

- Comexi Resolución 585 of September 16, 2010 lists the products for which the importer must obtain a prior import license from the Ministry of Agriculture, Livestock and Fisheries (MAGAP). This has in practice amounted to a defacto ban on certain dairy products.
- Resolución 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.
- Prior Authorization: Resolución 019 of 2014 requires imports of processed food to obtain prior Ministry of Agriculture Authorization as of October 9, 2014. Previously only Ministry of Health authorization had been required.

European Union

Given the number of issues at play in U.S.-EU dairy trade and the dramatic dairy trade imbalance of approximately \$1.4 billion now in place despite the U.S. having become a significant dairy exporter in recent years, we firmly believe that under the Transatlantic Trade and Investment Partnership a comprehensive system-approval approach is needed to address both current challenges and guard against trade barriers that may be introduced in the future given the EU's track record on agricultural issues. We do not support in TTIP any approach likely to result in an exacerbation of the present dairy trade deficit with the EU.

Geographical Indications

See EU section below, as well as the accompanying litany of countries which the EU has been actively working to encourage to violate their trade commitments to the U.S. through the imposition of inappropriate GIs.

Country of Origin Labeling Targeting Dairy:

Several EU member states have recently introduced or are in the processing of proposing to the Commission country of origin labeling requirements that specifically target dairy ingredients. This trend is noted here in our EU section given that it is proliferating across a variety of EU member states and in ways that do not appear to be fully in keeping with internal EU regulations on labeling. To date, France, Italy, Lithuania, Romania, Greece and Portugal are pursuing dairy COOL regulations.



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There has been a deeply concerning lack of transparency and questionable intentions in these regulations. The regulations do not appear to be being published in a consistent and transparent manner. In addition, none of them to date have been notified to the WTO, as is the obligation of each member state. This lack of WTO notification is depriving trading partners of important insights into how the regulations are intended to function and the opportunity to provide comments on the regulations. 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 part of a larger effort encompassing most foods. Coming during a time of challenging dairy prices and an oversupply of milk within the EU in the wake of its 2015 removal of dairy quotas, the motives of these regulations are naturally quite suspect. This is all the more so the case given that the EU has consistently maintained that the same regulations govern dairy productions 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.

Some of these countries are exempting final products imported into the member state from the labeling requirements (e.g. France, Lithuania), while others appear to be imposing the requirements in a way that excludes final finished products from compliance while still impacting potential trade with that country in ingredients due to the requirements that products produced in the member states label the country of origin of various dairy ingredients. As such, mandatory COOL for dairy ingredients is likely to reduce flexibility in the choice of ingredients as EU processors would be less inclined to source ingredients outside the country in which they operate, thus potentially negatively affecting trade with non-EU countries.

An additional puzzling omission from the scope of some of the regulations are outright exemptions for Protected Geographical Indications (PGIs). Although Protected Designations of Origin (PDOs) are required to be sourced entirely from within the applicant region, PGIs are not required in principle to source inputs from a specific geographical region. Therefore, their exclusion appears to create a favoured 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 wide-spread food safety concerns within the EU (in contrast to past regulations targeting meat which arose from certain internal meat food safety oversight issues) and which the Commission itself argues is produced under a harmonized set of regulations throughout the EU – 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. Even more daunting than the level of the tariffs, however, is the complexity of many of the related import measures. For instance, the EU'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 U.S.'s dairy tariff schedule. In addition, the EU's system of variable duties for processed products adds another layer of complexity and uncertainty to shipping to the EU.

- Tariff Form: Inconsistent Duties for a Given Tariff Code

The EU's system of variable duties for processed products adds another layer of complexity and uncertainty to shipping to the EU. 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 EU on the composite product depends on the ranges of these products in the EU's Meursing Code. The complexity of this formulation provides an added challenge to those seeking to export these products to the EU.

- TRQ Licensing Administration

As noted above, U.S. exporters have reported considerable difficulty with utilizing the EU's TRQ administration process. Although not the only complaint, a chief problem has been the difficulty created by allotting relatively small quantities of the TRQ to a wide number of applicants which in practice has led to considerable challenges for U.S. companies in amassing commercially viable quantities of the TRQ.

Certification Requirements

The issues cited below are examples of the types of challenges the industry has seen arise related to EU dairy certification requirements. In the case of the SCC and date stamping requirements, the U.S. has, after considerable effort, found a way to manage these requirements in a manner that has permitted trade to continue. They are listed here as examples of the types of problems our industry has encountered in exporting to the EU and issues that we would anticipate would be addressed as part of a broader effort that we believe is needed in TTIP to simplify EU certification requirements and establish a more fulsome recognition of the U.S. dairy oversight system.

- Somatic Cell Count issue
For decades, the U.S. provided certification assurances on this quality (not food safety) parameter to the EU 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 EU 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 actually is used to produce the product ultimately sold. Compliance with this revised requirement 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 strong past example of the types of challenges that have arisen in exporting dairy to the EU and why a broader recognition of the safety of the U.S. system is needed under TTIP.

- **FMD-related assurances**
The EU regulations state that the HTB certificate is to be used for countries not at risk for FMD and the HTC certificate is to be used for countries that are at risk for FMD. However, there are two HS codes on the HTC certificate that are not on the HTB certificate, and discussions on this point with the EU to date have not produced results. Some ports look only at the HS codes in the certificate notes and therefore demand the HTC certificate for certain products. However, the U.S. does not issue this certificate based on our FMD status.
- **Requirement for APHIS inspection 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 EU's animal health requirements for colostrum for animal feed are extremely burdensome. As a result, the U.S. has not been permitted to ship colostrum for animal feed to the EU for several years.
- **Date Stamping Issue**
The EU requires the health certificate to be dated prior to shipment. EU auditors of the U.S. system are aware that AMS issues certificates based on an inspection system and does not have inspectors physically stationed at each plant at the time the container loads. Despite this, the EU has refused to allow for flexibility in the implementation of this requirement as it relates to U.S. exports. The U.S. has had to reform how it issues and stamps certificates in order to comply with the EU's demands. Numerous exporters have had to return containers to the U.S. when the certificate was not issued prior to shipment, making this paperwork requirement a costly and undue burden.
- **Container vs. Ship Date Requirements**
The EU requires the container numbers on the certificates, but also requires the certificate to be dated prior to shipment. This requirement does not align with the way in which the U.S. typically issues certificates for other trading partners. Here again, U.S. companies and USDA have worked to comply with this revised

paperwork requirement, but the requirement appears more burdensome than is necessary to ensure the import of safe food given the lack of such requirements by most other countries importing dairy products.

- **Composite Certificates: Shifting and Incompatible Rules**
The EU composite certificate for products containing both animal-origin and non-animal origin components has been in place since mid-2012. Since its creation, there has been considerable confusion surrounding the appropriate uses of this certificate. While questions still remain and we remain of the view that the introduction of this certificate has overly complicated trade in relatively low-risk products, we note that the EU did take a positive step forward this year with the issuance of Commission Implementing Decision 2016/1196 this past July. This document provides additional clarity regarding which products require a certificate and related veterinary oversight.

There still remain however 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 EU and utilized in composite products manufactured in the EU, but the composite certificate requires any ingredients incorporated in composite products in third countries to come from FMD-free countries. The FMD distinction is inappropriate for ingredients that are properly treated according to the OIE recommendations for inactivation of FMD. If these countries are approved to ship to the EU directly, their ingredients should be allowed in composite products, whether they are produced in the EU or in third countries. 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 guardedly pleased to see that there has been no movement on the issue of cloning within the EU in the past year. Given the fervor of the debate on this topic within the EU in recent years, however, and the serious proposals that were being contemplated quite recently that would have had very damaging trade impacts, we remain concerned about its potential re-emergence.

Last fall 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 expanded a Commission proposal prohibiting the cloning of animals in select species by broadening it to all farm animals, their offspring and their semen and embryos, as well as marketing and import of these. U.S. dairy exporters would almost certainly have faced the full loss of market in the EU 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.

We are gratified that at this stage it has not proceeded but urge the U.S. government to continue to monitor the situation on this topic. 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 under TTIP for U.S. dairy exports.

India:

For over a dozen years the U.S. dairy industry has been confronted with significant market access barriers in the Indian market. Any continued dialogue with India on trade issues must include pursuit of the unjustified barriers India has imposed upon U.S. dairy exports. Moreover, we believe it is time to examine whether India is fully complying with its GSP obligation to “provide equitable and reasonable access to [its] market”.

Requirements for U.S. Dairy Certificate

Since late 2003, the vast majority of U.S. dairy exports have been blocked from the Indian market due to India’s dairy certificate requirements. Over the course of these long-running discussions, the U.S. has provided considerable scientific data in support of our position, multiple compromise solutions to address India’s concerns, and information demonstrating that the vast majority of countries around the world accept our dairy products and recognize them as safe. Despite this, India persists in refusing access for U.S. dairy products due to unscientific import requirements.

Despite relatively high tariff and quota constraints, India, the second most populous country in the world with a population of more than 1 billion, presents a large and unrealized market opportunity for the U.S. dairy industry. USDEC has estimated that resolution of this issue could yield additional exports ranging from \$30 million to \$100 million after the U.S. dairy industry has been able to establish itself in the market, depending on the nature of the resolution and growth in the Indian market over the next few years. Resolution of this longstanding issue is critical to maximizing future export possibilities for our industry in that region of the world.

Israel

Expansion of Free Trade Agreement

The United States and Israel remain engaged in negotiations designed to deepen the agriculture portion of the U.S.-Israel Free Trade Agreement (Agreement on Trade in Agricultural Products, or

ATAP). Most U.S. dairy products under the FTA remain constrained by small tariff rate quotas (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 the vast majority of its FTA partners on agriculture. As part of the negotiations on ATAP, Israel should finally agree to provide fully free market access for 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

Country of Origin Labeling

USDA recently reported that Japan is exploring enhanced country of origin labeling requirements for processed foods. This area is one of potential concern, depending on how these requirements are developed. Some of the proposals to date which require extensive detail into country supply sourcing raise strong concerns. We look forward to the opportunity to analyze in greater detail and comment upon these proposals and look forward to working with the U.S. government to ensure that COOL regulations for processed foods are not used to discourage the importation of ingredients for use in processed food production in Japan.

Russia

Plant Listing Requirement

U.S. dairy products have been excluded from the Russian market since the Fall of 2010. Prior to that abrupt market closure in Fall 2010, Russia was an increasingly important market for U.S. dairy exports. U.S. dairy exports to Russia in value terms increased 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 2013, the last full year prior to the Russian ban on imports from many leading dairy suppliers, Russia imported a total of \$2.9 billion from non-Customs Union partners, as well as additional sizable sales from its Customs Union partner Belarus.

In spring 2014 the U.S. 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, despite its WTO obligations to the contrary, 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 this spring and when the Russian ban on U.S. agricultural imports took effect in August 2014.

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 EU into other global markets where those products are now contributing to heightened competition for buyers in those other markets. Russia's outright ban on products from the U.S. 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 this market due to the facility listing requirement Russia is maintaining in violation of its WTO accession commitments. In light of this and the near-term unlikelihood of a WTO case against Russia over its facility listing requirements, the U.S. should initiate the process necessary to create a U.S. facility list that would allow for compliance with the de-facto Russian requirement for such a list. We reiterate our request that USTR and USDA work with FDA to take the steps necessary to start this lengthy process. Based on past experience with facility lists for other markets, the necessary process can take years.

We cannot afford to be in a position in the future where our key competitors regain access to the Russian market while the U.S. remains shut out. The U.S. should use this period to ensure that we have taken all the steps necessary on our end to be prepared to resume shipping to this market when the ban is ultimately lifted. We do not view such pragmatic preparatory efforts as incompatible with continuing to seek Russian compliance with its WTO obligations, including its commitment to abolish its listing requirements.

GLOBAL: Geographical Indications (GIs) Wielded as a Non-Tariff Barrier to Trade

EU's Abuse of GI Threatening U.S. Export Opportunities in Multiple Markets

The European Union continues to pursue an increasingly aggressive bilateral strategy to restrict 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 EU's clear goal is to advance their 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 wide-spread common usage around the world.

This EU policy poses a serious threat to global agricultural trade and is one that our industry in particular is deeply concerned about the potential ramifications of. A recent study by Informa Economics found that imposition of restrictions on a wide range of cheeses tracing their lineage back to the EU would lead to lost cheese sales of \$5.2 billion and farm losses of \$59 billion over the first decade of such a drastic policy shift. More information on this study is available here: <http://www.commonfoodnames.com/wp-content/uploads/Press-Release-GIs-Impact-Report-final-101016.pdf>.

We view the EU's efforts as bullying its trading partners into violating their WTO commitments and, where those countries have FTAs with the U.S., their commitments under those agreements,

as well. The EU's approach has resulted in the impairment of the value of concessions obtained by the U.S. 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 USTR to examine the degree to which countries' EU-driven GI measures result in non-compliance with their WTO and FTA obligations to the U.S.

The EU's actions put at risk hard-won U.S. market access opportunities in many markets and must be forcefully opposed as the protectionist measures they are. A key element to this is ensuring that our overseas FAS offices are fully integrated into efforts to combat these types of barriers to U.S. exports. Below are a number of examples of the way in which this global phenomenon has manifested itself across various countries. Note that these are recent examples of concerns rather than a comprehensive list of all countries in which the EU is actively working to erect barriers to U.S. exports. We will provide a more exhaustive listing of GI restrictions in our submission to the Special 301 report:

Canada

In its FTA with the EU ("CETA"), Canada agreed to GI registrations that, once implemented, would impose new restrictions on the use of a number of generic cheese names. The fact that it also intends to grandfather existing usage (primarily by Canadian companies) demonstrates the generic nature of the names concerned. These trade restrictions resulted from a process whereby Canada permitted the EU FTA GI provisions to bypass Canada's normal IP review procedures. The grandfathering provisions and the evasion of Canada's IP process signal the objective of the measures, which are clearly intended to protect EU and grandfathered Canadian companies from legitimate competition from imported products.

That short-sighted approach makes the CETA-related declaration on this topic that was recently issued by the EU all the more noteworthy. In that, the Commission pledged to pursue within the first five years of implementation of CETA a revocation of the provisions that preserved varying levels of continued usage of these generic terms. This pledge also further illustrates the continual nature of the EU's ambitions on this topic; if permitted to grow unchecked they will continue to expand without reasonable limitations on what terms genuinely merit protection vs. have simply secured sufficient political support within the EU.

We strongly reject Canada's actions as being inconsistent with their NAFTA and WTO obligations.

Central America (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua & Panama)

The consequences in this region of the implementation of new FTAs with the EU have been variable. In some countries such as El Salvador and Guatemala, government officials have restricted the use of various single-term names of concern to the U.S. but have been willing to provide important clarifications regarding the treatment of common names that are components of certain multi-term GIs of particular interest to U.S. companies. We commend the Administration and our trading partners for their good work

in those cases. Those efforts have helped preserve a significant portion of the value of market access commitments contained in the CAFTA.

In other countries such as Nicaragua and Panama, officials have yet to clearly indicate the scope of protection for EU GI registrations, leaving open the risk of future disruptions to U.S. exports. We strongly urge those countries to work with the Administration to establish clearer trading conditions for U.S. exporters and ensure that the GIs registered in their countries are not protected in an overly expansive manner designed to hinder trade.

With respect to major 2016 developments we would like to highlight the successful outcome reached with Honduras earlier this year and its capacity to serve as a model for future engagement with other countries on the topic of scope of protection for compound GIs. Honduras is an important trading partner in a growing region for U.S. dairy exports. U.S. dairy exports to CAFTA partners totaled \$109 million last year, with Honduras ranking second in the FTA region.

Diligent work with Honduras yielded a vital clarification earlier this year regarding the use of threatened cheese names including parmesan, provolone and brie. Although the results did not include assurance on the continued use of certain other common names currently protected in Honduras, it was a major breakthrough in providing important assurances about the scope of protection for compound (i.e. multi-term) GIs. In addition, the Administration was able to introduce further transparency to the market by securing a commitment to publish applications online in a searchable manner – an element that was previously not in place and that thwarted industry’s ability to combat the registration of various GIs of concern.

In other markets, our industry has been confronted with erroneous and overly broad interpretations of the scope of protection for registered GIs. The resulting understanding reached with Honduras to clearly spell out the scope of protection for various terms and clear delineation moving forward of which terms are generic created an excellent model for how to tackle this portion of the GI challenge.

In addition, we have continued to see new GI applications emerge in this region such as a filing for gorgonzola in Costa Rica that would put at risk U.S. exports under CAFTA. We urge the U.S. to continue to engage with this region to stress to our trading partners the importance of upholding the value of their market access commitments to the U.S.

China

China is involved in ongoing negotiations with the EU regarding geographical indications. We have deep concerns about the impact this agreement may have on U.S. exports and particularly on opportunities to continue to expand the range of U.S. products sold in this rapidly evolving market. At the November 2015 meeting of the U.S.-China Joint Commission on Commerce and Trade, the two nations reaffirmed an earlier understanding that product names are not eligible for GI protections if they are in common use in a particular territory.



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China and the United States also confirmed that this applies to all GIs, including those protected under international treaties. In an important commitment to due process, China also agreed to publish for public comment a draft of procedures for the cancellation of previously registered GIs. It is our hope that these commitments the U.S. has secured will help ensure that access to one of the most important cheese export growth markets in the world will not be restricted as a result of the EU-China GI agreement.

EU

In addition to driving the escalating threat of nontariff barriers to U.S. products world-wide, the EU also continues to contemplate new restrictions on the use of common food names within its borders. Over the past few years the EU has allowed two GI applications from Denmark (for havarti and for danbo) to proceed to the publication stage despite the existence of a Codex production standard for these widely produced types of cheese. Outside of Denmark, the U.S. is one of the primary producers of Havarti while South America is a significant producer of danbo. In Uruguay for instance, prior development efforts by Denmark stimulated the creation of local production of danbo.

The EU and Denmark were extremely active in the Codex process of reviewing and codifying the standard. At a 2007 Codex meeting that was critical in finalizing the updating of the Codex cheese standards (including havarti and danbo), neither the EU nor Denmark objected to a recognition by the Codex Committee on Food Labeling 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. In addition, Denmark was an active party in the International Dairy Federation discussions on these standards, including on section 7.2 of them and there is not a record of their objection to the following IDF statement presented at that same Codex meeting: "...the variety names have become generic, therefore, the variety names are no longer associated with any particular geographical origin."

We reject the EU's continued efforts to monopolize the use of common names and fail to provide the proper restraint on applications that would run afoul of existing trade commitments by impacting the equitable use of internationally standardized terms. We also note the EU'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 EU and is augmented when trading partners in term aim to implement their similarly broad yet vague FTA commitments with the EU.

We appreciate the U.S. government's continued focus on the systemic concerns posed by these types of applications and the serious flaws in the EU's GI system itself.



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Japan

Japan 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 GIs. We are very concerned that an eventual agreement could restrict current and future opportunities in the Japanese market for third parties exporting commonly produced types of cheese.

We thank the Administration for their extensive work with Japan as it worked to finalize its GI law and regulations last year as well as for the diligent ongoing monitoring of that system by the Foreign Agriculture Service. Japanese government actions this year have, however, suggested that Japan may be contemplating ignoring these obligations and providing protection to EU GIs in advance of the processing of applications for those terms through its own GI system. It would be entirely unacceptable for Japan to put in place restrictions to common cheese types of clear commercial interest for the U.S. under the access provided for in TPP. We urge the Administration to continue to insist that Japan abide by both the letter and spirit of its trade commitments to the U.S.

Malaysia

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 GIs. We are concerned that an eventual agreement could restrict current and future opportunities in the Malaysian market for commonly produced types of cheese. We appreciate the TPP side letter secured with Malaysia related to the issue of GI treatment and urge the Administration to ensure Malaysia complies with both the letter and spirit of those commitments.

Mexico

Mexico saw a wave of GI applications in 2015 through its membership in the WIPO Lisbon Agreement. These include cheeses such as asiago and gorgonzola, which the U.S. has exported to Mexico in significant quantities in past. Their registration despite U.S. objections to the registration of both GIs in advance of the one year deadline and the fact that the U.S. is the primary exporter of these products to Mexico are concerning examples of the deeply flawed Lisbon process. Upon receiving rejection notices in response to our filings this year, we have filed legal challenges in Mexico objecting to the lack of due process provided for the consideration of these terms in light of their existing prior use in Mexico. Mexico's handling of Lisbon Agreement applications has posed serious concerns regarding the legality of its process in light of Mexico's WTO and NAFTA market access commitments. In addition to generating results entirely out of alignment with the market situation in Mexico, Mexico's process for handling Lisbon Agreement applications displays a shocking lack of due process and transparency that is in urgent need of reform.

We will continue to work in Mexico to seek to ensure that the right to use of common names is not revoked in the largest export market for U.S. dairy products. This is particularly critical as the EU and Mexico move forward with their ongoing negotiations to update their bilateral FTA; the EU has already made clear its intention to use those talks to expand GI restrictions in that market. It is essential that Mexico uphold the letter and spirit

of its TPP GI commitments as well as ensure it does not impair the value of its prior market concessions to the U.S.

Morocco

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. To our knowledge, neither party afforded outside interests the opportunity to register opposition to any of these registrations or to seek clarifications regarding, for example, scope of protection.

We are very concerned about the impact of this agreement and the uncertainty it will create in this U.S. FTA partner market. It is also a very harmful example of an approval en masse of GIs that would appear to violate existing international obligations to subject IP applications to certain due process procedures. We urge USTR to continue to work to address these trade- restrictive actions and secure assurances about the range of products that can continue to be shipped to Morocco.

Philippines

The government of the Philippines has been in the process of revising its regulations on the protection of GIs. We appreciate the Administration's proactive work with the Philippines throughout that process over the past few years. The last draft of which we are aware however, did not adequately take into account potential trade effects or protect the right of producers to use common food names. Among other things, that draft would allow foreign GIs protected pursuant to a trade agreement to bypass the normal the GI evaluation process and objection procedures.

We urge the Philippine government to take into account the potential for unintended trade and commercial restrictions that could result from a lack of clarity in GI registrations and from allowing foreign GI registrants to effectively bypass the GI regulations that will govern domestic GI applicants. We fail to see as how it is in the Philippines' interest to create any type of short- circuit path for the approval of foreign GIs which could result in harmful consequences for local producers and other trading partners while requiring domestic GIs to utilize the due process the Philippines has been working so extensively to put in place. We urge the Administration to continue to engage with Philippine officials on the issue of GIs ensure that this market remains open to a broad range of U.S. products, particularly in light of the Philippines' expressions of interest in joining TPP.

Vietnam

Earlier this year, Vietnam and the EU released the concluded text of their FTA. That FTA text included some useful clarifications relating to several compound terms of interest to the U.S. These clarifications on the scope of protection for certain GIs strike a contrast with the standard approach taken in EU FTAs whereby the scope of protection for GIs appears to be very expansive and limits on it are very poorly defined.



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Another notable element of this FTA was a grandfathering clause that clearly allows those selling asiago, fontina and gorgonzola on the Vietnam market prior to Jan. 1, 2017 to preserve future access rights to that market. While we very much disagree with the decision to grant the EU GIs for these common names and impose any new limitations on the use of these terms, forward- looking opportunities for other countries to establish an in-road in Vietnam is a less harmful approach than the outright bans on the usage of such terms seen in numerous other EU FTAs. Quite disappointingly, however, this grandfathering provision effectively excludes feta, a cheese commonly produced in the U.S. and in other TPP countries in particular, by limiting the type of milk that can be used to produce it to a type not commonly used in most countries.

This year, however, we have watched with concern as developments in Vietnam's trademark system call into question the standing of the grandfathering provisions. In our view it is clear that the EU FTA grandfathering provisions – while not all we had hoped for – are an essential international commitment and must take precedence over any actions in the trademark system. Given this, it is puzzling to us why marks for “fontina” and “gorgonzola” have been filed for in the trademark system in a manner that seeks to reject the clear grandfathering provisions in the EU – Vietnam agreement. Moreover, U.S. companies relying on the grandfathering clause for asiago have encountered opposition from Italian GI holders as they have sought to ensure clarity that they will be able to generically use the term asiago, under the agreement's grandfathering provisions moving forward.

We strongly thank Administration officials for their work with Vietnam and urge continued engagement with them to ensure that U.S. companies are able to access the maximum possible range of export opportunities in this TPP partner 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.

Multilateral and Regional Trade Agreements:

World Intellectual Property Organization (WIPO)

Last year members of the Lisbon Agreement for the Protection of Appellations of Origin (Lisbon Agreement), which is administered by WIPO, approved a new Agreement that is poised to dramatically expand international protections for GIs in ways that could negatively impact trade. Ignoring WIPO precedent, Lisbon members denied non-members the right to participate in the negotiation on equal terms. The new Agreement ignores potential trade damage and does little to safeguard the interests of users of common names. We remain deeply concerned that the new Lisbon Agreement will give GI holders an unfair commercial advantage in markets around the world at the expense of companies in the U.S. and the developing world, who have for many generations used common names in the marketing of their cheeses, meats, wines and other products.

The WIPO Secretariat has an obligation to bring a greater degree of balance to the topic of how countries are dealing with GIs. The core focus of that more balanced discussion



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must be the importance of protections for users of common names and how countries can protect GIs in ways that provide better safeguards for those users. Generic terms are a vital part of a well-functioning marketplace and intellectual property system. Although trademarks and GIs can create value for companies registering their marks, generic terms provide benefits to the wider marketplace relying on common terminology. Lack of attention to the commercial benefits that generic terms provide to the marketplace as a whole risks tilting an intellectual property system dramatically in favor of applicants at the expense of other competitors and commercial actors. To date, there has been extremely little focus by WIPO on this critical role played by generics in trademark and GI systems; this is a serious gap that merits addressing by WIPO in the coming year.

It is also our expectation that the WIPO Secretariat will play an impartial role in whether or not countries become party to the Lisbon agreement. It is entirely unacceptable for the Secretariat to permit Lisbon agreement members to shut out the voices of other WIPO members from creating the rules in this international treaty and then make use of the broader WIPO Secretariat footprint and platform to encourage countries to join onto this treaty. If Lisbon member countries wish to expand their agreement, the onus should be on them to convince other countries to join. Promoting a highly discriminatory agreement reached without the full input from all WIPO members is not the proper role for the WIPO Secretariat.

Trans-Pacific Partnership FTA: GI Provisions

The TPP text contains ground-breaking new commitments that should help keep in check the prospect for TPP countries to erode existing and future market access opportunities for U.S. dairy exporters through unjustified GI-driven barriers to trade. The due process improvements in the TPP IP Chapter's GI provisions represent a notable accomplishment particularly given the fact that over the course of TPP talks the EU initiated or concluded FTA negotiations with over half of TPP participants and formally entered into plans for trade discussions with virtually all remaining countries. We appreciate the extensive and sustained work by the Administration over the course of these negotiations to ensure that we utilized TPP to better arm ourselves to deal with the EU's active campaign to restrict U.S. market access opportunities in a variety of foreign markets.

The TPP GI commitments are not perfect – as hard-fought new language on trade commitments rarely are – but they are key advances compared to today's status quo regarding the potential for the abrupt imposition of inappropriate and protectionist-motivated SPS and GI barriers to trade. If the U.S. is firm in insisting on holding our trading partners accountable for both the letter and spirit of these commitments, including during this vital pre-implementation stage, they should help keep market access doors open to U.S. products in the TPP region.

We urge the U.S. to continue to build upon TPP to further tackle the EU's aggressive agenda to limit competition from other suppliers in common food categories. We view the TPP GI text as an important starting point for future work on the issue of GIs and common

food names. It does not fully resolve this matter since it does not directly block the EU from inappropriately restricting the use of common food names important to global trade, but it does chart the course for addressing this topic in a much stronger direction.

The 2016 NTE Report's commentary on this topic was very welcome. We view the following statements contained within that report as particularly important and worth noting in the 2017 version as well: "... common usage names of products should not be absorbed into quality schemes, whether for wine or other products. If a Codex standard exists, or if a name is used in a tariff schedule or by the World Customs Organization, the United States believes that the name should be excluded from the quality schemes." It is essential that all countries respect that important role that standards and tariff schedules play in providing clear signals to the private sector regarding what terms are in common usage and should remain so.

We look forward to continuing to work with the U.S. government and others against the EU's efforts to impose restrictions on competition for products that long-ago entered into common use in the U.S. and many other countries around the world. For the EU 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.