1250 H Street NW, Suite 900
Washington, DC 20005
P: 202.737.4332 | F: 202.331.7820
WWW.IDFA.ORG

IDFA
INTERNATIONAL
DAIRY FOODS
ASSOCIATION℠

International Dairy Foods Association Comments
Regarding Foreign Trade Barriers To
U.S. Exports for 2016 Reporting
Docket Number USTR-2015-0014
October 28, 2015

The International Dairy Foods Association (IDFA), Washington, D.C., represents the nation's dairy manufacturing and marketing industries and their suppliers, with a membership of 550 companies representing a $125-billion a year industry. IDFA is composed of three constituent organizations: the Milk Industry Foundation (MIF), the National Cheese Institute (NCI) and the International Ice Cream Association (IICA). IDFA's nearly 200 dairy processing members run nearly 600 plant operations, and range from large multi-national organizations to single-plant companies. Together they represent more than 85 percent of the milk, cultured products, cheese, ice cream and frozen desserts produced and marketed in the United States. IDFA can be found at www.idfa.org.

Canada
At the time of this submission the full text of the Trans-Pacific Partnership (TPP) has not been made public. For that reason, these comments do not reflect new market access concessions.

Canada was the third largest export market in 2014 for the U.S. dairy industry valued at $396 million. Nonetheless, a number of Canadian dairy policy measures severely restrict market access for imported dairy products and must be addressed.

Canada's Supply Management Regime
Since 1970 Canada's dairy industry has been operating under a supply management system by which the government is heavily involved in planning and controlling the pricing, marketing, and production (through milk production quotas) of the dairy sector. As a result, Canadian milk producers are guaranteed an artificially high domestic price for dairy products. In order to protect these high domestic prices the Canadian supply management system relies on quotas and prohibitively high out-of-quota tariff rates to restrict dairy imports.

Under its supply management regime Canadian milk prices are well above the U.S. and world market, thus Canada is not commercially price competitive in the world market and has to heavily subsidize exports of products made with Canadian milk. For example, Canada has employed a special class program to reduce the price of dairy ingredients to prevent imports and to facilitate the export of further processed foods at prices more competitively priced for the world market. Canada has been challenged several times at the WTO for similar subsidies and found to be out of compliance with its trade commitments.

Under NAFTA, Canada allows imports of a predetermined annual (in-quota) amount of dairy products in various categories duty free from the U.S., but once the in-quota volume limit has been reached, anything over that amount is subject to prohibitive tariffs of a minimum of 200 percent and up to 313.5 percent. Despite our shared border, U.S. dairy processors have no commercial access to the duty free in-quota quantity allotted for fluid milk and cream, as the quota is considered to be filled by “cross border shopping,” or consumers crossing the Canada-U.S. border to purchase milk and cream in the U.S. and returning to Canada. U.S dairy processors also have limited duty free in-quota access for most other product categories. For example, the U.S. is currently limited to exports of 332 metric tons of yogurt per year. Any U.S. exports above this quantity are subject to a prohibitive over-quota tariff of 237.5 percent. U.S. exports of ice cream and most cheeses are also restricted.

Canada’s supply management system also requires a dairy import control list which mandates that manufacturers of many U.S. dairy products must first find a Canadian company that holds the import quota for the product they wish to import. Dairy processors on both sides of the border would benefit greatly from a more seamless North American market.

IDFA is adamantly opposed to dairy supply management in all forms, at home and abroad. Dairy supply control regimes, such as those existing in Canada, inhibit innovation in our industry, increase consumer costs, distort market forces, manipulate prices relative to world markets, and are completely contrary to the principles of free markets and fair and transparent trade. It should also be noted that Canada’s defense of its dairy supply management regime has also resulted in non-tariff measures that attempt to limit imports.

European Union-Canada Comprehensive Economic and Trade Agreement (CETA)
Additionally, IDFA is concerned by provisions in the European Union-Canada Comprehensive Economic and Trade Agreement (CETA) regarding EU demands for the protection of geographical indications (GIs). The protections the EU demanded from Canada will impair market access for cheese and other food products and could complicate Canada’s ability to meet a high standard TPP negotiation on the protection of intellectual property rights. The provisions on geographical indications are particularly alarming because they grant automatic protection to the EU for “asiago,” “feta,” “fontina,” “gorgonzola” and “munster” in complete disregard of Canadian intellectual property laws. Cheese manufacturers that produced those cheeses prior to October 18, 2013, will be allowed to continue to use those names, but future producers of those cheeses will have to add qualifiers, such as “kind,” “type,” “style” and “imitation.” These new limitations on the use of generic names clearly violate Canadian intellectual property procedures and existing international trade commitments.

In CETA, Canada also reallocated 800 metric tons of its 20,412 metric ton WTO tariff rate quota for cheese to the EU. This reallocation further restricts the limited access that U.S. cheese exporters have into the Canadian market. The U.S. dairy industry is concerned that the plan also violates the 1994 General Agreement on Tariffs and Trade (GATT), which bars countries from using free trade agreements to restrict trade.

European Union
The EU has the potential to be a large export market for the U.S. In 2014, the EU exported $1.1 billion in dairy products to the U.S. but U.S. companies exported only $70 million in dairy products to the EU. Barriers must be removed for U.S. dairy products in order to correct this trade deficit.

One challenge is geographical indications (GIs). GIs are an attempt by the EU to monopolize usage of certain cheese and other food names that the U.S. and many other countries regard as generic. Retaining the use of product names that have long been commonly used in the U.S., as well as in many other areas around the world, is a very important issue to the U.S. dairy and processed foods industries. For food products, this most significantly impacts cheese production.

The importance of these well-recognized cheese names goes beyond solely their significant commercial impact to the U.S. dairy industry, however. Preservation of the right to continued use of these names affirms what producers throughout much of the New World and certainly this country strongly believe to be true – that we are using these terms in good faith and largely as a result of the influence of generations of European emigration. The EU's desire to turn back the clock and now seek to claw back names that had already become generic is an affront to the many companies – small and large – who have worked to help build the markets for these products, as well as to the industry as a whole through the incorrect suggestion that our use of these terms has not been legitimate.

We view these efforts by the EU to ban our food producers from using several important names that have long been generic in the U.S. market and are commonly used internationally as well, as de facto barriers to trade. They are a clear effort by the EU to limit competition and to bestow upon their producers a considerable portion of the value of markets that our companies have devoted time and resources to helping build.

The focus should be on finding an acceptable resolution to the trade barriers that our industry has experienced as a result of the EU's over-reach on GIs. Examples of these barriers include our inability to sell parmesan and feta into the EU and the EU's increasingly aggressive efforts to block us from selling those and other products into important export markets as well. The EU has recently signed FTAs with Canada, Central America, Colombia, Peru, Panama, Singapore, South Africa and Vietnam. Talks with Japan and Malaysia are continuing.

IDFA's top concern is that the uncertainty and lack of resolution surrounding this issue will delay negotiations between the U.S. and the EU in the Transatlantic Trade and Investment Partnership. We urge the U.S. government to find a workable solution that benefits both sides without further restricting trade.

India

India uses trade-restrictive import procedures on milk and dairy products that effectively prohibit U.S. dairy from entering the country. Imported dairy products require a sanitary import permit issued by Department of Animal Husbandry, Dairying, and Fisheries (DAHDF), and a veterinary certificate certified by an exporting country's veterinary authority. India requires that milk products must be derived from a dairy cow that has been fed a vegetarian diet for its entire life. Policies such as this are scientifically unwarranted and inconsistent with international standards. IDFA urges the U.S. government to continue engaging with India to find a workable solution based on sound science.

Japan

At the time of this submission the full text of the Trans-Pacific Partnership (TPP) has not been made public. For that reason, these comments do not reflect new market access concessions.

Japan is a top market for U.S. dairy products. In 2014, U.S. dairy exports were valued at $373 million. However, there are a number of barriers limiting access for U.S. dairy exporters including high tariffs, supply quotas and a complex, nontransparent government-run import administration system. For instance, most imports from the U.S. in 2014 were for cheese which has a zero in-quota tariff and a 29.8% out-of-quota tariff. Butter, on the other hand, faces a 35% in-quota tariff and a 29.8% plus 985 or 1,159 yen/kg out-of-quota tariff.

Aside from high tariffs, IDFA is also concerned that Japan's Agriculture and Livestock Industries Corporation (ALIC) operates in a trade distortive and inconsistent manner. ALIC is a state-trading enterprise owned by the government that administers the manufacturing milk quota and imports of dairy products under tariff rate quotas.

As we understand the tender process, ALIC opens an import tender for a specified quantity of product and importers bid on a price. Then there is a release tender where domestic parties bid for the product. ALIC has the right to mark up prices before reselling to the Japanese domestic market creating a significant gap between the import and release prices. This margin is subsequently used to subsidize dairy farmers.

This approach disadvantages U.S. dairy exporters by inserting the Japanese government into a normal commercial process that would apply in an open market or in a quota situation and excludes certain products from being imported. While we are pleased that ALIC will not administer the quotas established in TPP, we urge the U.S. government to continue pressing Japan to administer all quotas on a first come, first-served basis.

Russia

Russia was once a strong market for U.S. dairy products valued at $82 million in 2010. However that same year, Russia effectively banned U.S. dairy products due to a new requirement of an approved list of foreign facilities. As part of its WTO accession in 2012, Russia agreed to remove this requirement but has yet to do so and is now in direct violation of its WTO commitments. To complicate matters more, Russia placed a ban on U.S. agricultural products last year. In the meantime, we urge the U.S. government to continue engaging Russia on this issue so that once the import ban is lifted, trade can resume.

IDFA appreciates the opportunity to provide comments on this matter.

Sincerely,

Beth Hughes

Beth Hughes
Director, International Affairs
International Dairy Foods Association