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IDFA
INTERNATIONAL DAIRY FOODS ASSOCIATION[SM]

International Dairy Foods Association
Comments Regarding Foreign Trade Barriers To
U.S. Exports for 2017 Reporting
Docket Number USTR-2016-0007
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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 within 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 online at www.idfa.org.

Canada
Canada was the second largest export market in 2015 for the U.S. dairy industry valued at $553 million. Although modest market access was granted in the Trans-Pacific Partnership (TPP), 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 through 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 inflated domestic prices, the Canadian supply management system relies on quotas and severe 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, thereby undermining fair competition from imports and effectively subsidizing Canadian processed food exports at pricing levels more competitive for the global 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, because the quota is considered 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 similarly 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 adamantly opposes dairy supply management in all forms, at home and abroad. Dairy supply control regimes, such as that which exists 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.

Canada's Ingredients Strategy
Canada's dairy producers and processors recently concluded a new ingredients strategy (Agreement in Principle) set to be implemented Nov. 1, 2016. The agreement favors the substitution of Canadian domestic origin dairy ingredients for dairy ingredients imported from the U.S. and subsidizes the export of Canadian dairy products to unfairly compete with our products in third country markets. As a direct result of this pending program, U.S. exports of ultra-filtered milk to Canada have already been negatively impacted.

Canada is contravening both its WTO and NAFTA trade obligations and undermining the intent of the pending TPP and CETA trade agreements. Clear-cut language must be incorporated into the TPP implementing bill ensuring Canada does not institute programs that negatively impact dairy trade. The U.S. must also develop a proactive, multilateral approach to push Canada into WTO dispute settlement consultations as soon as Canada implements the new agreement.

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 that would complicate Canada's ability to meet the high standard agreed upon in the TPP negotiations protecting 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 agreement 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 2015, the EU exported $1.5 billion in dairy products to the U.S. but U.S. companies exported only $97 million in dairy products to the EU. Barriers must be removed for U.S. dairy products in order to correct this trade deficit.

Geographical Indications

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. and around the world is a crucial issue for the U.S. dairy and processed foods industries, with generic cheeses being the primary target.

The importance of these well-recognized cheese names goes beyond their significant commercial impact to the U.S. dairy industry, however. Preservation of the right to continue using 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 claw back names that had already become generic is an affront to the many companies – small and large – who helped 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 bestow upon their producers a considerable portion of the value of markets that our companies have devoted time and resources to build. In 2015, the EU exported close to $1 billion in cheese to the United States while the U.S. shipped only $6 million in cheese to the EU. It's hard to believe that European producers are having a difficult time competing in the U.S. market when the trade imbalance in cheese sales overwhelmingly favors them.

On more than one occasion, the EU has proposed that the U.S. create an additional system to protect GIs when in fact, the U.S. has a stellar intellectual property (IP) system. U.S. trademark law already provides for the registration of "certification marks," including indications of "regional origin." Furthermore, many European producers have been utilizing the U.S. IP system successfully for years to protect their GI terms.

The uncertainty and lack of resolution surrounding this issue have delayed negotiations between the U.S. and the EU in the Transatlantic Trade and Investment Partnership (T-TIP). Even if T-TIP does not close in the near future, we urge the U.S. government oppose any effort by the EU to claw back generic cheese names, impose their GI system in the U.S., or impair U.S. cheese exports to other markets.

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 the Department of Animal Husbandry, Dairying, and Fisheries (DAHDF) and a veterinary certificate certified by an exporting country's veterinary authority. Finally, India mandates that milk products must be derived from a dairy cow that has been fed a vegetarian diet for its entire life. These policies are scientifically unwarranted, inconsistent with international standards and needlessly burdensome on producers.

Although recent bilateral talks between India and the U.S. did not advance this issue toward a resolution, IDFA urges the U.S. government to continue engaging with India and the U.S. dairy industry to find a workable solution based on sound science.

Indonesia
Indonesia's National Agency of Drug and Food Control (BPOM) recently issued a draft measure, "Law on the Labeling and Advertisement of Food." Several articles in the measure prohibit the advertising and promotion of milk products to children up to 2 years of age, and functional claims to children under 3. The draft measure also denies health care professionals access to information about milk products designed to meet the specific nutritional needs of young children.

The potential impacts could be detrimental to U.S.-based infant nutrition manufacturers. Under the guise of improving public health, measures such as this one are actually implemented to impede imports from the United States. Furthermore, this draft measure may also violate Indonesia's WTO obligations under the Technical Barriers to Trade (TBT) Agreement. IDFA urges the U.S. government to engage immediately with Indonesian officials to block this ill-conceived and protectionist measure before it is implemented.

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 in 2014. Once the import ban is lifted, IDFA urges the U.S. government to engage Russia on this issue so that trade can resume.

Thailand
Thailand's Ministry of Public Health recently released a final draft "Milk Code" that prohibits the advertising and promotion of milk products up to 3 years of age and denies consumers and health care professionals access to information about milk products designed to meet the specific nutritional needs of young children. Furthermore, violation of the "Milk Code" includes draconian criminal penalties.

The potential impacts could be detrimental on U.S.-based nutrition manufacturers and public health, as reflected in concerns raised by the Thai medical community. The draft code appears to discriminate against imported formula and complementary food products from the United States which would be inconsistent with Thailand's WTO obligations under the Technical Barriers to Trade (TBT) Agreement as well as its interest in joining the Trans-Pacific Partnership agreement. Furthermore, the draft code ignores less trade-restrictive, alternative policy measures to achieve the same policy goal. IDFA urges the U.S. government to engage immediately with Thai officials to prevent the adoption of this troubling measure.

Vietnam
In 2014, Vietnam's Ministry of Finance instituted mandatory price ceilings on infant nutrition products. Decision 1079 was scheduled to expire on May 31, 2015, but Vietnam extended the price controls through the end of 2016.

Vietnam is an important market for U.S.-based infant nutrition manufacturers; however, protectionist measures such as these threaten their competitiveness. The extension of non-market based price ceilings unfairly target imports, negatively effecting U.S. exporters, while local brands are able to circumvent the price controls and increase their market share.

Clear-cut language must be incorporated into the TPP implementing bill ensuring Vietnam does not extend the current decree, does not return to the system they had before, or does not create another mechanism to effectively control prices. Before the U.S. certifies to Congress that Vietnam is ready to comply with the obligations of TPP, this issue must be resolved.

IDFA appreciates the opportunity to provide comments to the Office of the U.S. Trade Representative on the barriers to trade harming our industry’s global competitiveness.

Sincerely,

Beth Hughes

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