Comments Regarding Foreign Trade Barriers to U.S. Exports for 2019 Reporting
by the National Milk Producers Federation
and the U.S. Dairy Export Council

Docket Number USTR 2018-0029
October 30, 2018

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-2018-0029). The National Milk Producers Federation (NMPF) and the U.S. Dairy Export Council (USDEC) appreciate the opportunity to present our 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.

Exports have become extremely important to the U.S. dairy industry. Last year we exported almost $5.5 billion in dairy products worldwide. The equivalent of one day's worth of milk production each week gets turned into products that are exported all around the world. Those sales play an indispensable role in supporting the health of America's dairy farms as well as the manufacturing jobs of dairy processors. Impairing export sales therefore harms not only farmers, but also workers in companies supplying inputs and services, and downstream processing plant jobs, as well as in cities with large port facilities heavily dependent on trade.

U.S. trade agreements have had a beneficial impact on the U.S. dairy industry through the reduction or removal of both tariff and nontariff barriers to U.S. dairy products. To continue that job-creating trend that has benefited dairy farmers and manufacturers alike, our industry strongly encourages the retention of existing trade agreements and the pursuit of new ones as of the utmost importance.

We strongly welcome the recent conclusion of the U.S.-Mexico-Canada Agreement (USMCA), the preservation of the Korea-U.S. Free Trade Agreement (FTA) and the launch of negotiations with potential new FTA partners particularly those with Japan and the United Kingdom. We hope to see the Administration move forward with the pursuit of FTA negotiations with additional partners as well such as Vietnam, nations in Southeast Asia and other important agriculture importing markets.

As the U.S. evaluates new FTA partners, it is important to ensure that U.S. negotiating time is best concentrated on agreements likely to yield net agricultural benefits for the U.S. We strongly caution against sinking scarce U.S. resources into negotiations with countries unlikely to lead to net dairy and agricultural export gains for the United States. There are only so many staff at our government agencies and only so much time in the day; we need to focus those resources where

they can yield the most benefits to American agriculture and result in strong agreements that can ultimately secure broad Congressional support.

In addition, we view the removal of tariff and nontariff barriers to trade that constrain U.S. dairy exports through additional avenues beyond FTAs as also vitally important. Policies aimed at such pro-trade outcomes would drive further returns to our farm sector and rural communities across the country.

Listed here are some of the major trade barriers confronting our industry. This is not an exhaustive list of ongoing issues, nor one primarily focused on lawful border measures (*e.g.,* tariffs, tariff rate quotas, etc.), that are of concern to our industry. 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 in the years to come. 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 and Mexico

Over-Arching

We welcome the conclusion of the U.S.-Mexico-Canada Agreement particularly in light of the improved certainty this will restore to U.S.-Mexico trade relations as well as the improvements the agreement makes in dairy trade with Canada. Although USMCA has not addressed the full range of Canada's vast and complex web of dairy tariff and problematic nontariff policies, it has made advances on both those fronts, as noted below in the Canada section.

More broadly, we commend the Administration for the new language incorporated into USMCA that establishes strong and useful precedents in key rules-based areas important to agricultural trade that will not only help lend greater predictability and openness to North America trade but will also serve as a benchmark from which to build upon further in future U.S. FTA negotiations.

Particularly notable accomplishments in this area include:

- *Enhanced Commitments Surrounding Sanitary & Phytosanitary Measures*
  The WTO SPS Agreement was ground-breaking at its time and continues to be an essential part of the WTO Agreement. USMCA includes valuable new provisions aimed at bringing greater transparency and a strong scientific grounding to countries' SPS measures. This is an extremely important accomplishment and our exporters would benefit from its applicability in additional markets in future agreements as well.

- *Due Process Disciplines for Geographical Indications*
  The intellectual property chapter of USMCA establishes a critical framework for beginning to introduce more transparency and due process procedures to the area of GI consideration and should help to mitigate against the inappropriate future registration of

unwarranted GIs. It contains numerous positive elements (examples of which were provided in our earlier report) that collectively establish a basic structure on the topic of GIs from which the U.S. can build further in FTA negotiations to come. As the Agreement's commitments are implemented, the U.S. will need to strongly guard against the approval of GIs that may result from compliance with the letter of the process requirements outlined in the GI Section yet fail to reflect the intent of the Article to prevent the registration of GIs that restrict the use of commonly used terms.

- *Government to Government Consultations on GIs*
  USMCA includes an important new commitment specifying that the Committee on Intellectual Property Rights shall, upon request, "endeavor to reach a mutually agreeable solution before taking measures in connection with future requests of recognition or protection of a geographical indication from any other country through a trade agreement". This requirement for consultations and the directive to work to arrive at solutions of mutual interest to the Parties is a much-needed and very welcome addition to the Administration's ability to defend the interests of U.S. stakeholders against the predatory efforts of non-Parties to use trade treaties to erect barriers to trade in common product categories under the guise of GI protections.

Canada-Specific

Canada's sustained and long-standing efforts to undermine access to its market and impair the value of trade concessions granted in NAFTA and the WTO for products containing dairy have posed a very deep concern to our industry. USMCA makes progress in beginning to tackle some of those concerns. Notably, the agreement will usher in an expansion of U.S. dairy access to the Canadian market and will introduce new disciplines on Canada's use of its dairy pricing programs to intentionally distort trade.

With respect to this latter area, we believe the additional transparency and consultations required by USMCA will play a critical role both to policing compliance with the terms of USMCA and to more fully assessing whether sufficient grounds exist to merit pursuit of a WTO Dispute Settlement case against Canada's abuse of those pricing policies to negatively impact both bilateral trade and most importantly global dairy markets. A particularly critical additional element in this area are the export surcharges included in USMCA that are intended to discourage exports of Canadian SMP, MPC and infant formula beyond certain specified quantities. We urge the Administration to focus strongly on working out implementation of this element with Canada in order to ensure that those surcharges bring about the desired shift in behavior from Canada. Moreover, we urge the Administration to hold open to possibility of needing to initiate a dispute settlement case against Canada on dairy should the important new disciplines in USMCA not ultimately prove able to curb Canada's harmful and trade-distorting approach to dairy trade.

Finally, we strongly appreciate the USMCA provision designed to avoid back-sliding by Canada on access to its market for products currently imported under the Duty-Relief Program or Import for Re-Export Program. Careful monitoring of the implementation of these programs under USMCA will be important yet the agreement's provision in this area is key guard against Canada

giving with one hand while taking with the other.

As additional opportunities arise for engagement with Canada on dairy trade – such as in the context of WTO negotiations – we urge the U.S. to continue to look for ways to tear down those barriers, particularly Canada's 200 – 300% dairy tariffs. Recognizing that no agreement solves all concerns with a trading partner, as engagement with Canada through USMCA or other forums continue, we note below issues that continue to impair access to the Canadian market for U.S. products:

- *Products 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). Over the past several years, Canada has considered further restricting access to its market by altering yogurt standards to similarly restrict trade. Particularly given USMCA's elimination of Class 7 and the uncertainty of Canadian policy change intentions in the wake of that shift, we urge the Administration to guard against further expansion of these intentionally trade-limiting measures on dairy product standards.

- *Tariff Reclassification*
  In 2013, Canada suddenly and with virtually no prior warning 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 United States under the appropriate duty-free tariff line (1601.00.90.90). We strongly appreciate the new requirements in USMCA that are designed to help guard against a similar recurrence of this deeply disruptive action that abruptly and without justification derailed trade.

- *Limiting "Cross-Border" Shopping and Other Artificial Constraints on Commercial Sales*
  Under the WTO Uruguay Round agreement, Canada committed itself to provide a TRQ to allow access for 64,500 MT of fluid milk (0401.10.1000 and 0401.20.1000), but then also banned commercial shipments from making use of this TRQ. We commend USMCA for establishing a new TRQ for fluid milk that can be sold on a commercial basis (albeit with a restriction that 85% can be only for further processing in Canada) in order to partially compensate U.S. producers for Canada's inappropriate restriction on its WTO commitment regarding trade in fluid milk. As the U.S. negotiates with Canada in the future, we urge a high degree of caution regarding Canadian efforts – as seen in the WTO context and in USMCA – to impose usage or format restrictions on products as an indirect way of limiting the access granted.

- *Erection of De Facto Barriers to Trade Through Misuse of Geographical Indications*
  In its FTA with the EU ("CETA"), which was implemented in September 2017, Canada completely disregarded its own intellectual property laws and agreed to GI registrations that imposed new restrictions on the use of a number of generic cheese names. The fact that it also grandfathered prior usage (primarily by Canadian companies) of those terms 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.

Mexico-Specific

Last year we shipped $1.3 billion worth of dairy products to Mexico, up from just $124 million in 1995. For much, if not all, of this we have NAFTA to thank. That is why we see the close of USMCA discussions and their preservation of the duty-free terms of dairy trade under that agreement as so important.

Beyond the tariff front of USMCA, we commend the Administration's achievement of two critically important side letters in that agreement with Mexico: 1) market access pertaining to common cheese names; 2) definition of prior users of commonly used food names. The first side letter establishes an impressive and ground-breaking precedent by providing clear market access assurances on a non-exhaustive list of commonly produced products. We strongly urge use of this model with additional trading partners albeit with a more inclusive list of terms that reflects the full scope of commonly produced cheeses in the U.S. The second side letter establishes a very useful definition of "prior user" in the context of the EU-Mexico agreement to cover all actors in the supply chain. We applaud both elements.

Separate from the scope of USMCA, however, unfortunately true free trade conditions with Mexico have not yet been fully restored. In June when Mexico retaliated against U.S. steel and aluminum tariffs by imposing tariffs on U.S. cheeses that reached 20-25 percent starting in July. U.S. cheese exports to Mexico totaled $391 million in 2017, an 8 percent increase over the previous year that represented a 75 percent share of the Mexican market. The longer Mexican duties remain in place, the bigger the opening this offers our competitors in the EU to get their foot in the door in this market in which the U.S. has long been the dominant supplier. Mexico accounts for 28 percent of total U.S. cheese exports, and it is essential that the unimpeded access that the U.S. has enjoyed under NAFTA be restored. We urge the Administration to take the final necessary step in shoring up our trading conditions with Mexico through the removal of U.S. steel/aluminum and Mexico retaliatory tariffs, the latter of which is currently a harmful weight on U.S. cheese exports to our most important trading partner.

Because of our trade agreement with Mexico and Mexico's commitment to a mutually beneficial trading relationship, at present we have generally had a quite positive trading relationship. Our organizations have worked to forge a partnership with the Mexican dairy industry to expand dairy

consumption in a way that benefits both countries. Our goal has not been to displace Mexican products, but rather to broaden overall demand for dairy in Mexico to the benefit of all of our producers. Since 1994, Mexican milk production has increased by almost 60 percent, which has helped meet the ever-increasing demand of Mexican consumers and visitors to Mexico while at the same time continuing to provide market opportunities for American producers as well. Together, we have grown consumption at a reasonable price for both the Mexican and U.S. consumer.

Despite that positive relationship there remain some issues that could be resolved in order to restore or preserve access for various products to this important market:

- *Revisions to Product Standards for Skim Milk Powder and Cheese*
  In 2018 Mexico has spent considerable time developing new technical regulations for key dairy categories, namely milk powder and cheese, as well as revising its yogurt regulation. Collectively, milk powder and cheese represent the majority of U.S. exports to Mexico and therefore successful resolution of these standard revisions has been of the utmost importance to our industry. As of the time of these comments, the revised drafts have been issued but the final regulations are not yet published in the *Diario Oficial*. As this process proceeds, it is critical to ensure that it is finalized in a manner designed to preserve trade flows in safe dairy products.

- *Erection of De Facto Barriers to Trade Through Misuse of Geographical Indications*
  In 2018 the EU and Mexico reached an agreement in principle on a new agreement that incorporates GI provisions. As it seeks to do through all its FTAs, the European Union sought to use that process to impose *de facto* barriers to trade and competition on various common name products that the European Union falsely claims as GIs. We commend USMCA for ensuring that a non-exhaustive list of products will be safeguarded from future restrictions. However, other names will be restricted as part of the Mexican-EU agreement or through Mexico's participation in the WIPO Lisbon Agreement. Collectively, these impact U.S. producers of asiago, feta, fontina, gorgonzola, gruyere, munster and neufchatel thereby nullifying and impairing prior market access rights granted by Mexico to the U.S. under NAFTA and under the WTO agreement. We believe that the USMCA provisions mandating new due process procedures for GIs will be helpful in the future in preventing the registration of additional GIs in a manner that bypasses objective consideration of the merits of those applications – as was unfortunately the case with Mexico's registration of EU and Lisbon Agreement GIs.

- *Access for Raw Milk for Pasteurization*
  Despite open and smooth access to Mexico for the vast majority of the $1.3 billion in dairy exports shipped there each year, the United States has been blocked from exporting raw milk for pasteurization to Mexico since mid-2012. In 2012 Mexico changed its regulatory requirements for this product which cut off trade. Prior to that, Mexican processors had pasteurized this milk upon receipt and used it both for fluid drinking milk and to make value-added products, such as cheese. Mexican processors used the U.S. exports of raw milk for pasteurization not to displace local production, but rather to supplement it,

particularly in times of production shortfalls in Mexico due to drought conditions or other agricultural factors. We encourage the United States to restore access for this product to the Mexican market.

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

Last year the U.S. exported $202 million worth of dairy products to Central American countries listed above and to the Dominican Republic. The U.S.-Central American-Dominican Republic Free Trade Agreement (CAFTA-DR) is an important tool in making these sales possible and we strongly support it.

Moreover, the FTA has been critical to ensuring that U.S. suppliers do not slip behind our major global competitors; just a few years after CAFTA-DR was implemented, the EU put in place its own FTAs with the region. Were we to lack preferential access to this market, European dairy suppliers would be very well positioned to seize market share from U.S. companies that would be then forced to pay much higher – and in some cases quite variable – tariff levels.

Product Registration

The Central American countries all require product registration of foods before they can be commercialized in the country of registration. Panama's registration process for US foods is straightforward because of provisions established through the US-Panama TPA. However, in the other Central American countries, product registration can take up to 6 months to complete and for products produced outside the region, must be completed individually in each country. There is a system in place now for the registration of domestically-produced products in each of these countries to be recognized in the other countries in the region, but this mutual recognition has not extended to foreign products. As part of its ongoing regional cooperation efforts, we urge the Central American countries to establish a system by which this mutual recognition of product registration can be extended to products produced outside the region so that a product only needs to be registered in one of the five member states of the Central American Customs Union. Such an effort would improve the efficiency of the registration process and lead to an elimination of redundancies.

Finally, we note a draft law in Panama that poses a concern (Law 680) as it would allow the Ministry of Development to temporarily suspend imports of agricultural products for a period of 12 months when local production is enough to meet demand. The scope of products includes fluid milk. We trust that the Panamanian government will reject this proposed law that runs counter to Panama's existing WTO and FTA commitments.

Erection of Defacto Barriers to Trade Through Misuse of Geographical Indications

The consequences in this region of the implementation of new FTAs with the EU have been variable. In some countries, such as El Salvador, Guatemala and Honduras, 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. In other countries such as Costa Rica and elsewhere in the region, a lack of clarity and politically-driven decisions have yielded potentially harmful uncertainty and we urge continued actions to bring these matters to resolution in order to preserve market access for U.S. exports.

We commend the U.S. government and our trading partners for their extensive work aimed at securing clarifications regarding the right to use several generic names in exports to CAFTA countries. Those efforts have helped preserve a significant portion of the value of market access commitments contained in the CAFTA agreement, which is very important to the industry given the U.S.' geographical advantage to these markets. In particular we note the strong results secured with Honduras two years ago and urge continued pursuit of these types of clear market access preservation assurances with other countries in the region and in other markets.

Chile

Chile is an important market for U.S. dairy exports, totaling $78 million last year due in large part to the success of the U.S.-Chile FTA's removal of tariff and nontariff barriers. Retaining competitiveness in this market requires preservation of our FTA with Chile and avoidance of the imposition of new tariff or nontariff barriers.

Chile is currently considering the imposing safeguard tariffs on imports of skim milk powder, whole milk powder and gouda cheese. These tariffs would be unwarranted, particularly in the case of skim milk powder, which constitutes the majority of U.S. dairy exports to Chile. Data indicates that the rate of increase of imports of skim milk powder has fallen dramatically since 2015, and appears to be on a trajectory to level off. Likewise, the ratio of imports to domestic consumption for skim milk powder appears to have essentially leveled off already. Under these circumstances, it is very difficult to understand how circumstances in the near future will result in serious injury to the industry, let alone meet the WTO Safeguards standard that such injury is "clearly imminent", based on the manifest facts, and not merely "allegation, conjecture or remote possibility." We appreciate the Administration's work on this issue to date and urge continued engagement with the goal of preserving duty-free trade with this valuable FTA partner.

In addition, Chile is negotiation an expansion of its FTA with the EU. In that process, the EU is seeking to nullify and impair the market access rights negotiated by the U.S. in our own FTA with Chile through the creation of geographical indications (GIs) for commonly used food terms. It is critical to ensure that the U.S. preserves the market access opportunities for the full range of food and agricultural products benefiting from the terms of the U.S.-Chile FTA.

Finally, via WTO notification G/TBT/N/CHL/458, Chile is seeking in Bulletin No. 11986-01 to require that "In the case that mixture of milks from different countries is sold, the countries of origin must be indicated on the label or front label, indicating in the back of the container or bottle the approximate percentage corresponding to each country." This regulation is not consistent with

Chile's WTO TBT commitments and we have concerns about its impact on trade. We urge work with Chile to ensure this developing regulation, if finalized, does not run counter to international commitments in particular through the removal of this overly detailed country of origin reporting requirement.

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 nearly $600 million, a 49 percent increase over the previous year. In recent years China has ranked as the second or third largest export market for U.S. dairy products.

The cycles of retaliatory tariffs imposed by China in connection with the U.S. Section 301 investigation of Chinese practices related to technology transfer, intellectual property, and innovation have reversed recent gains. A study commissioned by USDEC and conducted by Informa Agribusiness Consulting found that U.S. economic output in relation to the dairy industry would fall by $12.2 billion through 2023 if these retaliatory tariffs persist. In the shorter term, the study found that losses to dairy farmers this year alone are expected to tally over $1.1 billion and climb to roughly $2.2 billion in 2019. Products now subject to Chinese tariffs include milk, cream, yogurt, butter, whey, cheese, milk albumin, lactose, infant formula and ice cream, among others.

Our industry sees tremendous potential in this market as demand for dairy products continues to expand in China. But this potential will be thwarted in the absence of an early agreement with China that will remove tariffs and again place our dairy farmers on a path to continued export growth. The U.S. dairy industry is committed to the Chinese market, but once market access we've been building for years is lost, it will be hard to recover and hard to find another market as pivotal for U.S. dairy exports as China.

While Chinese retaliatory tariffs are the most pressing impediment to dairy trade with China, it remains important 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, in order to maximize the ultimate potential of the Chinese market. We appreciate China's past commitment to constructive engagement with the U.S. government on a number of dairy issues and China's willingness to pursue creative paths forward to preserve trade. USDA and FDA have worked extensively with China over the past several years regarding items critical to U.S. exports to China including agreement on a dairy certificate a few years ago and just last year established a Memorandum of Understanding between the U.S. Food and Drug Administration and China's Certification and Accreditation Administration of the Peoples Republic of China (CNCA) that addresses China's Decree 145 requirements.

Plant and Product Registration Requirements

The successful conclusion of that MOU last year was a major accomplishment following years of extensive work by both the U.S. and China to find a resolution and ensure that the vast majority of

the industry (although not all U.S. dairy companies) could continue to ship product in the interim. We urge a continued focus on ensuring that updates to the plant list be conducted in a timely manner in order to preserve and establish those opportunities that remain in this dairy-deficit market.

Additionally, no high-risk product applications (fluid milks) have been approved since the MOU has been in force; there has been a lack of transparency on part of the Chinese government as to why these applications have been rejected or what information needs to be provided so that they may be accepted. This is especially true for Extended Shelf Life (ESL) milk products. Currently, ESL does not have a standard of identity in China, and therefore, it does not have a separate questionnaire/application for CNCA. One must choose between the pasteurized milk application or the sterilized/modified milk application. The discrepancy lies in that if you choose the:

1. Pasteurized milk application: the ESL product is ultra-pasteurized, and may be rejected because of this; the time/temperature relationship does not match pasteurization and the reviewer may believe the product should be classified as sterilized;
2. Sterilized/modified milk application: the ESL product may get rejected in this case because it is not aseptically packaged or it may not be fortified as required by the Chinese standard.

The ESL product falls in a gap of regulatory requirements and it remains unclear how to actually secure access for this product to the market.

Another critical factor is work by both governments with industry to resolve issues related to plant listings and detained shipments from U.S. companies operating in a good faith effort to comply with China's requirements. This work, intended to iron out residual plant listing issues in order to fully normalize trade and ensure that eligible U.S. dairy exporters can access the China market, remains extremely important to minimize trade disruptions.

Tariff Constraints

Two key dairy trading competitors have FTAs with China: New Zealand and Australia. Those FTAs provide significant quantities of duty-free dairy product access to the Chinese market in ways that make it very challenging for U.S. dairy exporters to compete on a level playing field in China, particularly during the portions of the year during which duty-free safeguard quantities are permitted. For instance, this year New Zealand enjoys access for up to 154,745MT of skim milk powder at a tariff of only 0.8% (lowering to 0% by 2019) and access for up to 5,864 MT of cheese at a tariff of 0% while US exporters must pay the full MFN rate of 10% and 12% respectively for all the SMP and cheese they ship to China. The retaliatory tariffs levied on U.S. exports further deepen this disadvantage for U.S. exporters.

Erection of De Facto Barriers to Trade Through Misuse of Geographical Indications

Another key factor of interest for our industry in this large and expanding market is the topic of geographical indications (GIs). Dairy suppliers from around the world are 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. The EU

should not be permitted to hamper competition from the U.S. by enticing China into tilting the playing field squarely in the Europeans' direction and against U.S. cheese suppliers through its "100 for 100" GI negotiations with China.

Last year, our industry submitted detailed comments to China urging that it reject GI applications for multiple common name products (feta, asiago, gorgonzola) and establish clear protections for generic terms at risk of being restricted by compound GI names, including "parmesan, mozzarella, prosciutto, grana, romano and cheddar" in light of GIs under consideration in the process for Parmigiano Reggiano, Mozzarella di Bufala Campana, Prosciutto di Parma, Prosciutto di San Danielle, Grana Padano, Pecorino Romano, and West Country Farmhouse Cheddar. Should China choose not to preserve generic use of these common names, that decision would have harmful consequences on U.S. export opportunities and our capacity to expand sales to this rapidly evolving market in the future.

Through the U.S.-China Joint Commission on Commerce and Trade, the two nations have repeatedly affirmed the understanding that product names are not eligible for GI protections if they are in common use. China and the United States also confirmed that this applies to all GIs, including those protected under international treaties. It is our expectation that these commitments the U.S. has secured in past year will be drawn upon to ensure that access to one of the most important cheese export growth markets in the world will not be restricted as a result of an EU-China GI agreement.

Colombia

Last year, we exported $65 million worth of dairy products to Colombia, ranking it in our top 20 dairy export markets. Over just a five-year period, growth of this market reached almost three times what was exported in 2012. With MFN rates approaching 100 percent for certain dairy products, the U.S.-Colombia FTA has been instrumental to the U.S. dairy industry's growth in the Colombian market and we strongly support it.

Moreover, the FTA has been critical to ensuring that U.S. suppliers do not slip behind our major global competitors. Just a few years after the U.S.-Colombia FTA was implemented, the European Union put in place its own FTA with Colombia. Were we to lack preferential access to this market, European dairy suppliers would be very well positioned to seize market share from U.S. companies that would be then forced to pay much higher – and in some cases quite variable – tariff levels.

We commend the Administration and Colombia for the resolution of dairy plant registration requirements in a manner that has preserved U.S. access to this market. U.S. exporters, however, have noted a growing challenge with the process for product registration in this market, citing time-consuming and onerous re-registration demands for even minor changes that in practice make it more difficult to export safe dairy products to this market than is necessary.

Finally, we note that as part of the Colombia-EU FTA, Colombia restricted the use of certain

common food names such as feta and asiago. This action impaired the value of concessions granted to the U.S. under the U.S.-Colombia FTA. At the same time, however, Colombia also took positive steps to address U.S. concerns regarding other names by clarifying the scope of protection provided for certain multi-term GIs. U.S. exporters have of late cited impacts on their exports related to these Colombia-EU FTA provisions that are undermining the U.S.'s ability to serve as a consistent supplier of a wide range of products.

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.

One area of concern relates to Ecuador's insistence on a certificate of conformity for dairy products. Comex Resolución 116 of November 19, 2013 requires a certificate of conformity for imported products to prove compliance with Ecuador's compositional standards. This has presented a challenge to trade in practice, particularly given a lengthy delay in the issuing of implementing regulations to enable compliance.

In addition, 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 de facto 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

The United States' trade deficit with the European Union in dairy was a remarkable $1.4 billion in 2017. This is despite the fact that the U.S. is itself a major dairy exporter.

Clearly, many EU member countries are important dairy producers and exporters, but this does not fully explain why the EU exported $1.5 billion in dairy to the U.S. while the U.S. exported only approximately $116 million to them given the large variety of dairy ingredient areas in which the United States is a leading supplier to many markets around the world.

The United States has become a significant net exporter of dairy products to the world, as well as to most individual countries. Indeed, we export considerably more to such far away markets as Indonesia and Vietnam than we are able to export to the 28 European Union nations combined. As illustrated below, U.S. exports to the European Union are limited by a wide range of measures and practices that make sales in the EU market unduly complicated, costly, or even illegal.

Given the number of issues at play in U.S.-EU dairy trade, we firmly believe that only a comprehensive system-approval approach that guards against future unscientific and protectionist import requirements could address both current challenges and guard against trade barriers that may be introduced in the future given the European Union's track record on agricultural issues. Achieving this result is the only way to address the dramatic trade deficit the U.S. has in dairy trade with the EU.

Due to the European Union's habitual use of policy tools to impede U.S. competitiveness, we believe that U.S. engagement with the EU should be focused on insisting on resolution of those entrenched trade barriers that make access for U.S. products to the EU market so challenging. As the Administration considers its trade engagement with the EU, we would not support any approach likely to result in an exacerbation of the present exorbitant dairy trade deficit with the EU.

In addition to the barriers in its own market, the EU's intentional global efforts to impede competition from U.S. companies in third-country markets (as detailed below) are particularly galling given its tremendous reliance on the United States as a destination market. These tactics should be part of any engagement on trade matters with the EU.

Country of Origin Labeling (COOL) Targeting Dairy

Beginning in 2016 and continuing through 2018, several EU member states have introduced or are in the processing of implementing 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, Finland, France, Italy, Lithuania, Romania, Greece, Portugal, and Spain have instituted or are pursuing dairy COOL regulations.

There have been deeply concerning transparency shortfalls and very questionable intentions behind these regulations. With limited exceptions, the regulations do not appear to be being published in a consistent and transparent manner. In addition, they are not being consistently 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 included as part of a larger effort encompassing most foods. Coming as these regulations did following a time of

challenging dairy prices and an oversupply of milk within the European Union in the wake of its 2015 removal of dairy quotas (coupled with the 2015 Russian market closure), the motives of these regulations are naturally quite suspect. This is all the more so the case given that the European Union has consistently maintained that the same food safety regulations govern dairy production 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.

Mandatory COOL for dairy ingredients is likely to reduce flexibility in the choice of ingredients as EU processors may be less inclined to source ingredients outside the country in which they operate given higher tracking and compliance costs, thus potentially negatively affecting trade with non-EU countries.

An additional puzzling omission from the scope of some of the regulations is the outright exemption for Protected Geographical Indications (PGIs). Although Protected Designations of Origin (PDOs) are required to be sourced entirely from within the applicant region and as such would be naturally identifying the source of the inputs as a matter of requirement, PGIs are not required in principle to source inputs from a specific geographical region. Therefore, their exclusion appears to create a favored 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 widespread food safety concern within the European Union (in contrast to past regulations targeting meat, which arose from internal meat food safety oversight issues), and which the Commission itself argues is produced under a harmonized set of regulations throughout the European Union – 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. Moreover, in-quota tariffs are not set at levels designed to easily allow for access of those quotas. For instance, in-quota rates for various cheese TRQs are set at approximately 70 – 100 Euros per 100 kg, rather than at relatively negligible levels such as 0% or 5% in order to foster utilization of the TRQ quantities.

Even more daunting than the level of the tariffs, however, is the complexity of many of the related import measures. For instance, the European Union'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 United States' dairy tariff schedule. In addition, the European Union's system of variable duties for processed products adds another layer of complexity and uncertainty to shipping to the European Union.

- *Tariff Form: Inconsistent Duties for a Given Tariff Code*
  The European Union's system of variable duties for processed products adds another layer of complexity and uncertainty to shipping to the European Union. 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 European Union on the composite product depends on the ranges of these products in the European Union's Meursing Code. The complexity of this formulation provides an added challenge to those seeking to export these products to the European Union.

- *TRQ Licensing Administration*
  Over the years, U.S. exporters have reported considerable difficulty with utilizing the European Union'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 and Additional Access Compliance Requirements

The issues cited below are examples of the types of challenges the industry has seen arise related to EU dairy certification and related forms of access compliance requirements. In the case of somatic cell count (SCC) and date stamping requirements, the United States 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 European Union. In many cases, the fundamental challenge remains overly prescriptive EU requirements that mandate assurances of compliance with EU regulations rather than an over-arching recognition of the safety of the U.S. dairy food safety system.

- *Somatic Cell Count Issue*
  For decades, the U.S. provided certification assurances on this quality (not food safety) parameter to the European Union 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 European Union 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 good past example of the types of challenges that have arisen in exporting dairy to the European Union.

- *Foot-and-mouth Disease (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 European Union 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 United States does not issue this certificate based on our FMD status.

- *Requirement for Animal and Plant Health Inspection Service (APHIS) Inspection*
  This requirement 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 European Union's animal health requirements for colostrum for animal feed are extremely burdensome. As a result, the United States has not been permitted to ship colostrum for animal feed to the European Union for several years.

- *Certificate Date Requirement*
  The European Union requires the health certificate to be dated prior to shipment. EU auditors of the U.S. system are aware that the Agricultural Marketing Service (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 European Union has refused to allow for flexibility in the implementation of this requirement as it relates to U.S. exports. The United States has had to reform how it issues and stamps certificates in order to comply with the European Union's demands. Numerous exporters have had to return containers to the United States when the certificate was not issued prior to shipment, making this paperwork requirement a costly and undue burden.

  Although the US has reformed its process to meet EU requirements, US companies continue to struggle to meet the EU's requirements because of the vast quantity of traceability information required on the certificate that combined with the date requirement. The European Union requires the container and seal numbers on the certificates, but also requires the certificate to be dated prior to shipment. Container and seal numbers are available only at the time the shipment loads at the manufacturing facility, so if transit to the port is short, the exporter has very little time in which to obtain the certificate from the competent authority in order to meet the date requirement. As noted above, the USDA issues certificates based on an inspection system to plants in good standing and can take up to 5 business days to process from the date the application is received. For plants near either coast, the vessel often ships before the competent authority issues the certificate. As a stop-gap measure, companies have routinely requested the certificate before the goods load and an amendment to add the container and seal number once these details are available. For many years, this adaptive strategy has been the only means by which companies could meet both the date and information requirements of the EU simultaneously.

The EU is planning to increase the amount of traceability information required on certificates while at the same time limit the ability of competent authorities to issue them, so the workaround described above may no longer be available starting December 14, 2019. Through draft regulation SANTE/10281/2019 CIS Rev. 1, the EU is proposing to only allow replacement certificates in the case of administrative errors in the initial certificate or when the initial certificate is damaged or lost. The replacement certificate may not modify information in the initial certificate concerning the identification, traceability and health guarantees.

The traceability details in this proposal also exceed those in the existing certificates, further complicating the ability of exporters to obtain the necessary information and the ability of competent authorities to issue certificates. The EU has added several new fields to the data elements on the first page of the certificate, including one that requires identification of "accompanying documents", including the bill of lading. Exporters report that the bill of lading number is available to them approximately one week after the shipment leaves the U.S., so there is no way to add this information to the certificate and still meet the requirements of Article 3, point 5, which states that the certificate must be issued before it leaves the country of export.

The EU may be going even beyond its already excessive regulatory framework for certificates with the new seal number requirement detailed in the instructions to Box I.19 of the draft legislation. This field states that only the official seal number must be stated, and identifies an official seal as affixed under the supervision of the competent authority issuing the certificate. However, there is no clarification as to which products necessitate the official seal. If the EU is going to demand official seals for all animal-origin products exported to the bloc, they will essentially stop trade in all products, such as dairy, certified through inspection systems rather than through inspectors at each manufacturing facility. There is not enough information in the draft regulation to gauge the true intent of the provisions, though if implemented as described, U.S. companies would no longer be able to export dairy products to Europe.

The EU's certificate requirements are far more burdensome and complex than in any other market. Very few countries require the certificate to be issued prior to the sailing date, and those that do are generally just copying the EU's requirements. While we appreciate the need for traceability, the EU's requirements are far stricter than necessary to achieve the stated purpose. All the traceability details requested, including container, seal and bill of lading numbers are all on the commercial documentation accompanying shipments. In order for certificates to facilitate trade rather than obstruct it, there must be some flexibility included in the EU system. If the draft regulation moves ahead as written, trade in dairy and many other commodities will be threatened.

- *Composite Certificates: Shifting and Incompatible Rules*
  The European Union 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 European Union did take a positive step forward in 2015 when it issued guidance on certification of composite products, and also in 2016, with the issuance of a Commission Implementing Decision that further clarified for which products certification is required.

There 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 European Union and utilized in composite products manufactured in the European Union, 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 World Organization for Animal Health (OIE) recommendations for inactivation of FMD. If these countries are approved to ship to the European Union directly, their ingredients should be allowed in composite products, whether they are produced in the European Union 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 European Union in recent years. Given the fervor of the debate on this topic within the European Union in prior years, however, and the serious proposals that were being contemplated relatively recently that would have had very damaging trade impacts, we remain concerned about its potential re-emergence.

  In the fall of 2015, 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 European Union 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 to truly open this marketing for U.S. dairy exports.

- *Anti-Microbial Resistance "Reciprocity" Requirement*

A recent concern that is moving towards implementation in the EU consists of the EU taking it upon themselves to seek to dictate to all their trading partners certain production practices and which medications should be permitted for use in treating animals without appropriate evidence that these measures are needed in order to safeguard food safety.

The EU is revising its legislation related to the placing on the market of Veterinary Medicines. The EU has introduced the concept of reciprocity into the legislation meaning prohibitions/restrictions/use limitations applying to antimicrobials in the EU, could also be applicable to animals or food of animal origin, for import into the EU. As such, this new law would effectively impose EU antibiotic use measures on meat/milk/egg/fish producers in third countries that export to the EU. This approach runs counter to WTO requirements for a risk assessment to support the need for measures such as this that would impact trade. A de facto consequence of the EU's intended action is that third countries who want to export to the EU will have lost the capacity to determine for themselves the best options available to prevent and treat animal disease. We are concerned about the impact this measure will have on trade and the more systemic concerns this poses to countries' regulatory independence.

Geographical Indications

The European Union continues to pursue an increasingly trade-restricting and protectionist bilateral strategy of restricting 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 European Union's clear goal is to advance its 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 widespread common usage around the world. Numerous examples are referenced in other country-specific sections of these comments; below is just one example of the continual challenges this issuing is posing in the EU market itself as those restrictions continue to expand:

- The EU has moved to flout its WTO commitments by disregarding Codex cheese standards that the EU and its member states played a very active role in developing and updating only a decade ago. Specifically, last year the EU registered a GI for danbo cheese and reportedly is poised to soon approve one for Havarti cheese as well <u>despite the existence of Codex production standards for these widely produced types of cheese</u>. Outside of Denmark, the United States 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. Within the EU there are also producers that will be negatively impacted by these steps, namely the existing Havarti producers in Spain and Germany that have also lodged objections to the EU's restriction of these terms.

  These moves are in direct contradiction to the intent of these standards to provide consistent standards in order to facilitate trade. At a 2007 Codex meeting that was critical

in finalizing the updating of the Codex cheese standards (including havarti and danbo), the Codex Committee on Food Labeling recognized 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." Likewise, the International Dairy Federation, a formally recognized Codex Observer organization in which EU member states are highly active noted at that same meeting: "…the variety names have become generic, therefore, the variety names are no longer associated with any particular geographical origin." Despite all of this, the European Union has chosen to push forward with the establishment of GIs for these products, thus preventing their use by any other producer.

There are examples of EU GIs that have not proven to be problematic in practice because of the reasonability of the GI applicants and their EU member state government. One strong example of this alternate path has been the United Kingdom. For instance, the United Kingdom has multiple GIs registered for types of cheddar, a generic type of cheese that long ago took its name from the town of Cheddar, England (*e.g.,* GIs exist for Orkney Scottish Island Cheddar and West Country Farmhouse Cheddar). Those GI registrations, however, make clear that use of the generic term cheddar is preserved.

As we have urged for years, the European Commission (EC) should adopt this successful model for GIs that allows for the protection of unique multi-term regional specialties while clearly preserving continued generic usage of the product type. Had the European Union followed this model for other GIs such as "feta," by requiring the Greeks to submit a GI for "Greek Feta," rather than suddenly deciding the widely used term "feta" was the sole property of Greece, the Commission could have advanced its GI goals much more successfully and without the consequent harmful impacts on other trading partners. The fact that the EC has deliberately chosen not to adopt this successful UK-style GI model indicates its express intention to continue to use its GI system to unfairly use government dictates to eradicate competition for its producers around the world.

We reject the European Union's continued efforts to monopolize the use of common names and its failure to provide the proper restraint on applications that would run afoul of existing trade commitments. We also note the European Union'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 European Union and is augmented when trading partners in term aim to implement their similarly broad yet vague FTA commitments with the European Union.

We view the European Union's efforts as bullying its trading partners into violating their WTO commitments and, where those countries have FTAs with the United States, their commitments under those agreements as well. The European Union's approach has resulted in the impairment of the value of concessions obtained by the United States 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 the

Administration to examine the degree to which countries' EU-driven GI measures result in non-compliance with their WTO and FTA obligations to the United States.

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

Gulf Cooperation Council

The GCC bloc of countries is a very important trading region for U.S. dairy exports. Collectively, the countries accounted for $158 million in U.S. dairy exports last year with Saudi Arabia and the United Arab Emirates (UAE) representing $70 million and $48 million of that total respectively. Maintaining uninterrupted access to these markets is of critical importance for U.S. dairy exports.

For the past few years, the GCC countries have been moving towards the implementation of a new harmonized health certificate to be used for dairy imports in all six member states (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the UAE) and additional Halal certification requirements for select dairy products. The new GCC requirements are included in Appendix 5 of the "GCC Guide For Control On Imported Foods," (GCC Import Guide) which was most recently updated and notified to the WTO in December 2016. The GCC Import Guide was scheduled to be implemented on October 1, 2017, but was postponed when it became clear that there were outstanding issues to be resolved before the guide could be successfully enforced. The GCC countries reconvened in September 2018 to begin the process of reviewing and revising the GCC Import Guide.

In the year since the GCC Import Guide was postponed, Saudi Arabia has implemented its own domestic legislation that outlined the general requirements for importing food into Saudi Arabia. This draft regulation allows the kingdom to establish new certification requirements and outlines a broad framework that would ultimately permit Saudi Arabia to draw up lists of approved countries and products that are approved to export. There are numerous requirements in this draft regulation that are potentially problematic, and the text lacks specific details as to how such country lists will be developed and maintained so that they do not end up becoming a barrier to trade.

It is paramount that the GCC countries move forward with transparency and a trade-facilitative approach so that exporters can be confident that they know of and can comply with all new demands and supplies of high-quality, safe food can continue to be provided to their consumers. We urge the U.S. government to secure acceptance of the standard AMS sanitary certificate for dairy exports from the United States.

Moreover, we note the challenge for U.S. exporters when countries embark on regional initiatives and individual initiatives at the same time with overlapping and conflicting requirements. Saudi

Arabia, as part of the GCC, has declared its intention to implement the GCC Import Guide, which covers such issues as health and Halal certification. At the same time, Saudi Arabia established regulations governing imports, including certification, in its domestic territory in a way that may be more onerous than the GCC Import Guide calls for. Whether Saudi Arabia proceeds alone or with the GCC trade bloc, requirements must be clearly defined and clarify whether the domestic or regional regulations take precedence wherever contradictory requirements exist.

We support U.S. government work with the GCC countries, as a bloc and individually, to address the harmful trade impacts that would result from implementation of the Guide and commend their good work in keeping this important market open to date. As that work proceeds, we urge the U.S. to ensure it is providing sufficiently detailed information to GCC countries regarding how the U.S. dairy food safety system operates and its consistently high results with the goal of securing approval by GCC countries of the continued use of the current AMS-issued standard dairy sanitary certificate.

India

Last year the U.S. exported $43 million worth of U.S. dairy products to India, a fraction of the potential opportunity that we see in this market were U.S. exports not held back by artificial barriers to trade, namely the Indian dairy health certificate. Although Indian dairy tariffs are a hindrance to trade, India's refusal to work in good faith to negotiate a viable health certificate for dairy products is by far the largest hindrance to U.S. exporters seeking to meet the growing dairy demands in this market.

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 needed in order to maximize future export possibilities for our industry in that region of the world.

Since late 2003, the vast majority of U.S. dairy exports have been blocked from the Indian market by these certificate requirements. Over the course of these long-running discussions, the United States has provided considerable scientific data documenting the safety of U.S. dairy products, 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. These products are the very same ones Americans safely consume on a daily basis. Despite this, India persists in refusing access for U.S. dairy products due to unscientific import requirements.

Given India's intractability on this issue and its long-standing refusal to pursue reasonable, science-based resolution of the dairy certification issues, NMPF and USDEC last year called on USTR to examine whether India is fully complying with its GSP obligation to "provide equitable

and reasonable access to [its] market", and we commend USTR for commencing a review of that question. For the reasons set out in more detail in our June submission as part of that review, in our view, India is not abiding by this commitment despite the unilateral benefits it enjoys under the GSP program.

While there are many GSP beneficiary countries that are faithfully complying with their commitments to maintain their eligibility under this unilateral trade preference program, India's sustained actions for well over a decade to thwart dairy and other agricultural trade are a clear indication that it rejects a mutually beneficial trading relationship and currently appears to seek only one that unilaterally benefits India, despite the U.S.'s generous decision to extend to India duty-free access to its own market for a wide variety of products.

Indonesia

In 2017, we exported $132 million in dairy products to Indonesia, ranking it among our top 10 export market destinations and our 4th largest market for skim milk powder in addition to being an important market for U.S. whey exports. Indonesia remains a valuable trading partner and we welcome their actions over the past year to respond to concerns articulated about some of their regulations impacting trade. We commend USTR's decision earlier this year to initiate a GSP review of Indonesia's compliance with its obligations under that program and were appreciative of the opportunity to submit comments through that process regarding regulations we believe pose a concern to market access for U.S. dairy products.

Local Content Proposal: Law 26

In July 2017, the government of Indonesia issued a local content requirement regulation - MOA Law No 26 / PK450 / 7 / 2017. Fundamentally, the regulation was designed to provide benefits to Indonesia dairy farmers by requiring that:

- Dairy processors absorb a certain amount of milk from local farmers or provide some sort of other support to support local milk production in Indonesia, and
- Others in the dairy trade supply chain such as importance also conduct events or programs to support Indonesian milk production/farms.

In January 2018, MOA began implementing Regulation 26/2017, sending letters to domestic processors and importers, requiring that they submit "partnership proposals."

As a result, as part of USTR's GSP review of Indonesia (Docket Number USTR-2018-0007), NMPF and USDEC requested that the President suspend Indonesia's eligibility for GSP benefits because of its failure to meet GSP eligibility criteria – specifically, because of concerns that Indonesia was failing to provide U.S. agricultural products with "equitable and reasonable access" to its market (19 U.S.C. 2462(c)(4)) and was in the process of increasing, rather than reducing, trade-distorting investment practices and barriers to trade in services (19 U.S.C. 2462(c)(6).) Through the Administration's subsequent engagement with Indonesia on Law 26, we have seen improvements in revisions of the law to remove the requirement for partnership and associated penalties. We support ongoing government to government discussions aimed at ensuring that the

revised approach to this regulation is firmly cemented and appropriately implemented in order to alleviate burdens on trade moving forward. Our hope is that this process will preserve what has long been a positive relationship on dairy trade and continue to head off any deterioration of that dynamic.

Plant Registration Fee

In order to export to Indonesia, dairy plants are required to register with the government on an approved list. In the past, this requirement had not in practice presented a problem, however, Indonesia has begun charging a plant registration fee of nearly $1200. Although plant registration fees are not inherently unacceptable, the level of this fee is disproportionately high compared to other markets that require plant registrations and appears to far exceed any direct Indonesian government costs that would be incurred from the registration of an individual dairy facility. Given that, we are concerned that this excessive fee is designed to impede trade rather than to recoup reasonable and expended government costs directly related to facility registration.

Erection of De Facto Barriers to Trade Through Misuse of Geographical Indications

Indonesia is involved in FTA negotiations with the European Union. In keeping with recent practice, the European Union is expected to be pursuing the registration of a long list of GIs and a broad scope of protection for those terms. We are concerned that an eventual agreement could restrict current and future opportunities in the Indonesian market for commonly named products. Heightening these concerns is the fact that Indonesia passed revisions to its trademarks and GIs laws last years. To our knowledge, this was done without providing the opportunity for comment through a WTO notification. The new law is extremely pro-applicant with respect to GIs and strongly risks trampling on the rights of common name users, both within Indonesia and among its trading partners.

Israel

Last year, the United States exported $11 million worth of dairy products to Israel. The U.S.-Israel Trade Agreement is an important tool in making these sales possible given tariff levels for dairy products that can range up to 212 percent. We have for many years sought to deepen this trade agreement in order to create a true “free” trade agreement rather than be constrained by the limited access currently provided under the Agreement on Trade in Agricultural Products, or ATAP. Most U.S. dairy products under the FTA remain constrained by small 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 that process, 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

Japan ranks third among our export markets for dairy products, valued at $291 million in 2017. Our trade relations have been positive. Japan's sizable dairy tariffs have presented the largest barrier to greater U.S. exports to date.

Free Trade Agreement

Japan maintains high tariffs on dairy imports. A free trade agreement between the United States and Japan would provide an opportunity to substantially reduce these tariffs to the benefit of our dairy sector and many others in agriculture. For instance, Japan's out of quota tariffs on skim milk powder are 29.8% + 396 ¥/kg and its out of quota tariffs on butter are 29.8% + 985 ¥/kg to 29.8% + 1,159 ¥/kg (depending on butterfat content). Tariffs on other products such as cheese, whey and others likewise constrain the opportunities U.S. exporters could otherwise meet in this key dairy market.

We commend the launch of trade agreement negotiations with Japan in order to expand market access for U.S. dairy products and to ensure that our companies do not slip behind as Japan implements CPTPP and its FTA with the EU. However, we are disappointed by the Administration's decision to impose a ceiling on the level of ambition of those negotiations by committing in advance that the agricultural outcomes will not exceed those Japan has previously agreed to in its other trade agreements. For instance, in the case of CPTPP, Japan agreed to only negligible TRQs for skim milk powder and butterfat – tallying only approximately 3,000 MT each. The U.S. is best served by maintaining the full range of possibilities in its trade agreement negotiations and in pursuing full elimination of all tariffs on U.S. agricultural exports.

Geographical Indications

In December 2017 Japan announced its intention to recognize a number of EU GIs as part of its FTA with the EU. That final listed rightfully preserved use of a number of generic terms of considerable commercial importance to U.S. exporters including parmesan, romano, grana, bologna and others. Japan also however, noted its intention to restrict the use of certain commonly used terms such as asiago, feta, fontina and gorgonzola following a phase-out period for prior users.

In a recent WTO notification regarding its intent to revise Japanese GI regulations to establish a phase-out provisions for prior users, Japan noted that: "The amendment will limit the prior use for the duration of 7 years from the date of registration/designation of the geographical indication." While we believe that prior use is strong evidence of generic use of a term and as such merits rejection of a GI, we welcome Japan's clarification that the prior use eligibility cut-off begins on the date of registration of a GI not the date of application of a GI since otherwise an application could impose a de facto restriction on the market regardless of whether or not it was ultimately approved. We urge the administration to ensure that this time period of prior use qualification from the date of registration is consistently applied to all GIs in Japan, including those registered via an FTA process.

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Korea

Korea was our fourth largest dairy export market in 2017, valued at $280 million. All major dairy suppliers have FTAs with Korea, one of the world's biggest cheese importers. The U.S.-Korea (KORUS) FTA has allowed us to maintain our export share in that market. Without it, U.S. cheese exports to Korea would be subject to the pre-FTA tariff of 36 percent, while all of our key competitors could keep shipping millions of pounds of cheese duty-free. All three of our competitors' FTAs ultimately fully eliminate cheese tariffs, in addition to providing ample access for a wide range of other dairy products. We strongly support KORUS and commend the Administration's preservation of this critical FTA.

We appreciate that the KORUS update has also included Customs provisions that should help to address concerns our exporters have noted re: an overly strict interpretation of the agreement's country of origin requirements. In the past, US exports have lost KORUS status simply by being routed through a Canadian port even if the wholly U.S. goods remained entirely sealed and under Customs control the entire time. We look forward to the work of the committee tasked with considering these types of customs issues in order to ensure that companies complying in good faith the requirement for KORUS-benefiting products to be of US origin retain the agreement's duty-free benefits regardless of routing nuances.

Even with the best of trading partners, issues at times arise that merit resolution. One such topic of concern relates to Korea's regulatory approach to frozen cheese imports. Not long ago, Korea pursued regulatory changes to its Food Code and Livestock Code to merge the guidance documents. A positive result of this was that Korea added provisions to the Food Code that allow for the thawing of frozen cheese and butter in Korea. However, the regulations required U.S. exporters to secure agreement from domestic competitors to thaw the products in their facilities. This requirement to thaw in a licensed Korean dairy facility should only be if the thawed dairy product is going to be further processed (e.g. sliced, diced, etc.) and/or otherwise materially changed before distribution and sale. Food safety practices have demonstrated that proper/safe within package thawing occurs when product is slowly tempered, at ≤5°C. U.S. dairy companies should be permitted to work with Korean importers and/or cold storage warehouses to properly temper product (in existing packaging), from frozen to a refrigerated state. We urge Korea to slightly modify the draft regulations to expand the locations in which defrosting may take place particularly if the product remains sealed throughout that process.

Should the opportunity arise to again discuss tariff issues with Korea, we would urge action to address a discrepancy between KORUS and New Zealand FTA terms that will be placing U.S. cheese exporters at a disadvantage in the next few years. Subsequent to the conclusion of KORUS, New Zealand negotiated a tariff elimination phase-out of the Korean cheddar cheese tariff that takes place more quickly than the U.S. phase-out. As a result of this asymmetry, New Zealand cheddar cheese will reach zero before U.S. cheddar cheese. That disconnect in the tariff level began in 2018 and by 2020 the tariff paid by New Zealand suppliers to Korea will be almost 2/3 lower than the tariff paid by U.S. suppliers to Korea for cheddar cheese.

Finally, Korea will be implementing new certificate requirements for dairy products in the near

future. We encourage the U.S. and Korean governments to work together to find a mutually acceptable certificate to allow trade to continue to flow unimpeded.

Erection of De Facto Barriers to Trade Through Misuse of Geographical Indications

Finally, we note for posterity that with respect to the issue of GIs, Korea has provided both positive and negative examples of how countries may handle this important trade topic. As part of the EU-Korea FTA, Korea banned the import of several commonly produced U.S. foods if they were labeled using their common names. U.S. exporters have continued to report problems with exporting a number of those products to Korea despite the market access terms secured by the U.S. in KORUS. However, at the same time exporters have benefited from the clear agreement reached in prior years between the governments of the U.S. and Korea, which provides clarity regarding the status of common names contained in multi-term GIs. The understanding regarding multi-term GIs has allowed the U.S. to capture the majority of the intended benefits of the FTA, although the remaining single-term restrictions have curtailed some of the opportunities that U.S. companies had hoped to develop in this market.

Malaysia

In 2017, the U.S. exported $90 million in dairy products to Malaysia. Our imports of dairy items from Malaysia totaled almost $0.5 million, for a trade surplus of over $87 million in 2017. Our trade relationship is positive but our exports could grow with better market access such as through a FTA that eliminated Malaysia's dairy tariffs. As such, we strongly support the pursuit of an FTA with 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 of GIs. We are very concerned that an eventual agreement could restrict current and future opportunities in the Malaysian market for commonly produced products. We urge the Administration to insist that Malaysia abide by both the letter and spirit of its trade commitments to the U.S.

Morocco

Last year the U.S. exported almost $13 million worth of dairy products to Morocco. The U.S.-Morocco Trade Agreement is an important tool in making a wider range of sales opportunities possible in this market and we strongly support it.

We are particularly interested at this stage in ensuring that Morocco does not restrict access to the cheese market opportunities made available through this FTA by imposing unjustified GI provisions that restrict the use of products the U.S. produces and wishes to retain the rights to export to Morocco, now and in the future. 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. We urge the Administration to secure assurances regarding the types of products the U.S. will continue to be permitted to ship to this FTA partner and to preserve the value of the market access package that the U.S. negotiated with Morocco.

Peru

Last year the U.S. exported almost $75 million worth of dairy products to Peru. The U.S.-Peru Trade Agreement is an important tool in making these sales possible and we strongly support it.

We commend the U.S. government for its excellent work with Peru to head off a non-trade compliant piece of legislation that would have run counter to the U.S.-Peru FTA and raised prices for domestic consumers. The legislation would have prohibited imports of "milk powder, anhydrous milkfat and dairy products" used for "reconstitution and recombination processes" for various dairy products. This successful engagement ensured that trade in safe dairy products was permitted to continue, in keeping with the intent of the FTA.

On another front, as part of the Peru-EU FTA, Peru granted protection to commonly produced U.S. products and products that were generic in Peru such as feta and asiago. For instance, the feta sold in Peru was not typically sourced from Greece, but rather from other markets. This action violated WTO rules and impaired the value of concessions granted to the U.S. under the U.S.-Peru FTA, which pre-dated the EU agreement. We remain concerned by the impact of these actions on the U.S. ability to fully recognize the benefits of this FTA.

Philippines

Last year we shipped almost $243 million worth of dairy products to the Philippines, ranking it squarely among our top 10 markets. The Philippines has to date been a strong trading partner and we urge pursuit of an FTA with this country in order to eliminate tariffs on U.S. dairy exports. It has been a reliable market for U.S. dairy exports yet we face heightened competition due to the ASEAN-New Zealand – Australia FTA that provides better access for Oceania to this critical market than it does to the U.S.

Related to nontariff trade barriers, we commend the Philippines' deliberative and considered process to date of carefully evaluating changes to its GI regulations. Like in the U.S., there are numerous Philippine companies that would also suffer from overly broad GI restrictions that negatively impacted the use of common names and distorted trade. We applaud the U.S. government's engagement to date with the Philippines including the recent commitment secured via the TIFA process that guarantees that the Philippines will not automatically recognize GIs via a trade agreement. As work proceeds, we urge continued engagement to ensure that GIs that would impact the use of common terms are rejected.

Russia

U.S. dairy products have been excluded from the Russian market since the fall of 2010. That year, U.S. dairy exports had reached a high of $81 million, making Russia the 11th largest market for U.S. dairy products at that point in time.

Prior to that abrupt market closure in 2010, Russia was a growing 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 of one of the world's largest dairy import markets, particularly for butter and cheese.

In the spring of 2014, the United States 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 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 European Union into other global markets where those products have heightened competition for buyers. Russia's outright ban on products from the United States 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 the Russian market due to the facility listing requirement Russia is maintaining in violation of its WTO accession commitments. In light of this, the United States should initiate the process necessary to create a U.S. facility list that would allow for compliance with the *de facto* Russian requirement. We reiterate our request that USTR and USDA work with the FDA to take the steps necessary to start this time-consuming process.

Singapore

Last year the U.S. exported $59 million worth of dairy products to Singapore. The U.S.-Singapore Trade Agreement is an important tool in making these sales possible and we strongly support it. Singapore is a critical South-East Asian trading hub, making our agreement with Singapore quite important not only to trade with this country but also throughout the region.

We are particularly interested at this stage in ensuring that Singapore does not restrict access to the cheese market opportunities made available through this FTA by imposing unjustified GI provisions that restrict the use of common name products the U.S. produces and has negotiated the right to export to Singapore now and in the future. This is particularly timely given the expectation that the EU-Singapore FTA will be implemented in 2019. We urge the U.S. government to work with Singapore towards achieving those goals.

Switzerland

Swiss cheese makers, together with their French counterparts, filed for a U.S. trademark application for gruyere cheese. It is of course entirely appropriate that foreign rights holders should have access to the U.S. trademark system, just as U.S. trademark owners should have full access to foreign trademark systems. However, it is not acceptable when our trading partners abuse our intellectual property tools in order to erect barriers to competition and intentionally disrupt existing sales by multiple companies relying on generic use of common terms in our marketplace.

In response to this filing, U.S. companies and organizations have filed a challenge to that application pointing out that extensive generic use of the term gruyere in this country should have resulted in a rejection of the trademark. For instance, non-Swiss and non-French gruyere is found on the menus of at least 19 chain restaurants with 2,674 locations across the United States. At issue is the importance of preserving use of a term long used generically in this country in keeping with an FDA standard of identity for gruyere and used by multiple U.S. trading partners, given that a tariff code exists specifically for gruyere process cheese.

In addition to its predatory efforts to restrict use of this common term in the U.S. market, Switzerland also appears to be seeking to restrict generic use of country terms internationally as well. Given the fact that swiss cheese has long been a typical cheese variety in the United States, as well as in certain other foreign markets, this would be harmful to U.S. commercial interests and we urge strong rejection of any attempts to claw back use of terms that have already entered into common usage to describe a category of product, not the export location of the goods.

We see it as particularly concerning that Switzerland, while already benefiting significantly from access to this market and shielding its market from our own products through high tariff barriers, is intentionally working to use regulatory tools to impede fair competition from U.S. cheese suppliers here in the U.S. market and potentially abroad, as well.

Taiwan

The U.S. ran a trade surplus with Taiwan in 2017, with exports totaling $83 million. Taiwan's tariffs in the dairy sector are generally low to moderate, but improved access through a trade agreement would enable even greater U.S. exports. We support the pursuit of an FTA with Taiwan.

Thailand

The United States exported almost $50 billion worth of dairy products to Thailand last year, despite sizable dairy tariffs in certain areas. Thailand's tariffs in the dairy sector are generally on the high end for Southeast Asia, ranging up to 40 percent range. We are interested in reducing the burdens Thailand's high tariffs place on U.S. dairy products, in terms of their relative price competitiveness including through the pursuit of an FTA that would eliminate these tariffs.

United Kingdom

We support efforts to establish a solid foundation for U.S. dairy exports to the United Kingdom as it moves forward with its "Brexit" departure from the European Union. In 2017, the United States exported almost $9 million in dairy products to the United Kingdom due to existing tariff and nontariff restrictions imposed on this market as a result of the EU's regime on both fronts. The coming independence of the UK from the EU provides an opportunity for the establishment of a regulatory approach on GIs and trade in safe food and agricultural products that is more trade-facilitative while better aligning with the UK's historic role as a voice of reason on both these fronts within the EU. It is essential to ensure that the UK has sufficient independent leeway to negotiate regulatory issues in an FTA with the U.S. so that market access to the UK established under such an agreement would not be governed by the trade-restricting EU approach to such issues.

Vietnam

In 2017, the United States exported $112 million in dairy products to Vietnam. Vietnam's tariffs on dairy products are generally moderate, falling mostly in the 10 to 30 percent range. We urge the pursuit of an FTA with Vietnam and through that the removal of all dairy tariffs on U.S. exports. This is particularly important given that our major dairy competitors in that market have negotiated FTAs with Vietnam. New Zealand and Australia have a FTA already; the completed FTA with the European Union is expected to be implemented in 2019. Following that, the United States will be the only major dairy supplier to the Vietnamese market without an FTA, putting us at a distinct disadvantage.

One nontariff area of concern with this market relates to the impacts of the EU-Vietnam FTA on U.S. exporters' abilities to sell common name foods in Vietnam. The EU-Vietnam FTA imposes forward-looking restrictions on the use of several commonly produced products, while also containing useful clarifications relating to several compound terms of commercial importance to the United States. Another notable element of this FTA was a grandfathering clause that clearly allows those that established use of asiago, fontina, and gorgonzola in the Vietnam market prior to Jan. 1, 2017 to preserve future access rights to that market. In order to preserve the value of this international commitment, it is critical that Vietnam confirm that it takes precedence over any actions in the trademark system – namely trademark registrations or applications for asiago, fontina and gorgonzola.

We urge continued engagement with Vietnam to ensure that U.S. companies are able to access the maximum possible range of export opportunities in this 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.

GLOBAL:

Codex

Codex standards are frequently referenced and utilized during negotiations for free trade agreements and relied upon in adjudicating dispute settlements by the World Trade Organization. This makes Codex issues a critical forum for both food safety guidance development and for establishing a level, science-based playing field for international trade.

The US Codex office plays a critical role in formulating international, science-based food safety standards to be adopted by the Codex Alimentarius Commission (CAC). These standards ensure greater transparency and safer food worldwide in the interest of consumers, producers and manufacturers. As the U.S. dairy industry's reliance on exports continues to increase, the need for a proactive, engaged and fully-resourced Codex office to engage on the dairy industry's behalf is only more critical. We remain strongly supportive of the USDA reorganization that moved oversight of the U.S. Codex Office (the Codex office) from the Food Safety Inspection Service to the new Trade and Foreign Agricultural Affairs office (TFAA) at the U.S. Department of Agriculture in order to further those objectives.

The agriculture industry has repeatedly maintained that sound science must remain the foundation of all Codex standards. In order to see Codex abide by that principle, however, it is critical that the U.S. scientific and technical staff that work on the development of international food safety standards are provided with sufficient resources and support from interagency partners. We would like to see greater communication and collaboration amongst the U.S. agencies that work to create and promote increased trade of U.S. agriculture products. The Codex office is already structured to work in close collaboration with other agencies, and this reorganization will further aid those existing collaborative efforts.

The U.S. Codex office must be fully equipped to defend the principles of sound science and protect U.S. interests abroad, working in concert on a regular basis with like-minded countries, while retaining the food safety and scientific principles that have consistently underpinned U.S. positions in Codex.

World Health Organization (WHO)

We urge the United States to continue advocating for WHO policies surrounding dairy products that are based on sound science and align with existing U.S. and international guidance that highlights the significant nutritional benefits from consuming dairy products, including for young children. Likewise, we urge a rejection of international policies affecting dairy products that would constitute *de facto* barriers to trade and inappropriately discourage the consumption of nutritious dairy products by young children.

In addition, we are concerned about the importance of preserving Codex's unique mandate over those issues within its competency areas. WHO and Codex each have unique roles to play. It is

no more appropriate for Codex to dictate policy to the WHO on global health issues than it would be for the WHO to mandate Codex incorporation of all WHO decisions and documents within Codex's mandate areas. Codex is the standard-setting body for food products that has established a strong track-record of weighing the scientific evidence on various topics before arriving at consensus-driven standards based on that evidence. The WHO process, which tends to be more staff-led than member-driven, is quite different from that followed under Codex. It is critical that each body retain its unique mandate and independence moving forward.

Point of Contact:

Shawna Morris
Vice President, Trade Policy
NMPF & USDEC
smorris@nmpf.org
703-243-6111