



January 23, 2023

The Honorable Doug McKalip
Chief Agricultural Negotiator
U.S. Trade Representative
600 17th Street NW
Washington, DC 20006

The Honorable Alexis Taylor
Under Secretary for Trade and Foreign Agricultural Affairs
U.S. Department of Agriculture
1400 Independence Ave., SW
Washington, DC 20250

Dear Ambassador McKalip and Under Secretary Taylor,

On behalf of the U.S. dairy industry, we are writing to congratulate you on your respective Senate confirmations as Chief Agricultural Negotiator and Under Secretary of Trade and Foreign Agricultural Affairs. We look forward to working with both of you in your new roles as we continue our efforts to expand trade opportunities for America's dairy industry. As you step into these new roles, we would appreciate the opportunity to meet with you and discuss the dairy industry's top trade priorities.

As you know, the importance of dairy exports to the economic health of the industry cannot be overstated. This past year, the American producers are estimated to have exported over \$9 billion in dairy products – a record number, equivalent to approximately 18% of U.S. milk production. These exports are crucial to the economic wellbeing of nearly 30 thousand dairy farmers, dozens of dairy manufacturing companies, and the more than three million American workers whose jobs are supported by the U.S. dairy industry such as farm workers, milk haulers, dairy processing plant employees. Many in the U.S. dairy industry are family-owned businesses that have intentionally chosen to invest in producing dairy products in this country.

The U.S. dairy industry has a well-earned reputation for producing high quality products, and as a global leader on sustainability, we are confident in the future of American dairy. To continuing to grow, and to ensure that American dairy farms and manufacturers can operate profitably in the long run, we need to further open global markets to American exports and enforce the trade rules that are already in place.

For your reference, enclosed is a memo outlining U.S. dairy priorities and specific areas of needed focus, encompassing both tariff and non-tariff barriers, that, if resolved, will allow for more American products to reach store shelves and kitchens all around the world. This includes:

- Expanding markets through the negotiation of new free trade agreements, prioritizing prominent dairy importing countries such as the UK, Japan, Vietnam, and key regions including Southeast Asia and the Middle East,
- Establishing explicit protections for common food names to combat the misuse of geographical indications, starting with defending our market access for these products in current trade agreement partners' markets,
- Keeping current market access opportunities open and enforcing the terms of existing U.S. trade treaties,
- Leveraging trade and economic forums, including the ongoing IPEF and Taiwan negotiations as well as various TIFA avenues, to address nontariff barriers,
- Restoring export growth to China by addressing the lingering impact of Chinese retaliatory tariffs on U.S. dairy exports,
- Removing unwarranted nontariff barriers to trade in a variety of key dairy markets, while guarding against future barriers in development such as emerging EU agricultural policies,
- Pursuing WTO reforms to strengthen the rules-based global trading system, including prioritization of market-based trade liberalization, reduced market distortions, enhanced transparency, and a more effective dispute settlement system, and
- Advocating for science-based standards and trade rules.

Congratulations again on your respective confirmations. We have full confidence that with your leadership at USTR and the Department of Agriculture, we can work together to strengthen dairy exports and deliver a brighter future for America's dairy industry.

Sincerely,



Krysta Harden
President and CEO
U.S. Dairy Export Council



Jim Mulhern
President and CEO
National Milk Producers Federation

U.S. Dairy Trade Overview and Priorities

The U.S. Dairy Export Council (USDEC) and National Milk Producers Federation (NMPF) appreciate the opportunity to present this overview of key dairy trade issues and priorities to assist the Administration with its review and assessment of trade policy issues. 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. NMPF is the United States' national farm commodity organization that represents nearly 30,000 dairy farmers and the dozens of the dairy cooperative marketing associations they own and operate throughout the United States.

Exports have become extremely important to the U.S. dairy industry. In 2022 we expect to have exported over \$9 billion in dairy products worldwide, equivalent to roughly 18% of total U.S. milk production. Those sales play an indispensable role in supporting the livelihoods of America's dairy farm families, farm workers, milk haulers, dairy processors, dairy plant employees and many others throughout the supply chain. The U.S. dairy sector supports approximately three million American jobs from farm to fork throughout the supply chain.¹ As a result, impairing export sales harms not only farmers, but also workers supplying inputs and services and those involved in downstream processing, as well as in cities with large port facilities heavily dependent on trade. And in turn, measures that help drive greater dairy exports support those American jobs and businesses.

As global interest in sustainable food systems has heightened, the U.S. dairy industry is well poised to meet the environmental and animal welfare expectations of consumers and dairy purchasers around the world. American dairy farmers have been environmental stewards for decades, tending with great care to their land and water, and they value a proactive approach to sustainability. As a testament to the U.S. dairy industry's endeavors, greenhouse gas emissions required to produce a gallon of milk dropped nearly 20% over the 10 years from 2007 to 2017 and the environmental footprint of a gallon of milk has dramatically decreased since 1944 (e.g., 90% less land, 65% less water, 63% smaller carbon footprint per unit of milk). To continue and enhance our efforts to combat climate change, the dairy industry has launched the Net Zero Initiative, a five-year collaboration of dairy organizations to advance research, on-farm pilots and new market development to make sustainability practices more accessible and affordable to farms of all sizes. The Net Zero Initiative is intended to help the U.S. dairy industry achieve its Environmental Stewardship Goals of becoming greenhouse gas neutral, optimizing water usage, and improving water quality by 2050. The U.S. dairy industry also continues to update and expand the long-standing, industry-driven Farmers Assuring Responsible Management (FARM)² program. The FARM program's animal care standard pillar was the first dairy animal welfare program in the world to be internationally certified as WOAHC-compliant. Other pillars within FARM address additional sustainability areas such as environmental stewardship, workforce development, judicious antibiotic use, and biosecurity precautions.

¹ See: <https://www.nmpf.org/milk-pricing-economics/dairy-got-jobs/#:~:text=Dairy%20Creates%20Jobs%2C%20Exports%20Create,us%20to%20the%20next%20level> Source: Dairy DeliversSM economic impact tool created by IDFA.

² <https://nationaldairyfarm.com/what-is-farm/>

To support American farmers and workers throughout the supply chain, we request that the Administration prioritize the following initiatives to help ensure the economic health of the U.S. dairy industry and rural communities and their supply chain.

Pursue Market Expanding Trade Agreements

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, our industry strongly encourages the retention of existing trade agreements and the pursuit of new ones with carefully selected partners as a goal of the utmost importance. To have the full set of tools at the Administration's disposal, we strongly urge reauthorization of Trade Promotion Authority. **We are deeply concerned that the Administration has chosen not to negotiate new agreements that focus on expanding export market access for American-made products.**

Free trade agreements (FTAs) have enabled U.S. dairy exporters to compete on a more level playing field or even at an advantage with international competitors in terms of tariff access, removal of non-tariff barriers and clear and consistent rules for trade. In 1993, the year before NAFTA was implemented, the United States sold just \$618 million worth of dairy products overseas to all markets. In 2021, the United States sold \$4.1 billion to its FTA partners alone.

While we support the ongoing trade discussions on the Indo-Pacific Economic Framework and the U.S.-Taiwan Initiative on 21st Century Trade and want to partner with the Administration to ensure those agreements address specific nontariff trade barriers, we are concerned that the Administration has chosen not to include tariff reductions as part of the negotiations. Priority FTA areas for the U.S. dairy industry include Japan, the United Kingdom, Vietnam, and key dairy markets in Southeast Asia (e.g., Thailand, Indonesia, Philippines) and the Middle East (e.g., UAE).

U.S. dairy exporters are at an increasing competitive disadvantage as our trade competitors – namely the European Union and New Zealand – continue to forge new trade deals with key dairy markets while the United States sits still. We urge the U.S. government to reconsider its current strategy on not pursuing market access opportunities that yield tangible tariff results.

Counter EU Efforts to Expropriate Common Food Names Via Misuse of Geographical Indications

The Administration must take decisive action to **protect the use of common food and beverage terms for American exporters by securing commitments** explicitly preserving their usage with U.S. trading partners, then building on that progress with other countries as well.

In addition to establishing these common name protections with various trading partners, we urge an examination of the degree to which these EU-driven measures are inconsistent with the WTO Agreement on Technical Barriers to Trade (TBT) and the trade agreement commitments of U.S. trading partners.

The European Union has continued its efforts to monopolize the use of common food and beverage terms through its FTA negotiations and other international avenues. By advocating for wider use of GIs and insisting on an extremely broad scope of protection for those GIs, the EU is actively working to give EU companies the sole right to use many terms that are in widespread common usage around the world and, in some cases, even covered by an international Codex Alimentarius

standard. The EU has refused to adopt a simple solution to the problem applied in the United Kingdom that involves protecting multi-term regional specialties (such as “West Country Farmhouse Cheddar”) rather than the common name itself (“cheddar”). The EU bullies its trading partners into applying its approach to the detriment of U.S. dairy exporters, creating a global problem.

We urge you to prioritize work to counter these efforts by securing confirmations of U.S. companies’ rights to continue to use specific widely used terms, including in the Indo-Pacific Economic Framework and U.S.-Taiwan Initiative on 21st Century Trade negotiations and through bilateral letter exchanges or memorandums of understanding with key trading partners. We must not let 2023 go to waste; the Administration must act now to tackle this escalating global challenge.

Enforce USMCA

Vigorously enforcing the U.S.-Mexico-Canada Agreement (USMCA) will ensure that U.S. dairy producers and processors receive the agreed benefits from both Canada and Mexico.

We commend USTR, USDA and other interagency partners for the important victory announced last year in which a USMCA panel found Canada was improperly restricting access to its market for U.S. dairy products in violation of its USMCA tariff-rate quota (TRQ) commitments. The Administration’s rejection of an insufficient Canadian proposal to comply with the ruling and initiation of a second USMCA dispute settlement process in May and subsequent expansion of consultation scope in December sends a strong message to all U.S. trading partners that attempts to circumvent negotiated market access provisions will not be tolerated. Robust follow-through to ensure that the United States secures full compliance from Canada with its USMCA dairy market access commitments will be essential to ensuring the agreement delivers the export gains it was intended to provide.

Canada has a long history of sustained efforts to undermine access to its dairy market and impair the value of trade concessions granted for dairy access as part of its agreements. In addition to the ongoing consultations over dairy TRQ administration, we encourage close monitoring of Canada’s commitments with its USMCA dairy pricing and export policy commitments. Canada’s deliberate attempts to limit U.S. dairy market access have only underscored the importance of careful U.S. monitoring of Canada’s implementation of all of its dairy commitments, including in particular USMCA-mandated export surcharge provisions intended to curb Canadian exporting of large volumes of low-priced dairy protein on global markets. Our monitoring indicates that Canada is increasingly using loopholes in those USMCA disciplines to continue exporting more protein than USMCA intended onto global markets. Ensuring that Canada abides by USMCA provisions designed to prevent Canada from scaling back existing market access to offset that provided under USMCA is also critical.

USMCA enforcement is not just about Canada, however. Mexico is the top U.S. export market for a variety of dairy products. However, **Mexican authorities are increasingly attempting to create additional hurdles to the flow of dairy trade.** Mexico has proposed several regulatory and border measures that would have significant impacts on U.S. exports. Most concerning are the regulations related to dairy product standards, including the most immediate challenge of a new cheese conformity assessment proposal and related product standard regulations in development. The unwarranted conformity assessment procedures are nothing more than an attempt to distort trade for various dairy products. Moreover, Mexico has still not published how it will comply with

its USMCA common name commitments and is maintaining restrictions on access for raw milk for further pasteurization. We urge the Administration to continue discussions with Mexico with the goal of addressing the systemic trade distorting actions and to ensure Mexico follows its USMCA commitments.

Non-FTA Trade Forums (e.g., IPEF, Taiwan Talks, TIFAs, etc.)

In lieu of comprehensive tariff negotiations, both the Indo-Pacific Economic Framework (IPEF) and the U.S.-Taiwan Initiative on 21st Century Trade can make substantial contributions to advancing U.S. dairy market access priorities through commitments that address specific existing barriers and the potential for others to adopt similar barriers. Broad commitments such as USMCA-style chapters on sanitary and phytosanitary (SPS) barriers and technical barriers are useful, but not sufficient. To make meaningful headway, commitments need to focus on resolving existing issues (e.g., proliferating common names restrictions and an excessively burdensome dairy facility registration process in Indonesia) and proactively guarding against future ones (e.g., by establishing forward-looking commitments on dairy certificate changes and facility registration requirements to come).

In addition to IPEF and the U.S.-Taiwan negotiations, we urge a more focused use of Trade and Investment Framework Agreements (TIFAs) and other similar bilateral tools to secure commitments on tariffs and nontariff barriers. This Administration successfully worked with Vietnam to secure multilateral tariff reductions on several agricultural products in its first year and should continue to pursue MFN tariff cuts in additional markets while using these negotiating forums to tackle current non-tariff barrier challenges (see section below on various specific issues impacting dairy exports) and establish sounder future protocols.

These types of negotiating avenues are well suited to promote alignment, coordination, and cooperation in the areas of international standards and sustainability. The negotiations should be used to advance harmonization of domestic regulations with Codex Alimentarius Commission and WOH standards and should include commitments and mechanisms to foster routine alignment and coordination by our trading partners with the U.S. government ahead of meetings in those and other international standard setting bodies to advance science and risk-based decision-making.

Restore Export Growth to China

Over the past decade, China has become a critically important market for U.S. dairy exports. Sales in 2021 alone totaled over \$697 million, ranking China the second largest export market for U.S. dairy products, despite the dire impact of China's retaliatory tariffs in response to USTR Section 301 duties.

The U.S.-China "Phase One" economic and trade agreement in 2020 resolved numerous regulatory impediments for U.S. dairy exports to the Chinese market. However, retaliatory duties still place the vast majority of U.S. dairy exports at a disadvantage when compared to our major trade competitors. Notably, the tariff exemption application-based process that provides tariff relief only for specified product quantities has proven to be insufficient to restore a level playing field for U.S. dairy exporters.

As the Chinese retaliatory tariffs are the most pressing impediment to dairy trade with China, it remains important for the Administration to work cooperatively with China to secure an agreement

that ultimately eliminates all retaliatory tariffs on dairy HTS lines and, in the interim, to pursue targeted tariff relief for dairy through greater use of the year-long tariff relief process. Moreover, we urge consideration of how to ultimately create a fully level playing field for our exporters that face significant tariff disadvantages compared to China's FTA partners New Zealand and Australia.

Entrenched EU Barriers Impacting Trans-Atlantic Trade

The EU has used trade barriers to erect a sizable trade gap in dairy to the benefit of EU farmers and food producers. The United States' trade deficit with the European Union in dairy was a remarkable \$1.8 billion in 2021, and will be even greater in 2022. This is even though the United States is itself a major dairy exporter.

To contain and minimize harm from these EU policies, we believe it is essential that the United States counter the EU's efforts to export its anti-competitive approaches to dairy trade to third country markets. This includes EU efforts to impede competition from U.S. companies through its promotion of an approach to geographical indication (GI) systems that restricts the use of common food names; continual revisions to its dairy and composite certificates and other entry requirements; and its recent promotion of new "Farm-to-Fork" standards on product sourcing and ingredients, which we are concerned will serve as yet another layer of agricultural protectionism. In the meantime, we urge the Administration to avoid any steps that would exacerbate the extraordinary dairy trade deficit with the European Union.

Resolve Non-Tariff Barriers to Trade

American agriculture has been contending with a growing trend of unjustified and unscientific barriers to our exports in a variety of markets. Overly burdensome requirements and those unsupported by sound science are a challenge for many of our dairy exports. We urge the incoming Administration to develop a clear plan for leveraging both multilateral (e.g., WTO procedures) and bilateral tools (e.g., FTA dispute settlements, GSP reviews) to drive compliance by our trading partners and open markets for U.S. products.

Active issues not addressed above include:

- India's insistence on unscientific dairy import requirements, and its move just last year to extend that mandate to even more U.S. dairy products,
- Egypt's introduction of a sole source halal certification mandate without adequate transparency into the scope of the certification elements and costs,
- Indonesia's requirement that U.S. dairy facilities complete a registration process that introduces uncertainty with years-long delays and a lack of transparency,
- Peru's prohibition on the use of the term "milk" on evaporated products produced with milk powder from the United States and other sources, and
- Ecuador's procedure to obtain import licenses that requires a determination based on whether there is sufficient domestic production.

Foster Science-Based Guidelines in Multilateral Organizations and Guidelines

Multilateral organizations that make policy recommendations and set technical standards and guidelines form the bedrock upon which U.S. food and agricultural exporters rely as they meet the needs for American-produced products overseas. Those multilateral organizations and standard

setting bodies of greatest relevance to the U.S. dairy industry are the UN Food and Agriculture Organization (FAO), including its Committee on World Food Security (CFS); the World Trade Organization (WTO); the World Health Organization (WHO); Codex Alimentarius (Codex); and the World Organization for Animal Health (WOAH).

Codex and WOAH have historically played indispensable roles in formulating science-based standards and guidelines pertaining to food safety, fair trade practices, product standards, and animal health and welfare issues; and they still do today. We urge a continued, robust focus on these organizations. It will be increasingly essential that the United States continue to insist that these organizations develop and recommend science-based standards in light of growing political pressure on them by some regions and the tremendous upheaval that unscientific standards can impose on U.S. food and agricultural trade.

USDEC and NMPF support U.S. re-engagement in pursuing WTO reforms yielding tangible solutions to strengthening the rules-based global trading system that opens markets and provides provisions to guard against arbitrary use of technical regulations or standards to block imports. Reforms should lead toward further market-based and sustainable trade liberalization, reduced market distortions, enhanced transparency, and a more effective and efficient dispute settlement system. We support new areas of negotiation on topics like climate change and sustainability that have the potential to raise global ambitions on environmental sustainability, including in agriculture. USDEC and NMPF encourage a science-based and data-driven approach to these negotiations that embraces innovation and prevents abuse that could lead to disguised restrictions on trade.

With respect to the FAO and WHO, these organizations are engaged in ample work that impacts national food and agriculture policy at present yet have not always shown the same strong commitment to grounding their recommendations and guidelines in sound science, nor to evaluating the real-world impacts of their policy prescriptions.

Points of Contact:

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