



**Comments Regarding Foreign Trade Barriers to U.S. Exports for 2023 Reporting  
by the National Milk Producers Federation  
and the U.S. Dairy Export Council  
Docket Number USTR-2023-0010  
October 23, 2023**

The National Milk Producers Federation (NMPF) and the U.S. Dairy Export Council (USDEC) submit these comments in response to the notice of request for public comments concerning the National Trade Estimate Report on Significant Foreign Trade Barriers (Docket Number USTR-2023-0010). NMPF and USDEC appreciate the opportunity to present its 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 the United States exported over \$9.65 billion in dairy products worldwide, equivalent to approximately 18% of total U.S. milk production in 2022. 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, strong enforcement of existing trade agreements and the pursuit of new ones is of the utmost importance. **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.**

Beginning with the implementation of the North American Free Trade Agreement (NAFTA) in 1994, 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. By way of perspective: in 1993, the year before NAFTA, the United States sold just \$618 million worth of dairy products overseas; in 2022, the United States sold \$5.57 billion to its FTA partners alone.

NMPF and USDEC commend USTR and its interagency partners for pursuing full compliance of Canada's U.S.-Mexico-Canada Agreement (USMCA) dairy tariff-rate quota (TRQ) commitments. The initiation of a second USMCA dispute settlement panel 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, including the imposition of retaliatory tariffs, if necessary, 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.

Enforcing existing agreement is foundational, yet alone is not enough. NMPF and USDEC urge USTR to heighten its focus on expanding market access opportunities for American dairy exports. The organizations respectfully disagree with any misconceptions that trade agreements have not delivered benefits to the American workers, including in the agricultural community. Yes, current agreements can be improved, as USTR and Congress did with USMCA, but new agreements are imperative to enable U.S. companies exporting products to keep pace globally. Therefore, **NMPF and USDEC support the pursuit of agreements with key markets in which the United States competes head-to-head with other major dairy suppliers from the European Union and New Zealand.**

The removal of tariff and nontariff barriers, including the misuse of geographical indications (GIs) to restrict common food names, that constrain U.S. dairy exports are both important elements to expanding global opportunities for American-made products. Trade agreements are the most effective course to accomplish this. Failing that, however, the United States must maximize the use of other forums including the Indo-Pacific Economic Framework as well as other bilateral trade discussions to advance those objectives. Policies aimed at such pro-trade outcomes would drive further returns to the U.S. farming and processing sectors, as well as the broader rural communities in which they operate across the country.

Listed here are some of the major trade barriers confronting the U.S. dairy industry. This is not an exhaustive list of all ongoing issues that are of concern to the industry. Rather, it is a summary of the highest priority issues dairy exporters presently face in key markets, with an emphasis on those with which the United States has an opportunity to pursue changes in the years to come. In order to organize the comments most effectively, they are laid out below primarily on a country-by-country basis unless a common topic pertains to multiple regions.

## **COUNTRY-SPECIFIC ISSUES:**

### **Australia**

Australia is an important export market for U.S. cheese, thanks in large part to the U.S.-Australia FTA. Australia is in the process of considering GIs as part of its ongoing negotiations with the European Union. There are several terms on that list of potential GIs that Australia should rightfully have rejected consideration of outright given their clear common usage status in Australia (e.g., “parmesan,” “feta,” and others). NMPF and USDEC urge engagement with Australia to defend and safeguard our market access rights for common food names in this important cheese export market.

### **Brazil**

Brazil is a market with considerable potential for U.S. dairy exports, yet one that presently poses significant challenges to entry for many U.S. dairy exporters. Tariffs and non-tariff measures combine

to make it a difficult market to fully penetrate. NMPF and USDEC believe trade discussions aimed at tackling those barriers for U.S. exports should be pursued.

A developing trade barrier in Brazil poses a serious concern to U.S. milk powder exports and the potential for future growth of those sales: Brazil has been considering a law that would establish a minimum of 70% shelf life on milk powder imports (0402.10.10; 0402.10.90; 0402.21.10; 0402.21.20; 0402.29.10 and 0402.29.20). NMPF and USDEC are concerned that this new shelf-life floor is intended to negatively impact imports and are unaware of any food safety-related issues that have arisen related to the current requirements that would have necessitated this change.

On another front, although U.S. exporters have benefited from the integration of an online system to grant registration approval to products with a standard of identity, the system fails to efficiently facilitate a process for products that lack such a standard. Moreover, there is concern over registration issues for less “traditional” products such as micellar casein.

Further impediments to U.S. dairy exports to Brazil include a relatively new system for import licensing that is significantly slowing the approval process. Import licenses have historically been processed within a three-week timeframe but now may take up to two months for completion. In the frequent event of a technical malfunction, the importer is required to begin the licensing process again.

A further challenge that will impact U.S. opportunities in the market in the future is the EU-Mercosur agreement under which Brazil committed to impose restrictions on a number of common food names, awarding the EU geographical indication registrations even for terms in long-standing use in Brazil as generic terms. Compounding this problem, a list of “prior users” of terms scheduled to be restricted under the FTA omits all retailers and importers despite their previous inclusion on a 2020 version of the prior users list. This is a blatant attempt to limit competition and the opportunity for non-EU suppliers to fairly trade in this large dairy market.

NMPF and USDEC urge the USTR to pursue trade discussions with Brazil that would address these nontariff barrier constraints and expand access for U.S. dairy products to this significant dairy market.

## **Canada**

Canada has a long history of sustained efforts to undermine access to its market and impair the value of trade concessions granted in prior dairy agreements. USMCA provisions are intended to make headway into this tightly restricted market. Most notably, the agreement was designed to introduce new disciplines on Canada’s use of its dairy pricing programs to intentionally distort trade (including through the elimination of Class 6/7) and usher in an expansion of U.S. dairy access to the Canadian market. To realize those benefits, USMCA’s provisions must be fully implemented and enforced.

NMPF and USDEC commend USTR’s initiation this year of a second USMCA dispute settlement panel to address Canada’s continued failure to implement dairy TRQ allocations that meet its USMCA obligations. The initiation of the panel proceedings follows Canada’s failure to comply with an initial panel ruling made public in January 2022 that found Canada was unduly restricting dairy market access that had been negotiated under USMCA. As USTR has laid out so expertly in the current dispute

settlement process, Canada's TRQ administration procedures must be reformed to fully comply with their USMCA commitments and ensure that the full Canadian food supply chain active in dairy sales – from retailers to food service restaurants to importers and distributors to processing companies – have fair and equitable access to the USMCA dairy TRQs and that Canadian policies incentivize maximum use of the TRQs.

In parallel to the continued pursuit of Canadian compliance with its USMCA TRQ commitments, NMPF and USDEC urge USTR to work with interagency partners to monitor and address Canada's implementation of other dairy related USMCA provisions, such as those eliminating Canada's discriminatory Class 7 dairy pricing policy and requiring export surcharges on dairy protein exports like skim milk powder, milk protein concentrates, and infant formula. The latter is a particular cause for concern and we urge USTR to take action to address it with Canada in light of the growing Canadian exports of loophole products evading USMCA's export surcharge system. Canadian exports of milk protein isolates (MPIs) and certain skim milk powder blends manufactured under the new Class 4a have been increasing in a manner that appears designed to evade USMCA disciplines. These are increasingly being shipped to the U.S. and are having a negative impact on other U.S. manufacturers of these products. USTR should deploy the dairy consultation tools laid out in USMCA's Agriculture Chapter to address this concern in order to curtail the harmful impact these Canadian loophole exports are having.

In addition to these areas, NMPF and USDEC note that the U.S. dairy industry is counting on the market access granted by Canada under USMCA being provided in addition to that already extended under earlier agreements and programs, including Canada's WTO commitments and Canada's existing levels of dairy imports under its Duties Relief Program and Import for Re-export Program. To that end, Canada must not cut back the existing scope or volume of dairy products that may be imported under these programs as it implements its new USMCA market access. NMPF and USDEC strongly appreciate the USMCA provision designed to avoid backsliding 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 is important to ensure compliance with the agreement's provision in this area and to guard against Canada giving with one hand while taking with the other.

## **Chile**

Chile is an important market for U.S. dairy exports, exceeding \$103 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 the FTA with Chile and avoidance of the imposition of new nontariff barriers.

In December 2022, Chile and the European Union announced an "agreement in principle" on the review of their bilateral FTA. As part of the negotiations, Chile agreed to recognize 216 names as GIs. This will impose barriers to the use of common names for goods and beverages that had been traditionally known by consumers in the Chilean market. Chile and the European Union also agreed to recognize a list of prior users of the terms "gruyere" and "parmesano," who will be able to continue using the terms in good faith and subject to strict conditions. In June 2023, Chilean authorities issued a call for prior users of both terms, but the call was inexplicably closed to non-Chilean – an unprecedented WTO violation. NMPF and USDEC urge USTR to address the discriminatory nature of

the process and establish protections for common food and beverage terms in the Chilean market. This is even more important since both parties intend to sign the reviewed FTA soon.

NMPF and USDEC encourage the Administration to monitor and address nontariff trade barriers in Chile that would discourage U.S. exports. We urge USTR to engage in a dialogue with the Chilean government to ensure that any GI recognition requested by the EU only takes place according to the corresponding IP framework and not because of the decisions under the reviewed FTA.

## **China**

Over the past decade, China has become a critically important market for U.S. dairy exports. U.S. dairy sales to China last year alone totaled over \$803 million, ranking China the third largest export market for our exports, despite the harmful impact of China's retaliatory tariffs in response to USTR's Section 301 duties.

The U.S.-China "Phase One" economic and trade agreement in 2020 addressed numerous regulatory impediments for U.S. dairy exports to the Chinese market and has continued to yield benefits for the U.S. dairy industry. However, even though U.S. dairy plant registrations were renewed on Sept. 1, 2023 (one day past the deadline), the General Administration of Customs of the People's Republic of China (GACC) has not updated basic plant registration information nor has the agency added new facilities to the China Import Food Enterprise Registration (CIFER) list since at least December 2022. By doing so, China is in breach of the U.S.-China Phase 1 Agreement provision stipulating that "each time the United States provides China with an updated and complete list of dairy facilities and products under the jurisdiction of the FDA, within 20 working days of receipt of the list: (i) register the facilities and publish the list of facilities and products on the GACC website; and (ii) allow U.S. dairy imports into China from those facilities." There are several dairy plants waiting for this update on CIFER, which is creating a trade barrier. The plants that do not have information correct in CIFER risk having their shipments detained and rejected. NMPF and USDEC urge USTR to work with China on full Phase One compliance and to ensure that these shortfalls in dairy listing updates are part of that process.

Additionally, despite tariff exemptions for select products, retaliatory duties still place U.S. exports at a disadvantage when compared to major trade competitors. NMPF and USDEC urge USTR to remove its Section 301 tariffs on Chinese products and ensure that China in turn lifts its retaliatory tariffs on U.S. dairy exports.

### *Tariff Constraints Beyond Retaliatory Duties*

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 in which duty-free safeguard quantities are permitted. For instance, this year New Zealand enjoys duty-free access for up to 197 MT of skim milk powder and duty- and quota-free access for cheese while U.S. exporters must pay the full MFN rates of 10% and 12% respectively for all the SMP and cheese they ship to China, in addition to retaliatory rates currently in place if waivers are not granted for those sales.

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

GIs and common cheese names are a key interest for U.S. dairy exporters in this large and expanding market. The United States secured commitments from China in the U.S.-China “Phase 1” Agreement and in the U.S.-China Joint Commission on Commerce and Trade regarding the use of common food names. Despite this, U.S. exporters lack the certainty they need to develop this market with assurance that the demand they work to build will not later result in a windfall for their competitors should the European Union prevail in seizing commonly used cheese terms. Clear safeguards establishing the rights of U.S. suppliers to use common terms are needed in order to provide market certainty. This becomes all the more pressing in light of the implementation in 2021 of the EU-China “100 for 100” GI agreement (which includes restrictions on “feta,” “asiago,” “gorgonzola” and “romano”) and the agreement’s follow-on provisions of registering even more GIs that include terms of commercial significance to the U.S. dairy industry. An ongoing application making use of that route is for the common name “fontina”.

### **Colombia**

Last year, the U.S. dairy industry exported \$165 million worth of dairy products to Colombia, ranking it as the United States’ 11<sup>th</sup> largest dairy export market. 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.

Moreover, the FTA has been critical to ensuring that U.S. suppliers do not slip behind 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 the United States 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.

Although U.S. dairy exporters enjoy favorable market access in Colombia as a result of the FTA, some technical barriers to trade are emerging that threaten those sales. NMPF and USDEC urge the Administration to work with Colombia on addressing these issues including the following concerns:

#### *Facility Inspection and Registration Regulation*

In 2018, Colombia issued a regulation that would require mandatory plant inspections by Colombian health officials for all dairy importers. For countries that have an FTA with Colombia, the decree permits systems recognition upon the request of the exporting country. This is a reasonable and valuable accommodation, however, the implementation procedure for this system of recognition has yet to be established. As a result, the United States has been stymied in making use of this avenue that would be critical to retaining smooth access to the Colombian market. U.S. exporters require a systems recognition process to streamline plant registration and avoid the need for onerous and duplicative inspections.

#### *Sodium Regulation*

Resolution 2013/2020 regarding Maximum Sodium Content: in November 2022, Colombia implemented the first stage of the mandatory maximum sodium content limits for 59 processed food

items, including butter, cream cheese, farmers cheese, and pasta filata. We remain concerned that these mandatory limits could have unintended food safety consequences, as salt serves as an important antimicrobial to mitigate pathogen risk. With a view to compliance, however, U.S. exporters have at this stage focused on viably meeting the regulation's requirement to demonstrate compliance. The resolution allowed importers to temporarily present a supplier's declaration of conformity (SDOC). The original regulation called for mandating third-party certificates of conformity issued by Colombian accredited certifying bodies to demonstrate compliance with the maximum sodium levels after that initial transition window. Third-party conformity assessments are time-consuming, expensive, and trade-restrictive, with no significant advantage over SDOCs in assessing conformity and compliance. In October 2023, however, following extensive engagement by the U.S. government with Colombia, Colombia released a draft amendment to the sodium regulation that would make third-party certification voluntary and allow companies to continue to use first-party certification, as well as exempt raw materials for food service usage from the regulation. These are very positive steps forward and we commend the Administration for its work with Colombia on this issue.

### *Front of Pack Labeling*

Colombia is has been advancing implementation of a front-of-pack labeling regulation which is similar to others in the region. However, Colombia is also considering implementing a food tax on products that are deemed "ultra-processed." It is imperative that Colombia does not include nutritious products such as dairy on that list.

### *Common Names*

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 United States under the U.S.-Colombia FTA. To avoid additional restrictions in this market, steps to provide strong certainty regarding U.S. market access rights and explicit rights to use common food names for key products produced in the United States are needed.

## **Ecuador**

U.S. dairy exports to Ecuador face notable market access challenges. NMPF and USDEC urge work on addressing these barriers to trade. In particular, the organizations are very concerned about the August 2022 publication of the Organic Law, intended to promote Ecuadorian milk production and consumption. The legislation establishes an outright ban on milk powder imports for ten years to strengthen the local industry, in violation of Ecuador's WTO commitments. The new law sets a dangerous precedent in Latin America. U.S. government engagement is critical to ensure that dairy market access is preserved both in Ecuador and throughout Latin America.

In addition, the procedure to obtain import licenses continues to unduly impact dairy trade: Resolution 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.

## **Egypt**

Last year, the United States exported over \$74 million of dairy products to Egypt. The market represents promising growth capacity in the North Africa region for American dairy producers if exports are not subject to unwarranted nontariff barriers.

Unfortunately, a sole-source Halal certification requirement introduced in 2021 has already disrupted trade and will impose a nontariff barrier that could further limit or even altogether halt many exports to that market. In September 2021, the Egyptian government abruptly declared that all dairy exports must be certified as Halal, the certification must be completed exclusively by a company called IS EG HALAL, the label or packaging must include IS EG HALAL's mark, and shipments must include a Halal certificate issued by the exclusive certifier. IS EG HALAL is a company partially owned by the Egyptian government.

Egypt initially failed to notify the WTO that this change was set to occur and has repeatedly failed to provide sufficient details regarding this requirement. Egypt published its Halal regulation in August; however, the regulation provided no new information, and does nothing to resolve the underlying crux of the problem of mandating Halal certification while barring most established Halal certifying bodies from supplying this certification.

U.S. dairy exporters have already been successfully certifying their products as Halal for multiple markets around the world utilizing a variety of Halal certifying bodies. Halal certification in principle does not pose a concern. However, Egypt's approach to implementing this Halal requirement acts as a nontariff trade barrier by initially mandating use of one firm as a condition for entry into the market, subsequently expanding the scope of the allowed firms to still include only Egyptian-affiliated firms rather than also including the various established Halal certifying bodies that attest to products being shipped to other markets, failing to provide a publicly available fee schedule that ensures prices are connected to the cost of providing the service by this partially government owned company, and failing to provide clear information in writing on the scope of requirements.

NMPF and USDEC urge USTR to continue work to reject this unwarranted requirement and to secure more WTO-compliant Halal certification procedures similar to those used for dairy in other markets.

## **European Union**

The United States' trade deficit with the European Union in dairy was a shocking \$2.37 billion in 2022 - even though the United States is itself a major dairy exporter.

Clearly, many EU member countries are important dairy producers and exporters, but this does not fully explain why last year the European Union exported over \$2.55 billion in dairy to the United States while only importing approximately \$173 million from the United States given the large variety of dairy products 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. Indeed, the U.S. dairy industry exports considerably more to such far away markets as Indonesia and Vietnam than it is able to export to the entire set of European Union countries. As illustrated below, U.S. exports to the European Union are limited by a wide range of both tariff and nontariff measures that make sales in the EU market unduly complicated, costly, or even illegal.

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 are particularly problematic given its tremendous reliance on the United States as a destination market. These global anti-competitive tactics should be part of any engagement on trade matters with the EU.

Given the number of issues at play in U.S.-EU dairy trade, NMPF and USDEC firmly believe that only a comprehensive system-approval approach that establishes a simplified and streamlined certificate and trading terms, while also guarding against future unscientific and protectionist import requirements, would address both current challenges and trade barriers that may be introduced in the future given the European Union's track record on agricultural issues. These worries about future unwarranted impediments to trade being introduced are heightened due to the regulation changes seen in the past few years as the European Union has undertaken a complete revision of its trade-related regulations and those being contemplated related to the EU's Farm to Fork strategy.

We also urge the Administration to engage more strategically with the EU to address U.S. export concerns. The EU has no hesitation in raising its export concerns to extremely high levels and insisting on reforms, as evidenced in their response to the Inflation Reduction Act's EV incentives for instance. The EU has also been quite transparent about leveraging various tools to drive the trade outcomes it desires to see. The U.S. must be similarly assertive in leveraging incentives and insisting on resolution to drive EU compliance on our export issues, particularly on agricultural topics. The U.S. and EU are valuable partners and allies on a wide variety of fronts; but just as with our North American neighbors it is possible to maintain a positive relationship while still insisting on trade compliance from our European friends.

Specific EU policies of concern are detailed below:

#### *Certification and Additional Access SPS or TBT Compliance Requirements*

The certification 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 at present. **The U.S. dairy industry's fundamental challenge remains overly prescriptive EU requirements that mandate assurances of compliance with specific EU regulations and various mandates that require the U.S. process for oversight to mirror that used in the European Union.**

- *Dairy & Composite Certificate Requirements*

In late 2020 the European Union announced a myriad of changes to its import certificates for dairy, composite products, and other U.S. exports that included significant new animal health requirements that went beyond the animal disease status of the exporting country to include

new demands on on-farm practices. The EU's increasing insistence that its trading partners must mirror process requirements not simply outcome requirements fails to comply with its trade obligations and needlessly increases the volatility of supplying the EU market.

USTR should work to simplify the certification requirements for products destined for the EU market. NMPF and USDEC also urge a review of the long-standing veterinary equivalence agreement (VEA) between the United States and the European Union. When put to the test in 2021, the VEA failed to deliver any benefits to U.S. exporters in terms of cementing workable prior trading terms for accessing the EU market. At the same time, NMPF and USDEC presume that the agreement continues to benefit animal product EU exports entering the U.S. market. USTR should work with its interagency colleagues to address the dramatically disproportionate certification burden imposed on U.S. vs. EU dairy exporters.

- *Anti-Microbial Resistance "Reciprocity" Requirement*

In January 2019, the EU included a requirement in Regulation 2019/6 to restrict use of certain antimicrobials in their food system and demand that all countries exporting to the EU also restrict the use of antimicrobials in line with this legislation. The EU has since continued to advance this trade-distorting and WTO-illegal regulation. In July 2022, the EU published its list of antimicrobials restricted to use in humans. NMPF and USDEC's primary concerns with this regulation focus on the EU's overreach on veterinary drugs and commonly used antimicrobials. The policies that the European Commission (EC) decides to impose within its own territory are for EU regulators to decide. However, the limitations noted in this regulation will not only apply to EU producers but rather aim to dictate animal care practices to all EU trading partners as well, a step that far exceeds what measures are WTO-permissible for the EU to undertake in the absence of a clear indication of a food safety risk posed by imports not complying with the EU's preferred approach to addressing anti-microbial resistance in the EU population. It is not up to one trading bloc to dictate animal care practices to all other sovereign nations around the world.

A reciprocity clause in the regulation effectively imposes EU hazard-based antibiotic use measures on milk producers in countries that export to the European Union, including the United States. Although the initial list of antimicrobials in this legislation is not presently expected to negatively impact U.S. dairy producers, the impact of future amendments may be severe, as veterinarians in countries wanting to export to the European Union will lose their capacity to determine the best options available to prevent, control, and treat animal disease, including options vetted by the science-based risk assessment process for global food safety standards established by the Codex Alimentarius Commission (Codex). This may result in negative consequences for food safety, public health, and animal health and welfare. Third countries may be impacted directly because food operators may not be able to use products they currently use, including those deemed safe and effective by national competent authorities. In the case of dairy cattle, there are several negative consequences anticipated from this legislation for the most common disease in cows (mastitis) and in calves (diarrhea) if EU Article 118 restricts use of WHO antibiotics deemed medically important by the WHO.

In September 2022, the European Union announced that the Commission was working to put in place additional legislation that allows for an efficient implementation of the new regulation in order to curb antimicrobial resistance (AMR). Despite significant resistance from trading partners, the EU continued down the path to force third countries to follow EU

antibiotic protocols, and developed detailed rules regarding the use of antimicrobials third countries will need to fulfill in order to export animals and products of animal origin for human consumption to the European Union. As such, in July 2023, the European Union published the language of its new antimicrobial related health certificate attestations, notified to the WTO as G/SPS/N/EU/656, that all trading partners will be required to attest to following the implementation phase-in period.

NMPF and USDEC are very concerned that the European Union's reciprocity principle is another indication of the EU's non-science-based approach to undermining the WTO's rules-based system and of wielding access to its market to drive changes in the production practices of its trading partners that are not lawfully up to the European Union to dictate. Such a blanket ban on imports of products with differing AMR regulations is incompatible with a "risk analysis" approach to controlling the spread of antimicrobials. As such, the European Union would be at risk of contravening the principles of the sanitary and phytosanitary (SPS) agreement.

- *Third country compliance monitoring*

On September 6, 2022, the EC adopted a new third country compliance monitoring regulation to replace Council Directive 96/23/EC, which extended through December 14, 2022. The new regulation, which has not yet been published in the Official Journal, was adopted one day after the comment period of the draft regulation notified through G/SPS/N/EU/577 closed and began to be enforced as of December 15, 2022. The quick adoption of this new regulation is a clear indication that the WTO notification process was never intended to seriously take into account the feedback of trading partners and is another example of the European Union forcibly pushing significant new demands on third countries without consideration of the impact these new regulations may have.

The new adopted legislation imposes significant new controls on the use of veterinary medicines and demands extensive testing of contaminants and pesticides to show continued compliance with EU regulations. These new requirements are yet another sign of the EU's non-science-based approach to undermining the WTO's rules-based system and deliberate attempt to leverage market access as a means to dictate changes in the production practices of its trading partners.

- *Consumer Preference Mandates*

The European Commission has stated its intention to create new policies on sustainability and animal welfare related to the Farm to Fork initiative. It has also indicated that it is considering imposing demands on trading partners related to both these initiatives. WTO SPS rules allow countries to take certain science-based measures impacting imports of food and agricultural products only for the protection of human, animal and plant life or health, and provided certain criteria are met. WTO obligations for the imposition of technical regulations clearly state that countries shall not create unnecessary obstacles to trade and should be no more trade-restrictive than necessary. Both sustainability and animal welfare fall into the category of consumer preference and therefore do not meet the SPS guidelines. NMPF and USDEC have particular concerns regarding the EU's highly prescriptive proposed animal welfare requirements as these go far beyond WOH standards and would create insurmountable barriers to trade if imposed on U.S. exporters. While NMPF and USDEC support the importance of sustainable production and animal welfare (the U.S. was the first country in the

world to have an ISO-certified WOAHP compliance dairy welfare program), the organizations recognize there is no “one size fits all” approach to a sustainable future. NMPF and USDEC urge the European Union to fully respect its WTO obligations and refrain from imposing trade barriers on imported food and agricultural products that meet EU food safety and communicable animal disease outcome requirements.

- *Certificate Date Requirement*  
The European Union requires the health certificate to be dated prior to shipment despite the lack of a basis for mandating this from countries utilizing systems-based food and animal health system oversight. The Agricultural Marketing Service (AMS) issues certificates in the United States based on an inspection system and does not have inspectors physically stationed at each plant at the time the container loads. Despite the Commission’s recognition of the U.S. system during systemic audits, the European Union has refused to allow for flexibility in the implementation of this requirement as it relates to U.S. exports.
- *Somatic Cell Count Issue*  
For decades, the United States provided certification assurances on somatic cell count, to the European Union based on testing of comingled milk. Somatic cell counts are a quality (not food safety) parameter. 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 is used to produce the product ultimately sold. Compliance with this revised regulation 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 is an example of the EU’s redundant and overly complicated import certification process that could be avoided with a systems recognition approach.
- *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 Directorate-General for Health and Consumers (DG 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.
- *Composite Certificates Burdensome Rules*  
National treatment concerns exist with the sourcing of ingredients for products covered by the EU’s composite certificate. Ingredients from approved countries at risk for foot and mouth disease (FMD) can be shipped to the European Union and utilized in composite products manufactured in the European Union, but the composite certificate requires any dairy ingredients incorporated into composite products in third countries that are free from FMD to also come from FMD-free countries. The FMD distinction is inappropriate for ingredients that are properly treated according to the World Organization for Animal Health (WOAH)

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, NMPF and USDEC believe that it is important to resolve such issues.

### *Country of Origin Labeling (COOL) Targeting Dairy*

Beginning in 2016, several EU member states moved forward with country-of-origin labeling requirements that specifically targeted dairy ingredients. The EU is currently examining introduction of mandatory COOL on an EU-wide level. Mandatory COOL for dairy ingredients poses a concern for trade because it appears to be designed to reduce flexibility in the choice of ingredients by EU processors who as a result 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 that were introduced at the member state level were exemptions 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. Should the European Union implement broader COOL requirements, PGI productions should not be exempted.

### *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 the much more commonly used, 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. Moreover, the European Union maintains variable duties for processed products, creating time consuming administrative complications for U.S. dairy exporters.

- *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.

## *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; the following example illustrates how the issue continues to expand even within the European Union itself.

A years old example provides the best illustration of the extremity of the EU's approach to GIs. In 2019 the European Union registered a GI for havarti cheese despite the existence of Codex production standards for this widely produced type of cheese. The ample non-Danish production of havarti was a key factor when Codex reevaluated its cheese standards to determine which to retain and update slightly over a decade ago – a process in which the European Union and Denmark heavily participated. This move was 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, 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 chose to push forward with the establishment of a GI for havarti, thus preventing its use by any other producer and upending the work that was devoted to these Codex standards.

The European Commission should adopt a model in line with the "Gouda Holland" GI where protection is solely for a multi-term GI and does not extend to the generic term "gouda". This successful model for GIs would allow for the protection of unique multi-term regional specialties while clearly preserving continued generic usage of the product type. In addition, the European Commission should establish a non-exhaustive list of terms recognized as generic to provide assurance on future market conditions.

Compounding the bilateral barriers to trade that the European Commission's approach to GIs has created, EU FTAs magnify this problem by imposing bans on the use of generic names as well. This impairs the value of concessions obtained by the United States in its own negotiations with those third country markets and has led to unjustified technical barriers to trade. The U.S. government must forcefully address 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.

## **Gulf Cooperation Council**

The Gulf Cooperation Council (GCC) bloc of countries is a very important trading region for U.S. dairy exports. Collectively, the countries accounted for \$301 million in U.S. dairy exports last year with Saudi Arabia and the United Arab Emirates (UAE) representing \$122 million and \$71 million of that total, respectively. Maintaining uninterrupted access to these markets is of critical importance for U.S. dairy exports.

NMPF and USDEC appreciate that the GCC has taken the effort to align with the Codex General Standard for Food Additives (GSFA), recognizing it as “the single authoritative reference for food additives.” However, there are several instances where the GCC is not in full alignment with Codex standards due to limitations on food additives widely used in cheese production, notably curcumins and annatto. The GCC adopted the Codex GSFA as it read in 2019 when the draft GCC standard was developed, so the additives that have been added to the GSFA via the alignment process are not reflected in the GCC standard. This Codex alignment initiative moved several Codex approved additives from the commodity standards to the GSFA. The GCC’s Technical Regulations applied to Additives Permitted for Use in Foodstuffs issued in 2021 did not include annatto or curcumins, among other widely used food additives that were previously permitted in the Codex commodity cheese standards and the Codex General Standard for Cheese. This was partially rectified by an amendment to the regulation in 2022. However, there are still several gaps where additives allowed in the Codex GSFA are not included in the GCC’s regulation. This lack of alignment with Codex has the potential to disrupt trade.

## ***Qatar***

### ***Shelf-Life Requirements***

Qatar regulations impose shelf-life requirements on various dairy products in a manner that appears to be clearly designed to shelter a new domestic dairy firm and hinder imports. The regulation spells out rules for long life milk (UHT), requiring imports to have a maximum shelf life of three months from the date of manufacture. UHT milk usually has shelf life of at least six months. The regulation also requires imports to have a minimum shelf life of 80% of shelf life remaining (i.e., no less than approximately two months and twelve days) at the time of import. UHT milk is often sold in retail containers directly to the public without undue delay upon import. If the product has shelf life remaining at the time of import, it would be safe for consumption.

Additionally, the regulation imposes shelf-life requirements on all kinds of white cheese. As stipulated in the regulation, white cheese imports are required to have a maximum shelf life of 45 days from the date of manufacture. This 45-day shelf-life requirement is unrealistic as it groups together different types of “white cheese” which have different shelf-life requirements, and many “white cheese” varieties, like cream cheese, generally have a maximum shelf life greater than 45 days. “White cheese” is not a type of cheese, it is simply a color of cheese, a factor that does not impact the cheese’s shelf life. Instead, the shelf life depends on several factors, including processing (e.g., aging), intrinsic characteristics (e.g., moisture content), packaging, and storage. This impacts even products with a considerably long shelf-life such as frozen mozzarella for pizza usage. Given the reality of shipping times and the unscientifically narrow window this creates for trade, this barrier to exports has presented considerable problems.

NMPF and USDEC encourage USTR to work with the Qatari government to repeal this regulation. Alternatively, if the regulation cannot be repealed, NMPF and USDEC strongly recommend amending the regulation to address the trade barriers it has erected by aligning the shelf-life requirements with customary minimums that have a demonstrated relationship to food safety and quality.

## ***Saudi Arabia***

### ***Dairy Facility Listing Requirements***

In 2022, Saudi Arabia (KSA) WTO notified a new process that establishes requirements related to pre-export approval required for the export of animal origin products, including dairy. KSA lists an overseas audit as part of the requirements, and it expects the interested establishments and countries to pay travel expenses. The competent authority is expected to provide the KSA a list of approved establishments meeting Saudi Arabian requirements. We urge USTR and its interagency partners to press for a broad systems recognition of the U.S. regulatory processes. The U.S. government should seek flexibility in the evaluation of food control systems if their components, although designed and structured differently, may be capable of meeting the same objective, in accordance with Codex principles. Should an overseas visit be required as part of the approval of the U.S. regulatory system, the United States should secure agreement on a systems audit in which a representative sample of plants are visited in lieu of plant-by-plant inspections. USTR and USDA should seek approval of all dairy and food plants meeting U.S. government requirements and a grandfathering of all plants that have exported to the KSA over the last five years as approved while the details of the regulations are sorted out.

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. As new model health certificates were included as part of the current GCC Import Guide, and Saudi Arabia is in the process of creating/implementing new health certificates different from those in the GCC Import Guide, NMPF and USDEC urge the U.S. government to secure acceptance of the standard AMS sanitary certificate or certificates drawing on existing AMS-issued attestations for dairy exports from the United States.

Moreover, NMPF and USDEC 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 requires. 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.

NMPF and USDEC 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, NMPF and USDEC urge the U.S. government 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 United States exported \$39 million worth of U.S. dairy products to India, a fraction of the potential opportunity that NMPF and USDEC see in this market were U.S. exports not held back by artificial barriers to trade, namely the unscientific and overly burdensome Indian dairy health certificate. Although high 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 remains the largest limitation to U.S. exporters seeking to meet the growing dairy demands in this market.

Since late 2003, most 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 many countries around the world accept U.S. dairy products and recognize them as safe. These products are the very same ones Americans safely consume daily. Despite this, India persists in refusing access for U.S. dairy products due to unscientific import requirements.

In 2019, USTR concluded that India is not fully complying with its Generalized System of Preferences (GSP) obligation to "provide equitable and reasonable access to [its] market" and in response, revoked India's GSP eligibility – a step that NMPF and USDEC continue to strongly support in light of India's actions on dairy.

In 2020, India escalated its dairy trade barriers even further by for the first time extending its dairy certification requirement to Chapter 17 and 35 dairy products, thereby upending trade that has been taking place smoothly for many years without issue in the Indian market, though an exception was noted for "non-food" products destined for the pharmaceutical or nutraceutical sectors. This new extension of the dairy certificate to those additional products was done without advance public notice and upended established sales relationships. It illustrated further the volatile nature of the Indian market and the lack of dependable trading conditions even for products not previously impacted by India's trade barriers.

In 2023, the Indian government notified the WTO of a new dairy certificate, which is an update to the version initially announced in 2022. This updated version continues the problematic non-science-based requirements of the prior version and now requires all countries exporting to India to attest to meeting Indian requirements. The new certificate language does not appear to be a genuine attempt to facilitate trade according to SPS and TBT principles.

In 2023, the Indian government also implemented new plant registration requirements, and may also be looking to establish a country approval requirement. Both processes lack transparency. Although the plant approval requirements were notified to the WTO, many of the requirements are vague and leave open the possibility of discretionary enforcement. The U.S. government was also asked to complete a questionnaire on the U.S. regulatory system, though we are unaware of any new requirements for foreign country approval. The basis on which responses will be judged is unclear, as is the intent of such a request.

NMPF and USDEC urge USTR not to restore India's GSP benefits until it has resolved the artificial non-tariff barriers impeding U.S. dairy exports to India.

## **Indonesia**

In 2022, the United States exported over \$453 million in dairy products to Indonesia, ranking it as the United States' seventh largest export market destination. Indonesia remains a valuable trading partner and NMPF and USDEC urge pursuit of a trade agreement with Indonesia in order to expand access further for dairy products in this critically important dairy market.

### *Halal Regulation Revisions*

Indonesia has been reviewing and making changes to its Halal certification program. We appreciate the Administration's focus on this issue and on ensuring that U.S. exporters can continue to use their existing Halal certifiers moving forward, as well as on ensuring that new requirements are viable for companies to achieve. Many U.S. dairy exports have successfully completed the existing process to get their products Halal-certified for export to Indonesia. This is in part due to the availability of recognized foreign Halal certifying bodies (HCBs) currently approved by Indonesia available to U.S. dairy producers. The removal of any current HCBs from any future listings would severely limit the accessibility to Halal certification for U.S. exporters. The U.S. dairy industry has no objection in principle to Halal certification as a tool to help ensure that consumers are able to purchase the type of products they seek. It is important however to ensure that Halal certification regulations remain viable and reasonable to meet, just as they are today in Indonesia for dairy.

### *Plant Registration Issues*

In order to export to Indonesia, dairy plants are required to register with the government on an approved list. Indonesia has failed to make sufficient progress on the registration of U.S. dairy plants, resulting in wait times of as long as three years for companies to access the market. The time period involved with the process – from initial application submission to final approval to ship – remains far too long and unpredictable. One challenge – among many – in the present system is due to the exactingly narrow deadlines in which companies have to make payments while a broader concern is the multi-step evaluation process of plant registration reviews and the fact that these are conducted on at best a quarterly basis for only a small subset of plant applications at a time. Moreover, if problems are identified with an application's details, the exporter is then forced to wait several months before the additional information is reviewed to learn whether their additional/revised information has resulted in approval or not. Even for companies that have successfully registered other U.S. facilities, it appears impossible under the present Indonesian registration system to secure approval of a facility on the first attempt.

NMPF and USDEC urge USTR and USDA to work with Indonesia to secure prompt approval of the pending applications and to establish a streamlined process for facility registration in this key market. The United States has a robust and successful dairy oversight system that operates nationally; recognizing this system to allow for automatic listing of any U.S. dairy facility in good regulatory standing would address the concerns with the Indonesian dairy facility registration system in the deepest, most effective manner.

### *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. NMPF and USDEC are concerned that an eventual agreement could restrict current and future opportunities in the Indonesian market for commonly named products.

#### **Israel**

Last year, the United States exported \$9.6 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. NMPF and USDEC 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 (ATAP). Most U.S. dairy products under the FTA remain constrained by small TRQs and high out-of-quota duties.

NMPF and USDEC prefer to see the U.S.- Israel FTA revisited and developed into the type of high-quality agreement the United States has with most of its FTA partners on agriculture. As part of that process, Israel should finally agree to provide full market access for all 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 sixth among U.S. export markets for dairy products, valued at \$521 million in 2022. The trade relations have been positive. Japan’s sizable dairy tariffs have presented the largest barrier to greater U.S. exports to date.

##### *U.S.-Japan Trade Agreement*

USDEC and NMPF supported the implementation of the U.S.-Japan Trade Agreement that entered into force in January 2020. That agreement made important progress in expanding market access for U.S. dairy products and has helped mitigate the risk of U.S. companies slipping behind as Japan implements the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) and its FTA with the European Union. While the deal secured import tariff parity with the United States’ major dairy competitors on various whey, select cheese, lactose, and other dairy HTS lines, NMPF and USDEC urge USTR to pursue a comprehensive FTA that addresses the industry’s remaining market access needs in this market (e.g., for milk powder and butter), as well as institutes the nontariff commitments necessary to help provide for dependable trading conditions in the future.

##### *Geographical Indications*

In its FTA with the European Union, Japan granted GI status to a number of cheeses produced in the

United States, including “feta,” “asiago,” “gorgonzola,” and “fontina.” In its implementation regulations for these terms, Japan crafted an overly narrow prior use period for terms like “asiago”, “fontina” and “gorgonzola,” and imposed an outright prohibition to the use of “feta”, significantly undermining the ability of U.S. companies to export these products to Japan ultimately to maintain the possibility of future reassessment by Japan of whether those GI registrations were correctly granted. NMPF and USDEC remain dismayed that the time period covering prior use has not been aligned with the date of Japan’s final decisions on the submitted GI applications – a period NMPF and USDEC have seen utilized in other markets that have previously negotiated with the EU.

In addition, NMPF and USDEC emphasize the importance of establishing explicit safeguards for the use of common food names in Japan. U.S. exporters welcomed the positive steps Japan took to reject restrictions on a number of common names (e.g., “parmesan,” “romano,” “bologna,” etc.), yet there exists a constant risk that those advances could evaporate in the future. To provide market access certainty, it is essential that the U.S. secure clear confirmations preserving U.S. companies’ rights to continue to use those terms in the future as well.

### **Kenya**

NMPF and USDEC support the pursuit of the U.S.-Kenya Strategic Trade and Investment Partnership to establish a strong precedent for the elimination of non-tariff barriers in the region. Market access restrictions for U.S. dairy product exports into Kenya include not only prohibitively high tariff rates but also multiple onerous nontariff requirements for importers. The Kenyan government maintains these market impediments to protect its domestic dairy industry. These challenges were detailed in our submission to USTR regarding the U.S.-Kenya Strategic Trade and Investment Partnership and we urge USTR to ensure the negotiations address these barriers to trade.

### **Korea**

Korea was the United States’ fifth largest dairy export market in 2022, valued at \$582 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 the United States to maintain its 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 key competitors could keep shipping millions of pounds of cheese duty-free. All three of the United States’ major competitors’ FTAs ultimately fully eliminate cheese tariffs, in addition to providing ample access for a wide range of other dairy products. NMPF and USDEC strongly support KORUS and commend the Administration’s preservation of this critical FTA.

Even with the best of trading partners, issues at times arise that merit resolution. For example, Korea has provided both positive and negative examples of how countries may handle the issue of geographical indications. 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, a move that has negatively impacted U.S. exporters. For other products, U.S. 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 several common names contained in multi-term GIs. The understanding regarding multi-term GIs has allowed the United States to capture most 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. Since the FTA, the European Union has pursued additional GI restrictions in Korea. To avoid more limits on U.S. exporters' market access opportunities in this FTA partner market, NMPF and USDEC strongly urge the need to secure further explicit recognitions of U.S. exporters' rights to use common food names moving forward.

### **Malaysia**

In 2022, the U.S. exported \$218 million in dairy products to Malaysia. The trade relationship is positive, yet dairy exports could grow with better market access such as through an FTA that eliminates Malaysia's dairy tariffs – a move that NMPF and USDEC strongly support.

Malaysia is involved in FTA negotiations with the European Union. In keeping with recent practice, the European Union has proposed in this context the registration of a long list of GIs. NMPF and USDEC are very concerned that an eventual agreement could restrict current and future opportunities in the Malaysian market for commonly produced products. The organizations urge the Administration to secure explicit recognition of U.S. exporters' rights to use common food names moving forward.

### **Mexico**

Last year the United States shipped over \$2.45 billion worth of dairy products to Mexico, up from just \$124 million in 1995. NAFTA – and now USMCA – have been fundamental to this growth. That is why the effective implementation and strong enforcement of USMCA is so important.

NMPF and USDEC have worked to forge a partnership with the Mexican dairy industry to expand dairy consumption in a way that benefits both countries. That collaboration was reaffirmed in 2022 with the mutual goal of broadening overall demand for and bilateral trade in dairy to the benefit of both industries. Since 1994, Mexican milk production has increased considerably, 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, the two countries have grown consumption at a reasonable price for both the Mexican and U.S. consumer.

Unfortunately, of late there has been a proliferation of poorly designed regulations targeting U.S. dairy product imports and threatening to disrupt trade with Mexico. This has created uncertainty among importers and manufacturers. Several areas of high concern are cited below.

- *NOM 222 Milk Powder Regulation Revisions*  
Driven by domestic pressures seeking to support domestic milk producers, restrict imports, and create hurdles to U.S. dairy products, Mexico is considering multiple revisions to its milk powder regulation (in force as of January 31, 2020) that would create barriers to dairy trade. Among the proposals under consideration are: (1) prohibiting the use of milk powder as a raw material for fluid milk; (2) mandating that only “extra grade” powder be used in the manufacture of other dairy products such as cheese, cream and yogurt; (3) creation of a four month commercialization window for powder despite the fact that the product's actual shelf life is 18 to 24 months; (5) ignoring Codex standards for certain specifications; and (6) mandating additional information through a conformity assessment procedure that exceeds

what would be available in a test report. Discussions of the draft at the working group level have not yet started.

- *NOM 223 Cheese Regulation Revisions*

Mexico claims it is revising its cheese regulation (in force since January 31, 2020) in order to address the problem of the use of non-dairy ingredients (e.g., vegetable fats) in cheese, yet its approach to doing so would create burdensome new requirements for U.S. cheese and dairy exports to Mexico. Concerns related to the cheese regulation revisions include: (1) mandating that milk powder used as a cheese ingredient be extra grade; (2) mandating cheese be labeled as “imitation” if casein/caseinates or milk protein concentrates are used as ingredients; (3) eliminating some ingredients and anticaking agents that are permitted under the current regulation and Codex Alimentarius standards; and (4) extending the scope of the regulation to include bulk and raw material cheese sales (in addition to retail sales). Discussions of the draft at the working group level have not yet started.

- *NOM 181 Yogurt*

The Mexican government has completed the rulemaking process for amending the NOM 181 regulation, which is expected to be published in the Federation’s Official Gazette as a final rule by the end of 2023 and enter into force nine months after such publication. The amendments to the NOM-181 contain a number of provisions not aligned to the Codex relevant standard, such as the percentage of protein that the product shall contain to be considered yogurt. To demonstrate compliance with this regulation, traders of pre-packaged products commercialized in Mexico must issue and send to Mexican authorities a self-declaration of conformity attaching a test report issued by an accredited testing laboratory. Enforcement at the customs is yet to be decided, which may have an impact on prepackaged yogurt exported to Mexico from the United States.

- *Dairy Regulation Conformity Assessment Procedures (CAP)*

In parallel to the ongoing revisions to current dairy product regulations, Mexico has proposed to implement burdensome new compliance procedures with those regulations despite the final details of the underlying product regulations remaining in flux.

- *Conformity Assessment Procedure (CAP) for NOM 223 on Cheese*

In January 2022, Mexico published a proposed new conformity assessment procedure which it proposes to require to for all imports to show compliance with the cheese regulation, through a costly and complex certification or inspection procedure, which is unnecessarily burdensome considering the level of risk associated with the product and the purpose of the regulation (to provide rules for the composition and denomination of the product, not food safety). After a public consultation of the draft ended, there has been no discussions at a working group level, so the final shape of the regulation is still unclear.

- *Front of Pack Labeling Regulations*

In October 2020, Mexico’s NOM 51 regulation took effect, mandating the use of a new system of front-of-pack (FOP) labelling for pre-packaged food and non-alcoholic beverage products. The regulation requires the use of warning symbols for products deemed to be high in sodium, sugar, fat (saturated and trans), and/or calories. A key underlying concern with the

regulation is that it misrepresents nutrient-rich foods since nutrient rich and nutrient poor foods of the same category will carry identical warning labels.

- *Geographical Indications*

NMPF and USDEC commend USTR's work to include a non-exhaustive list of products to be safeguarded from future GI restrictions in a USMCA side letter and for the additional side letter establishing a broad definition of prior users for the use of certain terms. Diligent oversight and enforcement of both commitments will be essential to ensuring their full benefit.

- Common cheese names side letter: This letter establishes an impressive and ground-breaking precedent by providing clear market access assurances on a non-exhaustive list of commonly produced products. NMPF and USDEC strongly urge USTR to use and build further on this model with additional trading partners utilizing a more inclusive list of terms that reflects the full scope of commonly produced cheeses in the United States. In addition, work with Mexico to ensure that this commitment is upheld will be important in the face of continuing efforts by European trading partners to limit competition by restricting the use of common food names.
- "Prior users" side letter: This 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. NMPF and USDEC urge similar clarifications with other trading partners and also stress the importance of ensuring that this commitment is upheld.

Despite those steps, several common cheese names will be restricted as part of the Mexican-EU FTA and/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" cheeses, thereby nullifying and impairing prior market access rights granted by Mexico to the United States under NAFTA and under the WTO agreement for those products. In addition to the critically important USMCA side letters, NMPF and USDEC believe that the USMCA provisions mandating new due process guarantees 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 prior recognition of GIs under the Lisbon Agreement.

As Mexico implements changes to its intellectual property regulations, USMCA provisions that relate to GIs and common food name issues – including both relevant side letters – must be addressed in order to translate the USMCA text elements into clear regulatory guidance in Mexico.

- *Access for Raw Milk for Pasteurization*

Despite open and smooth access to Mexico for the vast majority of the \$2.45 billion in dairy exports shipped last 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. This issue was not resolved during the USMCA negotiations, and NMPF and USDEC encourage the United States to restore access for this product to the Mexican market.

## **Morocco**

The United States exported over \$11 million worth of dairy products to Morocco in 2022. The U.S.-Morocco Trade Agreement is a key tool in making a wider range of sales opportunities possible, which NMPF and USDEC strongly support.

NMPF and USDEC are particularly interested 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 United States produces and wishes to retain the rights to export to Morocco, now and in the future. In January 2015, Morocco and the European Union 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. NMPF and USDEC urge the Administration to secure assurances regarding the types of products the United States will continue to be permitted to ship to this FTA partner and to preserve the value of the market access package that the United States negotiated with Morocco.

In addition, Morocco recently issued for WTO comment proposed regulatory changes that could upend U.S. dairy exports to the market. The proposed regulation would do two things of primary concern:

- Require dairy exporters to register directly with Morocco's government or for the U.S. government to register facilities directly with Morocco's government. All registered plants must meet Morocco's regulatory requirements.
- For the purpose of plant registration, require dairy facilities to present a Certificate of Conformance – issued by the exporting country's competent authority – attesting that the products are in compliance with Morocco food safety regulations.

USDEC and NMPF urge the U.S. government to advance formal systems recognition between the United States and Morocco to replace the competent authority's Certificate of Conformance requirement and to enable smooth listing by Morocco of all U.S. facilities in good regulatory standing. Additionally, the organizations ask that the current U.S.-Morocco dairy export certificate that was negotiated in 2015 be accepted instead of a Certificate of Conformance for the registration of U.S. dairy plants.

## **Panama**

Last year, the U.S. exported \$113 million worth of dairy products to Panama. The U.S.-Panama Trade Promotion Agreement (TPA) is an important tool in making these sales possible and NMPF and USDEC strongly support it.



The Panamanian government submitted a formal request to the United States in March 2022 seeking to revise the agricultural tariff elimination terms in the trade agreement. We support USTR's decision to date to maintain the market access terms of the agreement as negotiated. Several of the TRQs have another ten years of slowly increasing before free trade with Panama is achieved, providing sufficient time for the local industries to prepare and adapt. In addition, under the TPA, Panama is also allowed to impose temporary agricultural safeguards on certain import sensitive products as it transitions to a more open market, just as the United States can. Modifying an implemented TPA would set a dangerous precedent.

One of the most important elements in the TPA, aside from its tariff benefits, was the set of commitments made by Panama to in the SPS and Technical Standards section that establishes the following assurances:

- "Panama recognizes that the U.S. sanitary, phytosanitary, and related regulatory systems are equivalent to those of Panama for ... all other processed products, including but not limited to dairy products, intended for human or animal consumption;
- Panama further recognizes that the U.S. food safety regulatory system for all processed products, including but not limited to dairy products, intended for human or animal consumption is equivalent to Panama's regulatory system for those products, and shall not require, as a condition for the importation or sale of those products, approval of individual U.S. establishments by any Panamanian authority;
- Panama shall not require certification of individual shipments, including sanitary or phytosanitary certification, or import licensing or permitting, as a condition for the importation or sale of any processed products; and
- Panama shall not require any product registration as a condition for the importation or sale of any agricultural product of the United States that is accompanied by the appropriate export certificate issued by a U.S. authority; a Certificate of Free Sale issued within the last 12 months by a U.S. state, federal, or other authority; or a Supplier's Declaration on the manufacturer's or supplier's letterhead stationery attesting that the product is fit for consumption in the United States. For other agricultural products of the United States subject to product registration requirements of the Panamanian Food Safety Authority, Panama shall issue automatically, free of cost, and within one working day of receiving basic product information about a product, a product registration statement containing a product registration number, which shall remain in effect as long as the information provided remains unchanged.

In light of the fact that Panama has eliminated the Panamanian Food Security Authority (AUPSA) and created the Panamanian Food Agency (APA) to execute the policies emanating from the Ministry of Agriculture (MIDA) and the Ministry of Health (MINSa) and to establish a new agency process (single window) for the verification and regulation of food imports, it will be critical to ensure that new regulatory requirements are not erected that contradict the strong and clear protections the United States secured in the FTA specifically in order to ensure that as tariffs declined SPS/TBT barriers did not spring up to take their place in this market and deny access to U.S. exporters.

## **Peru**

Last year, the U.S. exported over \$160 million worth of dairy products to Peru. The U.S.-Peru Trade Agreement is an important tool in making these sales possible and NMPF and USDEC strongly support

it. However, certain technical barriers to trade threaten to limit the potential for U.S. exports to this growing dairy market.

One such example is a new Peruvian regulation concerning labeling of milk products made with milk powder that went into effect in October 2022. All fluid products previously using the word “milk” and using milk powder as an ingredient must be renamed under the new legislation. The new regulations are being implemented to with the goal of undermining imports, not to support clearly information for Peruvian consumers. Peru is a milk deficit country, where U.S. milk powder plays an important role in providing an affordable and nutritional food source to a large segment of the population.

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.” This action violated WTO rules and impaired the value of concessions granted to the United States under the U.S.-Peru FTA, which pre-dated the EU agreement. NMPF and USDEC remain concerned by the impact of these actions on the U.S. ability to fully recognize the benefits of this FTA. The organizations urge pursuit of clear protections for common names in this market.

### **Philippines**

Last year, the United States shipped over \$582 million worth of dairy products to the Philippines, ranking it as the fourth largest export destination. The Philippines has to date been a strong trading partner and NMPF and USDEC 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 U.S. dairy exporters 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 United States.

Related to nontariff trade barriers, the Philippines has historically demonstrated a deliberative approach of carefully evaluating changes to its GI regulations. Like in the United States, 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. NMPF and USDEC commend the U.S. government’s engagement to date with the Philippines, including the commitment secured via the Trade and Investment Framework Agreement (TIFA) process that ensures the Philippines will not automatically recognize GIs via a trade agreement. However, the 2022 Philippine Rules and Regulations on Geographical Indications problematically favors a European-like system to protection GIs, threatening the ability to use common terms to label products. NMPF and USDEC urge continued U.S. government engagement to ensure that GIs that would impact the use of common terms are rejected and implementation of a fair and balanced due process to evaluate new GI registrations.

### **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, with an increase of more than 1,600% over the five-year period of 2006 – 2010. This reflected Russia’s

long-standing role as one of the world's largest dairy import markets, particularly for butter and cheese. In 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 and when the Russian ban on U.S. agricultural imports took effect in August 2014. That mandate continues to block the limited number of dairy products not subject to the ban on U.S. products from entering the Russian market.

NMPF and USDEC 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. Russia's approach to facility listing remains a trade impediment and serious concern that will ultimately need addressed – separate and aside from any future action on the U.S./EU/Australian products import ban.

## **Singapore**

Last year the United States exported over \$116 million worth of dairy products to Singapore. The U.S.-Singapore Trade Agreement is an important tool in making these sales possible and NMPF and USDEC strongly support it. Singapore is a critical South-East Asian trading hub, making the United States' agreement with Singapore quite important, not only to trade with this country, but also throughout the region.

Given Singapore's deeply pro-trade approach, trade concerns have been very limited. However, one area of concern is the impact on Singapore's cheese market opportunities from GIs inappropriately registered for protection due to their inclusion in the Singapore-EU FTA. While the Singapore IP system provides some tools for challenging those decisions, the exorbitant cost of that system has direct and negative impacts on the ability of stakeholders to defend their rights when IP examiners do not sufficiently carry out their responsibilities of clearly preserving generic terms.

In March 2023, the High Court of Singapore ruled that "parmesan" is a translation of "Parmigiano Reggiano." However, the Singapore government has not ruled on the question of whether the term "parmesan" is a generic term, nor has it issued any order to remove products labeled as "parmesan" from the market. This has created uncertainty for exporters and sellers in the country who have had product removed from store shelves. NMPF and USDEC urge USTR to secure clarity with its Singaporean counterparts regarding the generic nature of "parmesan" in order to preserve our FTA market access rights.

## Taiwan

Taiwan is among the top twelve largest U.S. dairy export destinations and growing, with over \$144 million exported in 2022. Extended shelf-life fluid milk products account for over 40% of exports by value, despite a 15% import tariff. New Zealand receives duty-free in-TRQ access for most dairy products through the New Zealand – Taiwan Economic Cooperation Agreement, putting the United States at a sizable tariff disadvantage. Recognizing that the U.S.-Taiwan Initiative on 21st-Century Trade is not likely to be such a comprehensive trade agreement, NMPF and USDEC nevertheless urge the Administration to seek to eliminate or reduce tariff barriers to U.S. dairy exports through the Initiative, either through bilateral negotiations or through pursuit of unilateral Most Favored Nation (MFN) tariff cuts.

The U.S.-Taiwan Initiative offers a valuable opportunity to obtain specific commitments to forestall introduction of new, foreseeable trade barriers, including:

- Common Name Protections:

The Initiative can be used to negotiate lasting access in Taiwan for U.S. products using common food and beverage terms like “parmesan” and “feta” to help blunt the European Union’s efforts to abuse the GI system through its trade negotiations. NMPF and USDEC urge the United States to build off the approach taken in the USMCA side letters on common names and “prior users” to expand the product scope and strengthen commitments that establish recognition for important generic terms and include an agreement not to restrict market access based on use of the terms.

- Prevention of Unwarranted SPS and TBT Barriers:

The risk of regulatory barriers such as onerous facility listing requirements and certification requirements that U.S. dairy exporters have struggled with in other Asian markets arising here could be proactively avoided if the Initiative includes commitments to recognize the safety of the U.S. dairy system, mirroring the broad terms in the U.S.-Panama exchange of letters regarding processed foods (expressly including dairy). Among other things, the exchange of letters exempts those products from any current or future facility listing requirements and disciplines certificate requirements. In the exchange of letters Panama recognizes that U.S. SPS and related regulatory systems are equivalent to those of Panama for U.S. agricultural products and accepts the consequences of this through several specific disciplines in its application of various food inspection, registration and certification requirements.

While a broad Panama-style set of comprehensive commitments would be ideal, an agreement with Taiwan on elements of those commitments would help to guard against the greatest hurdles facing U.S. dairy exporter in various markets related to these types of requirements. One such element would be a lasting forward-looking commitment to allow the use of the standard USDA Agricultural Marketing Service (AMS) sanitary export certificate for dairy. This certificate includes animal and public health attestations on the U.S. herd and regulatory oversight, and AMS issues this standard dairy certificate to many countries around the world. While many markets allow use of this certificate (which NMPF and USDEC support as reasonable), certificate requirements can change at any time. Disciplines in the Initiative on

this would guard against future problematic changes by memorializing use of the certificate for future trade.

The U.S.-Taiwan Initiative could also promote alignment, coordination, and cooperation in the areas of international standards and sustainability. The Initiative should be used to advance harmonization of domestic regulations with Codex Alimentarius Commission and WOAH standards and should include commitments and mechanisms to foster routine alignment and coordination between Taiwan and the U.S. government ahead of meetings in those and other international standard setting bodies to advance science and risk-based decision-making.

Additionally, the U.S.-Taiwan Initiative should be used to explore ways to create and advance a common vision on agricultural sustainability, sustainable food systems, and food security. For example, the United States and Taiwan can mutually recognize the important role that sustainable productivity growth, particularly sustainable livestock production can play in fostering more sustainable food systems. The United States has highly efficient and high-quality production practices, which have resulted in the lowest GHG emissions level in the world per gallon of milk. In addition, the United States was the first country in the world to have an internationally certified dairy animal care program. Establishing an approach to sustainability that embraces these positive contributions would be a constructive step forward in Taiwan.

## **Thailand**

The United States exported over \$113 million 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. NMPF and USDEC urge the United States to pursue avenues for reducing the burdens Thailand's high tariffs place on U.S. dairy products including through the pursuit of an FTA or other avenues for tariff relief, such as an MFN tariff reduction on dairy products.

In March 2023, Thailand and the European Union announced the relaunch of negotiations for a bilateral Free Trade Agreement. We should expect that the European Union follows the same pattern for GI recognitions in its negotiations with other countries in Asia and abroad. The Thai government should not agree to GI provisions that will limit current or future market opportunities for US products. NMPF and USDEC request that USTR monitor the negotiations and engage with Thai authorities going forward to protect the interests of our producers, exporters, and concerned importers and retailers in Thailand.

## **United Kingdom**

NMPF and USDEC support efforts to establish a solid foundation for U.S. dairy exports to the United Kingdom following its "Brexit" departure from the European Union. In 2022, the United States exported \$36 million in dairy products to the United Kingdom – trade that was constrained due to existing tariff and nontariff restrictions imposed on this market as a result of the European Union's regime on both fronts. NMPF and USDEC urge USTR to resume FTA negotiations with the United Kingdom.

Even in the absence of an FTA, we urge engagement with the United Kingdom to establish a regulatory approach on GIs and trade in safe food and agricultural products that is more trade facilitative. The United Kingdom has traditionally taken a relatively reasonable and trade-compliant approach to these issues yet has largely inherited the deeply problematic EU structures on both fronts.

The United Kingdom is in the process of creating new health certificates and risk categories for trading partners that determine the need for a certificate and the frequency of inspections. NMPF and USDEC urge the U.S. government to seek the same “low risk” categorization that the United Kingdom extends to the European Union, Canada and New Zealand for most dairy imports. If this proves unachievable in the near term, NMPF and USDEC encourage the U.S. government to push for simplified certificates that focus on public and animal health attestations aimed at confirming the safety of imported products within the context of the TBT Agreement rather than the current EU-based model, which is overly burdensome and demands compliance with specific importing market regulations including on matters unrelated to food safety or animal health.

### **Vietnam**

In 2022, the United States exported \$224 million in dairy products to Vietnam. In 2020 NMPF and USDEC strongly welcomed Vietnam’s decision to grant MFN tariff reductions on a number of dairy HTS lines, a step that helps narrow the competitiveness gap between the United States and other suppliers to this key market. To provide long term predictability and full tariff parity for our exports, NMPF and USDEC urge the pursuit of an FTA with Vietnam and the removal of all dairy tariffs on U.S. exports. This is particularly important given that major dairy competitors in that market have FTAs in place with Vietnam.

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 exporters who 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 confirms that it takes precedence over any actions in the trademark system – namely trademark registrations or applications for “asiago,” “fontina,” and “gorgonzola.” NMPF and USDEC urge continued engagement with Vietnam to ensure that U.S. companies can 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.

## **REGIONAL:**

### **Central America (Costa Rica, El Salvador, Guatemala, Honduras, & Nicaragua) & the Dominican Republic**

Last year the United States exported \$455 million worth of dairy products to the six 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 NMPF and USDEC strongly support both.

Moreover, CAFTA-DR has been critical to ensuring that U.S. suppliers do not slip behind major global competitors. Just a few years after the agreement was implemented, the European Union put in place its own FTAs with the region. Were the United States 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.

#### *Costa Rica - Plant Registration*

Costa Rica's Ministry of Agriculture's National Animal Health Service (SENASA) requires manufacturers to register their plants via completion of a lengthy questionnaire, which includes disclosing proprietary information. Additionally, there is significant amount of redundancy in this plant questionnaire since SENASA also requests a competent authority questionnaire, which already addresses the food safety concerns. Moreover, the total plant registration timeline can take up to more than six months to review and approve, putting new U.S. dairy exports to Costa Rica at a disadvantage. NMPF and USDEC urge a shift to a systems recognition for U.S. facilities.

#### *Product Registration*

The CAFTA-DR countries all require product registration of foods before they can be sold in the country of registration. In some countries, product registration can take up to six months to complete. For products produced outside the region, registrations 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, NMPF and USDEC urge the CAFTA-DR 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.

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

The consequences in this region of the implementation of new FTAs with the European Union 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 United States but have been willing to provide important clarifications regarding the treatment of common names that are components of certain multi-term GIs of 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 NMPF and USDEC urge continued actions to bring these matters to resolution in order to preserve market access for U.S. exports.

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

## **GLOBAL:**

### **Codex**

Texts published by the Codex Alimentarius Commission (Codex) are frequently referenced and utilized during negotiations of FTAs and relied upon in adjudicating dispute settlements by the World Trade Organization. This makes Codex a critical forum for both development of food safety guidance and for establishing a level, science-based playing field that facilitates international trade.

The U.S. Codex office plays a critical role in formulating international, science-based food safety standards by coordinating and managing input on U.S. positions for all Codex meetings. Robust Codex 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 advocate on the dairy industry's behalf is increasingly critical. Sufficient training for U.S. Codex delegates, including technical support staff from non-trade agencies, is also important for delivering key Codex outcomes for U.S. dairy exports. Ensuring robust support for the programming that the Codex Office leads in training new and existing U.S. delegates and others involved in the U.S. Codex program on Codex procedure and trade considerations is critical.

The agriculture industry has repeatedly maintained that robust scientific evidence and a risk-based approach must remain the foundations of all Codex standards. In order to see Codex abide by these principles, however, it is critical that the U.S. scientific and technical staff who work on the development of international food safety standards are provided with sufficient resources and support from interagency partners. This includes amplification of priority U.S. Codex positions via outreach by interagency partners to additional foreign Ministries (e.g., trade, foreign affairs, etc.). Robust communication and collaboration on Codex issues amongst all of the U.S. agencies that work to create and promote increased trade of U.S. agriculture products is essential. The U.S. Codex office must be fully equipped to defend the principles of science-based standard setting, risk assessment, and protect U.S. interests abroad, working in concert and 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.

In addition to the above over-arching priority areas, there are a number of ongoing or proposed work streams within Codex of high relevance to the U.S. dairy industry currently. Those include:



- Codex Executive Committee(CCEXEC) / Codex Alimentarius Commission (CAC):
  - NMPF and USDEC are increasingly concerned by the efforts of some members, the former Codex Secretary and Codex leadership to push the limits of the Codex scope, mandate and expertise. The Codex mandate, summarized as protecting the health of consumers and ensuring fair practices in the food trade, is a major reason that Codex has been successful over the last six decades. Codex has also benefited from tremendous expertise in the area of food safety. Efforts to push Codex into standard setting on topics outside its expertise, including sustainability, or to consider non-scientific factors outside its public health mandate are a serious threat to Codex’s viability. Overall and of foremost importance, we ask the United States to work with likeminded member states to oppose these efforts.
  - Related to the point above, the United States must also ensure that Codex protects, and all Codex Committees effectively apply, the critical “Statements of Principle on the Role of Science in the Codex Decision-Making Process and the Extent to which other Factors are Taken into Account” (Statements of Principle). The Statements of Principle enshrine Codex’s commitment to science-based decision making, but some Codex members, particularly from one Codex region, have demonstrated a commitment to undermining Codex’s longstanding commitment to science to change the rules to benefit the region’s producers and agenda. Allowing any erosion of the Statements of Principle or allowing Codex committees to ignore these essential rules would push Codex away from science and risk-based standard setting resulting in promulgation of Codex standards harmful to U.S. dairy interests and making it more difficult to challenge unjustified trade barriers using WTO remedies.
  - With so much important work languishing in the Codex pipeline due to limited resources, delays associated with infrequent meetings, and/or obstructionist tactics by some Codex members, it is unacceptable that Codex is dedicating limited resources to an ongoing and unnecessary evaluation of work on so called “new food sources and production systems.” This is code for emerging technologies like precision fermentation, cell-based animal protein alternatives, new plant-based foods, 3D food printing, and unconventional protein sources, including insect proteins. It is critical that the United States push back on the special attention Codex has given to these products as existing Codex standards already apply to and existing Codex processes are well equipped to assess and manage the risks associated with them. Furthermore, existing procedures allow for the development of any new standards through existing Codex Committees that may be determined necessary to address any limited, unique food safety issues associated with these products. The United States must also strongly oppose any efforts to undermine existing Codex texts, including the General Standard for the Use of Dairy Terms (CXS 206-1999), or for Codex to promote these products over legacy foods/production methods based on ideology.
- Codex Committee on Nutrition and Foods for Special Dietary Uses (CCNFSDU)
  - We are concerned by the prospect of Codex ceding its independence through referencing in technical product standards non-technical policy-related statements developed by outside by bodies. Such references pose important procedural concerns for Codex’s scientific integrity and independence in a range of committees; though

most such efforts have emanated from this committee and require active efforts by the United States to mitigate and manage.

- Possible development of Codex guidelines for nutrient profiling: work in this space must align with food based dietary guidance and ensure that the consumption of nutrient rich foods (e.g., whole, 2% and 1% milk; yogurt, cheese) is not discouraged, thereby unintentionally harming overall health outcomes rather than improving them.
- Efforts to develop Guidelines including General Principles for the Nutritional Composition of foods and beverages made from plant-based and other alternative protein sources: if new work in this area is undertaken by the Committee, special care must be taken to ensure consistency with the General Standard for the Use of Dairy Terms (CXS 206-1999). With Codex already providing clear guidance on the foods that can and cannot use dairy terminology, such new guidance at the Codex level is likely unnecessary. Should the United States continue to support such new work, far stronger language is needed in the new work proposal and discussion document to make clear that the new work does not undermine, otherwise conflict with or seek to replace the General Standard for the Use of Dairy Terms (CXS 206-1999).
- Codex Committee on Food Labeling (CCFL): The new work ongoing to revise the General Guideline on Claims (CAC/GL 1-1979) remains an area that the United States must monitor closely and engage actively to ensure this work does not spiral into areas far beyond the mandate of Codex. This new work grew out of a discussion paper prepared by New Zealand and the European Union that sought to have CCFL undertake specific work on environmental labeling. This work would have pushed Codex far beyond its mandate without justification and lacked clear trade related justification. We are happy with the updating of Codex guidance on claims to ensure they are consistent with the “truthful and not misleading” standard, but the United States must oppose efforts to expand this scope beyond the general work on claims.
- Codex Committee on Food Import and Export Inspection and Certification Systems (CCFICS): NMPF and USDEC have long worked with the United States to support efforts by CCFICS to complete work on guideline on the prevention and control of food fraud. Though this work has progressed well, some members are seeking to hold it hostage by demanding that the scope include protections for geographic indications (GIs). GIs are not related to food safety and are beyond the scope of CCFICS and this guidance. They must be expressly excluded from the scope of the Guidelines either in the text of the guideline or via footnote. The United States must work with likeminded allies to continue to hold the line on excluding GIs from the scope of this guideline and completing work on the guideline so that it can be utilized by countries to ensure effective prevention and control of possible food fraud.

### **World Health Organization (WHO)**

Despite being recognized as a nutrient-dense food important in a healthy, balanced diet by the U.S. Dietary Guidelines, dairy has been a frequent target of harmful WHO policies and recommendations that are not based on sound science and fail to recognize the significant nutritional benefits from consuming dairy products, particularly for young children. Likewise, NMPF and USDEC urge a

concerted effort to ensure WHO is not promoting international policies effecting dairy products that would constitute *de facto* barriers to trade and inappropriately discourage the consumption of nutritious dairy products by young children. This is beyond the WHO mandate and a direct affront on other international organizations (e.g., WTO).

NMPF and USDEC are also 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 is not transparent and tends to be more staff-led than member-driven, is different from that followed under Codex. It is critical that each body retain its unique mandate and independence moving forward.

Similarly, NMPF and USDEC note WHO's recent expanded interest in UN sustainability work and animal care/health standards, which warrant careful monitoring. WHO's core mandate relates to protecting health, yet staff within the organization seem increasingly energized to push that mandate to include environmental sustainability considerations in UN efforts to develop more sustainable food systems. WHO has also shown expanded interest in dictating how animals should be raised and cared for, in a manner that prescribes production methods and practices versus risk-based, food safety related outcomes. In some cases, this includes recommendations that seek to reduce consumption of animal-sourced foods in conflict with abovementioned U.S. Dietary Guidelines and to the detriment of consumers who need greater access to healthy, nutrient-dense foods. It is essential that the United States monitor any increasing engagement by WHO in these environmental sustainability discussions or expanded efforts to prescribe animal care standards and insist that WHO focus its energies, resources, and expertise on core mandate areas, not the ideological interests of certain staff members.

### **World Trade Organization (WTO)**

USDEC and NMPF reiterate their support for the United States' continued membership in the WTO's rules-based global trading system that provides provisions to guard against arbitrary use of technical regulations or standards to block imports, such as actions associated with SPS measures that lack a clear basis in science and are protectionist in intent. To strengthen this system, NMPF and USDEC supports reforms to ensure a functioning appellate body does not step beyond the original intent of the WTO as agreed upon during the Uruguay Round.

The organizations also support robust U.S. government engagement and commitment to WTO reform on provisions related to food and agriculture, particularly in expanding market access. USDEC and NMPF encourage USTR to reject proposals that would weaken disciplines on public stockholding and safeguards that run counter to the intent of the WTO to facilitate international trade. Further, any proposals on tightening domestic support commitments should not be considered without commensurate market access expansion. USDEC and NMPF look forward to collaboration with USTR and its interagency partners as it develops its WTO reform strategy.

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