



**Comments by the  
National Milk Producers Federation and the U.S. Dairy Export Council,  
Comments on Proposed Topics for  
U.S.-Brazil Commercial Dialogue Agenda  
Docket Number-2024-12105**

July 31, 2024

Maria Cameron  
Deputy Director  
Office of Latin America and the Caribbean  
International Trade Administration  
1401 Constitution Ave NW  
Washington, DC 20230

Dear Ms. Cameron:

Our organizations submit the following comments in response to the Request for Comments on Proposed Topics for U.S.-Brazil Commercial Dialogue Agenda (2024-12105). The National Milk Producers Federation (NMPF) and the U.S. Dairy Export Council (USDEC) appreciate the opportunity to present their views on this important issue.

NMPF develops and carries out policies that advance the well-being of dairy producers and the cooperatives they own. The members of NMPF's cooperatives produce the majority of the U.S. milk supply, making NMPF the voice of dairy producers on Capitol Hill and with government agencies. NMPF provides a forum through which dairy farmers and their cooperatives formulate policy on national issues that affect milk production and marketing. NMPF's contribution to this policy is aimed at improving the economic interests of dairy farmers, thus assuring the nation's consumers an adequate supply of pure, wholesome, and nutritious milk and dairy products.

USDEC is a non-profit, independent membership organization representing the global trade interests of U.S. dairy farmers, dairy processors and cooperatives, dairy ingredient suppliers and export trading companies. Its mission is to enhance U.S. global competitiveness and assist the U.S. industry to increase its global dairy ingredient sales and exports of U.S. dairy products. USDEC and its 100-plus member companies are supported by staff in the United States and overseas in Mexico, South America, Asia, Middle East and Europe.

Brazil represents a critical and growing export market for the U.S. dairy industry. While traditionally inaccessible due to significant tariff and nontariff barrier challenges, Brazil has greatly expanded its domestic dairy production in recent years and has become an increasingly important country in international climate negotiations – including hosting the United National Climate Change Conference (COP30) next year.

Recognizing this developing opportunity, NMPF and USDEC have increased their engagement with Brazilian dairy organizations and trade offices. However, to fully capture this potential, U.S. government engagement with Brazil is needed to address barriers to trade and reduce tariffs.

## **Non-Tariff Barriers**

### *Health Requirements*

On October 9, 2022, the Brazilian Nutrition Labeling Law, established by Resolution No 429/2020 entered into force, mandating that food labels for end consumers display a warning symbol if the products contain levels of added sugars, saturated fats, or sodium that meet or exceed the levels defined by regulations. This inappropriately discourages the consumption of nutrient-dense foods if they happen to have certain levels of salt, sugar or fat, and is especially a challenge for cheeses, which may not have sufficient visible space on labels for a warning symbol.

### *Technical Requirements*

Within Congress, Draft Law 952/2019, which aims to establish rules regarding the minimum shelf-life limit for Brazilian importers of milk powder, is awaiting submission to the Federal Senate. According to the draft, dairy products classified under the following MERCOSUR Common Nomenclature (NCM) codes 0402.10.10, 0402.10.90, 0402.21.10, 0402.21.20, 0402.29.10, and 0402.29.20 can only be imported if they have a minimum shelf-life of 70% – an excessively high minimum level. Proponents of the law claim that lower shelf-lives of imported products has a downward pressure on prices, reducing the competitiveness of Brazilian products. This illustrates the protectionist nature of the proposed law. From a sustainability concern, establishing such a high minimum shelf life fosters further food waste by deeming safe food well within its shelf-life parameters to be inedible.

### *Geographical Indications (GIs) and Common Names*

The Free Trade Agreement (FTA) negotiations between the European Union and the Mercosur countries (Argentina, Brazil, Paraguay and Uruguay) concluded in June 2019. However, the FTA has not yet been signed by the parties and therefore none of its provisions should be implemented by Brazil. Despite the low likelihood of the EU -Mercosur agreement ever being signed, the Brazilian government has begun implementation of the agreement's Intellectual Property (IP) chapter including its GI recognitions. The list of GIs recognized under the FTA was not reached based on the merits of each term; rather, Brazil disregarded its own IP rules in opting to restrict the use of long-established generic terms and prevent countries like the US from exporting products that had not been in the market prior to certain cut-off dates established in the EU agreement.

The list of prior users set by Brazilian authorities was changed several times from its original publication in 2020: first being modified in December 2021, then in May 2022, and again in July 2022. Each change further narrowed the interpretation of "prior users" and disqualified non-Brazilian entities from claiming prior user status. This confirms the high degree of political decision-making rather than technical review that drove this process. Given this, coupled with the uncertainty regarding Brazil's implementation of GI commitments under the Mercosur-EU FTA, we urge the U.S. government to communicate to Brazil the importance of halting implementation of the FTA's IP chapter. The United States should underscore to Brazil concerns surrounding Brazil's disregard for objective consideration of GI applications and Brazil's intention to implement new policies which would restrict trade between our two countries.

On a related front, trademark applications filed by the Consortium for Common Food Names (CCFN) – which was founded and is staffed by USDEC and NMPF – encountered administrative actions refusals in Brazil regarding two registered trademarks that included the common terms "parmesan"

and “asiago”. This was particularly concerning in the case of “asiago,” since the term was expressly recognized in prior years as a common name by the Brazilian intellectual property (IP) authority under Brazil’s domestic legal system. Nevertheless, on November 21, 2023, the Brazilian IP Office cancelled the CCFN trademark for “CCFN Asiago”.

While CCFN actively defends its cases and monitors further developments regarding the Mercosur-EU FTA, USDEC and NMPF urge the Administration to engage with the Mercosur countries to discuss and address the uncertainty and the restrictive trade policies that U.S. exporters face when they try to access this important market.

### *Product and Label Registration*

Prior to 2017, product registrations were conducted manually on paper, a process characterized by being long and time-consuming. Subsequently, the registration procedure has transitioned to MAPA's online system, facilitating exporters in monitoring registrations and maintaining a centralized database. This online system has made the process faster and easier for tracking old records. However, it still requires detailed information about the manufacturing process, original and Portuguese labeling, and the quality control process, including product testing.

#### Concerns:

- The process still requires a large amount of details that some companies consider confidential information, such as product composition, ingredient list, manufacturing process, tests, etc.
- If the label doesn’t meet Brazilian requirements upon review at the port, the product must be returned to its origin without the option of relabeling on-site.
- Products with a Brazilian Standard of Identity (SOI) have automatic registration approval in the MAPA online system. However, some ingredients that use new technologies and are not captured in the Brazilian SOI face registration challenges, such as those containing micellar casein (a product not produced through traditional coagulation, and therefore not permitted to be called "casein") and caseinates made through an extrusion process.

### **Tariffs**

Although we recognize that it is outside the scope of this Department of Commerce inquiry, we would like to stress the challenge that sizable Brazilian tariffs on dairy products pose to our industry as well. Should the opportunity arise in another forum to address those tariff constraints on U.S. dairy exports, we look forward to working with the Administration to advance that as a key priority in agricultural trade with Brazil.

### **Conclusion**

On behalf of the National Milk Producers Federation and USDEC’s 100-plus member companies, we appreciate the opportunity to provide comments on this important issue, and we remain available to provide any further clarification as needed. Should you have any questions, please feel free to contact Shawna Morris, whose contact information is provided below.

Point of Contact:

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