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IDFA INTERNATIONAL DAIRY FOODS ASSOCIATION℠

International Dairy Foods Association
Comments Regarding Foreign Trade Barriers To
U.S. Exports for 2019 Reporting
Docket Number USTR-2018-0029
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The International Dairy Foods Association (IDFA), Washington, D.C., represents the nation's dairy manufacturing and marketing industry, which supports nearly 3 million jobs that generate more than $161 billion in wages and has an overall economic impact of more than $628 billion. IDFA members range from multinational organizations to single-plant companies. Together they represent approximately 90 percent of the milk, cultured products, cheese, ice cream and frozen desserts produced and marketed in the United States and sold throughout the world. The diverse membership includes numerous food retailers, suppliers and companies that offer infant formula and a wide variety of milk-derived ingredients. Visit IDFA at www.idfa.org.

After being a net importer of dairy products roughly a decade ago, the United States now benefits from a dairy trade surplus of more than $2 billion and sends American dairy products to over 140 countries around the world. In fact, approximately one day's worth of milk production each week is exported. IDFA welcomes the opportunity to provide input on trade barriers facing the industry for the National Trade Estimate report. Below are some of the major trade barriers confronting the U.S. dairy industry. For organizational purposes, the issues are listed alphabetically by country rather than in order of priority.

Canada

Canada was the U.S. dairy industry's second largest export market in 2017, valued at $637 million. A number of Canadian dairy policy measures severely restrict market access for imported dairy products and must be addressed.

Limited Market Access

Since 1970, Canada's dairy industry has been operating under a supply management system where the government is heavily involved in controlling the pricing, marketing, and production of the dairy sector. As a result, Canadian milk producers are guaranteed an artificially high domestic price for dairy products, 59 percent higher than U.S. farm-gate milk prices. To protect these inflated domestic prices, the Canadian supply management system relies on very small import quotas with severe out-of-quota tariff rates to restrict dairy imports.

Under NAFTA, Canada allows imports of a predetermined annual (in-quota) amount of dairy products in various categories duty-free from the U.S. However, once the in-quota volume limit has been reached, anything over that amount is subject to prohibitive tariffs of a minimum of 200 percent and up to 313.5 percent. Despite our shared border, U.S. dairy processors have no commercial access to the duty-free in-quota quantity allotted for fluid milk and cream, because the quota is considered filled by "cross border shopping," or consumers crossing the Canada-U.S. border to purchase milk and cream in the U.S. and returning to Canada. Yet, there is no mechanism or data to certify that the quota is actually filled by cross border shopping. Compounding these barriers, most other product categories have severe restrictions for U.S. dairy processors. For example, despite the proximity to the U.S. and ample supply, Canada granted the European Union country-specific access to 66 percent of Canada's global quota for cheese, while the U.S. receives only a fraction of the in-quota allocation before a 245.5 percent tariff is assessed. Further, the U.S. is currently limited to 332 metric tons of yogurt per year. Any U.S. exports above this quantity are subject to a prohibitive over-quota tariff of 237.5 percent; U.S. exports of ice cream and most cheeses are also similarly restricted.

When looking at the export data, Canada is a top export market for U.S. dairy products, but it should be noted that most of Canada's commercial imports of U.S. dairy products are ultimately re-exported back to the U.S. or other foreign markets. Canada utilizes two programs for dairy product imports that require the product be re-exported within a certain time frame: the Import for Re-Export Program (IREP) or the Duty Relief Program (DRP). For instance, in 2017, 82 percent of skim milk powder (SMP) imports on a quantity basis entered through the IREP program. The same goes for milk imports. Similarly, more than half of the butter imports enter through the IREP program. Due to these re-export programs, U.S. dairy exports do not enjoy meaningful market access as most products do not directly reach Canadian consumers.

Canada's supply management system also requires a dairy import control list which mandates that manufacturers of many U.S. dairy products must first find a Canadian company that holds the import quota for the product the U.S. company wishes to export. This restrictive practice adds another layer of government regulation designed to keep out U.S. products. Dairy processors on both sides of the border would benefit greatly from a more seamless North American market.

The U.S.-Mexico-Canada Agreement (USMCA) will provide duty-free country-specific quotas for U.S. dairy products if ratified. Unfortunately, the market access is not equally shared across all dairy products and the prohibitive over-quota tariffs remain so certain products may not benefit as much as others. Furthermore, IDFA is concerned about the quota administration and the quota fill rate. As we understand it, the Canadian government allocated quota to importers that were unlikely to ever import product. In addition, the fill rate for the EU's cheese quota is barely 50 percent under the Comprehensive Economic and Trade Agreement (CETA). If the USMCA is enforced in the spirit with which it was negotiated, IDFA believes U.S. dairy exports will increase in small increments over time.

Canada's Class 6 & 7 Ingredients Strategy

Under its supply management regime, Canadian milk prices are well above the U.S. and world market. Thus, Canada is not commercially price competitive in the world market and has to heavily subsidize exports of products made with Canadian milk. For example, Canada has employed a special class program to reduce the price for some uses of dairy ingredients, thereby undermining fair competition from imports and effectively subsidizing Canadian SMP exports at pricing levels more competitive for the global market. Canada has been challenged several times at the World Trade Organization (WTO) for similar subsidies and found to be out of compliance with its trade commitments.

In the spring of 2016, Ontario implemented a new class 6 pricing program whereby it set artificially low prices for dairy ingredients. Class 6 was designed specifically to curb imports of ingredients entering duty-free from the United States. As a direct result of this protectionist program, U.S. exports of ultrafiltered milk to Canada have virtually stopped, effectively destroying a $150 million market for dairy processors in Wisconsin and New York and threatening hundreds of jobs and U.S. dairy farms.

Canada's dairy producers and processors then established a new national ingredients strategy which mirrors Ontario's Class 6 program. Implemented on Feb. 1, 2017, it established a new ingredient milk class, Class 7, to be priced at the lowest of the U.S., EU and Oceania price for solids-not-fat for 7 years. The cross subsidization of class prices which offset lower Class 7 pricing created a two-tiered price system. Further, it provides both an incentive to substitute domestic ingredients for their imported counterparts and allowed Canada to shift market share internally. For example, a leading Chinese dairy processor is building a new infant formula plant in Ontario with plans to export 60,000 mt of infant formula to China by using Canadian Class 7 milk as their base cost of ingredients.

The Class 7 program also enables the export of Canada's structural surplus of SMP at prices below the cost of production and in a way that would violate Canada's WTO export subsidy commitments. The 2002 ruling by the WTO capped subsidized exports of dairy products from Canada. Export subsidies for butter, SMP, cheese and "other milk products" are subject to caps of 3.5 TMT, 45 TMT, 9.1 TMT, and 30.3 TMT, respectively. In 2017, Canadian SMP exports rose to 71,880 metric tons, up from 23,867 metric tons in 2016. Furthermore, reports from traders suggest that Canadian SMP exports are sold well below the world market price. The additional large volumes of SMP forced onto the thinly traded global market have resulted in a further depression of prices that negatively impacts the revenues of dairy farmers in the U.S. and around the world.

As a result of Canada's poor record of reverting to unfair trade practices to undermine U.S. dairy market access, the USMCA includes provisions to address Canada's lack of transparency revolving around its Class 6 and 7 programs as well as consultation processes to ensure Canada does not institute future pricing programs and other non-tariff barriers that negatively impact U.S. dairy trade and jobs. If the USMCA is enforced in the spirit with which it was negotiated, IDFA believes the Class 6 and 7 pricing programs will no longer affect global dairy trade.

China

China was the third largest export market for the U.S. dairy industry last year. In 2017, U.S. dairy exports totaled $538 million compared to only $154 million ten years prior. After U.S. dairy product manufacturers and marketers invested years developing opportunities in China, it became the leading market for U.S. whey and was a growing customer for U.S. cheese. Unfortunately, the retaliatory tariffs China placed on U.S. dairy products in response to the tariffs the U.S. placed on Chinese products due to the Section 301 investigation into Chinese intellectual property and technology transfer issues are derailing those efforts and costing the U.S. dairy industry millions in sales, market share and jobs.

China bought 38 percent of U.S. whey exports by value in 2017. Overall, U.S. whey shipments to China totaled to $235 million. In July and August 2018, the first months with the retaliatory tariffs in place, exports declined 28 percent year-over-year. Likewise, China has been becoming a major market for cheese, with its total imports up by an annual average of 20 percent over the past five years. Similarly to the case of U.S. whey exports, U.S. cheese exports declined 46 percent in July and August 2018 year-over-year.

IDFA urges the Administration to remove the Section 301 tariffs so the U.S. dairy industry can reclaim the markets and business relationships that have made China a leading foreign market for U.S. dairy products.

European Union

The EU has the potential to be a large export market for the U.S. dairy industry. In 2017, the EU exported close to $1.5 billion in dairy products to the U.S., but U.S. dairy companies exported only $116 million in dairy products to the EU. Barriers to imports of U.S. dairy products including high tariffs and other non-tariff barriers such as burdensome import licensing and certification requirements must be removed in order to correct this trade deficit.

The U.S. dairy industry welcomes a high-quality trade agreement with the EU. However, IDFA is gravely concerned that the current trade discussions between the U.S. and the EU do not include agriculture. The U.S. government should only negotiate with partners that are also seeking trade agreements that are comprehensive in scope and provide meaningful market access for all industries and sectors.

Geographical Indications

Geographical indications (GIs) are a significant market challenge for the US dairy industry. GIs are an attempt by the EU to monopolize usage of certain cheese and other food names that the U.S. and many other countries regard as generic. Retaining the use of product names that have long been commonly used in the U.S. and around the world is a crucial issue for the U.S. dairy and processed foods industries, with generic cheeses being the primary target.

The importance of these well-recognized cheese names goes beyond their significant commercial impact to the U.S. dairy industry, however. Preservation of the right to continue using these names affirms what producers throughout much of the New World and certainly this country strongly believes to be true – that we are using these terms in good faith and largely as a result of the influence of generations of European emigration. The EU's desire to turn back the clock and claw back names that had already become generic is an outrage to the many U.S. companies – small and large –that helped build the markets for these products, as well as to the industry as a whole through the incorrect suggestion that our use of these terms has not been legitimate.

We view these efforts by the EU to ban our food producers from using several important names that have long been generic internationally and in the U.S. market as de facto barriers to trade. They are a clear effort by the EU to limit competition and bestow upon their producers a considerable portion of the value of markets that our companies have devoted time and resources to build. In 2017, the EU exported close to $1 billion in cheese to the United States while the U.S. shipped only $4.3 million in cheese to the EU. European cheese producers are fully able to compete in the U.S. market without exclusive use of generic cheese names when the trade imbalance in cheese skews in the EU's favor.

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

Most recently, the EU has finalized agreements with Japan and Mexico to monopolize a long list of common names under the guise of geographical indications. Many U.S. cheese exporters may no longer be able to sell parmesan, feta and asiago to these markets. IDFA believes the EU's exclusive use of generic cheese names runs counter to international trade commitments. IDFA urges the U.S. government to oppose any effort by the EU to claw back generic cheese names, impose their GI system in the U.S., or impair U.S. cheese exports to other markets.

India

India uses trade-restrictive import procedures on milk and dairy products that effectively prohibit U.S. dairy from entering the country. Imported dairy products require a sanitary import permit issued by the Department of Animal Husbandry, Dairying, and Fisheries (DAHDF) and veterinary certification by an exporting country's veterinary authority. Finally, India mandates that milk products must be derived from a dairy cow that has been fed a vegetarian diet for its entire life. These policies are scientifically unwarranted, inconsistent with international standards and overly burdensome on producers.

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

Indonesia

Indonesia's Ministry of Agriculture (MOA) recently revised a regulation that previously mandated that U.S. dairy companies buy local milk or invest in local on-farm dairy production activities. As a condition for obtaining approval to import dairy products, the regulation required local milk processors to procure local milk and required dairy product importers to fund activities to promote milk consumption. The language of the regulation was vague and the penalty for failing to comply included withholding import recommendations.

According to a U.S. Department of Agriculture GAIN report the "most recent revision eliminates all language making the partnerships compulsory, deletes previously required reporting requirements, and removes all remaining sanctions associated with non-compliance." Although the revised language removes mandatory requirements, Indonesia's MOA has publicly stated that it will "encourage" these partnerships with local dairy producers.

IDFA urges the U.S. government to continually engage with Indonesian officials to ensue U.S. dairy exports do not face trade disruptions to a market where U.S. dairy companies shipped $133 million worth of dairy products last year.

Japan

Japan is the fourth largest market for U.S. dairy products totally $291 million in 2017. Unfortunately, the U.S. market share will decrease significantly once the EU-Japan free trade agreement enters into force. The EU will have increased market access for numerous dairy products including 20,000 mt of cheese, 780 mt of evaporated milk, 6,200 mt of whey, 12,857 mt of butter, SMP, milk powder and 5,242 mt of milk powder for chocolate.

IDFA welcomes a free trade agreement with Japan and urges the U.S. government to negotiate a deal that improves upon the limited market access gains in the Trans-Pacific Partnership including addressing Japan's restrictive TRQs and high tariffs on many key U.S. dairy products.

Mexico

Mexico is an indispensable partner for the U.S. dairy industry thanks to the market access achieved in the North American Free Trade Agreement. Mexico imported more than $1.3 billion of U.S. dairy products and ingredients in 2017 compared to only $250 million in 1993 before NAFTA was implemented. U.S. dairy exports to Mexico now account for one quarter of total dairy exports supporting nearly 30,000 American jobs.

Unfortunately, the U.S. share of the Mexican market is in grave jeopardy. Mexico included U.S. cheeses on the list of products now subject to a 25 percent tariff in retaliation for U.S. actions on steel and aluminum imports under the Section 232 investigation. Further, Mexico and the European Union recently concluded a modernization of their free trade agreement which provides the EU greater cheese access. Allowing Mexican cheese tariffs to remain in place greatly assists the EU in a market where the U.S. has long been the leading supplier.

IDFA urges the Administration to remove the Section 232 steel and aluminum tariffs so the U.S. dairy industry can reclaim the markets and business relationships that have made Mexico the most important foreign market for U.S. dairy products.

Russia

Russia was once a strong market for U.S. dairy products valued at $82 million in 2010. However that same year, Russia effectively banned U.S. dairy products due to a new requirement of an approved list of foreign facilities. This new requirement maintains that all imported dairy products must come from Customs Union-approved facilities. As part of its WTO accession in 2012, Russia agreed to remove this requirement but has yet to do so and is now in direct violation of its WTO commitments. To complicate matters more, Russia banned the importation of U.S. agricultural products in 2014. Once the import ban is lifted, IDFA urges the U.S. government to engage Russia on the foreign facility list issue so that trade can resume.

United Kingdom

Although the U.S. has not formally begin negotiating with the United Kingdom, IDFA welcomes a comprehensive trade agreement that covers all industries and sectors and eliminates the current barriers that the U.S. dairy industry faces with the European Union including high tariffs and other non-tariff barriers such as burdensome import licensing and certification requirements. The UK has the potential to be a significant market for the U.S. dairy industry as it is a net importer of dairy products. However, IDFA is concerned that an independent United Kingdom will adopt many of the EU regulations that curtail U.S. dairy exports to the region. If that is the case, any benefit or gains made in market access will not be realized. IDFA urges the U.S. government to engage on these concerns with the UK at every opportunity.

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

Sincerely,

Beth Hughes

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