

May 10, 2013

Doug Bell
Chair, Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508

Re: Request for Comments Concerning Proposed Transatlantic Trade and Investment Partnership
Docket No. USTR–2013–0019, Request for Comments.

Dear Mr Bell

In response to the above referenced request, Fonterra (USA) appreciates the opportunity to provide comments on the proposed Transatlantic Trade and Investment Partnership (TTIP).

Fonterra has been committed to the US dairy market for over 40 years. Fonterra (USA) Inc. is a dairy ingredients company headquartered in Rosemont, Illinois, where we employ 60 people serving US customers with both imported and US-manufactured ingredients as well as exporting dairy products from the US.

Fonterra (USA), which is part of Fonterra Co-operative Group Limited (Fonterra), a New Zealand based multinational dairy co-operative, has made substantial capital investments in its US production operations. We also work closely with our partners in the US dairy industry, sharing technology and trade expertise in collaboration with other industry members. DairiConcepts, Fonterra's joint venture with Dairy Farmers of America, is a multimillion dollar company that employs over 500 people and processes milk through nine plants situated in Iowa, Minnesota, Missouri, Pennsylvania, Wisconsin and South Dakota. With Dairy America, Fonterra is a major exporter of US dairy products. Finally, Fonterra is a major global supplier to several large US corporates in the food and beverage sector.

Fonterra (USA) exports US-produced dairy products from our DairiConcepts joint venture to the European Union. Fonterra (USA) also holds import licences for European Union (EU) produced cheese and butter, and uses these to import around US\$11.5 million of cheese and butter into the US yearly.

Fonterra (USA) supports a high-standard, comprehensive, broad-based TTIP

Like other members of the US dairy industry, Fonterra (USA) strongly supports the elimination of global trade distortions that act to the detriment of all dairy farmers and accordingly agrees with USTR's vision of TTIP an ambitious, high-standard trade and investment agreement that would provide significant benefit in terms of promoting US international competitiveness, jobs, and growth.

We also support the suggestion in the letter to USTR Kirk on November 15, 2012 (available at <http://www.nppc.org/wp-content/uploads/2012-11-15-Ag-US-EU-FTA-Letter.pdf>) from 60 US agricultural groups that the Trans-Pacific Partnership (TPP) negotiation should serve as the template for a US-EU FTA.

The objective of the TPP negotiations is a high-standard, comprehensive, broad-based regional agreement that covers many of the same priority areas identified in the HLWG report, including:

- Elimination of conventional barriers to trade in goods, such as tariffs and tariff-rate quotas;
- Elimination and prevention of barriers to trade in goods, services, and investment;
- Enhanced compatibility of regulations and standards;
- Elimination and prevention of unnecessary “behind the border” non-tariff barriers to trade in all categories; and
- Enhanced cooperation for the development of rules and principles on issues of global significance such as trade facilitation, environment and labour.

The TPP negotiations have made significant advances in several of these areas, and adopting similar approaches in both agreements could strengthen the position of these agreements in setting rules for global trade, and potentially support renewed activity within the rules-based multilateral trading system.

Market Access

We support the recommendation of the United States-European Union High Level Working Group on Jobs and Growth (HLWG) that the objective of such an agreement should be to achieve a market access package that goes beyond what the United States and the EU have achieved in previous trade agreements. In order to fulfil its vision as an ambitious, high-standard trade agreement that will provide significant economic benefit to the US, it is critical that access to the EU market is fully opened.

At this time, access into the EU market is tightly restricted for imported dairy products. As has been noted by the US Dairy Export Council in their comments to the HLWG, US dairy exports to the EU have averaged slightly more than \$100 million over the last three years, to a market with over 150 million metric tonnes of dairy consumption.¹

Dairy exports to the EU outside of quotas have effectively been limited to milk protein concentrates and casein/caseinates as trade in other dairy products cannot flow due to the prohibitive tariffs. These tariffs are summarised in table 1 below. As one example, the tariff for skim milk powder (SMP) is €1188 per metric tonne (mt). There is a MFN quota (EU Reg 2535/2001 – Annex) for SMP with an in-quota tariff of €475 per mt, but even with this lower tariff, it is still not possible to export SMP to the EU. Similarly, for butter and cheese, even the in-quota tariffs are prohibitive to trade (€948 per mt and €853 per mt, respectively).

In addition to prohibitive in-quota and over-quota tariffs, present quota access is very limited. Current quotas for access into the EU are between 5,360MT for some specific cheeses and 68,000MT for skimmed-milk powder

¹ United States Department of Agriculture – Foreign Agricultural Service
(<http://www.fas.usda.gov/psdonline/psdQuery.aspx>)

for all countries. Also, there are country specific quotas for cheese and butter. These quotas represent a very low percentage of total dairy consumption within the EU.

Further, the European Union has a number of Meursing tariffs, which are a tariff with a variable content based upon the goods compositional percentages of milk fat, milk proteins, starch/glucose and sucrose/invert sugar/isoglucose. These tariffs are difficult to administer, adding costs to trade and acting as an inhibitor to trade.

Table 1: Summary of selected EU dairy tariffs

Product	HS Tariff Code	Out of Quota Duty	Bi-lateral in-quota duty	MFN in-quota duty
WMP with a fat content exceeding 11% but not less than 27%	04022118	€1304.00/MT	N/A	N/A
WMP with fat percentage exceeding 27%	04022199	€1619.20/MT	N/A	N/A
SMP not exceeding 1.5% fat	04021019	€1188.00/MT	N/A	€475.00/MT
AMF	04059010/9090	€2313.00/MT	N/A	€948.00/MT
Butter	04051019	€2313.00/MT	€700.00/MT	€948.00/MT
Recombined Butter (spreadable)	04051030	€1896.00/MT	€700.00/MT	€948.00/MT
Cheddar Cheese	04069021	€1671.00/MT	€170.60/MT	€210.00/MT
Cheese for Processing	04069001	€1671.00/MT	€170.60/MT	€835.00/MT
Pizza Cheese	04061020/80	€1852.00/MT	N/A	€130.00/MT
Processed Emmentaler	04063010	€1449.00/MT	N/A	€719.00/MT
Processed Gruyere	04069013	€1717.00/MT	N/A	€858.00/MT
Gruyere Sbrinz	04069015	€1717.00/MT	N/A	€719.00/MT
Fresh Cheese	04061020/80	€1852.00/MT	N/A	€926.00/MT
Blue-veined cheese	04064010/50/90	€1409.00/MT	N/A	€704.00/MT
MPC > 85% Protein Dry Matter	35040010	3.40%	N/A	N/A
MPC < 85% Protein Dry Matter less than 1.5% fat	04049021	€1004.00/MT	N/A	N/A
MPC < 85% Protein Dry Matter exceeding 1.5% fat but less than 27%	04049023	€1357.00/MT	N/A	N/A
MPC > 85% Protein Dry matter N/A exceeding 27%	04049029	€1672.00/MT	N/A	N/A
WPC > 80% protein based on dry matter	35022091	€1235.00/MT	N/A	N/A
WPC > 80% protein base dry matter with less than 1.5% fat	04041012	€1004.00/MT	N/A	0%
WPC < 80% protein based on dry matter exceeding 1.5% fat but less than 27%	04041014	€1357.00/MT	N/A	0%
WMP <80% protein based on dry matter exceeding 27% fat	04041016	€1672.00/MT	N/A	0%
Lactose	17021100	€140.00/MT	N/A	N/A
Caseinate	35019090	6.40%	N/A	N/A
Casein	35011090	9%	N/A	N/A
Technical Casein	35011050	3.20%	N/A	N/A
Whey/Casein/ Milk Protein Hydrolysates	35040090	3.40%	N/A	N/A

Table 2: Summary of EU All Country Quotas

Quota Number	HS Tariff Code	Description	Country of Origin	Annual Quota
09.4590	04021019	Skimmed-milk powder	All third countries	68,000MT
09.4591	04051011 04051019 04051030 04051050 04051090 04059010 04059090	Butter and Fats and oils derived from milk	All third countries	11,360MT
09.4591	04061020 04061080	Pizza cheese frozen, cut into pieces weighing not more than one gram, in containers of 5kg or more, of a water content by weight, of 52% or more, and a fat content by weight in the dry matter of 38% or more	All third countries	5,360MT
09.4592	04063010	Processed Emmentaler	All third countries	18,438MT
09.4592	04069013	Emmentaler	All third countries	5,413
09.4593	04063010 04069015	Processed Gruyere and Gruyere	All third countries	5,413
09.4594	04069001	Cheese for processing	All third countries	20,007
09.4595	04069021	Cheddar	All third countries	15,005
09.4596	04061020 04061080 04062090 04063031 04063039 04063090	Fresh cheese, grated powdered, processed and blue-veined cheese	All third countries	19,525

It is clear that the potential for increased market access for US dairy exporters is considerable. As in the TPP negotiations, the end point for the market access negotiations in the TTIP should be comprehensive market access (i.e. quota-free, tariff-free access for US dairy products into the EU). During any phase-in period care must be taken to ensure that the administration of any interim restraints is not in itself a burden to the trade in dairy products.

Non-tariff barriers

In addition to the significant tariff and quota barriers to the EU dairy market, there are also a number of non-tariff barriers that make it difficult to export dairy products to the EU. In prior submissions and testimony to USTR regarding US-EU trade, USDEC has identified a number of regulatory barriers to US dairy exports such as requirements unrelated to food safety with respect to somatic cell count limits for imported dairy products, and tariff-rate quota administration details. In this submission we would like to highlight two of these barriers as further examples:

- The EU has unique requirements relating to somatic cell counts and plate counts for raw milk that goes into processed dairy products. These requirements are not shared by any other country except the EU Customs Union and therefore seem unnecessary for food safety; and

- Restrictions on the moisture content for edible caseins of 10% moisture (Council directive 83/417/ECC) that means edible casein cannot be imported into the EU. There is no similar requirement for technical casein, which has moisture content of 12% under which trade can flow.

Both the US and EU have sophisticated regulatory regimes that are effective at protecting the health of their respective populations. The ultimate objective should be for the US and EU to work together towards accepting each others' regulatory regimes as equivalent to their own.

Fonterra (USA) strongly supports including "WTO plus" commitments in the SPS and TBT chapters, as proposed in the HLWG report. The agreement should ensure that the provisions are fully enforceable and that dispute settlement provisions are included in the final agreement. Fonterra (USA) also favors the inclusion of a "Regulatory Coherence" chapter to establish cooperation and disciplines that enhance trade.

Geographical Indicators

Another critical issue in the TTIP is the protection of commonly used food names. Provisions protecting the use of Geographic Indications (GIs) can act as barriers to trade by limiting trade in certain cheese types. The European Union (EU) has been very active in promoting international rules in the WTO on GIs and more recently through providing for increased protection of GIs for EU cheese types by the inclusion of GI schedules in its FTAs with Korea, Colombia/Peru and Singapore.

Fonterra (USA) strongly supports the model as proposed by the Consortium for Common Food Names to protect both legitimate geographical indications and generic food names. Specifically, any provisions on GIs should:

- Require that a geographical indication include the name of the region or sub-region where the product is produced, and a second term that describes the product (e.g., "Camembert de Normandie", "Idaho Potatoes," etc.);
- Maintain a strong tie to the full original geographical indication by protecting the term only in its original language and in transliteration (e.g., "Parmigiano Reggiano");
- Establish reference points for identifying common names, such as existence of a Codex standard or other international standards; use of the term in dictionaries, newspapers, product descriptions in tariff schedules or in explanatory notes; levels and diffusion of global production; international trade; etc.;
- Provide the opportunity for stakeholders around the world to comment on geographical indication applications to ensure that officials have fully considered the request and its impact on other farmers and food producers.

Fonterra (USA) would oppose any attempt to monopolize common (generic) names that have become part of the public domain, such as feta or parmesan.

Thank you for this opportunity to comment on negotiating priorities for the TTIP. We are available to meet with you to provide further detail on the points raised in this submission but are not seeking to testify at the public hearing on May 29 and 30. We look forward to working with USTR to seize the opportunities afforded in the TPP negotiations and to realize President Obama's vision of a dynamic and expanding Transatlantic economic partnership that supports US exports and jobs.

Yours sincerely

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