Comments by the National Milk Producers Federation
And the U.S. Dairy Export Council
Regarding the Request for Comments Concerning
Proposed Transatlantic Trade and Investment Partnership
Docket Number USTR-2013-0019
May 10, 2013

Our organizations submit these comments in response to the notice of request for public comments concerning the Proposed Transatlantic Trade and Investment Partnership (TTIP): USTR-2013-0019. 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. We would also like the opportunity to testify at the hearing on this issue that will be held on May 29 and 30. Below is a summary of these comments and the key points of our testimony.

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.

Summary:
NMPF and USDEC support the TTIP negotiations. It is our hope that a comprehensive trade agreement can remove the many tariff and nontariff obstacles to trade that currently hinder greater U.S. dairy exports to the EU. The U.S. faces a dairy trade deficit with the EU that exceeds $1 billion. Despite EU complaints about U.S. regulations pertaining to a relatively narrow range of products, the U.S. market has been relatively open to EU dairy products, as evidenced by the $1.3 billion sold here last year. In contrast, U.S. dairy exports have had significant difficulties penetrating the EU tariff and nontariff regime. As a result, the U.S. exported only $88 million to the EU last year – roughly as much as we exported to Singapore, a nation home to 100 times fewer people than live in the EU. With global exports of $5.2 billion last year, the U.S. is a major dairy exporter. We expect TTIP to remove the barriers to our products that have so greatly impeded U.S. market access to the EU.

Our TTIP priorities can be summarized in six key points of equal importance:

1. Dairy tariff elimination, in full concert with removal of nontariff trade barriers, that is handled in a coordinated manner (i.e., that accounts for average EU dairy tariff rates being triple those in the U.S.)
2. Through separate and issue-specific discussions, remove restrictions on the use of common cheese names in EU market and other U.S. export markets
3. Full recognition of the safety of the U.S. dairy product system for food and feed uses in order to remove the need for the multiple problematic EU certificates pertaining to dairy products and avoid the threat of future trade restrictions unsupported by science
4. Simplified and stream-lined border administration measures, particularly re: TRQ administration & licensing procedures
5. Enforceable, WTO-Plus SPS commitments to provide enhanced certainty to all U.S.-EU agricultural trade
6. Mutual elimination of dairy export subsidies to all destinations

Comments:
Just as the High Level Working Group report calls for, it is critical that this agreement not only remove tariff barriers but also undertake the much more difficult yet meaningful work of nontariff barrier removal. It is also vital that work on NTBs involve both current policies as well as proactive efforts to include regulations currently under debate that threaten to significantly impair trade. An agreement that primarily focused on tariffs or simply some of the issues that either party has voiced complaints about for an extended period would not yield truly balanced and beneficial results. We firmly believe that TTIP offers a genuine opportunity to expand U.S. dairy exports and chip away at the sizable dairy trade deficit currently in place – but only if dairy issues are truly dealt with in a holistic manner.

Too often in trade matters, whether bilaterally with the U.S. (e.g. somatic cell count demands in the dairy industry) or internationally (e.g. within Codex discussions), the EU's approach appears to be designed to ensure that other countries essentially adopt regulations mirroring those in the EU, which tend to be more restrictive than scientifically justified. While exporters naturally bear the burden of ensuring that their products comply with a foreign country's requirements, the importing country has obligations as well. These include basing sanitary and phytosanitary (SPS) requirements on sound science, not simply consumer preferences, and choosing the least trade restrictive measure necessary to accomplish a regulatory goal. We believe that a number of EU requirements should be reformulated to ensure that they are not operating in a manner that unnecessarily hinders trade.

Trade Data:
As noted above, the EU exported $1.3 billion worth of dairy products to the U.S. last year while the U.S. exported $88 million to the EU. Both the EU and the U.S. are major global dairy exporters. Total U.S. dairy exports last year were ranked the third largest, amounting to $5.2 billion, signifying that this is clearly not a situation where a sizable trade deficit stems from a more export oriented industry.

In 2012 the U.S. actually exported more to New Zealand (the world's single largest dairy exporter and home to 4 million people) and more to Australia (also one of the world's largest dairy exporters and home to 23 million) than to the entire EU (home to approximately 500 million people). U.S. dairy sales to the EU equated those to Singapore, a country of 5 million.

Tariff Elimination:
Provided that TTIP truly removes the nontariff barriers hindering improved U.S. dairy access to the EU market, we support full tariff elimination over a reasonable time period.

Since EU dairy tariffs are on average three times those of U.S. dairy tariffs, dairy tariff removal must be handled in a coordinated manner to ensure that improper market signals are not sent simply related to timing of when a reduced tariff level becomes a surmountable hurdle. For instance, reducing a 90% tariff in half over 5 years would still result in a relatively sizable market barrier of 45%; by contrast reducing a 30% tariff in half over that same time period would result in a 15% rate which may be much more easily accepted as a feasible cost of doing business. Tariff incentives should be dealt with in alignment and out of recognition of the widely varying levels currently in place that provide a much lower tariff barrier to EU dairy exports than to U.S. dairy exports.

We are providing confidentially a USDEC summary of EU tariff details for dairy products. The table demonstrates the onerous nature of most EU dairy tariffs. In particular, tariffs on whole milk powder, nonfat dry milk (included under skim milk powder), whey products, butter and cheese are prohibitively

high. In many cases, even in-quota rates are extremely high, which leads to very low usage of the existing TRQs. In contrast, U.S. in-quota dairy TRQ rates are set at minimal/negligible amounts. In addition, the EU has sizable EU-specific TRQs for the U.S. market; the U.S. does not have comparably large U.S.-specific dairy TRQs for the EU market, which results in more favoritism for EU suppliers into our market than for U.S. suppliers into the EU market.

We are interested in the full range of dairy products given the nature of the EU's highly developed dairy market.

Geographical Indications (GIs) Wielded as a Tool to Limit U.S. Competition
Restrictions on the Use of Product Names, Masquerading as Intellectual Property Protection, Threaten to Hinder U.S. Sales in Both the U.S. and Export Markets.

It defies credibility to think that a trade agreement could actually make it more difficult for our producers to market their products both domestically and internationally, yet that seems the direct goal of the EU's approach on GIs. Our industry has already been grappling with the negative trade impact caused by a predatory EU policy on GIs that does not take into account the common usage nature of many terms included in many European GIs.

Because of these struggles, we would welcome bilateral discussions on GIs with the EU, provided that this is done in a separate undertaking designed to truly address the legitimate concerns of both sides. The best structural model for this approach is the U.S.-EU wine agreement. Although not perfect (according to U.S. wine industry advocates), the U.S.-EU wine agreement successfully resulted in an agreement welcomed by both sides as an improvement on a long-standing area of deep divergence. That type of agreement was only possible because these talks occurred in an issue-specific forum which forced the EU to address some of the very significant trade concerns of the U.S. industry, rather than merely insist upon further pressure to adopt the EU approach and impose additional restrictions on the FTA partners' producers, as has been the case in each of the EU's recent FTAs with its other trading partners.

The specifics of the results of such a discussion on food products, however, are likely to differ considerably from the agreeable outcome arrived at in the U.S.-EU wine agreement. One facet of the wine agreement was to grandfather existing registered users of certain terms and for the industry to migrate to the use of grape varietal names instead. This preserved the ability to refer to a category of product in a uniform manner which assists in maximizing collective marketing efforts. Such an option does not exist in most food sectors. Given this and other factors, these solutions would be a very poor fit for food terms and would be rejected by our industry. Additionally, our industry is already quite export-focused and as such discussions in this area must provide assurances about the rights of companies to use key terms not only in their home market but also in the EU and other export markets.

Key U.S. industry goals for such a discussion would include the following:

- Remove barriers to the sale of U.S. products such as "parmesan" and "feta" (labeled as such) in the EU market.
- Ensure that no new limitations as a result of the U.S.-EU discussions are placed on usage in the U.S. market of terms currently recognized as generic within the U.S.
- Establish a way to effectively address growing restrictions in third countries on the use of common names, particularly those that result from implementation of trade agreements with the EU.

Past U.S. FTAs have not included language on GIs that extended beyond cementing the importance of the first in time, first in right principle; therefore omission from the broader agreement of GI language that goes beyond this principle would still yield a comprehensive outcome. And as stated above, we urge USTR to hold discussions on this topic – in an appropriate separate forum – in order to secure a truly mutually agreeable outcome on the issue of GIs and common name preservation.

See further background details in the Appendix.

Enforceable "WTO Plus" SPS Commitments
USTR has worked extensively in the Trans-Pacific Partnership (TPP) to create strong SPS commitments that build upon existing WTO SPS Agreement requirements. We applaud this ongoing effort even while we continue to work with the Administration to try to ensure that those commitments are genuinely enforceable so that the U.S. can rely on the excellent work by our negotiators if/when TPP trading partners attempt to flout their TPP SPS obligations. Given the long-standing history of U.S. concerns with EU SPS practices, this undertaking will be even more important in TTIP.

The WTO provides a forum for resolving and enforcing those commitments that are exclusively spelled out in the WTO SPS agreement. However, any agreement surrounding WTO Plus elements (new commitments beyond the WTO SPS Agreement as well as clarifications regarding existing WTO SPS commitments) would not likely be relevant in a WTO case since by their very definition, these commitments are going beyond the fundamental WTO SPS agreement. We believe that these elements are vital to include in TTIP and want to ensure that we can genuinely count on them at the conclusion of this agreement.

Border Measure Administration:
Aside from various regulatory burdens (detailed below), the process of complying with the tariff administration measures in the EU is extremely complex and burdensome. We would like to ensure that this process is dramatically stream-lined as part of TTIP and that the following issues are addressed.

- **Import Licensing and TRQ administration**
  The EU'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 EU's dairy tariff schedule.

- **Tariff Form: Inconsistent Duties for a Given Tariff Code**
  The EU's system of variable duties for processed products adds another layer of complexity and uncertainty to shipping to the EU. The U.S. does not use a variable duty system. Although ultimately elimination of tariffs is the goal (as detailed above), that is likely to take place over a period of years. In the mean time we would like to see greater predictability by moving away from the EU's use of its Meursing Code to determine a total tariff for various composite/processed products. 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 EU on the composite product depends on the ranges of these products in the EU's Meursing Code.

  See further background details in the Appendix.

- **Port Inspection Issues**
  Inconsistent inspection practices across the EU's BIPs have caused difficulties in the trade of dairy products as well. We would expect BIPs to sample products in a way that leaves their integrity intact, but we have found this not to always be the case. Instead of making a small slit in a bag of dried dairy products and covering that slit in its entirety with a sticker of the BIP, we have observed some BIP's ripping open the bag and then attempting to seal it by wrapping the entire bag in tape, though in some cases its content continues to leak. When the shipment reaches the customer, they of course reject the bag because it is not properly sealed and the product may be contaminated. We urge consistent inspection practices which ensure that any BIP sampling does not compromise the integrity of imported products.

- **Dairy Samples**
  U.S. exporters face challenges due to the difficulty in sending dairy samples to potential EU buyers given widely varying requirements on this depending on the sample's intended usage. Streamlining these requirements and improving speed of process would help address this challenge.

Specific NTBs and SPS Regulations/Requirements
Restrictions on U.S. Dairy Exports Due to EU Regulations and/or Policies Other than Tariff Levels

Below we detail several areas of concern with respect to EU regulations. Some are related to SPS requirements; others pertain to trade administration procedures. Our primary interest with respect to these non-tariff measures it to ensure that our safe products are genuinely able to access the EU market without significant additional burdens. This is not the case currently.

We believe that a broad assessment is needed in order to provide assurances regarding U.S. dairy product access to the EU market. We believe that our system is comparable to that in the EU, yet despite this the U.S. still faces many current regulatory challenges as well as the threat of future trade restrictions. TTIP must provide a firmer recognition of the acceptability of U.S. products produced in compliance with U.S. regulations.

- **Elevation of Consumer Preferences and/or Animal Welfare Issues Above Scientific Findings**
  Our organizations recognize that countries must maintain the ability to conduct their own scientific assessments of issues relating to plant, animal and human health. What is deeply concerning about the EU's overall approach to SPS issues, however, is that its political body is frequently given the ability to override the EU's own scientific authority's findings to instead establish restrictions on products based typically on animal welfare or consumer preferences. While it is naturally the right of the EU to do so with respect to domestic production, WTO commitments do not permit such restrictions for imported products. Yet this remains a persistent problem with many EU policies.

  We wish to flag a few issues in this respect:

  Cloned Animal Regulations
  The EU is in the process of developing new regulations related to products derived from the offspring of cloned animals. We want to ensure that these regulations would not negatively impact sales of U.S. dairy products to the EU.

These offspring are reproduced in the typical manner (i.e. are not clones themselves) and the EU's scientific body has found them to not pose any elevated risk to consumers. In addition, the offspring of cloned animals are already present in the EU farm system and have not been tracked. This means that the EU does not have a method for knowing which animals are the offspring of cloned animals. Despite this, the EU continues to consider imposing restrictions on imported products that may be derived from the offspring of cloned animals.

The issue of trade policies for products from the offspring of cloned animals is itself a concern and holds the significant potential to negatively impact U.S. exports to the EU. Just as in the EU, the cloned animals' offspring (found by both FDA and EFSA to pose no elevated risk to consumers) in the U.S. have not been traced. Even if the U.S. wished to honor future EU demands for products that are not derived from the offspring of clones, NMPF and USDEC cannot currently conceive of how the U.S. government could certify to the product being from a certain group of animals that neither producers nor the government has tracked and are by now intermingled with both U.S. and EU herds.

EU somatic cell count (SCC) Requirements

EU SCC requirements for a limit of 400,000 somatic cells per mL at the farm level impose regulatory restrictions based on a parameter that is a quality measure, not one related to food safety. The EU has asserted that it relates to herd health, but this is not a relevant factor for imported dairy products. This quality measure is not a requirement in the dozens of other U.S. export markets and is not a justifiable import requirement for the EU – particularly as it now relates to individual farms' level rather than assessing the state of the overall milk supply used to produce products for the EU (i.e. based on comingled testing at the plant or tanker level). We want to see this hindrance to U.S. dairy exports removed.

SCC levels at the vast majority of U.S. dairy farms are in keeping with EU regulations for this milk quality parameter. However, the lack of a similar U.S. limit and the common-place shipment of U.S. milk between different companies has meant that most major U.S. coops and processors have had to comply with a very onerous program designed to allow USDA to certify compliance with this requirement. (USDA has done its best to try to minimize burdens on the industry; but the record-keeping associated with the EU requirement itself is inherently burdensome.) Furthermore, farms not in compliance face the threat of effectively being shut out of the market over foreign quality criteria.

At the recent National Conference on Interstate Milk Shipments (NCIMS) meeting, NMPF supported lowering the U.S. regulatory limit to be more in keeping with the EU's. The state officials that form the bulk of the NCIMS voting bloc did not agree, however. Therefore, this issue demands resolution in TTIP.

Use of rBST/rBGH

The EU does not currently restrict access to its market only to products made from milk from animals that have not been treated with rBST/rBGH. This is due to a recognition by the EU that there is no documented human health risk associated with this product's usage in lactating dairy animals. Although use of the drug is not permitted in the EU's dairy herd, the EU does not place restrictions on imported products. NMPF and USDEC want to ensure that this remains the case moving forward so that the EU does not erect a new barrier to trade based on this technology.

Potential New Areas of Regulation
There is a growing pressure within the EU to impose animal welfare requirements on imported products. We would vehemently reject this approach as inconsistent with EU WTO obligations. Similarly, there is discussion underway in the EU to broaden the scope of "sustainability" programs. We reject the use of such programs as an import requirement. We strongly urge USTR to ensure that its work with the EU is broadly focused to work to avoid brewing issues from becoming tomorrow's barriers to trade.

Export Certificate Requirements
The EU's numerous health certificates and the requirements included in the certificates themselves have proven to be very problematic for U.S. exporters. Issues range from certificate date requirements to confusion over which certificate should be used following the introduction of composite certificates in 2012. The situation is further complicated by the often contradictory information in EU regulations and uneven interpretation across the border inspection posts (BIPs) throughout the member states. A summary of the most concerning issues is listed below. In addition, the SCC issue cited above is also one that is manifested through a certificate requirement

- **Certificate Date Requirement**
  U.S. exports to the EU are being hindered due to EU regulations that may align well with their system but cause a serious mismatch with USDA and U.S. port procedures. Addressing this concern would not compromise food safety in any way and would remove an impediment to U.S. access by resolving a paperwork matter. The EU already allows New Zealand dairy certificates to be dated after the date of export so this is not an unprecedented request. Given these factors, we urge early work on this issue.

  The EU requires that health certificates must be dated prior to the date of shipment (Annex IV to COUNCIL DIRECTIVE 2002/99/EC states in point 6). In addition, the EU also requires that the accompanying health certificate be dated prior to the sailing date and must include the container and seal number(s) (Notes for Commission Implementing Regulation 194/2011 for dairy health and transit certificates and Commission Implementing Regulation 468/2012 for composite health and transit certificates).

  In the U.S., however, the container and seal numbers are only available at the time the products are physically loaded onto an ocean container at the manufacturing facility and/or warehouse. Therefore, exporters cannot fully complete the health certificate until the product is physically loaded and en route to the port. There are some cases where the vessel sails within a few days of the shipment loading, but it can take up to 5 business days for USDA/AMS to process health certificate requests. Given these 2 requirements, U.S. exporters are challenged with providing all the required information on the certificate and meeting the EU's requirement to have the certificate dated prior to the vessel's sailing date.

  See further background details in the Appendix.

- **Composite Health Certificates**
  The EU first introduced composite health certificates in January 2012 through Commission Regulation (EU) No 28/2012. The intent of the certificates appears to be to ensure that animal-origin ingredients included in composite products originate from countries approved to ship

those products directly to the EU. While in theory this goal is sound, the implementation of the certificates has been fraught with difficulty. We are now more than a year out from the certificates' first appearance, and still both exporters and BIPs struggle with their implementation. As a result, these composite certificates are acting as a barrier to trade.

The EU defines a composite product as containing both animal and plant origin ingredients. Fundamentally, we see no need for these certificates when a product contains dairy as the only animal-origin ingredient. We would like to see them eliminated for composite foods in which dairy is the only animal-origin ingredient and only a dairy certificate used. This approach would also alleviate the issue mentioned below.

Really the only requirement in the composite certificate over the dairy certificate is that the composite certificate places additional restrictions on sourced ingredients to verify the FMD status of the country of origin and ensure that they are eligible for export to the EU. This sourcing requirement included in the composite certificate has been problematic from the start and the focus of extended U.S.-EU discussions already. The most recent changes to this requirement were in June 2012, but those did not alleviate the fact that a country that is allowed to ship dairy products (other than raw milk or raw milk products) directly to the EU is prohibited from providing properly treated dairy ingredients to another non-EU country for further processing and then ultimately export it to the EU in the form of a composite product. The triangular trade language restricts the sourcing of ingredients in a way that it does not from EU member states.

At a bare minimum, these triangular trade restrictions are scientifically unjustified and cause unnecessary barriers to trade. It is crucial to resolve the triangular trade now as the sourcing of U.S. goods is jeopardized under the current language, and for the future in case Foot & Mouth Disease appears in the U.S. and therefore further restricts our ability to ship to the EU under these current regulations.

An additional challenge is determining which products fall under the scope of each certificate. As stated above, the EU defines a composite product as containing both animal and plant origin ingredients. However, the products for which the composite certificate should be used does not necessarily follow this definition. Instead, the EU has established a number of Harmonized System (HS) codes for which it expects the composite certificate to be used. This approach leads to numerous inconsistencies which are detailed in the annex along with additional information on this issue.

- **Inconsistent use of Tariff Codes on Dairy Certificates**
  The EU uses two different dairy certificates – "HTB" for countries free of FMD and "HTC" for countries at risk of FMD. (The HTB certificate requires pasteurization of dairy products, whereas the HTC certificate lists the heat treatment options noted for countries at risk of FMD.) As a FMD-free country, the United States issues only the HTB certificate. The difficulty that exporters and EU BIP officials face is that again, the EU determines which product falls under which certificate by the HS code, and there is inconsistency among the HS codes on the HTB and HTC certificates.

  For example, both codes 1901 and 2106 are not included on the HTB certificate (the less restrictive one and the one that the U.S. uses) although the products are permitted to enter the

EU market with pasteurization treatment from an FMD-free country. This inconsistency in the HS codes included in the notes to these certificates has caused problems at certain ports. We would like to see the EU update its tariff code guidance to ensure all eligible dairy products are included on the HTB certificate as well.

- **Colostrum Certification**

  Human Consumption

  There is not currently an EU-wide regulation and certificate for human consumption colostrum. Some of the member states that do not permit the import of colostrum allow the domestic production of colostrum, and colostrum from these companies can be found for sale across the EU. The EU's regulations state that the transitional period of member state regulation on products such as colostrum ends by the end of 2013, and we understand that there are currently efforts underway to achieve harmonization of import requirements. If this is not achieved or the outcome is not acceptable to permit trade in this product, we urge USTR to address this barrier.

  Colostrum for Animal Feed:

  The United States currently cannot ship colostrum for animal consumption to the EU. The EU's certificate for colostrum for animal feed contains attestations that the U.S. cannot endorse since U.S. animal disease monitoring programs differ from those conducted in the EU. Although some shippers have been able to regain access to the EU market once this certificate was released in 2010, the U.S. has not. We would encourage both sides to continue the dialogue to work toward a resolution that would both provide the EU the animal health safeguards it seeks while allowing the U.S. a more flexible path to making these guarantees.

- **Duplicative Inspection Requirements:**

  The EU requires dairy shipped for feed use to be inspected by the USDA veterinary service, even if the plant is already inspected and found to be in compliance with food-grade inspection criteria. This is a duplicative requirement that does not add additional safety to dairy trade. It is also relatively unique; the vast majority of other U.S. dairy export markets permit food-grade inspection to suffice since this inspection is typically performed at a higher level of parameter scrutiny.

- **Response to two EU Concerns:**

  U.S. Grade A Milk Requirements

  The EU has voiced complaints about the U.S. Grade A system and the perceived hassles they must go through in order to be able to ship a certain subset of dairy products to the U.S. Some EU companies have chosen to take part in that process and have shipped Grade A dairy products to the U.S. over the past few years; others have not. Going forward, however, as was decided at the April 2013 National Conference on Interstate Milk Shipments (NCIMS) conference, the process for EU companies to ship Grade A products to the U.S. will become much more open through an expansion of the program for 3rd party certifiers to inspect foreign facilities and their suppliers. We believe that this effort to better response to the trade concerns of the EU and other trading partners should address complaints with the U.S. Grade A system.

Any action on this issue must take into account the widely varying food safety systems (in terms of implementation, not solely on-the-books regulations) throughout the whole of the EU. The NCIMS, overseen at the federal level by FDA, commits each of the 50 U.S. states to carry out regulations in a similar manner to ensure that U.S. regulations are enforced in a uniform way throughout the whole of our territory. We are not aware of a comparable mechanism within the EU. However, some areas of the EU may indeed be able to comply with Grade A requirements – particularly under the newly updated NCIMS program. This should provide them with the access they seek for the segment of dairy products covered by Grade A regulations.

Inclusion (at ½ Rate) of Imported Dairy Products in U.S. Dairy Promotion Program
Another dairy-specific issue that the EU has raised has been the 2008 Farm Bill's extension to imports of half of the dairy promotional program fee. We maintain that the current program is fully in compliance with U.S. WTO obligations and in fact continues to provide an advantage to imported products since the levy is set at a rate lower than the domestic promotional fee rate. This is in no way a barrier to EU dairy exports; rather it continues to provide an advantage to them over domestic products and compared to treatment of imported products under other U.S. "checkoff" programs.

As is the case for many other agricultural commodities, the U.S. has in place a USDA-administered "check-off" program whereby dairy producers contribute $0.15 per 100 lbs of milk they produce for activities intended to promote the consumption of dairy products. Until just recently, this program effectively gave importers a free pass by not levying a fee on their products. This practice was not in keeping with the approach of most other U.S. "checkoff" programs, which primarily levy the promotional fee on imports as well. Contrary to the claims of European dairy manufacturers, the 2008 Farm Bill changes still provide an advantage to dairy imports since they only pay $0.075 per 100 lbs of milk equivalent in their dairy products (i.e., half the rate paid by those in the U.S.).

The EU dairy industry has also claimed that they do not benefit from promotional activities under this program. To the contrary, however, U.S. promotional efforts are currently designed to promote dairy consumption without preference being given to the origin of the product. And, a close examination of the promotional activities will show a very substantial amount of spending against promoting the dairy category as a whole – especially as an important source nutrition of nutrition – which serves to expand total domestic consumption in a way that benefits both imported and domestic suppliers. EU dairy sales have benefited from this as seen by their increase of $212 million over the past decade, despite unchanged U.S. dairy tariff levels over that period. Furthermore, as the goal of TTIP is to remove tariffs, EU dairy sales would no longer face any restriction in our market if that is achieved.

Export Subsidies
Over decades and most recently in 2009, the EU has made use of its massive export subsidy allowances to tremendously distort world dairy markets. Under its WTO commitments, the EU is permitted to spend over 2 billion Euros a year on dairy export subsidies: 946 million on butter, 724 million on other dairy products, 346 million on cheese, and 298 million on skim milk powder. This equates to 411,600 metric tons of butter, 1,008,900 MT of other dairy products, 331,700 MT of cheese and 323,400 MT of skim

milk powder. When activated, use of these government subsidies makes it more difficult for U.S. exporters to compete in global markets.

In recent U.S. FTAs, the use of export subsidies has typically been prohibited between the U.S. and its partner country (i.e. in each others' markets). Our industry has supported these provisions. We believe it is entirely appropriate and expected that the U.S. continue this model in TTIP and thereby prohibit the use of export subsidies in each others' markets.

Moreover, we should seize the opportunity to make use of a trade agreement between two of the major users of direct export subsidies by securing a commitment to abandon their use entirely regardless of market. In the context of the Doha WTO negotiations, the EU was already prepared to forego use of its export subsidies by the end of this year, as was the U.S. We should capitalize on this willingness to abandon use of export subsidies by both major players in this area and include such a commitment as part of a U.S.-EU trade agreement. This would be a significant achievement on a bilateral basis but also a symbol of how direct U.S.-EU trade talks can benefit the global trading system at large as well.

Conclusion:

The U.S. dairy industry welcomes the prospect of truly finding meaningful ways to address the full range of regulatory barriers plaguing the U.S.-EU dairy trade relationship currently. As stated above, full resolution of these issues is absolutely critical both to address current trade challenges and to ensure that any market access expansion that results from a possible EU-U.S. trade agreement truly opens the market for our exports to the EU in reality and not in name only.

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Appendix of Further Details:

- **GIs and Common Names**
  Names that have been directly targeted by the EU for monopolization include ones such as feta, parmesan, asiago, gorgonzola, fontina, gruyere, munster and others. In addition to these direct attacks on commonly used names, the EU's policies also make unclear what may happen in third country markets (or in some cases in the EU itself in the future) to other terms that form part of a compound (i.e. more than 1 word) GI such as cheddar, mozzarella, gouda, provolone, emmental, grana, brie, camembert, ricotta, romano, pecorino and others. This approach has even gone so far as to propose bestowing on Danish producers the sole right to use a term that has long had an internationally-recognized Codex standard. A similar application for the sole right to use the term "havarti" is also making its way through the EU's evaluation process.

  The use of these product names is part of our country's heritage as a nation of immigrants. Any suggestion that use of them has been inappropriate or "counterfeit," as European producers have at times suggested, is offensive to the hundreds of cheese makers – most of them small or medium-sized businesses – that regularly use these terms to help market their products in the U.S. and abroad.

  This issue has significant economic ramifications for America's dairy industry – both for current production and future growth. According to USDA's NASS report, there are over 500 cheese plants in the U.S. Roughly $21 billion in U.S. cheese production utilizes European-origin names. Last year over $1 billion in U.S. cheeses was exported – a new record. Cheese exports are a particular growth opportunity for our industry, virtually doubling over the past five years.

  We believe it is important to clarify that in our view GIs are not inherently problematic; the U.S. has several GIs that are not creating international trade problems. The EU too has already registered several GIs in the U.S. through our trademark system – a process that remains entirely open to them, provided they seek good faith usage of terms.

  Rather, the problem is the way in which the EU has pursued its brand of GI policies. This approach is in many cases harmful to U.S. farmers and companies. The EU's approach to GIs is designed to outlaw internationally the use of many generic terms. Although the EU recognizes a limited number of important product names as generic within its own territory, past EU GI decisions (e.g. on feta and parmesan) indicate that the standard for what constitutes a generic term appears to be whether the historic origin of a product is entirely forgotten by consumers – a near impossibility in a country of immigrants such as the U.S. where it is part of the standard commercial practice to reference the historic roots of products while still clearly identifying where the product is actually produced. Will the EU next propose banning the display of Italian flags in any pizzeria around the world in order to avoid "consumer confusion"?

- **Tariff Administration: Variable Duties**
  If a movement to convert the Meursing Table rates to fixed rates per tariff line is not possible at the immediate outset of the agreement's implementation, we strongly urge an examination of the method of calculating these tariffs on processed dairy products. A change to the current EU system is needed to ensure that tariffs are fairly assessed based on the actual composition of the product. The challenge is that the test method established in Commission Regulation 900/2008 for determining the milk fat in the final product may not generate accurate results

when there is more than one type of fat present. This regulation uses a factor of 25, which is the equivalent to assuming that milk fat has a butyric acid content of 3.45%. The same factor is applied to any dairy product, yet in reality butyric acid levels vary considerably.

Further regulatory discussion with the EU on this point is warranted to ensure that test methods used will accurately calculate the amount of milk fat in composite products so U.S. exports are not hit with excessive tariffs based on faulty calculations. Given that this is a correction to a faulty methodology, work to resolve this issue could begin at an early stage.

- **Certificate Issues**
  - **Certificate Dating**
    As stated above, the EU requires the health certificate to be dated prior to the date of shipment. In countries where there is a government official physically located in the plant to issue the certificate, this certificate date requirement seems logical. However, the U.S. issues dairy certificates based on an ongoing monitoring and inspection program. There are no USDA officers present to visually inspect the loading of dairy products for export. Instead, exporters apply to USDA headquarters in Washington, DC for a certificate, and AMS will issue a certificate as long as the plant is current on the EU-approved list.

    Since the U.S. issues certificates based on a monitoring program, the date of the certificate should be irrelevant. However, we have seen numerous instances where the health certificate was issued after the sailing date and the port health authorities rejected the consignment. This puts U.S. exporters at risk for rejected shipments based on clerical errors and other non-food safety concerns due to this cumbersome regulatory requirement.

    As noted above, the EU already allows New Zealand dairy certificates to be dated after the date of export so this is not an unprecedented request. There does not appear to be a specific EU concern with U.S. dairy system food safety that is driving this requirement. No such similar requirement exists on the U.S. side.

  - **Composite Certificate**
    The EU currently requires composite certificates to be used instead of dairy certificates for composite products, which they define as those containing both animal and vegetable origin ingredients. These certificates have proven to be confusing for exporters, importers and BIP officials like, prompting us to question the need for them in the first place for products containing only one animal-origin ingredient. If the composite certificates were required only for products containing multiple animal-origin ingredients, such as quiche made with egg and dairy, we would understand the need for attestations on both the egg and dairy ingredients. However, this is not how the certificates are used.

    The need for a separate certificate would also be understandable if the composite certificates introduced new categories of dairy products that require certification. This is not the case though. According to Articles 4-6 of Commission Decision 2007/275/EC, a certificate is needed for shelf-stable dairy products containing more than half their substance of dairy, and non-shelf-stable products with dairy in any proportion. This requirement remains the same with the composite certificate. Composite dairy products that required certification prior to the introduction of the composite certificate in 2012 were previously certified by the dairy certificate, so the only change appears to be the

certificate that should be used for such products – not whether they require a certificate in the first place.

We believe that the attestations on the dairy certificate are sufficient for the import of products with dairy as the only animal-origin ingredient, whether or not a vegetable ingredient is included. As it stands, USDA currently removes or crosses out all meat, fisheries and egg product attestations from the composite certificates it issues, so essentially what they are left with is a composite certificate that mirrors the dairy certificate. In fact, the composite certificate is actually less strict in some cases. It does not require the exporting country to certify to the EU's contaminants or residues regulations, both of which are listed on the dairy certificate.

Retention of the composite certificate also leaves in place the current problem related to triangular trade. Commission Implementing Regulation 468/2012 requires the country of origin of the dairy product to be either (a) the same as the country of export; (b) an EU member state; or (c) a third country authorized to export dairy products in Column A or B of Commission Regulation 605/2010, where the country where the composite product is produced is authorized under the same conditions to export dairy products directly to the EU. Essentially, ingredients from third countries are only allowed from list A and B countries, which are those identified as not at risk of foot and mouth disease (FMD) – such as the United States - if the final country making the product is also not at risk of foot and mouth disease. However, list C countries, or those at risk for FMD, are restricted in the use of ingredients from other countries with dissimilar status. This scenario is problematic for numerous reasons:

Even though list C countries are allowed to ship dairy products to the EU with the HTC certificate in Commission Implementing Regulation (EU) 914/2011, under the conditions in the composite certificate, a list A country (such as the United States) could not incorporate a properly treated dairy ingredients from a list C country for a composite product shipped to the EU. The restrictions on utilizing raw milk from a list C country are scientifically justified since additional precautions are necessary for countries at risk from FMD. However, there is no scientific justification for restricting the use of properly treated dairy ingredients once they have met the heat treatment parameters specified in the HTC dairy certificate.

The triangular trade language restricts the sourcing of ingredients from list A and B countries in a way that it does not from EU member states. Currently, list C countries can export a composite product directly to the EU if they use only dairy ingredients produced in their own country or those of an EU member state. However, they cannot source dairy ingredients from third countries in lists A and B and export the final composite product to the EU.

We are not aware of any restrictions among EU member states on the use of dairy ingredients in domestically produced products based on the FMD status of the country of origin of the ingredients. If in fact no such restrictions are in place, the current triangular trade paradigm in the composite certificate would violate the national treatment principle.

At a bare minimum, these triangular trade restrictions are scientifically unjustified and cause unnecessary barriers to trade. It is crucial to resolve the triangular trade now as the sourcing

of U.S. goods is jeopardized under the current language, and for the future as FMD could appear at any time and U.S. dairy trade could be unnecessarily hampered should we no longer be included in list A and B.

Even after the triangular trade issues are addressed, further concerns remain with the composite certificates. One of the greatest challenges is determining which products fall under the scope of each certificate. As stated above, the EU defines a composite product as containing both animal and plant origin ingredients. However, the products for which the composite certificate should be used does not necessarily follow this definition. Instead, the EU has established a number of Harmonized System (HS) codes for which it expects the composite certificate to be used.

This approach leads to numerous inconsistencies:
Products meeting the definition of a composite product sometimes require the dairy certificate and sometimes require the composite products certificate. For example, pepper jack cheese of HS 0406.90 and strawberry yogurt of HS 0403.10 are both composite products by definition, but these HS codes are listed in the notes to the dairy certificate in 914/2011 rather than the composite certificates, so they need the dairy certificate.

The HS codes for some products are listed both in the notes to the dairy certificate and in the notes to the composite certificate (e.g. ice cream of HS 2105). For these products the EC has said in subsequent correspondence that the composite certificate should be used when the product meets the definition of a composite product and the dairy certificate when it doesn't. Both exporters and BIPs struggle to choose the correct certificate in such instances. Exporters often are required to obtain the other certificate if the BIP believes they chose incorrectly. This uncertainty creates an extra cost for exporters when they need to obtain additional certificates and importers when the products are detained over documentation.

The list of HS codes in the notes composite certificates is not inclusive of all products that would meet the definition of a composite product. Commission Implementing Decision 2012/31/EU is an amendment to Commission Decision 2007/275/EC and contains an updated list of products for which health certification is required by HS code. Articles 4-6 of the 2007/275/EC regulation establish the criteria for certification of composite products containing dairy. As stated above, composite dairy products require certification when they are shelf-stable and contain at least 50% dairy, and in all cases when they are not shelf-stable. The two regulations though are not always in agreement. For example, a blend of 94% milk powder and 6% cocoa powder falls under HS 1806. This code is not included in Annex I to 2012/31/EU nor the notes to the composite certificate, but does meet the definition of a composite product and the 50% rule specified in 2007/275/EC.

When such a product arrives in the EU, the importer is not able to select code 1806 in the common veterinary entry document (CVED) to start the import process. Importers must choose another code and then explain to BIP and Customs officials why the actual HS code doesn't match the one on the CVED. Numerous BIPs have raised questions when such imports arrive. The same complication would not take place for a blend of

96% milk powder and 4% cocoa powder under HS 1901 since this code is included in Annex I to Decision 2012/31/EU and HS 1901 is included in the notes to the composite certificate. The inconsistency in the EU regulations as to when a certificate is required according to dairy percentage and the HS codes listed both in EU regulations and on the certificates causes issues both upon arrival and for exporters, who must obtain their certificates prior to shipment according to the date rule described above without having a clear understanding of what will be needed upon import.

The EU's expectation of an entirely different certificate to be used for composite dairy products as defined in Commission Decision 2007/275/EC versus the dairy certificate that had been used up until that point has confounded exporters and importers alike, and even the EU's BIPs have also struggled to enforce this regulation. Despite FAS' efforts to address these concerns with the EU, many questions have gone unanswered and numerous challenges remain. A guidance document was supposed to be published that would clarify some of the questions above, but it is still forthcoming. Even with additional guidance on the implementation of these certificates, issues like the national treatment concerns noted above and HS code confusion could still cause an undue burden on trade in dairy products.

As stated above, the need for separate certificate for composite dairy products with dairy as the only animal-origin ingredient seems unnecessary. USDA already includes in its monitoring program a check on any imported dairy ingredients, so the EU's traceability concern could have been addressed with trading partners through channels other than a new health certificate. If the EU insists that the certificate remain in place, the other issues such as national treatment and HS code confusion must be rectified to ensure that trade in composite products continues to flow.

- **Dairy Certificates (human consumption)**
  The HS code confusion noted in the composite products certificates above also plagues the EU's dairy certificates. The EU has different lists for approved shippers to the EU. As noted above, list B countries are considered not to be at risk for FMD, and a single pasteurization treatment is noted as sufficient products covered by this certificate – "HTB". List C countries are noted as at risk for FMD, and additional heat treatment requirements are imposed for products covered by this certificate – "HTC".

  The HTB certificate requires pasteurization of dairy products, whereas the HTC certificate lists the heat treatment options noted for countries at risk of FMD. As a FMD-free country, the United States issues only the HTB certificate. The difficulty that exporters and BIP officials face is that again, the EU determines which product falls under which certificate by the HS code, and there is inconsistency among the HS codes on the HTB and HTC certificates.

  Both codes 1901 and 2106 are included on the HTC certificate, but not the HTB. Therefore, as it appears, the EU will accept dairy products under these codes from countries at risk from FMD on list C, but not from countries not at risk for FMD on list B. Most BIPs recognize this irregularity and do not hold steadfast to the list of codes in the notes to the certificate to determine whether a product is eligible for import. However, we have seen numerous cases where the BIP officials have detained shipments, asking for the HTC certificate to be issued instead of the HTB. As with the composite certificates above, importers must use the

incorrect code in the CVED and then explain to BIP and Customs officials what the correct code should be for tariff purposes.

FAS has asked the EC to rectify this situation, and they responded that they were under the impression that products falling into HS 1901 and 2106 were always processed according to the treatments noted on the HTC certificates. The U.S. countered that this was not the case.

Products from countries free of FMD are normally pasteurized to the standard times and temperatures noted on the HTB certificate, and as a FMD-free country we only issue the HTB certificate – not the HTC. Furthermore, the FMD status of the country and not assumed commercial practice should dictate the appropriate certificate. The EU has already updated the list of HS codes in its dairy certificates twice, with Commission Implementing Regulations 914/2011 and 300/2013, when it became apparent that the list of HS codes in the certificate notes was incomplete. However, the discrepancies between the HTB and HTC certificates remain and will continue to cause difficulties until rectified.

- **Dairy Certificates (Animal Feed and Pet Food)**
  The EU's feed regulations are lengthy and complex, and choosing the correct certificate can be very difficult for both exporters and importers. They are forced to consult with the BIP of entry to determine the correct certificate, and then are left to potentially differing interpretations of border officials. The HS Codes in the notes to the dairy for animal feed and pet food certificates are also incomplete, which further complicates the situation. For example, the notes to the dairy for feed certificate (Chapter 2A) omit the HS codes for basic dairy products such as milk powder (0402.10, 0402.21), whey (0404.10) and lactose (1702.11, 1702.19), which are classified under these codes regardless of whether they are destined for food or feed. However, the notes do list codes 2309.10, the classification for pet food for retail sale, despite the fact that there are separate certificates in Chapter 3 for pet food. Within the Chapter 3 certificates, there are additional inconsistencies. Chapter 3B, processed pet food, does not list any HS codes in the certificate notes. Flavoring innards (3E) lists only the codes for animal organs and waste, but there is nothing in the language of the certificate itself that would exclude a dairy product from using this document. If the EU is to use the HS codes as a reference point for the correct certificate, the notes should be inclusive of all potential products falling within the scope of each certificate so that such ambiguity can be eliminated.

- **Colostrum Certificate**
  Human Consumption
  The import of colostrum (pre-milk) for human consumption is currently not harmonized among EU member states. There are currently no public health EU import requirements for colostrum, therefore transitional measures provided for in Article 3 of Regulation (EC) No 1162/2009 apply until 31 December 2013. This means that national competent authorities of EU-countries may specify public health import requirements for colostrum. As a result, we see varying import requirements across the EU. Some member states will accept the HTB dairy certificate for colostrum whereas others take the view that since there are no EU rules, the import of colostrum is not permitted. Some of the member states that will not permit the import of colostrum allow the domestic production of colostrum, and colostrum from these companies can be found for sale across the EU.

Although the transitional period from member state to harmonized EU regulations is supposed to come to a close at the end of 2013, we do not yet know what will happen at the end of this transitional period. It could be extended, or the EU could come up with an acceptable certificate – dairy or otherwise – to be used for colostrum. We expect that the EU notify any potential new certificates to the WTO and have a constructive dialogue with trading partners on comments received so that any concerns are worked out before they become official.