

Comments by the National Milk Producers Federation
and the
U.S. Dairy Export Council
to the
Office of the United States Trade Representative

Concerning U.S.-EU High Level Working Group on Jobs and Growth

Docket Number: USTR-2012-0001

February 3, 2012

The National Milk Producers Federation (NMPF) and the U.S. Dairy Export Council appreciate this opportunity to provide comments on the consideration by the High Level Working Group on Jobs and Growth of various trade expansion options between the US and the European Union (EU). 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. proprietary processors, milk producers, dairy cooperatives, and export traders. The Council's mission is to increase the volume and value of U.S. dairy product exports.

NMPF and USDEC certainly support the possibility of negotiating a high-quality EU-U.S. Free Trade Agreement (FTA). This Administration has been clear that our trade agreements, such as the Trans-Pacific Partnership FTA, must set a high bar and genuinely resolve the challenges facing exporters in the 21st Century. We would applaud bringing this same approach to embarking on FTA negotiations with the EU since the barriers facing U.S. dairy export in that market entail not only tariffs and TRQs, but also a myriad of non-tariff barriers to trade.

The reality is that the U.S.-EU dairy trade imbalance is dramatic. Over the past three years, EU exports of dairy products to the U.S. have averaged more than \$1 billion. Meanwhile, U.S. exports to the EU over that period have averaged slightly more than \$100 million. This is despite the fact that the U.S. is now a leading export of dairy products to a large number of countries around the world. At the same time that the EU enjoys exorbitant success in the U.S. dairy market, a combination of EU tariff barriers and non-tariff measures hinders greater sales of U.S. dairy products to the EU.

A few examples of those types of non-tariff issues are detailed in these comments in order to highlight the types of concerns that exist to date. In addition, we will provide a summary of the substantial and extremely complex EU dairy tariff and TRQ barriers to USTR directly. The non-tariff examples cited here do not represent an exhaustive listing of the challenges that exist; they provide some illustration of the types of concerns that exist. Moreover, of additional significant concern would be those measures not currently known but which may be introduced in the future. Given the EU's history of employing creative and shifting measures to thwart trade, evolving discussions within the EU on newer policy areas such as cloning and animal welfare guidelines pose potential concerns to their ultimate impact on U.S. exports. It is of course entirely appropriate for the EU to set its own internal policies with respect to the use of technology or animal handling guidelines; the challenge in this context would arise if policies not solidly supported by science are imposed on imported products as well.

- **EU Use of Certain Geographical Indications (GIs) as TBTs:**

NMPF and USDEC recognize that GIs are a legitimate form of intellectual property, and we support such legal protections. Properly used, they can be valuable tools for many producers and product manufacturers. It is important to note that of the hundreds of GIs registered in the EU, only a few have

been problematic. However, we are increasingly concerned about efforts by the European Union to remove from the public domain (within the EU and around the world) names of cheeses and other food products that have been used for many generations by producers worldwide, and to reserve those names for use by a handful of producers. These relatively few GIs of concern are behind the strong concerns by our industry about how the EU has sought to abuse the concept of GIs in order to wield some of the more lucrative ones as barriers to trade.

The EU approach to GIs protects not only the full registered GI, but also in some cases individual components, such as conceivably “provolone” (from the GI “Provolone Valpadana”), and even terms that are asserted to be derived from the GI yet are not even contained in the GI itself, such as “parmesan.” This practice ignores the fact that such terms long ago became the common language names for cheese types that are produced in large quantities around the world. Moreover, the EU also permits the registration of GIs that employ a single term (e.g. “feta”) rather following the much more logical and workable format of requiring GI applicants to tie the product type to a particular region while permitting the basic product type to remain in free usage.

The U.S. dairy industry deeply believes that there is a “win-win” model for GI protection that would allow our two countries to move beyond many of the bitter disagreements over this issue to the benefit not only of our industry but also the 99% of EU GI holders who have not had any hand in creating the current impasse on this issue. But in order to get to that win-win situation, we must have a willing partner to work with on the other side.

Again, we are by no means opposed to the maintenance of a GI system within the EU. But it is critical to ensure that producers outside the protected GI region are simultaneously free to continue to use common names both domestically and in international commerce. This critical barrier to U.S. exports to the EU, as well as potentially to other export markets, would have to be addressed in any U.S.-EU trade agreement in order to resolve a major impediment to smoother US-EU dairy trade.

- **Animal Welfare / Cloning**

The EU is still actively debating how to handle products from cloned animals in the EU marketplace. Even if the more rational view prevails that progeny should not be included in the new regulations (the only outcome that can be scientifically justified), it is still not clear whether the EU would require exporting countries to certify that the product being shipped does not come from cloned animals. This is despite clear EFSA findings that this food is safe and that the primary grounds for EU objections have been over animal welfare grounds.

This is a prime example of the growing pressure in the EU to impose their animal welfare preferences on all suppliers shipping to the EU. Given the lack of scientific basis for many of these requirements and the open-ended scope of what such preferences could entail, this clearly raises significant trade concerns should those issues not be fully addressed in the context of a trade negotiation with the EU.

- **Container/Seal Number and Sailing Date**

Annex IV, point 6 of [Council Directive 2002/99/EC](#) requires health certificates to be dated prior to the date of shipment. [Commission Implementing Regulation 194/2011](#) (food) and [Commission Regulation 142/2011](#) (feed) both state in the notes to the certificates that the container and seal numbers should be included on the health certificate. 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 AMS to process health certificate requests. Therefore, 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.

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. In discussions with the EU, FAS has been trying to negotiate an exemption for U.S. dairy products from the date requirement. The EU already allows New Zealand dairy certificates to be dated after the date of export. Discussions with the U.S. so far have not brought about this desired change. FAS has indicated that they may include this issue in Veterinary Equivalency Agreement (VEA) discussions. However, it is possible that there will not be resolution on this issue until the VEA as a whole is approved, which could be a very long term prospect. In the meantime, U.S. exporters continue to be at risk for rejected shipments based on clerical errors and other non-food safety concerns because of this cumbersome regulatory requirement.

- **Inconsistent Inspection and Sampling Practices**

Most EU ports make a tiny hole in the bag of bulk dairy products, draw out a small amount to test, and then cover the hole in its entirety with a sticker indicating that the BIP has extracted a small sample. The EU importer then knows that the product is safe since the bag was only opened within the confines of the BIP and then completely sealed.

However, in the past year, we've observed wide variations in this sampling procedure at the port of Rotterdam – the largest port of entry for U.S. dairy products. Inspectors have cut some bags open with a large slit, and then taped up the bags with black tape around the entire bag. In other instances, the original bags were placed in larger bags, with the slit not closed at all and powder continuing to spill out. In both cases, the cuts were not fully closed so the product could be contaminated post-sampling. The importer has not been able to use any of this sampled product, and the exporter has absorbed the cost, both in terms of lost product and customs duties paid on product that was unusable.

We understand that sampling is part of the EU's procedure to ensure the safety of imported products, but sampling must be done in such a way as to maintain the integrity of the product. The U.S. industry would benefit from an agreement on proper sampling procedures so that the port health authorities can obtain their needed samples and importers can still utilize sampled product.

- **Dual Signature Requirement for EU certificates – Ireland & Belgium**

The dairy health certificate for food noted in [Commission Implementing Regulation 194/2011](#) contains both public and animal health attestations. The agencies within USDA have a memorandum of understanding by which APHIS allows AMS to endorse certain animal health statements on their behalf for certificates which contain both public and animal health statements.

However, two EU member states – Ireland and Belgium – do not recognize this arrangement and demand that both AMS and APHIS endorse the health certificates. This dual signature requirement has negative implications for the exporter since they are forced to pay for both the APHIS and AMS signature. The extra time needed for two endorsements also threatens the signature date requirement.

- **EU Import License Requirements:**

The EU's import license requirements are needlessly burdensome and complicated. The current requirements serve to hinder imported dairy products. We would be happy to provide more details on the specific challenges related to the import license requirements directly to USTR.

In summary, we strongly support a high-quality FTA with the EU that genuinely addresses both tariff and non-tariff challenges in the U.S.-EU dairy relationship. We also would like to highlight the messages contained in the January 2012 letter to Ambassador Kirk from several dozen U.S. agricultural organizations, including NMPF and USDEC, which also underscored the importance of a high quality deal that does not entail wide-spread market access exceptions to and removes the impediments that currently plague U.S. agricultural exports to the EU.

In keeping with this position, we could not support any trade initiative with the EU that did not fully deal with the issues hindering greater U.S. dairy exports to the EU, including both tariffs and the many non-tariff barriers of concern. Clearly a tariff-only agreement would not result in a balanced outcome, nor would it address the real-world issues that dominate how U.S.-EU dairy trade is actually conducted.

Thank you for the opportunity to provide comments on this issue of such considerable importance to the U.S. dairy industry.

Point of Contact:
Shawna Morris
Vice President for Trade Policy
smorris@nmpf.org
703-243-6111