Comments Regarding Foreign Trade Barriers to U.S. Exports for 2025 Reporting – Canada, Colombia, Egypt, European Union, India, and Indonesia; Docket Number: USTR-2024-0015

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The International Dairy Foods Association (IDFA) represents the nation's dairy manufacturing and marketing industry, which supports more than 3.2 million jobs that generate $49 billion in direct wages and $794 billion in overall economic impact. IDFA's diverse membership ranges from multinational organizations to single-plant companies, from dairy companies and cooperatives to food retailers and suppliers, all on the cutting edge of innovation and sustainable business practices. Together, they represent most of the milk, cheese, ice cream, yogurt and cultured products, and dairy ingredients produced and marketed in the United States and sold throughout the world.

In 2023, the United States exported $8 billion of dairy products to 145 countries. This amounts to approximately one day's worth of U.S. milk production each week being exported, resulting in the United States now exporting more dairy products than we drink. As a result, trade and our global competitiveness is a strategic priority for IDFA members, who rely heavily on open markets, rules-based trading conditions, and fair opportunities to trade U.S. dairy products.

With this context, IDFA welcomes the opportunity to comment on foreign trade barriers to U.S. dairy exports for the 2025 National Trade Estimate (NTE) report. Below are some of IDFA's priority foreign trade barriers facing the U.S. dairy industry, listed alphabetically by country, each country appearing on its own page as requested by the Federal Register Notice.[1] Please do not hesitate to contact IDFA with any questions or concerns regarding these comments.

[1] Reference: https://www.federalregister.gov/documents/2024/09/03/2024-19694/request-for-comments-on-significant-foreign-trade-barriers-for-the-2025-national-trade-estimate.

Canada

Canada represents a significant market for U.S. dairy exporters; reaching $1.09 billion in U.S. dairy exports in 2023, Canada is the second largest market for U.S. dairy exporters. Because of the size of the market, it is of critical importance that Canada follows transparent, rules-based, non-distorting trade measures. As a close neighbor, many dairy processors have operations on both sides of the border or rely on Canada as an important customer or supplier. Despite the close business relationship with Canada, the Canadian government continues to impede dairy imports and distort trade through the following two trade barriers:

Import Policies – Tariff Rate Quota (TRQ) Administration

Despite the U.S.-Mexico-Canada Agreement (USMCA) dispute panels' decisions, IDFA remains concerned that Canada continues to maintain restrictive conditions for TRQ allocation that IDFA believes are inconsistent with the obligations in USMCA. These conditions limit the ability of U.S. dairy exporters to take full advantage of the preferential quotas contained in the agreement. For example, Canada's methodology for calculating market share differs depending on the type of applicant, whether processor, distributor, or further processor, and appears to advantage processors over other applicants. Canada also requires applicants of many dairy TRQs to be "active regularly in the Canadian food or agriculture industry", creating uncertainty as to what constitutes "regular activity", and how new-to-market importers or distributors might become eligible to begin importing U.S. products. Canada's policies result in the allocation of quota primarily to processors for multiple categories of dairy products, which essentially requires imports of those products to be allocated solely to manufacturers of those same products. The circumstances under which the dairy supply chain would require a manufacturer of a product to import the same product it manufactures – at a higher price – are extremely rare, creating a built-in disadvantage for U.S. dairy exports to Canada.

In practice, Canada's administration of the dairy TRQs have prevented full utilization of the TRQs, depriving U.S. producers of the market access negotiated under USMCA. In fact, in the last full year of access, Canada's dairy TRQs under USMCA filled at an average of just 37%, with the lowest TRQs (powdered buttermilk and skim milk powder) reaching just 2% and 3% filled, respectively.[2] Despite market intelligence suggesting significant demand exists, only two products (three quotas) are filling above 60% -- cheese and butter. Anecdotal reports support the data; IDFA's members report these Canadian policies result in significantly decreased ability to obtain quota licenses as the majority of quota is taken by Canadian processors, who delay their quota fill until a rush before the reallocation window rather than evenly or as needed throughout the year. Even Canadian distributors report being unable to obtain quota and pushed out of their own import businesses due to these distortive policies.

[2] Data calculated from both calendar year quotas (year ending December 31, 2023) and quota year quotas (year ending July 31, 2024), reference: https://www.international.gc.ca/trade-commerce/controls-controles/utilization-archive-utilisation.aspx?lang=eng.

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Ultimately, irrespective of the USMCA dispute panel rulings, the TRQ fill data is evidence that Canada's TRQ administration remains a barrier to trade, and that it will continue to disincentivize the consistent value-added dairy exports USMCA should have facilitated.

Subsidies – Milk Class Pricing Policies

After implementing the provisions of USMCA, Canada created a revised price class structure that effectively recreated the trade-distorting effects of Class 7 by providing raw milk prices for a range of protein-rich milk products such as skim milk powder (SMP) blends, milk protein concentrates, etc. that are below the actual cost of production. The pricing formula for Class 4(a), the class used for these protein-rich products, achieves this below-production price subsidy through a non-transparent cost of production survey and an assumed processor margin that is widely considered to be approximately double the comparable processor margin in the United States due to the outdated calculation model employed by Canada, among others. These tools and the subsidized outcome allow Canada to export an equivalent level of dairy protein into global markets that far exceeds the export thresholds established for skim milk powder under USMCA commitments, thereby allowing Canada to continue to export high quantities of subsidized proteins despite the intentions of its USMCA commitments.

IDFA believes Canada's revised milk class policies post-entry into force of USMCA act as an export subsidy and function very similar to 1990s-era Canadian milk classes 5(d) and 5(e), which the World Trade Organization (WTO) ultimately ruled were an export subsidy in the 1997 WTO dispute on Canada dairy. In that previous dispute the key findings were that pricing for the products was below the cost of production, payment was made upon export, and the payment was financed by virtue of government action. IDFA finds these three key findings to still be the case in Canada's policies under class 4(a) today.

Clearly, Canada has demonstrated its intention to avoid compliance with both USMCA and WTO commitments, and to continue to adopt policies that promote export subsidization of its dairy protein surplus. IDFA strongly urges the Administration to consider these actions as it initiates its review of both Article 3.A.3 within USMCA, as well as the full Agreement review. IDFA further urges the Administration to consider Canada's Canadian milk class policies relative to their subsidy commitments under the WTO.

Colombia

Colombia has consistently been a major trading partner for U.S. dairy since entry into force of the U.S.-Colombia Trade Promotion Agreement (TPA) in 2012, attaining $126 million in dairy imports from the United States in 2023. Colombia is regularly the top U.S. export market for dairy exports to South America.

Import Policies and Other Barriers – Countervailing Duties

Due to unrelated matters, however, Colombia has repeatedly targeted U.S. milk powder imports by claiming without substantiation that these imports are hurting their domestic producers. Colombia has targeted these imports first through a safeguard investigation under the TPA in 2021, which was concluded without sufficient evidence to institute a safeguard, and this year through an independent, self-initiated countervailing duty (CVD) investigation along with imposition of a provisional duty.

IDFA respects Colombia's desire to protect its domestic dairy industry, but notes that the targeting of U.S. milk powder imports does not achieve that purpose: As reported by USDA, Colombia's dairy industry is primarily centered on fluid milk production and relies significantly on imported milk powder for food manufacturing.[3] Further, IDFA has heard reports from Colombian dairy stakeholders who report they have not complained about U.S. imports to the Colombian government and do not support the current provisional duty. It is clear that the Colombian government is opposed to U.S. milk powder imports and determined to find methods to implement barriers to trade. IDFA urges the U.S. government to continue to engage Colombia on this matter in an effort to re-establish the access promised under TPA.

[3] Reference: https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Colombia%20Imposes%20Provisional%20Duty%20on%20US%20Milk%20Powder_Bogota_Colombia_CO2024-0014.

Egypt

Egypt is a major dairy importer and regularly imports more than $700 million in dairy products from global sources. Although U.S. dairy exports to Egypt topped $100 million just a few years ago, Egyptian halal measures introduced in 2021 have consistently hampered U.S. dairy exports to Egypt. U.S. dairy exports to Egypt to were $56 million in 2023 and are projected to be below $50 million in 2024, due to the below-referenced measures:

Technical Barriers to Trade and Other Barriers – Halal Certification and Bribery/Corruption

In late September 2021, U.S. dairy exporters received verbal reports from importers that Egypt's sole halal certification authority as recognized by Prime Ministerial Decree No. 35/2020, IS EG Halal, would be implementing a mandatory halal scheme on dairy products effective October 1, 2021.[4] The application of halal requirements on dairy imports initially appeared in no written regulations, was not notified to the WTO, had no clear product scope or procedures, and was announced for implementation in an unreasonable period. While some of those concerns have since been clarified, the lack of transparency as to the implementation plans, products in scope, and enforcement remain unclear, along with IS EG's continued requirement to disclose business confidential information.

Although the Egyptian government has now notified the measures to the WTO and delayed implementation, the underlying halal certifier and its certification requirements remain concerning to IDFA. IDFA and our members support the rights of trading partners to implement religious policies such as halal certification for dairy imports when partners are following good regulatory practices, namely transparent notice and opportunity for comment, and when the policy is not more trade restrictive than necessary. While most dairy products are considered to be naturally halal, many U.S. dairy producers and exporters obtain halal certification for their products anyway in order to honor the religious concerns of many consumers. However, IDFA is deeply concerned with a non-transparent halal policy that is verbal only and that is being advanced almost entirely by a non-government entity. IDFA is also concerned with the troubling precedent being established by allowing a quasi-private company to both unilaterally establish a country's import policy and require arbitrary and exorbitant payments as a condition of import, effectively monopolizing all halal certification for Egypt without government oversight.

IDFA believes the removal of this barrier to trade would see dairy exports to Egypt increase back to previous levels (increase by approximately $50 million annually). IDFA urges the Administration to continue to press Egypt to delay or remove IS EG's halal regulations and ensure the measures are consistent with all applicable trade obligations.

[4] See GAIN Report: Egypt's Halal Certification and Policy, EG2020-0002, January 28, 2020: https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Egypt%27s%20Halal%20Certification%20and%20Policy_Cairo_Egypt_01-19-2020.

European Union

The United States exported nearly $161 million in dairy products to the European Union (EU) in 2023, a figure U.S. dairy exporters estimate could be significantly higher were it not for consistent ongoing and new technical barriers to trade implemented by the EU.

Technical Barriers to Trade – Deforestation Regulation

Although the European Commission recently delayed implementation of its Deforestation Regulation (EUDR), which was adopted in June 2023 and initially set to enter into force in December 2024, the measure itself remains highly concerning to IDFA. Even though the current measure is not initially planned to apply to dairy, IDFA understands there are plans to include dairy eventually.

The present version of the EUDR requires producers to provide highly specific geolocation data to prove their products were not produced on land deforested since December 2020, regardless of whether the product originated in a country that has a negligible or zero risk of deforestation. However, this overly broad and costly initiative does not guarantee the prevention of deforestation, therefore failing to meet the objective of the measure, all while creating barriers to trade for those impacted. The EUDR as drafted is more trade restrictive than necessary because it does not adequately consider different conditions in countries outside the EU that source imports into the EU. IDFA appreciates the U.S. government's efforts to counter the EUDR and urges the government to continue raising concerns with the EUDR.

Technical Barriers to Trade – Packaging Regulation

Earlier this year, the Council of the European Union and European Parliament concluded negotiations on the EU's Packaging and Packaging Waste Regulation (PPWR). The Regulation introduces waste reduction targets and requires that all packaging placed on the EU market is recyclable and carries recycling labeling. The Regulation also introduces new requirements for packaging minimization, minimum recycled content in plastic packaging, re-use targets for packaging, and bans certain packaging formats.

Unfortunately, the EU did not take into consideration the necessary functional requirements of packaging, nor technology available to safely require such strict new rules on dairy packaging prior to introducing these rules. For instance, dairy products require packaging for specific functionality criteria that go above and beyond product containment and delivery to the consumer. The range of available dairy products is very wide, and each product type has its own sensitivities to temperature, moisture, sunlight and gases that can lead to spoilage and undesirable changes to flavors, textures, and colors. Other considerations for packaging include prevention of taints, shelf-life for extended supply chains and export, chemical migration barriers, and hygienic barriers at re-processing. Dairy manufacturers must also balance the environmental and recycling concerns with the product safety/integrity requirements noted above. To achieve the safe delivery of the product, many products used mixed materials, such as plastic liners in bags or plant-based cartons with plastic coatings, which complicates recycling and may require separation of the package's components for recycling.

For these factors and many more, IDFA remains deeply concerned about the feasibility of the PPWR and how the EU will ensure its implementation does not adversely affect food product imports for which technologies may not yet exist for recyclable packaging while safely delivering food. IDFA strongly urges the U.S. government to raise concerns with the PPWR to the EU in all available fora.

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India

India represents a tremendous market potential for U.S. dairy exports which are limited through a combination of non-tariff barriers and exorbitant over-quota tariffs. Given that U.S. dairy exports to India reached $42 million in 2023 just in the limited dairy products permitted to enter, IDFA believes the India market potential if restrictions were lifted is at least twice that amount due to significant demand in India for lactose, casein, and whey protein concentrates and isolates, which have historically been restricted.

Sanitary and Phytosanitary Measures – Certification Requirements

India currently requires imported dairy products to be accompanied by a sanitary import permit issued by the Department of Animal Husbandry, Dairying, and Fisheries (DAHDF) in addition to a combined sanitary and veterinary export certificate issued by an exporting country's veterinary authority, meeting the requirements of DAHDF as well as the Food Safety and Standards Authority of India. IDFA is concerned with the duplicative nature of these certificate requirements, which are inconsistent with international standards, guidelines, and recommendations, and do not appear to be based on science nor on the risk of the products being imported. Codex guidelines openly state the need to minimize duplication in certificates, and even that facility registration may not be needed if certificates exist (and vice versa). This situation has created a scenario in which U.S. dairy exporters that are interested in and working toward complying with India's certificate requirements are constantly chasing changing requirements. IDFA urges the U.S. government to continue seeking clarity, transparency, and a streamlined approach to India's current duplicative certificate attestations and to agree on a final certificate with India that provides U.S. dairy exporters the certainty they need to comply.

Indonesia

Indonesia is a top market for U.S. dairy exports, reaching almost $305 million in 2023, the highest annual value that U.S. dairy exports to Indonesia have ever reached. Indonesia is currently the seventh largest market for U.S. dairy exports.

Sanitary and Phytosanitary Measures – Facility Registration

Despite the importance of the market and the market's growth, U.S. dairy exports continue to be impeded by Indonesia's facility registration measure for dairy imports, Ministry of Agriculture Regulation Number 15/2021 (previously under an MOA regulation from 2011). In this regulation, Indonesia requires lengthy technical questionnaires from each exporting facility that requests excessive amounts of information and subsequently takes years to obtain approval. Indonesia also requires payment of excessive fees to register facilities for import, far more than the actual cost of service. Despite U.S. assistance in the development of Indonesia's domestic dairy industry, as a major importer of dairy products, Indonesia's implementation of lengthy registration requirements on U.S. dairy facilities exporting to Indonesia not only is more trade restrictive than necessary, it creates food insecurity.

In the experience of IDFA member companies, Indonesia's dairy facility registration requirements are the most expensive in the world and are almost the slowest and most burdensome in the world. IDFA requests that the U.S. government seek simplification of Indonesia's facility registration measures to make them consistent with WTO obligations. Such obligations of interest to IDFA include ensuring Indonesian facility registration requirements are not more trade restrictive than necessary, ensuring the measures are based on an assessment of risk and have scientific justification, and that the fees are not more than the cost of the service. IDFA strongly supports any efforts by the U.S. government to create a simplified or streamlined registration process that takes the existing U.S. oversight of U.S. dairy exports into account.