IDFA
International
Dairy Foods Association

Comments to Assist in Reviewing and Identifying Unfair Trade Practices and Initiating All Necessary Actions to Investigate Harm from Non-Reciprocal Trade Arrangements; Docket Number: USTR-2025-0001

Submitted via comments.ustr.gov

March 11, 2025

To Whom It May Concern:

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 2024, the United States exported $8.2 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 reviewing and identifying unfair trade practices and investigating harm from non-reciprocal trade arrangements. Please do not hesitate to contact IDFA with any questions or concerns regarding these comments.

General Comments

IDFA supports the administration's initiative to achieve fair terms of trade for U.S. dairy and appreciates the opportunity to provide input. IDFA urges the Administration to ensure actions it takes to achieve fair and reciprocal trade treatment do not create unintended consequences such as retaliation on U.S. exports and loss of foreign customers and markets. Because dairy is an export-reliant sector as described above, the possibility of excess product and milk in the U.S. – backing up to the farm level – is a real danger if U.S. exports become depressed enough. IDFA therefore urges thorough stakeholder consultation, careful consideration of potential measures, and full evaluation of all possible consequences prior to implementing any action in response to this docket.

In addition, IDFA is concerned with the uncommonly short comment period associated with this notice, particularly in light of the significant quantity of countries and potential trade barriers at being considered within the request for comment. IDFA would welcome additional time for stakeholder consultation on this comment period and the many barriers to dairy trade.

Country Specific Comments

IDFA notes it is infeasible to describe every trade barrier experienced by dairy exporters given the significant proliferation of trade barriers exporters experience, some of which are customer-mandated and some of which are based on rules established by foreign governments. As such, the comments below focus on some of IDFA's priority foreign trade barriers facing the U.S. dairy industry, listed alphabetically by country.

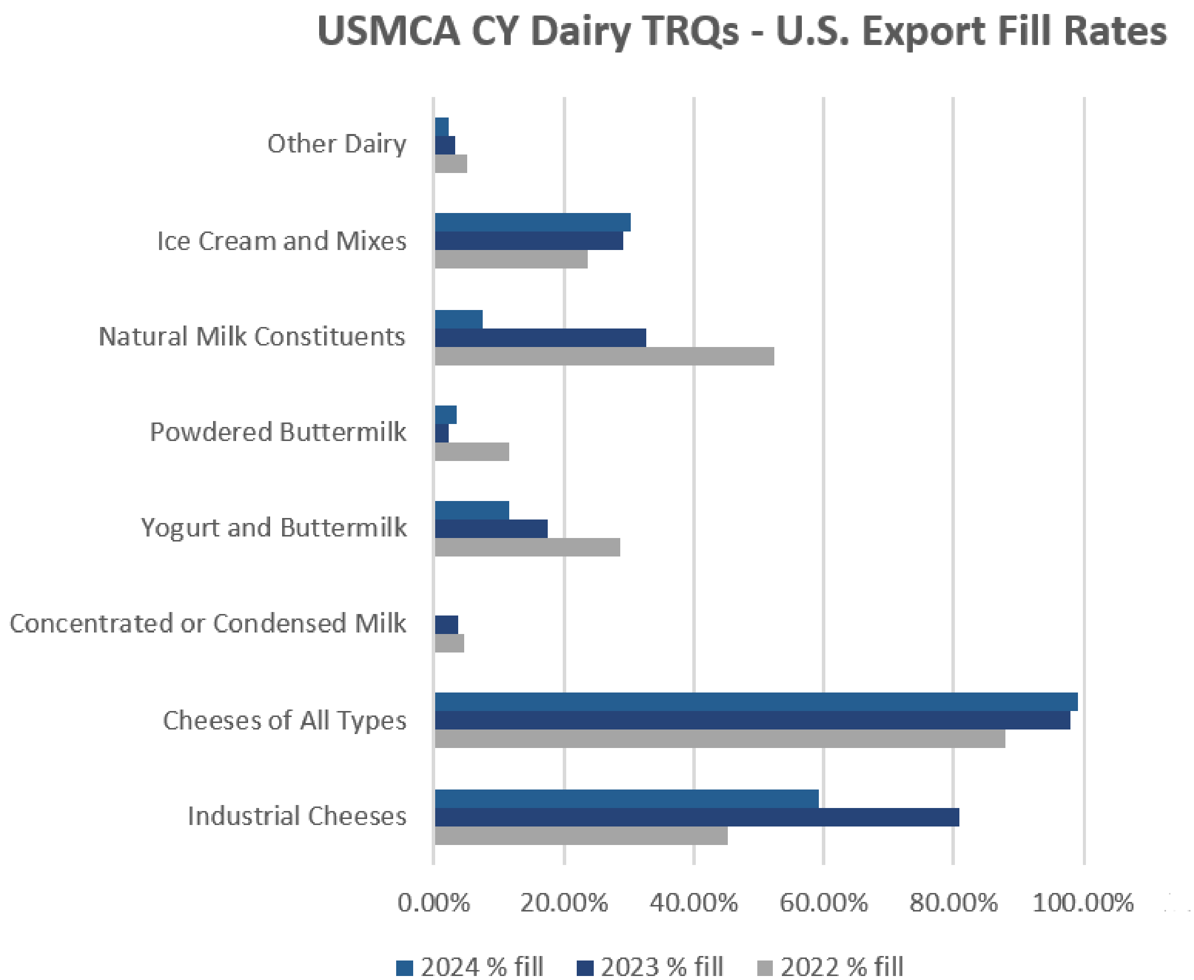
Canada

Canada represents a significant market for U.S. dairy exporters; reaching $1.14 billion in U.S. dairy exports in 2024, Canada is the second largest market for U.S. dairy exporters. In addition, 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. Because of the size of the export market, however, it is of critical importance that Canada follows transparent, rules-based, non-distorting trade measures. Unfortunately, despite the close business relationship with Canada, the Canadian government continues to impede dairy imports and distort trade through the following two trade barriers:

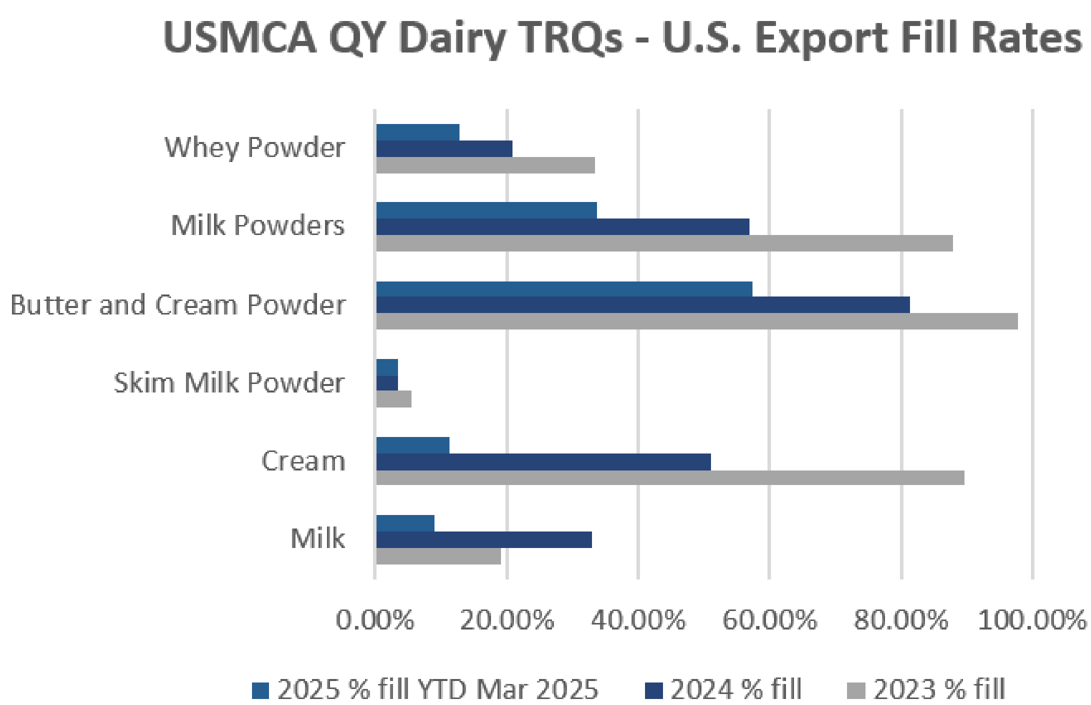
Dairy Tariff Rate Quota (TRQ) Administration

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 27%, with the lowest TRQs (other dairy and condensed milk) reaching just 2% and 0% filled, respectively.[1] Despite market intelligence suggesting significant demand exists, only two product quotas filled above 60% -- cheese and butter.



[1] Data calculated from both calendar year quotas (year ending December 31, 2024) 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.



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.

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. Canada's TRQ administration policies must be revised to allow U.S. exporters the opportunity to actually utilize the negotiated quotas.

Milk Class Pricing Policies Subsidizing Canadian Dairy Protein Exports

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. They also allow Canadian exports of these dairy products to the United States to have grown to more than $418 million in dairy products in 2024 – well over double the value of dairy imports since USMCA was negotiated, due in part to Canadian dairy production subsidies.

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 both USMCA and the WTO, and work to amend Canadian pricing commitments in USMCA in way that eliminates Canada's ability to maintain such export subsidies.

Colombia

Countervailing Duties Investigations on U.S. Milk Powders

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 $128.7 million in dairy imports from the United States in 2024. Colombia is regularly the top U.S. export market for dairy exports to South America.

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.[2] 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 does not support initiating reciprocal tariffs on this important trading partner for U.S. dairy exports; however, Colombia's ongoing attempts to circumvent the long and successfully history of our trade agreement should not go unnoticed in the context of this review for fair 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.

European Union (EU)

The United States exported nearly $167 million in dairy products to the European Union (EU) in 2024, 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. U.S. exports to the EU are just a fraction of U.S. imports of European dairy products, but include unique, medically critical ingredients used in European infant formula production. The European Commission (EC) also assesses a wide range of duties on U.S. dairy imports based on product type, but their average dairy tariff rate has historically been well over 30%.

The United States imported $2.89 billion in dairy products from the EU in 2024; in fact, many IDFA members are also importers and further processors of European dairy imports. For example, it may be helpful to note that upwards of 60% of all cheese imports are further processed (cut & wrap wedges, shredded bags, etc.) in U.S. facilities using U.S. workers. While U.S. tariffs imposed on EU (and UK) cheeses may appear to harm only those nations and foreign companies, this is not solely the case as there is a direct and meaningful impact to U.S. importers, processors, the workers within the entire supply chain, and consumers when the volume of imports decline as they did during the Section 301-Large Civil Aircraft dispute. Importing IDFA members are concerned based on their experience with the Boeing/Airbus tariffs that foreign dairy producers will not reduce their sell price to offset the tariffs, and that importers will be forced to pass along higher costs to our grocery retailers and restaurants chains. They are therefore concerned that tariffs on certain food imports may lead to inflation pressures on food, reduced personal consumption, and corporate capital expenditures will decline which will be a drag on U.S. economic growth.

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

Notwithstanding the above context, below is an outline of a sampling of the barriers to trade U.S. dairy exporters face when attempting to access the European Union:

Deforestation Regulation

Although the European Commission (EC) 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.

Packaging Regulation and Packaging Waste Regulation

In 2024, 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.

Geographical Indications (GI)

The EC's GI policies embrace the concept that product names that have long been commonly used in the United States and around the world, and have as such become generic, should be limited for use by producers of those products in specified regions. These policies disproportionately prohibit the sale of non-European produced cheeses based solely on the EC's perceived right to produce and name specified cheese varieties only when they have been produced in certain regions in Europe, despite being considered generic in the United States and many other parts of the world. Acknowledging the World Trade Organization's (WTO) decision on the EU's GI policies under the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), IDFA is concerned that the EU's GI policies, particularly their efforts to advance GI protections through its trade agreement negotiations, conflict with the EC's WTO obligations under the Agreement on Technical Barriers to Trade (TBT).

Specifically, by claiming that non-European cheeses should not be permitted to apply the same labeling as European cheeses, the EC is treating like products originating in other countries less favorable than its own products (Article 2.1). Similarly, the EC's GI policies create unnecessary obstacles to trade without meeting any of the legitimate objectives listed in Article 2.2 of the WTO's TBT Agreement. While the EC attempts to argue that GI policies prevent deceptive labeling practices, the EC's disregard for existing international standards, guidelines, and recommendations such as Codex standards, which clearly allow for the use of such generic cheese names.

IDFA views the EC's GI policies as a clear effort by the EC to limit competition in the EU and reserve a significant portion of the EU market for domestic producers, all while European cheese producers are fully able to compete in the United States and abroad. The EC also limits competition in foreign markets by forcing trading partners to adopt its GI policies in trade agreement negotiations, creating barriers to trade for U.S. cheese exporters in those markets. Unfortunately, even where common names are protected by the United States, the simple existence of these EU policies create confusion in foreign markets, and IDFA members report at times having legitimate U.S. cheese shipments rejected over GI labeling concerns when the cheeses were in fact common and generic terms.

At a time when the dairy and overall trade imbalance with the EU significantly skews in the EU's favor, the EC's attempts to limit the use of names that have been considered generic for decades is a direct attack on the U.S. companies that have in fact helped build a market for these same products. Retaining the ability to label products with legitimate, generic terms that have been widely used and internationally recognized for decades, consistent with Codex and the WTO TBT Agreement, is something that must be corrected on behalf of U.S. cheese producers.

Sanitary Certificates

The EC's certificate requirements for agricultural imports have long been some of the most complex certificate requirements worldwide and are arguably more burdensome than necessary to achieve the EU's appropriate level of protection. The multi-paged certificates are so detailed as to dictate the color of ink that must be used by certifying officials, and even with this level of tedious complexity, EC border inspection posts (BIPs) frequently interpret the certificate requirements differently, leading to detentions based on interpretations. Although U.S. dairy exporters have attempted to work within the confines of these unnecessary requirements for several years, in July 2020, the EC proposed additional animal health requirements for all animal and animal product certificates that go above and beyond existing requirements. The proposal requires animal health zones to be listed with the EC, and that certifying officials track the milked animal and subsequent dairy product, through its various zones in order to certify the product. There was no indication by the EC of consideration for pre-existing, bilaterally negotiated certificates, and the EC is requiring similar levels of animal traceability even for transit certificates, which could significantly impact not only U.S. dairy exports to the EU, but also nearby countries that use EU ports as hubs. The EC's continued use of its certification requirements to create regulatory barriers for imports – in the latest proposal potentially totally stopping U.S. exports upon implementation – is a trade barrier that the United States must act on immediately before the remaining amount of dairy exports to the EU enjoyed by U.S. producers are lost completely.

With respect to all barriers to trade with the EU, IDFA strongly supports free and fair trade, including commitments to liberalize trade through all mechanisms readily available. International trade is essential to the U.S. dairy industry and provides consumers with items not readily produced in the U.S. and as a growing outlet for excess domestic dairy production that would otherwise suppress industry growth due to domestic oversupply. To advance IDFA objectives for fairer trade and resolve the aforementioned barriers to trade, IDFA supports the Administration commencing trade negotiations with the EU, specifically by considering sectoral negotiations that either lower EU tariffs on U.S. dairy or create tariff-rate quotas for U.S. specialty cheeses and ingredients which will grant the U.S. greater market access to the EU (and which was actually agreed upon during the last Uruguay Multilateral Trade agreement). IDFA further supports the Administration addressing GIs in a manner that advances trademark use and protects common names in all markets, such as the recent Emmental and Gruyere rulings granting common name status.

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 $52 million in 2024 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.

Veterinary 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.

Tariffs

India maintains prohibitively high tariffs on top of its already burdensome certification requirements that ensures any dairy exporters who attempt to comply with Indian certification requirements will still face barriers to entry and remain uncompetitive even after significant investment. And yet, India needs high-quality U.S. ingredients, which can be produced at pharmaceutical grade to meet the needs of India's pharmaceutical manufacturing sector. IDFA encourages the negotiation of a TRQ for U.S. dairy ingredients and streamlined certificate requirements.

Indonesia

Indonesia is a top market for U.S. dairy exports, reaching almost $245 million in 2024, 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.

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.