



**International Dairy Foods Association**

Milk Industry Foundation

National Cheese Institute

International Ice Cream Association

January 14, 2010

The Honorable Ron Kirk  
United States Trade Representative  
Executive Office of the President  
600 17th Street, NW  
Washington, DC 20508

Dear Ambassador Kirk:

The Department of Agriculture (USDA) has circumvented a transparent regulatory development process by instigating action by U.S. Customs and Border Protection (CBP) that has resulted in restrictions on imports of dairy products and foods with dairy ingredients that do not comply with new data reporting requirements. I am writing to ask that you recommend the immediate suspension of this new trade requirement.

On December 10, 2009, the U.S. CBP issued a memorandum requiring 255 categories of dairy and other foods to either report proprietary information on the milk solids content of the product or be refused entry into the United States, effective January 1, 2010.

USDA through CBP apparently requires this information for a proposed rule (AMS-DA-08-0050) under the "National Dairy Promotion and Research Program", a program that promotes U.S. dairy products. By invoking an unpublished reporting requirement prior to a final rule, this action by USDA will be viewed as an obvious and blatant non-tariff trade barrier. Already we are hearing from those involved in the trade that CBP has indicated it will halt imports, and in some cases has, if this information is not provided.

As you know, Congress authorized USDA to collect assessments on imported dairy products if the program could be modified to comply with U.S. international trade obligations. Congress further instructed USTR to determine if USDA could implement this program in a manner that does not discriminate against imported dairy products. This issue has been the subject of significant controversy, and USDA has not finalized its proposed rule. In spite of this, the CBP is essentially enforcing an arbitrary trade restriction resulting from a premature and deficient process. Based on conversations with officials it appears possible that the collection of this data and the enforcement of this requirement on January 1 was not the original intention of those that instigated the action, and may have come about as a result of a misunderstanding between participants involved in an inter-agency process.

Due to the poorly-publicized release of this requirement in December, most firms were not even aware of the new requirement until after the New Year, and it has resulted in a great deal of confusion, extending from small, U.S.-based importers to global food companies. We are very concerned that unless action is immediately taken to suspend this new requirement, there will be negative impacts on our trading relationships and U.S. dairy exports.

U.S. trade restrictions always risk inviting other countries to put up similar trade barriers. There continues to be concern from our trading partners that the potential dairy import assessment rule would violate international trade obligations. This latest development has only exacerbated their concerns in addition to unnecessarily disrupting trade in dairy and related products. USTR's efforts to suspend the new requirement would, for the time being, allay mounting concerns about the non-transparent and seemingly arbitrary nature of U.S. trade policies involving milk and dairy products.

Thus, we respectfully request that USTR work with the various agencies to suspend the reporting requirement and carefully review concerns raised by the proposed USDA rule.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Connie Tipton". The signature is fluid and cursive, written in a professional style.

Connie Tipton  
President and CEO

CC: The Honorable Tom Vilsack  
The Honorable Edward M. Avalos  
The Honorable James W. Miller  
The Honorable Daniel Baldwin  
The Honorable Cass R. Sunstein  
The Honorable Rayne Pegg