IDFA
International
Dairy Foods Association

# Comments Regarding Foreign Trade Barriers to U.S. Exports for 2021 Reporting

Docket Number: USTR-2020-0034

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The International Dairy Foods Association (IDFA) represents the United States' dairy manufacturing and marketing industry, which supports more than 3 million jobs that generate $159 billion in wages and $620 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 90 percent 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.

The United States exports approximately $6 billion in dairy products to over 146 countries around the world every year; currently, approximately one day's worth of U.S. milk production each week – about 15% of all production. As a result, trade is a policy priority for the industry, as is maintaining open export markets that enable U.S. dairy producers and exporters to maximize their opportunities. With this context, IDFA welcomes the opportunity to comment on foreign trade barriers to U.S. dairy export for the 2021 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 rather than in order of priority.

## Canada

IDFA is concerned with two Canadian trade barriers that may violate the U.S.-Mexico-Canada Agreement (USMCA), and which are preventing U.S. dairy exports from reaching the $227 million in annual additional dairy exports the Agreement should have achieved, as indicated by the International Trade Commission's (ITC) estimate.[1]

### Import Policies – Tariff Rate Quota (TRQ) Administration

Even after implementing changes to its TRQ administration in order to be ready for USMCA entry into force, Canada has maintained restrictive conditions for TRQ allocation that are inconsistent with the conditions outlined in USMCA, and which limit certain U.S. dairy exports. The inconsistencies between USMCA's Agriculture Chapter as well as the annex on TRQs in the Canadian Schedule (Appendix 2: Tariff Schedule of Canada - Tariff Rate Quotas) and Canada's TRQ administration regulations are numerous, despite the Agreement's prohibition on the introduction of any new conditions or eligibility requirements on the utilization of a TRQ beyond those set forth in the Canadian Schedule. For example, Canada's eligibility and allocation calculation conditions limit access to the "Cheese of All Types" TRQ to just 15% for distributors and allocating 85% to processors, conditions which are not included in USMCA commitments and which contradict additional USMCA commitments that require parties not to "limit access to an allocation to processors" unless otherwise agreed.[2] For the "Butter and Cream Powder" TRQ, Canada's calculation of allocations assigns 80% of the TRQ to

[1] Reference: https://www.usitc.gov/publications/332/pub4889.pdf
[2] Reference: https://www.international.gc.ca/trade-commerce/controls-controles/notices-avis/1020.aspx?lang=eng.

processors and 10% to further processors on a market share basis, where the USMCA commitment directs Canada to assign the majority of the TRQ based on use (i.e. further processing) without designation of market share basis, not on eligibility criteria of who may apply for an allocation. By indicating the majority of the TRQ may only be applied for by Canadian butter producers, Canada is minimizing imports of butter to further processors who seek to use butter as an ingredient.[3]

In addition to the concerns related to Canada's cheese and butter TRQ conditions, Canada's TRQ regulations for fluid milk and cream also appear to be inconsistent with Canada's commitments in USMCA. USMCA outlines how Canada must administer the aggregate quantities outlined for the fluid milk TRQ, without designation for any share basis for those quantities. However, in its regulations Canada states that 85% of the fluid milk TRQ is allocated to processors "on a market share basis based on the kilograms of milk processed by the processor during the reference period…", and allocated 15% to distributors "on an equal share basis."[4] For processors, 85% of the TRQ is the full tonnage allotted. Within that share, TRQs could be allocated to individual processors on an equal share or market share basis. Distribution on a market share basis means the total number of sales for that processor is divided by the number of total sales for the industry when allocating a processor's share of the TRQ. By basing the market share on domestic sales of domestic milk, investment into imports is disincentivized as processors will ensure that their domestic allocation of raw milk is utilized fully before entertaining any imports. The equal share method of allocation to distributors, especially for distributors who may be just starting to import fluid milk, means they will be just one of many applications and they will likely get a small fraction of their capabilities, creating allocation uncertainty and making it difficult to build a brand business for fluid milk exports. This creates a scenario where the distributor segment of the market remains tiny, and the processor segment is sustained as a large segment that receives only the desired TRQ volume. These share designations between processors and distributors are in Canadian regulations but not in USMCA obligations for administration of Canada's TRQs, and essentially eliminate any significant gains to be realized under Canada's USMCA commitments on dairy TRQs.

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 also institutes a condition that high percentages of dairy TRQs must be allocated 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 and yielding extremely low fill rates. 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.

IDFA's members report these Canadian policies are resulting in low TRQ fill rates, even by the category of TRQ applicants that would have been most likely to have reason to import dairy from the United

[3] Reference: https://www.international.gc.ca/trade-commerce/controls-controles/notices-avis/1018.aspx?lang=eng.
[4] Reference: https://www.international.gc.ca/trade-commerce/controls-controles/notices-avis/1015.aspx?lang=eng.

States from a business perspective. Some members report fill rates as low as approximately 18% of the quantity allegedly offered. Canada is clearly seeking to negate any potentially significant gains U.S. dairy exporters stood to realize under Canada's USMCA commitments by simply and openly violating the commitments. IDFA is concerned that Canada is using the conditions in its regulations rather than its USMCA commitments to further prevent building branded U.S. businesses in Canada and to limit imports to bulk ingredients – all the while boosting Canadian market prices of the same products. Ultimately Canada's TRQ conditions will continue to disincentivize the consistent value-added dairy exports USMCA should have facilitated unless the United States pursues enforcement of the relevant USMCA provisions against Canada. IDFA urges the United States to pursue these enforcement discussions at the earliest opportunity.

<u>Subsidies – Milk Class Pricing Policies</u>
IDFA has reason to believe Canada that has created a substitute price class structure which includes several yet unpublished subclasses, processor margins, yield factors, make allowances, monthly pooling information, and class price formulas. Most concerningly, Canada has published a new milk class to replace Class 7 called Class 4(a), which effectively recreates the trade-distorting effects of Class 7 by providing raw milk prices for a range of concentrated milk products such as butter, skim milk powder (SMP), condensed milk, etc. as did Class 7. The pricing formula for Class 4(a) starts with the U.S. non-fat dry milk price and allows for the deduction of the assumed processor margin in Canada, which is widely considered to be approximately double the comparable processor margin in the United States due to the outdated calculation model employed by Canada. The artificially inflated Canadian assumed processor margin depresses the minimum price that Canada can charge for milk used in these products and, in turn, facilitates the export of surplus skim milk solids from Canada that once again provides domestic dairy processors with a milk price that is likely to continue to promote exports of Canadian SMP, milk protein concentrates (MPCs), and infant formula and displace imports.

In addition to the effect of Class 4(a) replicating some of the previous Class 7 prices, Class 3 cheese prices were revised in a manner that allows Canada to keep the Class 7 pricing ratio for cheeses in its new Class 3 calculation. Again, this action essentially continues the same favorable pricing for Canadian milk destined for cheese production that Class 7 permitted. IDFA is concerned that these new pricing policies will allow Canada to continue to raise prices for certain classes or subclasses while lowering the price for the protein subclass within Class 4(a), just as was historically done through Class 7. This will ultimately keep returns to Canadian producers elevated, all the while maintaining a cap on the quantity of Class 4(a) product that is used for domestic manufacturing of other milk class products in Canada and allowing Canadian exporters to dump large quantities of cross-subsidized Class 4(a) SMP on world markets.

IDFA is concerned that Canada continues to pursue pricing policies that are inconsistent with the transparency commitments of Article 3.A.3 on Dairy Pricing and Exports of Annex 3-A of Chapter 3 of USMCA. While Canada has created a substitute price class structure, it has not yet published all its laws and regulations at the central or regional level of government that govern or implement a milk class pricing system for dairy, which applied as of entry into force per paragraph 10 of Article 3.A.3. IDFA also believes Canada's revised milk class policies post-entry into force of USMCA may serve as a de facto subsidy under World Trade Organization (WTO) rules, as was ruled for Classes 5(d) and 5(e) in the 1997 WTO dispute on Canada dairy. In these aspects, Canada has demonstrated its intention to avoid both current and impending compliance with both USMCA and WTO commitments, and to continue to adopt policies that promote import displacement and export subsidization.

If U.S. dairy exporters are unable to obtain globally-consistent, fair market prices for their products, if and how TRQs are allocated and filled will be become less relevant then U.S. producers will be unable to effectively access the Canadian market without taking losses and the international market will suffer due to depressed global prices created by Canada's new price classes. IDFA urges the Administration to press Canada towards compliance on its TRQ and price class commitments under USMCA.

**China**

The U.S. dairy export relationship with China has been tumultuous since 2014 due to China's implementation of facility registration measures in 2014. Before the measure was implemented, U.S. dairy exports to China reached $706 million in 2013. While economists argue that U.S. dairy exports reached that value in 2013 due to the value of the dollar and global milk prices at the time, China's facility registration regulation appear to have permanently decreased the number of facilities shipping to China. With equitable tariff access and reduced regulatory barriers, given the consumer demand for quality dairy products in China, IDFA believes U.S. dairy exports to China have the potential to reach 2013 levels and higher.

Sanitary and Phytosanitary Measures – Facility Registration

In 2012, China introduced Decree 145, which requires exporting facilities and their products to appear on a list of registered facilities as well as requiring foreign competent authorities to attest to Chinese laws and regulations on behalf of the exporting facilities. In 2014, when Decree 145 was implemented, because the U.S. Food and Drug Administration would not attest to compliance with Chinese laws and regulations, China refused to list all U.S. facilities and for several subsequent years, only about two thirds of U.S. facilities were listed and considered eligible for export by Chinese authorities. By the time the United States was able to ease these restrictions through the gains achieved in the Economic and Trade Agreement between the U.S. – China (i.e. "Phase One"), retaliatory tariffs and years of restricted access had resulted in U.S. facilities no longer considering China a secure market for U.S. dairy exports, and the number of registered facilities has remained depressed.

IDFA is concerned that, as in 2014, China will continue to use its facility registration regime to control imports from countries with which China has political disagreements. IDFA is also concerned that the registration requirements themselves are not consistent with the WTO SPS Agreement as they are without a basis in science, are not based on risk, and achieve no discernible additional guarantee of product safety given the existence of additional requirements such as mandatory testing (Decree 152), exporter registration, and mandatory sanitary certification. As such IDFA continues to support U.S. efforts to eliminate duplicative and burdensome regulatory barriers like Decree 145, which China has and may continue to use to threaten U.S. dairy exports.

**European Union**

IDFA understands and supports USTR's efforts to obtain a more balanced trade relationship with the

European Union (EU), particularly for the U.S. dairy sector.[5] U.S. dairy exports to the EU are and have been exponentially lower than the EU's dairy exports to the United States for many years, due in most part to the wide-ranging protectionist measures in the EU. For example, U.S. dairy exports to the EU reached just over 6% of the value of EU dairy exports to the United States in 2019, which is unfortunately a ratio that is approximately historically consistent with the dairy trade imbalance that has existed between the United States and the EU to date.[6] Despite the EU's policies, the EU has the potential to be a much more significant export market for the U.S. dairy industry. In 2019, the United States exported $116 million in dairy products to the EU, but that number has historically reached $160 million, and the EU has historically reported $540 million in dairy imports from other dairy-producing countries globally. With that background on the potential for U.S. dairy exports to the EU, IDFA would like to highlight the following three non-tariff barriers:

Sanitary and Phytosanitary Measures – Certification
The European Commission's (EC) 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.

Technical Barrier to Trade (TBT) -- Geographical Indications
The EC's geographical indication (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

[5] Dairy products represented by IDFA include HTS codes 0401 (milk and cream), 0402 (milk powder), 0403 (buttermilk and yogurt), 0404 (whey), 0405 (butter), 0406 (cheese), 1702 (lactose), 1901 (prepared foods containing dairy), 2105 (ice cream), 2202 (milk-based drinks), 3501 (casein), and 3502 (whey protein concentrate).
[6] Source: U.S. Census Bureau Trade Data accessed via Global Agricultural Trade System Online (https://apps.fas.usda.gov/gats/Default.aspx).

certain regions in Europe, despite being considered generic in the United States and many other parts of the world. Acknowledging the WTO's 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, may conflict with the EC's WTO TBT Agreement obligations.

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.[7]

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 member 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 a critical priority for U.S. cheese producers.

Subsidies – Private Storage Aid (PSA) and Intervention Stocks of Skim Milk Powder

The EC operates two programs to protect their dairy industry in periods of low prices, specifically the PSA and public intervention stocks programs. The PSA pays storage costs for products temporarily removed from the market, while the public intervention stocks program purchases the product determined to be surplus at a fixed price. Historically the public intervention program in particular has created scenarios in which the EC purchased massive amounts of skim milk powder and butter, more than could possibly be consumed within the EU, and then released the stocks more rapidly than can be accounted for by the current demand, possible domestic consumption, or the market prices at the time. Most recently the EC implemented these purchasing actions under its intervention program between 2016-2018. In 2016, the EC raised its ceiling of intervention stocks for SMP twice, accumulating over 378,000 metric tons of SMP by the end of 2017. The EC then sold over half that, 276,883 metric tons in 2018, all of which sold at prices below their purchase price, and the remainder of

[7] Reference: http://www.fao.org/fao-who-codexalimentarius/committees/committee/related-standards/en/?committee=CCMMP.

it sold in early 2019. The surplus overhang of SMP in 2016 and 2017 ultimately depressed global market prices of SMP in those years, which remained depressed during the selling period.[8]

Noting that any product sold from government stocks at a price below acquisition cost and then exported would be considered a subsidized export under WTO rules, IDFA is concerned that the EC is bolstering domestic producers by buying product, then effectively subsidizing its exports of SMP by disposing of the aged product at low prices when there is no domestic demand for the product. On average this product was sold in a rising market at a discount relative to the commercial market. As a result of this program, the EU increased its export volume to markets in Southeast Asia in 2019 which displaced U.S. sales and effectively reduced U.S. market share in these markets. IDFA is concerned that the EC will continue to utilize this program in such a way as to distort the global market. IDFA urges the United States to ensure the trade imbalance with the EU remains a policy priority for the Administration, and that in the process, European programs such as the intervention program are stopped from adversely impacting U.S. and global dairy prices.

**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, and which India appears to have done very little to meaningfully address recent bilateral negotiations. Given that U.S. dairy exports to India reached over $60 million in 2019 just in the few 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 cheese and whey, both of which have historically been restricted.

Sanitary and Phytosanitary Measures – Certification Requirements

India requires imported dairy products to be accompanied by a sanitary import permit issued by the Department of Animal Husbandry, Dairying, and Fisheries (DAHDF) and veterinary certification by an exporting country's veterinary authority. Problematically, the attestations required in the certificate, which must be furnished in order to obtain an import permit, are based on religious requirements and not science or risk based. The certificate requires that products were not produced using rennet, that source animals received no hormone treatments, and were never fed certain ingredients commonly used to supplement dairy calf feed in the United States. India also requires all imports to be fit for human consumption, regardless of their end use. Lastly, in 2020 India expanded the scope of these requirements to include non-traditional dairy products such as dairy-based sugars like lactose and whey protein concentrates and isolates for pharmaceutical uses in scope, in order to prevent their export to India as well.

These requirements are inconsistent with international standards, guidelines, and recommendations for dairy certification, and do not appear to be based on science nor on the risk of the products being imported. When confronted with these concerns, India has openly acknowledged the importance of its own dairy industry, and the importance of ensuring imports do not supplant its own industry, in essence acknowledging its role in creating and maintain barriers to trade. IDFA strongly urges the United States to continue to reach a solution with India that opens market access for U.S. dairy exporters.

[8] Reference: https://www.idfa.org/wordpress/wp-content/uploads/2020/06/Impact-of-EU-SMP-Intervention-Program_6.5.20-3.pdf.

**Kenya**

IDFA believes global competitiveness is key to the U.S. dairy industry's continued growth and to that end, with a population of roughly 1.3 billion people, the African continent represents significant market potential for U.S. dairy exports under equitable trade conditions. Unfortunately, Kenya's import policies hinder the U.S. dairy exports opportunities. Since 2002, Kenya has strategically and aggressively pursued the restriction of dairy imports while building their domestic industry production through the exponential expansion of the artificial insemination of their dairy cattle. The subsequent herd increase has resulted in Kenya enjoying the status of a dairy exporter for the region while continuing to restrict imports.[9] U.S. dairy exporters need tariff reductions, science-based SPS measures, and a simplified, trade facilitative approach to import permits in order to be fully competitive in Kenya, particularly in light of the European-East African trade commitments that have given EU exporters the ability to dominate over 81% of Kenya's dairy import market.

Market Access – Prohibitively High Tariffs and Cumbersome Import Procedures

Currently, Kenya maintains its highest tariffs on a range of agricultural products, including dairy at an average of over 50 percent, because it considers dairy to be "sensitive" products and uses tariffs to stabilize domestic prices. In fact, Kenya's tariffs on dairy imports are significantly higher than most other agricultural import tariffs and present the primary barrier to U.S. dairy exporters to Kenya. In addition to the prohibitively high tariffs, Kenya's "Dairy Industry Import and Export Regulations (2004, Revised 2012)" require importers of dairy products to apply for an import permit, receive a recommendation from the national Dairy Board, be granted the import permit, then obtain a clearance certificate indicating the import permit was granted – all of this must be done for every consignment of imported dairy products.

Sanitary and Phytosanitary (SPS) Measures – Certification Requirements for Import Permits

The SPS portion of Kenya's "Dairy Industry Import and Export Regulations (2004, Revised 2012)" require dairy imports into Kenya be physically tested for radioactivity and be accompanied by attestations that the products stem from milk that originates from animals within the country of export, that the product has not been trans-shipped, and that the product has received not just one, but two pasteurization treatments. The regulations require these statements and test results to be provided with each consignment of dairy imports.

IDFA is concerned that these regulations are not science-based or consistent with international standards, guidelines, and recommendations and that it does not appear Kenya has based this measure on existing international standards, guidelines, or recommendations, consistent with Article 3.1 of the SPS Agreement. For instance, the World Organization for Animal Health (OIE) and Codex do not require double pasteurization to mitigate animal diseases or to ensure a product's safety, and there is no risk or scientific basis to require radioactivity testing, prohibiting trans-shipment of products, or require this level of testing and attestation for each consignment. In fact, Codex guidelines on the

[9] Dairy Development in Kenya, Food and Agriculture Organization of the United Nations: http://www.fao.org/3/a-al745e.pdf.

use of official certification encourage countries to avoid consignment-based certification where appropriate.[10]

IDFA is concerned that in addition to prohibitively high tariffs, Kenya is using requirements not based on science to exponentially increases costs of potential exporters, create a trading environment that is more trade restrictive than necessary, and to ultimately prevent the import of dairy products. Although Kenya is not currently a major market for U.S. dairy products, as the United States continues to pursue bilateral discussions with Kenya, IDFA urges the United States to pursue resolution of these trade barriers.

**Mexico**

Mexico is currently the top export market for U.S. dairy products, importing over $1.5 billion in U.S. dairy products in 2019. However, in recent months, Mexico has become increasingly unstable for U.S. dairy products due to lack of transparency regarding implementation of certain measures and inconsistent implementation of those measures. Recognizing the negative impact the COVID-19 pandemic may have had on the Mexican economy, U.S. dairy exports have been depressed since entry into force of USMCA compared to the same months in the previous year. In light of the U.S. ITC estimate in 2019 that U.S. dairy exports to Mexico would stand to grow by over $50 million above existing exports as a result of USMCA entry into force, the instability in the supply chain resulting from the measures outlined below are ensuring U.S. dairy exporters are not able to achieve the growth intended under USMCA.[11]

Technical Barriers to Trade – Labeling

In 2019 Mexico notified to the WTO a draft amendment to the Mexican Official Standard NOM-051-SCFI/SSA1-2010 for the general specifications for the labelling of pre-packed food and non-alcoholic beverages, which requires front-of-pack logos and labeling of food products as containing excess calories, sugars, saturated fats, trans fats, and sodium. Warning labels for caffeine and the use of sweeteners are also part of the regulation. Despite significant comments submitted to Mexico by trading partners regarding the scientific basis for the warning labels, including information about products that would be adversely impacted by nature of their manufacture rather than by any additive ingredients (e.g. cheese), Mexico moved forward with implementation and enforcement of NOM-051. In addition to the warning labels, Mexico requires cumbersome conformity assessment of imported foods to ensure their compliance with NOM-051, and Mexico's late changes to the implementation scope of its Foreign Trade Agreement Law resulted in foodservice, bulk ingredients, and other non-retail dairy products being detained at the Mexican border, with Customs officials saying they have not received guidance on how to clear shipments, whether the non-retail products are eligible to receive exemptions from NOM-051 labeling requirements as intended in the NOM itself, or how to interpret the standards even to food additives. U.S. dairy exporters have been experiencing detentions and customer uncertainty for weeks, with no clear solution in sight other than to attempt to relabel bulk ingredients and foodservice products with the retail and consumer-facing labeling, which is a costly and time-consuming undertaking for manufacturers.

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[10] Reference: http://www.fao.org/input/download/standards/375/CXG_038e.pdf.
[11] Reference: https://www.usitc.gov/publications/332/pub4889.pdf.

IDFA is concerned that Mexico's legitimate objective of protection of its consumers health and safety in undertaking this measure was not based on scientific rationale, and with the changes in implementation scope, that Mexico is applying the measure in a manner that is more trade restrictive than necessary under the terms outlined in the TBT Agreement. When considered alongside other actions taken by Mexico recently, such as the Office of the Federal Prosecutor for the Consumer's (PROFECO) actions in mid-October 2020 to publicly harass cheese and yogurt companies for perceived labeling errors, rather than to address the companies directly, IDFA is concerned about the future stability of U.S. dairy exports to Mexico and the ability of U.S. dairy exports to realize the gains estimated by the ITC.

**Russia**

Russia was once a strong market for U.S. dairy exports, such as in 2010 when the United States shipped $82 million of dairy products to Russia. In addition, demand exists in Russia for value added processed dairy products which Russian producers do not yet have the capacity to manufacture domestically.[12] Although Russia continues to work towards self-sufficiency in its dairy production, IDFA believes that under equitable and open market conditions, significant opportunity still exists for U.S. dairy exports to thrive in Russia.

Sanitary and Phytosanitary Measures – Facility Registration

In 2010, the same year U.S. dairy exports to Russia reached their highest level ever, Russia implemented a facility registration regulation that requires all imported dairy products to come from Customs Union-approved facility lists, in addition to existing veterinary certification requirements. In 2012, as part of its WTO accession, Russia agreed to remove its requirements for facility registration and facility lists but did not comply with the terms of its accession then and has not to date. Although Russia banned agricultural imports from the United States in 2014, the facility list registration requirements remain in place, resulting in a situation where U.S. dairy exporters would not be able to export to Russia even if the ban were lifted, as no list of registered dairy facilities eligible to export to Russia currently exists, and would be time-consuming for U.S. agencies to create.

It is imperative that Russia be held accountable to its WTO accession commitments as other WTO members have been. IDFA urges the United States to continue to press Russia to meet its WTO accession commitments so that U.S. dairy exports to Russia can continue once its ban on U.S. agricultural products is lifted.

IDFA appreciates the opportunity to comment on the 2021 reporting of foreign trade barriers to U.S. exports.

[12] Reference: https://apps.fas.usda.gov/newgainapi/api/report/downloadreportbyfilename?filename=Dairy%20and%20Products%20Annual_Moscow_Russian%20Federation_12-20-2017.pdf.