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Cheese Importers Association of America
PROPOSAL FOR
COMPREHENSIVE AGRICULTURAL TRADE REFORM

May 2, 2016

The Cheese Importers Association of America ("CIAA" or the "Association") is deeply committed to improving international trade opportunities for dairy foods through the Transatlantic Trade and Investment Partnership (TTIP) and the Trans-Pacific Partnership (TPP). Trade with TTIP and TPP partners is most significant for U.S. agriculture and the U.S. dairy industry, and can be enhanced for all parties through comprehensive and coordinated reform of market access programs, with a preference for the eventual elimination of tariffs and quotas, and the harmonization of sanitary and phytosanitary standards.

The importation of high quality cheese is responsible for thousands of jobs across our industry. Importers, cheese converters and processors, warehouse operators, shipping companies, wholesalers and retailers all share in the positive benefits of cheese trade. At the same time, importers need to have the reasonable assurance that they will be able to reliably import the product they trade in year after year. The ability to import highly perishable commodities, such as high quality cheeses, must be on a regular and well planned basis through, a proven, successful, reliable, and time tested licensing system as provided currently. Additionally, CIAA believes that further harmonization of international standards should be a goal of all current trade negotiations, and points out that those who have previously imported under the current licensing system are more likely to have the skill and resources to organize compliance with the food safety standards discussed below.

<u>CIAA's Primary Recommendations</u>

With further detail provided below, CIAA's primary recommendations regarding these trade agreements include:

- CIAA supports significant reductions in tariffs and the expansion of tariff rate quota volumes en route to their virtual elimination and the resulting fully free trade;
- CIAA believes the best approach to quota allocation is use of the current licensing system under which the right to import products which are subject to tariff quota restrictions are fully, fairly and equitably allocated among importers and users with a proven track record, and rejects first-come, first serve allocations;
- CIAA prefers combining the various import licenses into commodity neutral versus cheese type, particularly for any new quotas;
- CIAA supports a 4-way split for any new access under a new quota system through the structure of the current four subparts;
- CIAA recommends that any license that can not be used by the license holder for actual imports would have to be surrendered as early as possible, but no later than May 30 of each year with reallocation by June 30; and
- CIAA supports the enhanced engagement in international standard setting bodies, to ensure the development of international standards which are appropriate for the United States dairy sector, work that promotes the adoption of international standards by trading partners and, the fair and equal treatment of products, and ingredients, that are imported from Countries with System Recognition Agreements ("SRA"), without exclusion in any form.

MARKET ACCESS

I. *Tariff Reduction*

In the context of market access liberalization, in order to foster material increases in market access opportunities on a commercially viable basis, the CIAA recommends the adoption of a package of reforms which operating together will accomplish this critical objective. In the case of tariffs, our proposal divides tariffs into three categories namely, general tariffs (tariff only items), in-quota (or lower-tier) tariffs, and over-quota (or higher-tier) tariffs.

(a) ***General Tariffs***. The Association supports significant reductions in tariffs in general. We continue to support the following provision of the G-20 proposal on a Framework for Establishing Modalities in Agriculture issued on May 28, 2004:

- a formula to ensure progressivity in tariff reductions through deeper cuts in higher tariffs;
- comprehensive product coverage without a priori exclusions;
- tariffs that are already bound duty free shall not be counted towards the assessment of the tariff reduction commitments; and
- tariffs to be capped.

(b) ***In-Quota Tariffs***. For products subject to tariff-rate quotas ("TRQ" or "tariff quota"), the CIAA believes the following six comprehensive reform measures will collectively have the effect of creating meaningful access opportunities for businesses located in all potential exporting countries. As explained hereinafter in greater detail, market access within each tariff quota will be substantially enhanced, both in terms of the size and commercial viability of the access opportunity, by the adoption of the following package of four reform measures:

(i) **elimination of all in-quota (or lower-tier) tariffs**. The Associations believe that in-quota tariffs for all products subject to TRQ restrictions should be removed immediately or in equal installments over a short phase-in period, not to exceed five years;

(ii) **reductions in over-quota tariffs** (see, paragraph I(c));

(iii) **expansion of tariff-rate quota volumes** (see, Section II); and

(iv) **the adoption of various TRQ administration disciplines** (see, Section III).

(c) ***Over-Quota Tariffs.*** We support significant reductions in over-quota tariffs and harmonization of all higher-tier tariffs with eventual elimination as the ultimate goal. We encourage a fast and steep reduction of over-quota tariffs**.**

II. ***Tariff-Rate Quotas***

(a) ***Expansion of Tariff-Rate Quota Volumes.*** Enhancing market access for all products subject to TRQ restrictions, including dairy products, on a world wide basis should be a top priority of U.S. trade negotiators. In the view of the Association, this should be accomplished by progressively increasing all TRQ volumes to at least ten percent (10%) of the TTIP AND TPP member state's "current" domestic consumption of the particular product group over a five year phase-in period. We further recommend that current domestic consumption be determined by using a base period consisting of the three most recent calendar years preceding for which the data is available.

III. ***Tariff-Rate Quota Administration Disciplines***

To ensure that trade agreements succeed in opening new markets for agricultural products and in preventing unfair trade practices, the proponents of trade liberalization must fight for the adoption of strict disciplines pertaining to the manner in which governments administer tariff quotas. CIAA believes we will substantially improve market access through the elimination of policies which are unduly burdensome and exclusionary.

(a) ***Quota Allocation Methodology***. The CIAA recommends that the best approach to quota allocation is use of the current licensing system under which the right to import products which are subject to tariff quota restrictions are fully, fairly and equitably allocated among importers and users with a proven track record. As discussed below, the lottery license system could be improved to provide similar benefits. Some agricultural products, admittedly, may not be well suited for licensing and should be evaluated on a case by case basis. Products which are pure commodities, such as soy beans, rice and many other raw agricultural products, may not derive any significant benefit from a licensing system. With respect to consumer ready products, however, the use of import licenses has important and far reaching advantages. As noted above, importers need to have a reasonable assurance that they will be able to reliably import the perishable product it trades in year after year, and the ability to import must be on a regular and well planned basis throughout a given year.

The opposite of a licensing system approach to TRQ allocation is a non-licensed "first-come, first-served" system of quota administration. Under this system whoever gets his goods to the port first, gets the quota to enter it; latecomers and their goods are turned away if they arrive after the quota is filled, unless they choose to enter the goods at the higher over-quota duty rate. The following are just some of the disadvantages of the first-come, first-served system: (i) there is no orderly marketing as goods tend to arrive at the beginning of the quota year; (ii) it does not permit brand or product development, thus only commodities which store well and sell easily once entered can be imported; (iii) long term strategic relationships with customers within the market can not be established due to the lack of continuity of supply; (iv) due to the chaotic market situation many would be importers choose not to participate in the business; and (v) FDA's Foreign Supplier Verification rule presupposes the importer's familiarity with the supplier's relevant food safety records, the ability to conduct corrective actions, and the presence of downstream supply chain partners to control potential hazards. These same disadvantages, it should be noted, exist with respect to the "applied tariff" administration method as well.

Use of a properly structured licensing system approach to tariff quota administration, on the other hand, has none of these disadvantages. Rather a properly designed licensing system of tariff quota allocation permits importers to operate with a degree of certainty concerning their ability to import merchandise which is subject to TRQ restrictions. In order to successfully market consumer ready products, such certainty of supply is absolutely necessary for efficient business operations, planning and investment.

In order to improve efficiency of the license system, the license reallocation system needs to be improved. Difficulties could be avoided if the license holder who is not able to use the license is allowed to surrender it as early as possible and throughout the quota year. Licensees that are surrendered should be reallocated as early as possible, with surrender no later than May 30 of each year and reallocation by June 30 by US authorities to importers who actually have a need for licenses for importing purposes.

Further, to in order to help cheese importers to more efficiently respond to the needs of American consumers, CIAA would prefer combining the various import licenses into commodity neutral versus cheese type, particularly for any new quotas. The consumer market has changed since 1994 when the Uruguay round was signed.

Current lottery licenses, referred to as Appendix II in the dairy import quota system, are also of very limited utility. While they certainly serve a beneficial purpose in allowing for new entrants to enter the business, they do not allow for the long-term planning and continuity of supply that building a brand and the related supply chain controls requires. An importer has no assurance that the App. II license received this year will be received in following years. The size of the App. II licenses is too small to build a viable business. For cheese the largest App. II license an importer can receive is 38,000 KG. For non cheeses the maximum license quantity is 57,000 KG. That amount is insufficient to build a viable business. In 2016, App. II lottery licenses will make up 31.9% of 157.5 million KG in-quota dairy import TRQ. This is a sufficiently large enough share that allows new entrants a chance to enter the business. CIAA recommends that the lottery system be modified so that preference for lottery licenses is given to those who previously obtained and used a lottery license, while ensuring that a portion is consistently left for new applicants. Such a preference for lottery licenses could enable more importers to develop more efficient and long term business operations.

Preferred licenses, those for which foreign governments can designate who the importers should be, will make up 30.3% of the 2016 TRQ. CIAA believes this designation should be reviewed to include entities beyond subsidiaries of EU companies as required by current EU regulations at a minimum, as a fairness issue to home-based importers.

Please consider the following specific examples that demonstrate why the current import license system is beneficial:

- Arla Foods was formed in 2000 when the largest dairy companies in Denmark and Sweden merged. The Danish company had an office here in the U.S. that for many years had been focusing on and building up the market for their high quality Danish dairy products; Blue cheese, Havarti, Danish Butter, etc. They were very successful, and over the years Danish cheese became a staple on the American market. This success was in large part due the fact that they were able to reliably and continuously import their premium products over the long term. The current import licensing system made this possible.

  In 2006, Arla acquired their first dairy here in the U.S. and began making variations of their popular Danish-style cheeses here in America. Arla has enjoyed great success, significantly investing in and growing their domestic production along with its imported business.

- Atalanta Corporation is a family business since 1945, and has been importing cheeses for over 60 years. In 1995 Atalanta invested in a conversion facility to complement their portfolio of products. In the last twenty years, the volume in that facility has grown by 5000% and they currently employ over 100 people. Today that facility supports more domestic inputs than imports. Growth and re-investment has only been made possible by the comfort of continuity in their import business.

- Other importers have also invested in domestic production, cutting and packaging operations to make the cheeses they import more appealing to the U.S. market.

All these ventures employ American workers. Those companies that started producing cheese in the U.S. following their positive import experiences are buying milk from American farmers, thereby enhancing American dairy farmers' incomes. Would these companies have made such investments if they hadn't first been able to establish a beachhead here in America with their imported cheeses? The answer is probably no. And would they have been able to establish their premium imported brands under a first-come-first-served licensing regime under which their ability to import their products was less certain and open to more risk? Again, the answer is probably no.

In view of this convincing and impressive record, the CIAA recommends that TTIP and TPP members be required to allocate tariff quotas by means of a system similar to the current import licensing system whenever the products subject to tariff quota restrictions are consumer ready or high value-added products, and that the lottery system be modified so that preference for lottery licenses is given to those with an actual record of import history.

(b) ***Eligibility***. To enhance tariff quota utilization, the Association recommends that, except for the "set aside" described below, import license eligibility should be limited to persons who can demonstrate to the satisfaction of each TTIP and TPP member state (including the European Union as a member state) that it has been actively engaged in the business of importing, exporting, manufacturing or otherwise using in commerce the products which are subject to the particular TRQ during the preceding twelve months. To ensure that eligibility is strictly limited, except as described below, to those persons or firms who intend to, and actually do, continuously operate bona fide businesses involving the importation, exportation, production or other commercial utilization of the same or similar merchandise (e.g., within the same HTS Chapter or Subchapter) for resale to customers and/or for use in their own domestic processing facility, minimum volume criteria and reasonable operational requirements should be adopted by each TTIP AND TPP member state.

The CIAA also supports a 4 way split for any new access under a new quota system through the structure of four sub-parts. Part 1 should be reserved for the historical license holders which includes both foreign and domestic stakeholders in some sort of proportional allocation related to their current historical license volume. Part 2 supplemental quota would be allocated in a renewable manner whereby those entities who receive an allocation would get priority for that same access in subsequent years as long as they utilize that allocation in an amount of at least 85-90%. Part 3 would be reserved for designated license holders appointed by the EU, and part 4 would be reserved exclusively for new companies established after the conclusion of the Uruguay Round of WTO post 1995 (that currently have no historical access).

Historical and designated parties would not be allowed to participate in the Part 4 access. All three categories of stakeholders would be eligible to participate in at least two different parts. Historical holders would participate in Parts 1 and 2, Designated would participate in Parts 2 and 3, and new companies formed after 1995 that have qualified as eligible cheese importers over the past five years (who have no historical access) would participate in Part 2 and Part 4 access. Should any portion of these four suballocations go unclaimed, a second round should be open without restriction to all eligible applicants.

(c) *Continuity*. It should be recognized that in the case of consumer ready and high value added goods some reasonable degree of certainty concerning an importer's ability to import tariff quota merchandise from year to year is essential to the creation and maintenance of a viable ongoing business. Such continuity can be achieved by using the current method of license allocation as well as by other means. As noted above, we recommend, for example, that licensees who utilize their non-historical TRQ import license by some high percentage (e.g. 85%) should receive preferential treatment when reapplying for that same license for the following quota year. In other words, their applications would be granted before the applications of first time applicants and applicants who failed to achieve that utilization level.

As stated above, any license that can not be used by the license holder for actual imports would have to be surrendered as early as possible, but no later than May 30 of each year with reallocation by June 30.

(e) *License Amount*. To enhance the economic feasibility of trade in TRQ articles, the amount of an import license should generally not be less than 19,000 kilograms depending on the product, unless a lesser amount is specifically requested by the license applicant. Governments should also be required to increase the minimum license size in proportion to the size of the particular TRQ.

(f) *License Validity*. Since all TRQ commitments are annual, import licenses should be issued for not less than twelve months, unless special circumstances (to be carefully defined) justify shorter validity periods. A twelve month validity period has the great advantage of ensuring that consumer demand can be satisfied when and where it exists throughout the entire quota year, thereby enhancing market development.

(g) *Full and Timely Allocation*. Each TTIP and TPP member state must be required to fully allocate the entire amount of each TRQ which such member has agreed to establish. All quotas, whether allocated by means of the issuance of import licenses or otherwise, must be available for use beginning on the first day of the relevant quota period.

(h) *Licensee Safe Guards*. In order to encourage the long term development of firms which will invest in the establishment of a sales and distribution business in the particular product category, licensees must be free from regulatory fines, penalties or loss of eligibility if they periodically turn back (surrender) TRQ import licenses which they can not use during a particular quota year provided this is done as early as possible and throughout the quota year. The practice of surrendering import licenses should also be encouraged since it contributes to enhancing quota utilization when combined with a reallocation program.

(i) *Transparency*. Member states should be required to publish and post on the internet TRQ fill rates regularly (i.e., at least monthly). Licensing program rules and regulations, license amounts issued and the amounts utilized should be published as well.

With respect to the agricultural rules on domestic support, the CIAA supports continued reduction and eventual elimination of all trade-distorting domestic supports, including elimination of the "blue box." Domestic support policies that artificially stimulate or restrict production, or ensure inefficient production, have significant effects on international market conditions that are harmful to the global community.

SANITARY AND PHYTOSANITARY MEASURES

As importers of quality cheese products, we wholeheartedly agree that the appropriate sanitary and phytosanitary measures should be in place. We place extremely high priority on the use of scientificbased regulations that are aligned with internationally recognised standards. The international credibility of the United States food safety system is underpinned by our use of international standards.

For this reason, we strongly support:

- **Enhanced engagement in international standard setting bodies,** to ensure the development of international standards which are appropriate for the United States dairy sector. As a priority we include those standard setting bodies recognised by WTO's SPS and TBT Agreements e.g. Codex Alimentarius, the OIE, and the International Standards Organisation (ISO). The International Dairy Federation (IDF) is also important for the dairy industry.
- **Work that promotes the adoption of international standards by trading partners**. This could be via FTA frameworks, or investment in enhanced trading relationships that involve a strong component of regulatory cooperation, to build capability and understanding.

Furthermore, we support the fair and equal treatment of products, and ingredients, that are imported from Countries with System Recognition Agreements ("SRA"), without exclusion in any form. As drafted, the final rule implementing the Foreign Supplier Verification Program ("FSVP") provisions of the Food Safety Modernization Act ("FSMA") will limit the benefit to importers of products from a country with a Systems Recognition Agreement to products "that are not intended for further manufacturing/processing . . .". We feel this is a step backwards in FDA's approach to equivalence and does not recognize a SRA country's food safety systems for protecting public health.

We believe that there is a need for harmonization of these standards to recognize that the countries from which we import product have the appropriate safeguards in place. It should be noted that there is a more likely assurance that the FSMA requirement of supplier verification would occur with companies with actual importing history. Their long and successful history of protecting public health while honoring traditional production practices needs to be emulated.

We must also caution that the imposition of the various requirements proposed by the various FSMA related rules is already having an unintended chilling effect on the importation of safe, wholesome cheese products, because some suppliers find the requirements to be a financial and operational cost that make exporting cheese to the United States uneconomical and overly complicated. For this reason, we respectfully suggest that a further harmonization of international standards should be a goal of all current trade negotiations.

CONCLUSION

As an industry engaged in a sector of international agricultural trade in which market access barriers are rampant, we analyzed the challenge of improving market access with the benefit of possessing the knowledge and experience acquired from operating with quotas and other border restrictions, as importers and as exporters, for over half a century. Given this expertise, the CIAA is confident that the amalgamation of reform measures described in this document will result in the creation of a commercial environment for trade in agricultural products subject to TRQ restrictions which closely approximates free trade conditions. This we believe is indisputably the most effective way to increase real trade opportunities.