



MARKET ACCESS FOR U.S. DAIRY PRODUCTS INTO INDIA

The National Milk Producers Federation and the U.S. Dairy Export Council appreciate this opportunity to provide comments to the House Ways and Means Committee's Trade Subcommittee regarding U.S.-India Trade Relations: Opportunities and Challenges. For almost a decade India has imposed barriers against U.S. dairy exports to that country. The U.S. government has repeatedly sought to address India's concerns, yet India has not appeared willing to focus on practical measures aimed at addressing this trade dispute. Our industry is discouraged by India's response to this issue and the inability to find a reasonable resolution after virtually a decade of negotiations.

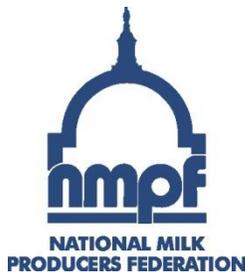
Background:

In late 2003, following an increase in dairy imports from the U.S. and other countries, India revised its dairy certificate for all imported dairy products. The new language was not something that the U.S. could certify to, thereby effectively closing the market to U.S. dairy exports. Beginning in early 2004, the United States has engaged with India to attempt to find mutually acceptable certificate language. This effort to explore workable alternate language has been primarily one-sided.

The U.S. and India are both major milk producing countries. India is the world's largest milk producer due to its significant cow and buffalo numbers, while the U.S. is the world's largest single country producer of cow's milk. Our two countries would best be served by working more closely together to help further growth goals of both industries and gaps in dairy demand in each country. Cross-investment is a frequent result of closer trading relationships between the U.S. and other nations. Such cooperation is difficult, at this stage, given the lack of a constructive working relationship.

The U.S. has become a significant export destination for India's dairy industry. Indian dairy exports to the U.S. over the past five years averaged \$62 million. Sales to the U.S. last year were \$52 million, a 27% increase over 2011's total. It is also noteworthy that India has retained access to the U.S. market despite a recent public investigation by India that revealed serious food safety lapses in its dairy system. Over that time period, India has also at times struggled to ensure adequate domestic dairy availability, due in part to weather issues. The temporary bans on exported dairy products that India has had to impose in response to that has undermined its reliability as a supplier. Had India been able to avail itself of a broader range of import sources it could have addressed domestic shortfalls while maintaining its important expansion of export involvement.

India's dairy market is far from open, even aside from SPS barriers. Tariffs are relatively high for most dairy products. For examples, applied rates for skim milk powder are 68%, for whey 36%, for butterfat products 36 – 46%, for cheese 30 – 36%. Among those, tariff-rate quotas with lower in-quota rates are in place only for milk powder and butterfat. Clearly, trade devoid of SPS barriers would not leave India unreasonably exposed to dramatic dairy import surges. U.S. exporters are simply seeking some degree of access, despite these sizable tariff levels; the industry has not insisted on securing duty-free trade.



Issue Detail:

At various times over the past 9 years India has offered up one certificate attestation or another as the primary impediment to resolution of this issue. For instance, the U.S. devoted considerable time and extensive conversations with India to focus on India's requirements with respect to maximum pesticide residue levels. Upon nearing completion of resolution of that matter, the focus then switched to indicating a primary concern with usage in the U.S. of rBST, a product deemed safe by JECFA and stalled in its Codex approval process in significant part due to India's objection. After in-depth government to government discussions on that topic and industry feasibility assessments on its usage, the focus then switched to feeding practices which were then presented as the key obstacle to resolution.

The U.S. dairy industry has attempted throughout that period to exhaustively evaluate what changes in production methods would be feasible for companies interested in the Indian market to implement, even if only on a limited scope (i.e. only some U.S. companies would choose to make the demands on their supplying farmers, thereby narrowing the prospective range of U.S. suppliers to India). In the lead-up to President Obama's late 2010 trip to India, the U.S. dairy industry thoroughly evaluated the full extent of flexibility options that it could consider to attempt to address India's concerns. In order to finally secure a path forward on this issue, industry was even willing to consider unscientifically-supported avenues such as committing exporters to require that their supplying farmers did not use rBST. In a similar fashion, the Administration poured significant resources into engagement with India in the months leading up to that visit. Despite this, India was not willing to entertain practical alternate ways to resolve the issue, particularly with respect to animal feed requirements.

When India ultimately changed its certificate yet again in 2012 in order to further restrict permissible feed options, among other changes, it became abundantly clear to U.S. companies that it was not realistic to make any long-term plans with respect to altered production practices given a continually shifting situation with respect to India's requirements. Current required certificate language is as follows. The primary areas believed to be contentious are bolded (emphasis added):

Veterinary Certificate to be issued by the Official veterinarian

The undersigned official veterinarian certifies that the product described above satisfies the following requirements specified in sections II and III:-

II. General Conditions or requirements

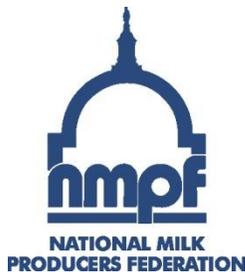
1. Animal rennet has not been used in making of this product.

Or

Animal rennet has been used in making of this product. The product package/container has been labelled accordingly.

(Retain as applicable.)

2. The source animals, from which milk was drawn have never been fed with feeds containing any animal tissues, except milk products.



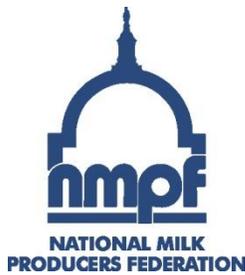
III. Sanitary Information or requirements

1. The milk / milk product has been processed to make it fit for human consumption.
2. Milk, used for making the milk product, has been processed with a heat treatment which ensures destruction of pathogenic organisms, including, *Mycobacterium bovis sub tuberculosis*, *Listeria monocytogenes*, *Mycobacterium avium paratuberculosis*, *Coxiella burnetii*, *Brucella sps.* and other bacterial disease-causing organisms.
- 3. The animals from which the milk has been derived were not administered with Bovine Growth Hormones (BGH) / Bovine Somatotropin Hormone (BST/rBST).**
4. The source animals were not treated with estrogen within the last ninety days before the milk was drawn.
5. The milk/milk product (*retain as applicable*) does not contain drug/pesticides/heavy metal residues and levels of mycotoxins above the limits prescribed by the Codex Alimentarius Commission.
6. Milk/ milk product (*retain as applicable*) does not contain pre-formed bacterial toxins such as those produced by bacteria belonging to *Staphylococcus aureus*, *Bacillus cereus*, *Clostridium botulinum* and enterogenic *Escherichia coli*.

Note that although only two sections have been bolded above, this reflects an assessment of the U.S. industry's belief on where the primary issues remain, not a guarantee by India that there are no other problems with respect to the other required items.

Regarding the two bolded items above:

- India's ban on the use of any animal tissues in feed is not scientifically supported. India appears to recognize this due to its separation of that issue and the rennet labeling requirement (also not scientifically warranted, but not a requirement that industry believes would be extremely onerous to comply with) from the "Sanitary Information or Requirements" section. Instead, after seven years of negotiations, India asserted in the last few years that this feed restriction is in place due to religious concerns. Despite this, India does not appear to have a reliable oversight system in place within its country to ensure domestic compliance with this and other dairy regulations, as the Indian government study mentioned earlier found. This appears to raise significant national treatment violation concerns.
- India is the only country that bans imported dairy products on the basis of use of rBST during milk production. Scientific evaluations of this drug have consistently found it to be safe for usage, although some countries have chosen not to permit its use in their own countries for primarily trade-related reasons (e.g. Australia and New Zealand) or for perceived animal welfare issues (e.g. European Union). Despite lack of approval for domestic usage in some areas of the



world, none of these other countries bans imported dairy products on that basis, given the understood lack of food safety risk. It is particularly noteworthy that the EU does not restrict imports on this basis, given the EU's extremely cautious approach to the use of many food-related technologies.

India is unique in its application of its restriction to imported product. India's stance is not in keeping with the scientific assessments on rBST by JECFA, nor by multiple countries around the world. This does not appear to be in keeping with India's WTO SPS obligations.

Summary:

The U.S. has provided considerable scientific data in support of our position, compromise solutions to address India's concerns, as well as information demonstrating that the vast majority of countries around the world accept our dairy products and recognize them as safe. Despite relatively high tariff and quota constraints, India, the second most populous country in the world with a population of more than 1 billion, presents a large and unrealized market opportunity for the U.S. dairy industry.

USDEC has calculated that resolution of this issue could yield significantly additional exports after the U.S. dairy industry has been able to establish itself in the market. Resolution of this longstanding issue is critical to maximizing future export possibilities for our industry in that region of the world. Some relatively small levels of trade have taken place since India imposed the import requirements in 2003. However, the risk that a shipment will most likely be rejected at the border due to the lack of agreed-upon dairy certificate has kept most U.S. exporters out of the Indian market.

The U.S. dairy industry is appreciative of U.S. government efforts to resolve this issue and is dismayed it has not been met with a serious effort from India to find a reasonable way forward on this long-standing issue. The industry remains dismayed, however, at the inability to challenge the WTO compliance of India's SPS barriers due to India's last-stage assertion that some of its criteria are religious-based requirements. Despite this asserted basis, the industry believes that there are significant national treatment questions raised about the extent to which India's requirements are equally enforced and monitored within its own dairy farming industry. Without an avenue for legal challenge, however, there is no clear solution and the U.S. appears likely to remain effectively blocked from this rapidly growing market in the years to come at the same time that India continues to benefit from access to the U.S. market for its dairy products and from benefits granted to it through the U.S. GSP system.

The U.S. dairy industry believes that the ideas proposed by Chairman Nunes in H.R. 6537 last year are particularly relevant with respect to major developing nations that take advantage of that unilaterally-granted preferential access to the U.S. market yet in return impose a significant number of intractable non-tariff barriers on U.S. products. The U.S. should examine all potential tools in its effort to encourage compliance by our trading partners with their international obligations.

Our industry desires to work together to forge closer ties with India's dairy industry and expand bilateral investment. That outcome, beneficial to both countries, remains difficult to envision at this stage due to how this issue has been handled and the continued lack of willingness by India to find a workable resolution to this challenge.



Thank you for the opportunity to provide comments on this important issue.

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