

**Alliance of Western Milk Producers ■ American Dairy Products Institute
International Dairy Foods Association ■ National Milk Producers Federation
U.S. Dairy Export Council**

July 23, 1999

Ms. Sharon Bomer-Lauritzen
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Dear Ms. Bomer-Lauritzen:

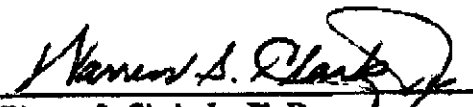
The Alliance of Western Milk Producers, American Dairy Products Institute, International Dairy Foods Association, National Milk Producers Federation and U.S. Dairy Export Council would like to respond to the U.S. Department of Agriculture (USDA) and the U.S. Trade Representative request for public comments on the upcoming World Trade Organization (WTO) round of negotiations, to be launched in December 1999 in Seattle, Washington. Our organizations represent the views of U.S. producers, processors and traders of milk and dairy products in the United States. We are pleased to present a position paper that reflects the U.S. dairy industry's broad view concerning the main negotiating areas in the upcoming multilateral trade talks. *This proposal should be regarded as a "package." The recommendations cannot be taken as individual items.*

We applaud the Administration's efforts to listen to the concerns of the agriculture sector. Obviously, the next WTO round is of great interest to our organizations, and we are fully committed to participate and be involved in the negotiations. The dairy industry stands prepared to further discuss our concerns and positions on all aspects of these negotiations with USDA and USTR at any time.

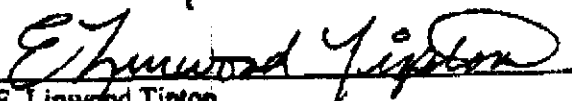
Sincerely,



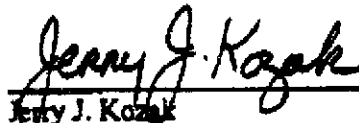
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PREPARING FOR THE SEATTLE ROUND: U.S. DAIRY INDUSTRY NEGOTIATING PRIORITIES

OVERVIEW

In preparation for the November 30 launch of the next round of WTO negotiations in Seattle, the U.S. dairy industry is pleased to continue its participation in a close dialogue with the U.S. government. With the implementation of the Uruguay Round Agreements (URA), dairy industries all over the world began adjusting to new trading rules. While the Uruguay Round was a milestone agreement for agriculture, overall gains have been insufficient and trade in agriculture still has a long way to go to complete its reform and be fully integrated in the world trading system.

The Uruguay Round of multilateral negotiations continued the reduction of trade barriers achieved in the previous rounds. However, a key element of the URA was the inclusion, for the first time, of rules disciplining agricultural trade and domestic policies. Countries had to convert all non-tariff trade barriers to tariffs. In addition, the Uruguay Round introduced some limits to export and domestic subsidies, and new rules on the use of Sanitary and Phytosanitary (SPS) measures. It also substantially improved the process for settling trade disputes.

The next round must build on the accomplishments of the Uruguay Round. The U.S. dairy industry strongly supports the next round of WTO multilateral negotiations and believes that the U.S. priorities should focus on eliminating export subsidies and creating real reciprocal access through reduction of tariffs and elimination of all non-tariff measures. The U.S. government should also pursue the revision of current rules to close loopholes that allow countries to evade their commitments.

To accomplish such an enormous task, it is imperative that the United States show the necessary leadership to combat trade-distorting schemes, while defending U.S. interests. Strong leadership should not be interpreted as requiring a moral responsibility to prod the negotiations forward through unilateral concessions. U.S. officials must demonstrate leadership on global trade issues by sending frequent, clear messages that the United States is prepared to negotiate only if the outcome of the negotiations will provide its agricultural and food sectors with fair trade.

The U.S. industry has much to gain from successful negotiations, but it could lose its future growth capacity if an incomplete or poorly balanced agreement results. Therefore, the U.S. government should recognize that our goals are carefully interrelated. Failure to reach significant progress in all of the key reforms could seriously affect the dairy industry's future position.

The most critical areas for the upcoming round, which are addressed below, are:

- Scope, Timing and Structure of Negotiations
- Export Subsidies
- Market Access
- Domestic Support
- Circumvention and Dispute Settlement
- Other Issues

A. Scope, Structure and Timing of the Negotiations

Among the preparatory issues to be addressed in the upcoming Ministerial Conference are the scope, structure, and timetables for the next round of negotiations.

Recommendation: The U.S. dairy industry urges the U.S. government to support a broad-based round of negotiations that concludes with a single undertaking, and includes economic sectors beyond agriculture of importance to such key players as the EU, Japan, and the developing countries. The negotiations should not allow early harvest of agreements on a sector-by-sector basis. The U.S. dairy industry strongly encourages the U.S. government to propose a three-year negotiation.

Without the pressure of the benefits that accrue from gains in non-agricultural trade in the next WTO Round, entrenched interests, hostile to freer and fairer trade will seriously undermine any progress on agricultural trade. Yet, the larger round or comprehensive "single undertaking" approach does not require every subject relating to the WTO to be included.

The United States has stated that it would like to see that the negotiations start on time and end as soon as possible, but timing the negotiations will be sensitive. However, the expiration of the "due restraint" (Peace Clause) should have an effect on the timeframes established on the negotiations.

Finishing the negotiations in the year 2002 would allow countries to make the necessary internal changes (legislative) to accommodate any disciplines agreed on the new round. This will also match the expiration of the Peace Clause leading to implementation by the year 2004.

Specific Agricultural Issues

For agriculture in general and the dairy industry in particular, it is critical that the round continue the reforms made in the Uruguay Round Agreement on Agriculture. To this end, the U.S. government must address issues regarding previous commitments on export and domestic subsidies and market access.

B. Export Subsidies

Export subsidies continue to pose a major barrier to the expansion of U.S. dairy exports by depressing world prices and hindering the convergence of U.S. and world prices. In 2000, 15 WTO members will, in the aggregate, still retain the right to spend in excess of \$3 billion and to subsidize the milk equivalent of more than 50 billion pounds (22.6 million metric tons) of dairy product exports each year. The EU alone accounts for more than 75 percent of these export subsidies.

Recommendation: The U.S. Dairy industry supports the gradual elimination of all agricultural export subsidies in five years, starting no later than 2002.

This is the industry's highest priority upon which all its other positions depend. The U.S. government and the Cairns Group have already identified the complete elimination of subsidies as a goal of the next round. Such subsidies would include, among others, the EU restitution programs and the Dairy Export Incentive Program. Although all the major WTO players in agriculture currently retain WTO rights to use export subsidies, over 100 members do not; those that do include the United States and at least seven members of the Cairns Group. These, plus the new members that are likely to be admitted to the WTO during the next round (such as China), should form a powerful anti-subsidy bloc in the next negotiations.

In addition, the current subsidy rules should be clarified to make explicit their coverage of potential *de facto* export subsidies that can be used in the dairy industry, including government managed class-price systems based on export performance (Canadian system), and other suspicious practices currently used by other WTO members. The U.S. dairy industry pledges to work closely with U.S. negotiators to identify schemes that should be considered export subsidies.

Circumvention of export subsidy commitments is a major concern to the U.S. dairy industry. Whether WTO member countries agree to the elimination of all export subsidies or the significant reduction of current subsidies, it is imperative that the new round establish tighter disciplines to preserve the integrity of previous commitments. The dairy industry cannot afford to lose resources and market share pursuing countries through legal procedures to make them abide by their commitments.

C. Market Access

Although converting all non-tariff measures to tariffs was critical for agriculture during the URA, the exercise produced unbalanced access to markets. Current WTO commitments permit many members to retain largely closed dairy markets. Final Uruguay Round bound tariff levels on key dairy products are still in excess of 50 percent for many WTO members. Over-quota tariffs on dairy tariff-rate quota (TRQ) items in the EU, Canada, Japan, Korea and other countries typically remain well in the triple digits.

In-quota tariff rates for the EU are excessive. TRQ's themselves are small and often administered through restrictive licensing arrangements.

Recommendation: The U.S. dairy industry supports efforts to ensure that market access negotiations focus on levelling the playing field. To this end, the U.S. should concentrate on reduction and harmonization of high tariffs, while improving the administration and enforcement of tariff rate quotas. In addition, the pace of reforms in tariffs should be linked to the timetable on export subsidy elimination.

1. **Linkage to export subsidy elimination:** Reductions in tariffs should be developed in relation to the timetable and rates for achieving elimination of export subsidies.
2. **Base Levels:** Market access negotiations should use the lowest applied rates rather than the higher bound rates when negotiating tariff reductions. Countries should not be allowed to use their right to modify their applied rates as a negotiating tool.
3. **Ordinary Tariffs (all tariffs excluding products subject to TRQs):** All ordinary peak tariffs should be capped immediately upon implementation of the next WTO round. To identify the level of the upper limit on tariffs will require additional analysis. However, this cap should provide real access in all markets under ordinary tariffs.
4. **Tariff Rate Quotas (TRQs):** Over-quota tariffs on dairy products subject to TRQ's should be reduced in a manner that ensures reciprocal and equal obligations among the WTO members that maintain tariff rate quotas. In-quota tariffs on dairy products should be immediately bound at a harmonized level upon implementation of the next round.
5. **Non-Tariff Measures:** Although the URA created a tariff only system, many countries maintain practices (beyond licensing) that are non-transparent, discriminatory, and trade restrictive. The U.S. dairy industry will work closely with the U.S. government to create an inventory of non-tariff measures affecting the dairy industry. For instance, TRQ licensing procedures and activities of import STE's must be addressed immediately with a view toward providing real market access. Examples of other non-tariff measures include government controls over imports based on domestic supplies, administration of import licenses, and price reference or price bands that can create trade barriers. The U.S. dairy industry will develop a list of its market access priorities for this purpose.
6. **Simplification:** The structure of dairy product tariffs should be simplified, harmonized, and made more transparent.

D. Internal Support

When the next WTO round commences, the EU will be the primary possessor of WTO rights to provide domestic support to its dairy sector. The option of using significantly large domestic subsidies could allow the EU to continue distorting trade in dairy products even without export subsidies.

Recommendations:

1. Support the general principles of the "Green box".

For these policies with the smallest potential effect on production and trade, the objective should be to close loopholes so countries would not mask production and trade distorting subsidies. In addition, the U.S. must ensure that all subsidies are promptly reported to the WTO, including indirect subsidies (such as credit, lower energy cost assistance.) To this end, the industry pledges to work closely with U.S. negotiators to develop policies acceptable to support dairy farmers and the industry in general, that have minimal effect on trade.

2. Seek greater disciplines on all countries' domestic supports, with particular attention to ensuring that EU supports are brought under control.

The EU WTO ceiling on domestic support (AMS) is about \$80 billion, while the U.S. is at \$19.1 billion. This huge disparity can be exacerbated if by eliminating export subsidies, the EU could freely increase its domestic support outlays. We must ensure that the European Union does not continue to heavily subsidize its domestic production.

3. Seek limits of the blue box policies seeking its ultimate elimination

The Blue box policies allow direct payments related to production as long as those payments were under limiting programs (e.g. fixed yields, head of livestock). Although these payments were included in the base aggregate measure of support (AMS), they were exempt from reductions and notification. These policies have a significant potential to distort trade even without export subsidies and should be included in the Amber box.

4. The dairy industry will work with the government to develop positions on:

- Treatment of supply management, import controls and over production.
- Domestic support reduction priorities for other WTO members.
- Other issues to be decided, including special consideration to developing countries, and the status of the "de minimus exemptions."

E. Dispute Settlement

Under GATT rules, the general perception was that overall rules that applied to agriculture were much weaker than for other goods. Moreover, the enforcement of the GATT dispute settlement process was powerless. The Uruguay Round attempted to improve this procedure by creating the SPS agreement and new rules governing the process for dispute cases. The WTO dispute settlement system is a significant improvement over its GATT predecessor. However, the effectiveness of the dispute settlement mechanism remains in doubt.

Recommendation: The U.S. dairy industry encourages the U.S. government to find ways to close ambiguities in the dispute settlement system, which currently allows governments to drag out the dispute settlement process.

Tighter rules on time frames and deadlines, as well as mechanisms to facilitate more timely settlements, such as agreed-upon arbitration, could improve the system and make it more accountable.

F. State Trading Enterprises

State Trading Enterprises (STE's) as such do not necessarily constitute interference to trade. An example is the Commodity Credit Corporation (CCC) in the United States. The Uruguay Round imposed on STEs the same rules that apply to private entities regarding export subsidies and market access. However, the unique powers of single desk buyers and sellers have the potential to distort trade.

Recommendation: The U.S. dairy industry support efforts to impose greater transparency on STE's and single desk buyers and sellers.

The dairy industry will work with the government to develop a profile of all monopolies of economic significance to the interests of U.S. dairy trade. In principle, the U.S. should stress the importance of eliminating import and export monopolies that are supported with government legislation. At a minimum, these entities should be subject to the same risks and uncertainties as faced by their market-driven competitors. WTO rules should provide adequate disciplines on the trade-distorting activities of STE's.

G. Sanitary and Phytosanitary (SPS) Measures

The WTO is currently engaged in a 3-year review of the SPS agreement. There is some concern that the EU is seeking to use this review as a lever to eventually reopen and weaken the text of the current SPS agreement, possibly by bringing it into the agriculture negotiations in the next WTO round.

Recommendation: The U.S. dairy industry insists that no changes be made to the substance of the WTO agreement on SPS measures.

Any changes stemming from the current 3-year review or the resumption of WTO negotiations in agriculture should be confined to procedural changes, improving compliance and transparency, etc., and should be incorporated in the agreement in a manner that does not alter the strict disciplines of the SPS agreement. The industry opposes any attempts by the EU to allow social or economic considerations to form any basis for applying SPS measures in exchange for reduction of subsidies, tariff-based market access barriers, or any other negotiating issue.

H. OTHER ISSUES

1. **Peace Clause:** The Agreement on Agriculture provides an exemption to the Subsidy and Countervailing Agreement, which prohibits actions against certain subsidies. The exemption will automatically expire at the end of 2003 unless specifically extended. The expiration of the Peace Clause will help bring the EU and other WTO members to the negotiating table because of its legal ramifications.

Recommendation: In principle, the U.S. dairy industry opposes the extension of the Peace Clause, unless it benefits the U.S. negotiating position by ensuring good faith negotiations.

2. **Biotechnology:** The growing production and trade of agricultural products produced through biotechnology has prompted a surge of new trade disputes. Both the Sanitary and Phytosanitary (SPS) Agreement and the Technical Barriers of Trade (TBT) Agreement in the WTO provide guidelines for developing regulations based on science.

Recommendation: The U.S. dairy industry strongly supports the position that biotechnology issues be resolved on the basis of science-based frameworks.