

July 12, 2021

The Hon. Tom Vilsack  
Secretary of Agriculture  
1400 Independence Ave., SW  
Washington, DC 20250

The Hon. Katherine Tai  
U.S. Trade Representative  
600 17th St., NW  
Washington, DC 20508

Dear Secretary Vilsack and Ambassador Tai,

The members of the Agriculture Technical Advisory Committee (ATAC) for Trade in Animals and Animal Products (TATP) welcome recent announcements by the Biden Administration that build a closer trade relationship with the European Union (EU). Building allies and finding pathways to resolve entrenched issues lay an important foundation for President Biden's Build Back Better agenda. Building on the momentum of the President's trip to Europe, we encourage you to address several ongoing challenges we face when exporting our products to the EU. Members of the TATP represent farmers, ranchers, fishers, workers, manufacturers, and academia involved in animal and animal product food and agriculture trade.

American farmers and ranchers produce sustainably and efficiently helping to feed a world's growing population. Agriculture, food, and related industries contribute more than one trillion dollars to the U.S. gross domestic product. In 2019, 22.2 million full- and part-time jobs were related to the agricultural and food sectors, accounting for 10.9 percent of total U.S. employment. Maintaining and growing these American produced exports to the world's consumers is vital to the economic health of the nation.

In 2020, the United States exported over \$35 billion of animal and animal products around the world, and yet only \$696.2 million are exported to the EU. For comparison, the United States imported \$2.85 billion in animal and animal products from the EU. For many sectors, U.S. exports constitute an important percentage of American production and farm income. Unfortunately, nonscientific trade barriers enacted and supported by EU member countries mean that this important market is underutilized for some U.S. commodities and closed to others. We have collected perspectives below from committee members, which are listed after our general concerns.

*Below you will find an explanation of some issues that our industries need addressed in the short-term as well as in a broader negotiation in order to maintain the current continuity of business for agriculture exports to the EU. The issues related to EU proposed health certificates, Farm-to-Fork policies, Common names, anti-microbial resistance "reciprocity" requirements, and many of the other issues described pose a significant threat to our industries in the near and long-term. The respective commodities represented on the ATAC have also provided details on individual issues that impact their specific industries. Collectively, this broad ranging list of access barriers illustrates the urgent need for engagement to protect our current market share, but also protect international trade, science and technology and our future exports to the EU.*

*EU Health Certificates:* The EU has long had food certification requirements that are excessive and burdensome to manufacturers and traders. Last fall, the EU announced new certification requirements for a wide range of food products, including dairy, meat, and composite products. These proposed certificates add confusing and onerous requirements that threaten to upend U.S. exports as soon as mid-August. Those requirements seek to impose prescriptive new procedures on how U.S. farms operate and how animal disease control approaches are implemented in the U.S.

This puts at risk a broad swath of U.S. exports including dairy, meat, and various processed foods relying on composite product certificates. Magnifying the impact of these regulations far beyond the level of direct final product exports to the EU are two market-place realities: 1) U.S. exports to various third-country markets require an EU certificates as they are incorporated into product manufactured overseas that is ultimately exported to the EU; and 2) U.S. domestic sales of livestock input products to composite product manufacturers are often broadly required to be EU-eligible in order for the composite product manufacturer to ensure that all products produced could be exported to the EU, thereby providing supply flexibility and removing the need to segregate product within a plant as EU vs. non-EU eligible. The EU has already recognized the U.S. food safety inspection system for a range of commodities for many years, making new export certificates unnecessary.

It is essential that the U.S. secure a delay in the implementation of these requirements and that a more workable pathway forward be established that focuses on the end-result needed – safe, wholesome and disease-free products being imported into the EU market – rather than on the process used to achieve that outcome. We appreciate the work done by the U.S. government to date on this issue and underscore the urgency of commercial certainty for U.S. exporters.

On a longer-term basis, we urge the U.S. to pursue simplified certificates for livestock products with the EU to avoid just this situation which is created by the fact that EU certificates currently refer to various pieces of EU legislation and require government attestation of compliance with those prescriptive rules. A streamlined set of certificates focused on the recognition of the U.S. food safety inspection system would achieve the necessary controls while not unduly burdening trade.

*Common Names:* EU trade policies are driving the proliferation of global barriers to meat and dairy products using common food terms. It has become a growing impediment to U.S. exports beyond the EU and into a wide variety of foreign markets throughout the Americas, Asia, the Middle East, Africa, and Oceania. To combat this nontariff trade barrier, we strongly encourage you to secure concrete agricultural market access protections for common food terms with existing U.S. trade agreement partners and in future trade negotiations to affirm the ability to use specific widely-used common food names.

*Science and New Technologies:* While the United States is fully invested in harnessing the benefits and efficiencies of science-based trade, the EU considers science as a secondary factor by embracing a philosophy called “the precautionary principle.” The precautionary principle defaults to aggressive risk management tactics – like banning use – rather than a risk informed process. The EU continues to invoke the precautionary principle to justify its policies regarding

various regulatory issues and generally rejects arguments, on the grounds of risk management, that the lack of clear evidence of harm is not evidence of the absence of harm. The EU hides behind the precautionary principle as a protectionist measure to restrict imports from the United States and other countries which use these safe and efficient technologies, rather than do the science to determine safety, as required by the WTO Agreement on the Application of Sanitary and Phytosanitary Measures. In other instances, the EU fails to adopt risk management decisions due to political decisions of Member States.

The EU resistance to follow science when it comes to food safety innovation delays efforts to reduce food borne illness. American innovation enables our farmers, ranchers, workers, and manufacturers to employ new technologies to support safe and sustainable production. Promoting sound, science-based regulatory approaches with a view to facilitating exports of food products is increasingly important especially in bilateral negotiation with the EU.

*Farm to Fork:* The EU's trade-restrictive policies are not limited to animal health, food safety, and marketing. The EU's proposed approach to implement its Green Deal Farm to Fork Strategy announced in May 2020 rely on fear rather than science and its intent is to block trade. It is particularly concerning with the potential, negative impact on U.S. agricultural exports to the EU, as well as third countries, as it professes to work to have global adoption of its standards. In addition to the specific issues related to animal and animal products discussed below, the EU fails to understand that sustainability is regional and site specific, and importantly, includes the economic sustainability for farmers and ranchers, in addition to environmental and social sustainability.

*Animal Welfare:* As part of the Farm to Fork Strategy, the EU will conduct an internal review of Europe's animal welfare laws and compliance by each Member State. Like the United States, the EU's laws on animal welfare for food animals have been on the books for many years. While the EU's standards are more subjective in nature, it is critically important that the EU not be allowed to apply similar non-scientific restrictions to imported products under the banner of "animal welfare" and "sustainable production practices". If left unchecked, the EU will export its subjective and trade-distortive standards to the rest of the world.

The EU's certification requirements do not appear to advance any food safety or animal health objectives and thus do not belong on sanitary certificates. As part of the Farm to Fork Strategy, the Commission announced that it also intends to consider an animal welfare labeling initiative that could negatively impact sanitary certificate statements.

*Anti-Microbial Resistance "Reciprocity" Requirement:* In January 2019, the EU published Regulation 2019/6, which effectively prohibits the use of antimicrobials for growth promotion and those reserved for treatment of certain infections in humans by third country operators exporting animals and products of animal origin into the EU. Supplemental legislation will determine the criteria for certain antimicrobials to be reserved for the treatment of certain infections in humans and the list of antimicrobials reserved for human use. Under Article 118 of regulation 2019/6, the EU will no longer set antimicrobial resistance (AMR) policies on a risk-assessment but will use hazard-based analysis. Lowering the scientific threshold to restrict the

use of veterinary medicines could have negative impacts on animal health and will most likely be used by the EU as another protectionist non-tariff trade barrier.

These EU legislative measures are due to take effect on 28<sup>th</sup> January 2022 and will apply to the United States as an exporter to the EU. Yet, we still do not know what antimicrobials will be affected or how the policy will be implemented. We are unable to determine how this policy will affect U.S. animals and continue to have concerns of a foreign government dictating how US veterinarians can prescribe FDA approved medicines.

Article 118 fails to recognize any efforts to combat AMR in third countries. This undermines global efforts to combat the development and spread of AMR. Furthermore, banning any veterinary antimicrobial is a severe measure and has the potential for significant impacts on animal health and welfare as well as increasing resistance selection pressure on other antimicrobials. While the intent of actions to combat AMR are good, the application could result in major problems for animal health and consumer safety.

From a trade perspective, the application of these changes could give the European Commission multiple avenues to erect non-science-based restrictions on American agricultural goods. The EU has not communicated how this policy will comply with the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures. Risk-based, science-based standards are critically important for maintaining healthy animals and are necessary for promoting high standards through trade.

### *Specific Issues*

#### Bison

The Hilton Quota and its 20% tariff on bison meat in any trade negotiations with the European Union is still a major stumbling block for the Bison industry and we urge you to once again make this issue part of any agricultural agreements.

#### Dairy

The United States' dairy trade deficit with the EU was a remarkable \$1.45 billion in 2020. This occurs even though the United States is itself a major dairy exporter to 105 other countries globally. The following are some additional EU non-tariff barriers restricting U.S. exports of dairy products, a list provided annually to USTR for the National Trade Estimate report.

#### *Import Licensing*

The EU maintains highly complex import measures. For instance, the European Union's import licensing procedures have proven to be unduly burdensome and complex, thereby inhibiting companies from taking advantage of even in-quota opportunities that do exist in the United States' dairy tariff schedule.

### *Government-Financed Intervention Dairy Purchases Suppressing Global Prices*

The U.S. dairy industry is concerned with the potential for the EU to resume use of its intervention purchases of dairy products, namely skim milk powder (SMP) and butter, in a manner that unduly impacts global prices. To tackle EU dairy support goals, we instead urge USTR and USDA to press the EU to adopt measures that further spur consumption within the EU and encourage its producers to implement appropriate production practices to adapt to market changes without artificially depressing global prices via the offloading of publicly stockpiled intervention purchases onto global markets at discounted rates.

### *Country of Origin Labeling (COOL) Targeting Dairy*

Beginning in 2016, several EU member states moved forward with country of origin labeling requirements that specifically targeted dairy ingredients. It is noteworthy that in most countries, dairy ingredients are being singled out for this onerous regulation. It is possible that the EU may choose to simply shift these regulations from a MS level to an EU level resulting in EU processors to reduce sourcing ingredients from outside the EU.

### *Requirement for Animal and Plant Health Inspection Service (APHIS) Inspection*

This requirement precludes food grade sales for feed use. Feed facilities must be inspected annually by APHIS and the facilities must be included on the SANCO list of approved establishments. These requirements essentially block U.S. exporters from spot sales of food-grade product in the feed market, a common practice in other markets.

### Poultry

The U.S. poultry industry seeks access to the EU market based on production and inspection requirements that are science-based and note that a number of EU restrictions currently being imposed do not meet the standards set forth in the WTO SPS Agreement. We ask that the EU recognize water chilling as equivalent to air chilling. The poultry industry also requests that no agricultural products are allowed access to the EU without poultry being included.

### Seafood

Fundamentally, EU tariff barriers to U.S. seafood exports are simply too high. The U.S. often provides DFQF treatment for Europe seafood exports to the U.S. The EU in the T-TIP negotiations offered to afford duty free treatment to U.S. seafood, in most cases upon entry of the agreement into force, an offer that, in effect, acknowledges the current imbalance. We welcome Administration efforts to address specific seafood tariff and nontariff barriers established by the EU. However, the overall transatlantic trade situation is imbalanced, and this imbalance has contributed to a decline in U.S. exports to a level not seen in a decade.

More specifically, the EU for years has banned safe, wholesome U.S. molluscan shellfish products out of alleged (but unsubstantiated) food safety risks. The EU ban includes both raw

and processed products, including processed clams. A bilateral agreement early in 2020 set the stage for restoration of market access once several regulatory hurdles were overcome, starting with products harvested from agreed-upon MA and WA waters, with progressively broader market access to follow. We are concerned that the EU is not adhering to its January 2020 commitment to move forward with this process, and we urge the Administration to make certain that DG Foods meets that commitment as soon as possible.

Regrettably, the EU has continued to utilize ATQs for major seafood items, a policy the UK adopted when it reestablished its sovereignty in January. ATQs help to create commercial uncertainty for seafood exporters, especially for our Alaska harvesters.

We ask for clarity regarding lobster meat exports to the EU. Both Canada and the U.S. harvest North American lobster. Canada has enjoyed duty free access to the EU for several years, an advantage that harmed U.S. watermen, processors, and distributors. The 2020 EU-U.S. lobster “mini-deal” apparently does not include within its scope lobster meat removed from the shell. Although eliminating tariffs on live product has helped counter Canada exports that have had similar treatment for several years, U.S. producers will remain at a disadvantage against their Canada competitors until lobster meat – which *is* included within the scope of the Canada-EU agreement – from the U.S. can enter the EU duty-free.

Finally, new EU health certificates for many food items take effect August 21, 2021. We urge the Administration to ensure that EU regulators provide transparency as to any new certificate requirements applicable to seafood.

Minority Comment Submitted by ATAC member Kurt Brandt on Behalf of the United Food and Commercial Workers International Union United Food and Commercial Workers International Union -- EU vs US Regulatory Systems:

*U.S. food supply chains are more vulnerable to disruptive shocks than the EU.*

The COVID-19 pandemic exposed the underlying fragility and unsustainability of poultry and meat supply chains under the current US deregulatory approach. The pandemic drove home how susceptible the US meat supply chains are to shocks like pandemics, droughts and floods, and that vulnerability to systematic shocks puts workers’ health, safety, and indeed their lives, at risk.

The European Union’s (EU) precautionary approach to food supply chain protection regulation proved dramatically more effective during the COVID-19- pandemic than the U.S. deregulatory approach. The EU experienced neither the degree of plant shutdowns, nor the meat shortages at the retail level, as was experienced in the US.

As of June 2020, 24,715 meatpacking workers in the US had been infected with COVID-19, and at least 86 had died. By contrast, in European meatpacking plants there were only 2,670 coronavirus cases reported as of June of 2020, and only four workers had died. 4. So U.S. COVID-19 cases were 9 times higher than the EU’s, and US deaths were 21 times higher.

Although the EU has only two-thirds the number of meatpacking workers as the US, the gap is still substantial, and nonetheless provides ample evidence that the EU's regulatory approach proved superior at protecting worker health, safety and lives from the coronavirus pandemic in contrast to the US. An international association of investigative journalists tracks COVID-19 outbreaks and "workers affected" in meatpacking and other frontline sectors. The association's latest count lists a total 77 outbreaks and 8,854 affected workers among EU meat producers. This compares to Food & Environment Reporting Network's recent count of 58,886 US meatpacking workers infected—over six times the EU count. The EU avoided the meat supply chain disruptions that resulted in retail shortages in the US because it had a greater number of smaller and mid-sized plants. Therefore, EU meat processors could shutdown infected plants and shift production without the major disruptions that plagued the US. Therefore, UFCW does not concur with the unnuanced, blanket critiques against the EU regulatory approach. Nor do we agree with the concurrent blanket assumption that the US deregulatory approach is inherently better than the EU's regulatory approach.

Respectfully,

A handwritten signature in black ink, appearing to read "Jaime", with a stylized flourish at the end.

Jaime Castaneda  
Chair  
Animal and Animal Products ATAC