



## TRANSATLANTIC TRADE & INVESTMENT PARTNERSHIP SPS ISSUES RELEVANT FOR DAIRY TRADE

**DRAFT**

**General Objective:** The United States are one of the key markets for EU dairy products, in particular cheeses, milk protein concentrates (MPCs) and caseins. Ideally, the TTIP would result in the total removal of tariffs and mutual recognition of the food safety systems as equivalent or comparable.

### 1. Grade “A” Pasteurized Milk Ordinance

The Grade “A” Pasteurized Milk Ordinance (PMO) is perceived by many as the main sanitary barrier as it affects EU exports of most types of dairy products. The Grade A PMO was devised as a means of addressing the risk of food borne illnesses resulting from the consumption of fresh, perishable dairy products. It applies to all dairy products that are classified as Class I or II under the Federal Milk Marketing Orders, i.e. liquid milk, cream (with the exclusion of frozen cream), cottage cheese, whey and sterilized products. Butter, cheese, frozen desserts, ice cream, infant formula and dietary products are excluded from Grade A classification.

More importantly from the perspective of dairy trade, any dairy ingredient such as milk or whey powders used in a Grade A product must also comply with the provisions of the Pasteurised Milk Ordinance. This means that for instance milk powder used as an ingredient in yoghurt has to be produced in accordance with the Grade A PMO. Moreover, the use of technical/functional dairy ingredients such as milk protein concentrates (MPC) or casein(ates) sourced from Europe is only possible as long as no “Grade A alternative” exists. At present, these products are not produced in the US but if an American or even a foreign establishment were to produce Grade A - MPCs, this would block the use of non-Grade A - MPCs in Grade A dairy products. We are also concerned that the scope of the Grade A PMO will be further extended to for instance sport nutrition and wellness products.

Because of the difference between the EU and US regulatory systems, production models and plant designs it is extremely difficult for EU establishments to get “Grade A approval”. The Grade A PMO is tailored for US plants and contains very detailed and prescriptive requirements. So far, only a handful of EU plants have been authorised to export Grade A products to the US.

There are in principle several possibilities for EU establishments to qualify for Grade A. Inspections by a US State or by a third party auditor are however no viable options because they require compliance with all Grade A requirements. The only valid option seems to be recognition of equivalence but so far this has not been feasible. We therefore hope that mutual recognition of the EU and US food safety systems (including Grade A) can be achieved in the context of the TTIP negotiations. This seems to be the only way to eliminate this regulatory barrier.

### 2. Food Safety Modernization Act

The Food Safety Modernization Act (FSMA) is a comprehensive overhaul of the food safety system that seems to go into the right direction as it shifts the focus from combating contamination to preventing it. The implementation of the FSMA is however still ongoing so it is too early to say whether problems will arise from the new rules. Potential issues are:

- Would the HACCP principles as applied in the EU be compliant with US rules on preventive controls?
- How will the upcoming rules on “Foreign Supplier Verification for Importers” and “Accredited Third Party Certification” impact EU exporters? With the foreign supplier verification programme, a mixture of public regulations and private business related demands is introduced. We fear that this will lead to a situation where individual importers will introduce their interpretation of the guideline. Furthermore we are convinced this will

lead to more red tape as new individual control mechanisms can be expected to be introduced. This may lead to severe distortions of trade.

- What is the relation between the FSMA and Grade A requirements? Does one need to fully comply with both and which provisions prevail in case of a conflict?

EDA and Eucolait are pleased to note that there is consistency between the FSMA requirements and existing EU food legislation which provide a solid basis for mutual recognition of the food systems in EU and US. Mutual recognition is imperative in order to avoid any trade distortion and to avoid different interpretation by individual importers during the implementation and during the developing of guidelines under the Food Safety Modernization Act. As such, EDA and Eucolait would favour mutual recognition of EU and US food safety systems for the sake of simplification and facilitating trade.

### 3. Restrictions on raw milk cheeses

About half of the US States do not allow the sale of raw milk or raw milk products and consequently the interstate commerce and the importation are banned as well. According to the code of federal regulations, certain raw milk cheeses (hard cheeses, semi-soft cheeses and soft ripened cheeses) can however be placed on the market (and also imported) provided that they have been ripened for at least 60 days. The requirements for these cheeses can be found in Title 21 of the Code of Federal Regulations, sections 133.150, 133.182 and 133.185.

The EU has no restrictions on raw milk products from the US. The United States are listed in Column A of Annex I to Reg. 605/2010 and as such are authorised to ship raw milk products to the EU.

### 4. Organic products

The European Dairy Industry and Dairy Traders would really welcome an enlargement of the equivalence agreement of last year on organic products so that animal products could be also be covered, at present this is not the case.