

[Docket No. USTR–2016–0025]

Public Comments and Hearing Regarding Request To Reinstate  
Action Taken in Connection With the European Union’s Measures  
Concerning Meat and Meat Products

STATEMENT OF THE SPECIALTY FOOD ASSOCIATION

February 15, 2017

The Specialty Food Association (SFA) welcomes the opportunity to comment about Docket No. USTR–2016–0025. This Docket and the request for public comments was triggered by a beef industry request that the United States (U.S.) reinstate tariffs in connection with the 1998 beef hormones dispute at the World Trade Organization (WTO), the WTO authorized suspension of concessions by the U.S., the subsequent 2009 Memorandum of Understanding (MOU) between the U.S and European Union (EU) and the ruling by the Court of Appeals for the Federal Circuit.

SFA urges USTR to refuse to reinstate the previous 100% tariffs or any other “penalty” trade measures. Reinstatement of penalty tariffs would have a negative effect on individual companies, the specialty food sector, the national economy and consumers. Reinstatement would have negative effects on the hundreds of small and medium sized (SME) food businesses across the nation that are retail, broker, distributor and importer members of SFA. Reinstatement also would drag consumers into the weakening of these SMEs. By denying consumers of affordable specialty products for birthdays, holidays and other special occasions, the consumers will purchase less or not at all. In that way the reinstatement would weaken these SME’ both directly (through fewer sales by retailers and imports) and indirectly (e.g., through less employment and income for distributors). Retailers as well as consumers and importers would be harmed by penalty tariffs on specialty products like hams, paprika, chocolate and cocoa preparations, rusks, lingonberry and raspberry jams, prepared mustard, soups, mineral waters, Roquefort cheese and juices, among other products on the list.

The Specialty Food Association is a non-profit trade association, headquartered in New York City, that represents the interests of its 3,600 members throughout the United States. They are the manufacturers, retailers, distributors, brokers, imports and others who make up the specialty food trade of high value, processed foods. SFA (under its previous name of the National Association for the Specialty Food Association or NASFT) has presented its opposition to tariffs in this dispute in previous hearings of the Section 301 Committee about this lengthy US-EU dispute.

For SMEs, the burden of reinstatement cannot be considered in isolation, since the impact of the increased tariffs and prices would be joined by the financial and administrative costs of compliance with several food safety and labeling regulations from the Food and Drug Administration, several of which have significant trade implications.

Reinstatement will be financially and administratively burdensome for small and very small U.S. food importers, who are in the process of implementing the Food and Drug Administration's detailed and lengthy regulations that implement the 2011 Food Safety Modernization Act (FSMA).<sup>1</sup> For those in the food import business there are rules about *Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food*<sup>2</sup>; and the *Foreign Supplier Verification Program for Importers of Foods for Humans*<sup>3</sup>; among several others. They are also ensuring that the education, training and qualified individual rules are met, often at cost and time; whether to participate in the *Voluntary Qualified Importer Program*<sup>4</sup> with its benefits and substantial costs for small businesses, accreditation and certification possibilities and benefits, and significant considerations. There are new requirements for hazard analysis and written food safety plans, plus other preventive controls. In sum, reinstatement would add significant burdens to current legal requirements faced by SME

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<sup>1</sup> Pub. L. 111-353.

<sup>2</sup> 21 CFR 117.

<sup>3</sup> 21 CFR 11,21 CFR 111,21 CFR 1.

<sup>4</sup><http://www.fda.gov/downloads/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/UCM448558.pdf>.

importers. The deadlines for implementation of FSMA's rules vary and are staged in recognition of their burden on small and very small food companies during the next few years, with very small businesses being given until 2019 to comply.

A trade consideration that adds to the burden on SMEs is the failure of the USG to conclude systems regulation agreements with major trading partners. The failure means that food importers that bring in products from trading partners (like the United Kingdom) with comparable food safety systems must still go through all the preventive controls and other steps in FSMA compliance, while importers of foods from a smaller trading partner like New Zealand do not. This non-action should be considered a penalty on imports from the EU (among others), who must meet more steps for preventative controls. It is a form of alternative trade measure.

At the same time, some importers are advising themselves and their foreign suppliers about changes that should be made to comply with the revised U.S. nutrition facts panel.<sup>5</sup>

In summary, the reinstatement of tariffs in the beef hormones dispute would harm U.S. SMEs in the food sector as well as consumers. If the concern within the beef industry is that other suppliers are using the negotiated quota for US exports, then action should be taken against those countries and should lead the EU to protect the US use of the quota. Other segments of the US food industry should not bear the burden of the problem identified by the beef industry.

Thank you for the opportunity to present this Statement. Detailed support for the positions in the Statement will be contained in SFA's post-hearing submission.

Sincerely,

Philip Kafarakis  
President

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<sup>5</sup> Revision of the Nutrition and Supplement Facts Labels. 21 CFR 101.9, 21 CFR 101.36.