

On December 20, 2022, the United States requested consultations with Canada pursuant to Articles 31.2 and 31.4 of the United States-Mexico-Canada Agreement (“USMCA”) with regard to measures of Canada through which Canada allocates its dairy tariff-rate quotas (“TRQs”) under the USMCA (“dairy TRQ allocation measures”). The United States and Canada held consultations, but unfortunately, these consultations failed to resolve the matter. Pursuant to Article 31.6.1 of the USMCA, the United States is providing to Canada written notice of the U.S. request to establish a panel. As set out in Article 31.6.4 of the USMCA, “[o]n delivery of the request, the panel is established.”

Canada’s dairy TRQ allocation measures are reflected in the following legal instruments, operating separately or together with the Export and Import Permits Act (“EIPA”)¹ and any corresponding regulations:

- A. Comprehensive Review of the Allocation and Administration of TRQs for Dairy, Poultry and Egg products – Phase II: Policy Options for the Administration of Supply-Managed TRQs, published on February 14, 2020;²
- B. Public Consultations: CUSMA Dairy Tariff Rate Quotas (TRQs) Panel Report Implementation - Proposed Allocation and Administration Policy Changes, published on March 1, 2022;³
- C. Message to Industry – Opening of the Application Period for the 2022-2023 Dairy Year TRQs and CUSMA Calendar Year 2022 Dairy TRQs (August to December 2022), published on May 16, 2022;⁴
- D. General Information on the Administration of TRQs for Supply-Managed Products, modified March 14, 2022;⁵
- E. Key dates and access quantities 2022-2023: TRQs for Supply-Managed Products, modified on December 6, 2022;⁶ and

¹ Export and Import Permits Act (R.S.C., 1985, c. E-19), <https://laws-lois.justice.gc.ca/eng/acts/E-19/page-4.html#h-203129>.

² Available at https://www.international.gc.ca/trade-commerce/consultations/TRQ-CT/policy_administration-politiques_administration.aspx?lang=eng.

³ Available at https://www.international.gc.ca/trade-commerce/consultations/TRQ-CT/cusma_dairy_changes-produits_laitiers_aceum_changements.aspx?lang=eng.

⁴ Available at <https://www.international.gc.ca/trade-commerce/controls-controles/messages/2022-05-16-message-industry-industrie.aspx?lang=eng>.

⁵ Available at https://www.international.gc.ca/trade-commerce/controls-controles/notices-avis/trq_info_ct.aspx?lang=eng.

⁶ Available at <https://www.international.gc.ca/trade-commerce/controls-controles/trq-dates-ct.aspx?lang=eng>. This document was subsequently modified on January 3, 2023, and the United States understands that the document is regularly updated to, *inter alia*, reflect the available quantity of each TRQ.

- F. The following Notices to Importers concerning Canada’s USMCA dairy TRQs:⁷
- i. CUSMA: Cream TRQ – Serial No. 1071, dated May 16, 2022;
 - ii. CUSMA: Butter and Cream Powder TRQ – Serial No. 1073, dated May 16, 2022;
 - iii. CUSMA: Milk TRQ – Serial No. 1075, dated May 16, 2022;
 - iv. CUSMA: Milk Powders TRQ – Serial No. 1076, dated May 16, 2022;
 - v. CUSMA: Skim Milk Powder TRQ – Serial No. 1077, dated May 16, 2022;
 - vi. CUSMA: Whey Powder TRQ – Serial No. 1078, dated May 16, 2022;
 - vii. CUSMA: Cheeses of All Types TRQ – Serial No. 1079, dated May 16, 2022;
 - viii. CUSMA: Industrial Cheeses TRQ – Serial No. 1080, dated May 16, 2022;
 - ix. CUSMA: Concentrated or Condensed Milk TRQ – Serial No. 1081, dated May 16, 2022;
 - x. CUSMA: Ice Cream and Ice Cream Mixes TRQ – Serial No. 1082, dated May 16, 2022;
 - xi. CUSMA: Other Dairy TRQ – Serial No. 1083, dated May 16, 2022;
 - xii. CUSMA: Powdered Buttermilk TRQ – Serial No. 1084, dated May 16, 2022;
 - xiii. CUSMA: Products Consisting of Natural Milk Constituents TRQ – Serial No. 1085, dated May 16, 2022; and
 - xiv. CUSMA: Yogurt and Buttermilk TRQ – Serial No. 1086, dated May 16, 2022.

I. Canada Makes Certain Types of Importers, Including Retailers and Food Service Operators, Ineligible to Apply for USMCA Dairy TRQ Allocations

1. Canada’s dairy TRQs set limits on the quantity of certain types of dairy products⁸ that may be imported at a lower (within access) rate of duty. Through its dairy TRQ allocation measures, Canada denies access to TRQ allocations to all types of importers except for processors, distributors, and in some cases, further processors. Canada has determined that

⁷ See Supply-managed tariff rate quotas (TRQs), available at https://www.international.gc.ca/trade-commerce/controls-contrôles/supply_managed-gestion_offre.aspx?lang=eng&type=Notice%20to%20importers#data.

⁸ Butter and cream powder, cheeses of all types, concentrated or condensed milk, cream, ice cream and ice cream mixes, industrial cheeses, milk powders, milk, other dairy, powdered buttermilk, products consisting of natural milk constituents, skim milk powder, whey powder, and yogurt and buttermilk.

other types of importers, including retailers and food service operators, are not eligible to apply for a TRQ allocation.

2. Canada's dairy TRQ allocation measures are inconsistent with the following provisions of the USMCA:

- A. Paragraph 3(c) of Section A of Canada's TRQ Appendix,⁹ because Canada is failing to allocate its TRQs each quota year to "eligible applicants" within the meaning of that provision; and
- B. Article 3.A.2.6(a) of the USMCA, because Canada has introduced a new or additional condition, limit, or eligibility requirement on the utilization of a TRQ for importation of an agricultural good.

II. Canada Allocates its Dairy TRQs on a Market Share Basis, Applying Different Criteria for Different Segments of Eligible Applicants

3. Through its dairy TRQ allocation measures, Canada allocates its dairy TRQs based on a calculation of an applicant's product-specific market share during a 12-month reference period. The methodology for calculating market share differs depending on the type of applicant, whether processor, distributor, or further processor, and Canada's methodology advantages processors over other applicants.

4. Canada's dairy TRQ allocation measures are inconsistent with the following provisions of the USMCA:

- A. Article 3.A.2.11(b) of the USMCA, because Canada's methodology for calculating market share limits access to shares of the quota exclusively to processors;
- B. Article 3.A.2.4(b) of the USMCA, because Canada is not ensuring that its procedures for administering its TRQs are fair and equitable;
- C. Article 3.A.2.11(e) of the USMCA, because Canada is not ensuring that allocation to eligible applicants is conducted by equitable and transparent methods;
- D. Article 3.A.2.11(c) of the USMCA, because Canada is not ensuring that each allocation is made in commercially viable shipping quantities and, to the maximum extent possible, in the quantities that the TRQ applicant requests;
- E. Article 3.A.2.10 of the USMCA, because Canada discriminates against "new importers" who have not previously imported the agricultural good subject to the TRQ when allocating the TRQ; and
- F. Article 3.A.2.6(a) of the USMCA, because Canada has introduced a new or additional condition, limit, or eligibility requirement on the utilization of a TRQ for importation

⁹ USMCA, Chapter 2, Annex 2-B, Appendix 2, Section A, paragraph 3(c).

of an agricultural good.

III. Canada Restricts Access to its Dairy TRQs by Imposing 12-Month Activity Requirements for Applicants and Recipients

5. As noted above, Canada allocates its dairy TRQs among applicants using a product-specific market share calculation for applicants. Canada's dairy TRQ allocation measures establish a 12-month reference period that is used to calculate market activity for the purpose of determining market share, and the measures require that applicants must be active during all 12 months of the reference period to be eligible to apply for a TRQ allocation. Canada's measures also require that TRQ allocation recipients must remain active during all 12 months of the quota year.

6. Canada's dairy TRQ allocation measures are inconsistent with the following provisions of the USMCA:

- A. Paragraph 3(c) of Section A of Canada's TRQ Appendix,¹⁰ because Canada is failing to allocate its TRQs each quota year to "eligible applicants" within the meaning of that provision;
- B. Article 3.A.2.6(a) of the USMCA, because Canada has introduced a new or additional condition, limit, or eligibility requirement on the utilization of a TRQ for importation of an agricultural good; and
- C. Article 3.A.2.10 of the USMCA, because Canada discriminates against "new importers" who have not previously imported the agricultural good subject to the TRQ when allocating the TRQ.

IV. Canada Does Not Allow Importers the Opportunity to Utilize TRQ Quantities Fully and Does Not Ensure that There is a Mechanism for the Return and Reallocation of Unused Allocations in a Timely and Transparent Manner that Provides the Greatest Possible Opportunity for the TRQ to Be Filled

7. Canada's dairy TRQ allocation measures provide that unused allocations of TRQ quantities may be returned by allocation holders four months prior to the end of the TRQ year without penalty. Returned allocations are then reallocated to other eligible allocation holders that have not returned any portion of their allocation, and who must then use the allocations before the end of the quota year.

8. Canada's dairy TRQ allocation measures are inconsistent with the following provisions of the USMCA:

- A. Article 3.A.2.6 of the USMCA, because Canada is not administering its TRQs in a manner that allows importers the opportunity to utilize TRQ quantities fully; and

¹⁰ USMCA, Chapter 2, Annex 2-B, Appendix 2, Section A, paragraph 3(c).

- B. Article 3.A.2.15 of the USMCA, because Canada is not ensuring that there is a mechanism for the return and reallocation of unused allocations in a timely and transparent manner that provides the greatest possible opportunity for the TRQ to be filled.

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Accordingly, pursuant to Article 31.6.1 of the USMCA, the United States is providing written notice of its request to establish a panel to examine this matter, which concerns perishable goods, with the terms of reference as set out in Article 31.7 of the USMCA. The United States proposes that, pursuant to Article 31.9.1(a) of the USMCA, the panel be comprised of three members.