



THE UNITED STATES TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON

December 9, 2020

The Honorable Mary Ng, P.C., M.P.
Minister of Small Business, Export Promotion, and International Trade
Industry Canada
155 Queen Street, 14th Floor
Ottawa, ON, K1A 0H5
Canada

Dear Minister Ng:

Pursuant to Articles 31.2 and 31.4 of the United States-Canada-Mexico Agreement (“USMCA”), the United States hereby requests consultations with the Government of Canada with regard to measures of Canada through which Canada allocates its dairy tariff-rate quotas (“TRQs”) under the USMCA (“dairy TRQ allocation measures”). The matter that is the subject of this request for consultations concerns perishable goods within the meaning of Article 31.4.5(a) of the USMCA.

Canada’s dairy TRQ allocation measures set limits on the quantity of certain dairy products¹ that may be imported at a lower (within access) rate of duty. Furthermore, through the dairy TRQ allocation measures, Canada, sets aside and reserves a percentage of those within access quantities for particular importer groups. For all of its dairy TRQs, Canada sets aside and reserves a percentage of the quota for processors, and for ten of the TRQs² an additional percentage is reserved for so-called “further processors.”³ These measures are reflected in legal instruments that include, but are not limited to, the following notices to importers published by Global Affairs Canada on June 15, 2020, concerning the allocation of Canada’s TRQs,⁴ operating separately or together with the Export and Import Permits Act (“EIPA”)⁵ and any corresponding regulations:

¹ Butter and cream powder, cheeses of all types, concentrated 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.

² Butter and cream powder, ice cream and ice cream mixes, industrial cheese, milk powder, other dairy, powdered buttermilk, products consisting of natural milk constituents, skim milk powder, whey powder, and yogurt and buttermilk.

³ For 13 of the TRQs, 10 to 15 percent is additionally reserved for distributors. Thus, for all of Canada’s dairy TRQs, 100 percent of the TRQ has been allocated among processors, “further processors”, and distributors.

⁴ See supply-managed tariff rate quotas (TRQs), https://www.international.gc.ca/trade-commerce/controls-controles/supply_managed-gestion_offre.aspx?lang=eng&type=Notice%20to%20importers#data.

⁵ 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>.

1. CUSMA: Milk TRQ – Serial No. 1015, dated June 15, 2020;
2. CUSMA: Cream TRQ – Serial No. 1016, dated June 15, 2020;
3. CUSMA: Skim Milk Powder TRQ – Serial No. 1017, dated June 15, 2020;
4. CUSMA: Butter and Cream Powder TRQ – Serial No. 1018, dated June 15, 2020;
5. CUSMA: Industrial Cheeses TRQ – Serial No. 1019, dated June 15, 2020;
6. CUSMA: Industrial Cheeses TRQ – Serial No. 1031, dated October 1, 2020;
7. CUSMA: Cheeses of All Types TRQ – Serial No. 1020, dated June 15, 2020;
8. CUSMA: Milk Powders TRQ – Serial No. 1021, dated June 15, 2020;
9. CUSMA: Concentrated or Condensed Milk TRQ – Serial No. 1022, dated June 15, 2020;
10. CUSMA: Yogurt and Buttermilk TRQ – Serial No. 1023, dated June 15, 2020;
11. CUSMA: Powdered Buttermilk TRQ – Serial No. 1024, dated June 15, 2020;
12. CUSMA: Whey Powder TRQ – Serial No. 1025, dated June 15, 2020;
13. CUSMA: Products Consisting of Natural Milk Constituents TRQ – Serial No. 1026, dated June 15, 2020;
14. CUSMA: Ice Cream and Ice Cream Mixes TRQ – Serial No. 1027, dated June 15, 2020; and
15. CUSMA: Other Dairy TRQ – Serial No. 1028, dated June 15, 2020.

Canada's dairy TRQ allocation measures appear to be inconsistent with several provisions of the USMCA. First, the measures appear to be inconsistent with Article 3.A.2.11(b) because Canada is setting aside and reserving a portion of the quota to processors. Second, the measures appear to be inconsistent with Articles 3.A.2.4(b) and 3.A.2.11(e) because Canada is not providing "fair" and "equitable" procedures and methods for administering its TRQs. Third, the measures appear to be inconsistent with Article 3.A.2.11(c) because Canada fails to ensure that, "to the maximum extent possible", the allocation is made "in the quantities that the TRQ applicant requests" as a result of reserving access of large shares of the quota to processors and so-called "further processors". Finally, the measures appear to be inconsistent with Article 3.A.2.6(a) because they "introduce a new or additional condition, limit, or eligibility requirement on the utilization of a TRQ" that are "beyond those set out in [Canada's] Schedule to Annex 2-B."

We look forward to receiving your reply to the present request and to fixing a mutually convenient date for consultations.

Sincerely yours,



Robert E. Lighthizer

cc:

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