

Agricultural Technical Advisory Committee for
Trade in Animals and Animal Products
(ATAC/AAP)

Addendum to the Committee Report on the New U.S.-Mexico-Canada Agreement
October 25, 2018

- **Canada Market Access**

USMCA delivers additional export market access for U.S. dairy products across a diverse range of product categories. This expansion of access to the very tightly constrained Canadian market is welcome and will create new opportunities for the U.S. dairy industry in Canada's trade-restrictive market. As the agreement is implemented, it will be critical to monitor Canada's TRQ administration practices to ensure that procedures are not wielded to dampen TRQ fill-rates. In addition, we would like to stress the importance of ensuring that the end-use restrictions on certain TRQs do not unduly thwart the ability of U.S. exporters to fully fill the established TRQs.

This ATAC recognizes the significant challenge U.S. negotiators faced in their efforts to prompt an existing FTA partner to fully open agricultural markets that it succeeded in maintaining tight restrictions on under the original agreement. Given the difficulty of prompting further market opening changes once an FTA is already in place, as the Administration moves forward with trade treaties with new trading partners, we strongly urge the pursuit of strong market access without end-use restrictions for U.S. exports in future FTAs. The USMCA experience makes clear that while an additional measure of progress is possible, the optimal time to secure deep, market-opening tariff cuts free from end-use restrictions from our trading partners is in the initial FTA with them.

- **Canada Pricing Policy Disciplines**

We commend U.S. negotiators for the important advances made in USMCA regarding the long-standing challenge of disciplining Canada's use of dairy pricing policies to intentionally distort trade. In particular, we applaud the recognition that the ample track record established by Canada in this area required unusual measures to curb Canada's use of its supply managed system to: 1) dispose of steeply escalating quantities of dairy products onto global markets, and 2) to continually introduce new pricing policies in an often sudden and non-transparent manner in order to impact trade flows.

This ATAC is hopeful the export surcharge structure, the mandatory review and consultation clauses, and the enhanced transparency measures will yield real and meaningful changes to Canada's dairy policy actions, particularly as they relate to impacts on world markets. Ensuring this is the case, however, will require robust attention and enforcement by the Administration during the implementation preparation period and once the agreement is in place. For instance, Canada cannot be permitted to utilize the export surcharges to fund industry support activities as this would dramatically

undermine their utility in disciplining Canada's use of pricing tools to distort global dairy trade. We urge careful attention to this and other aspects related to ensuring Canadian compliance with both the letter and the spirit of its commitments on dairy policy issues.

We are concerned with the exemption for the use of skim milk powder (SMP) and milk protein concentrates (MPC) in Annex 3B, Section C, Line 6 on page 3B8 that allow animal feed manufacturers to procure fresh skim milk powder (SMP) and milk protein concentrates at below market rate prices. This exemption will allow Canada to protect and subsidize their milk-fed veal growers and export the meat to the US at prices below the US cost of production. Feed costs are the single largest expense in raising milk-fed veal to their 500-525 pound end weights. We believe Canadian veal meat and live calf imports will further increase at the expense of domestic production which will in turn lower demand for domestic milk proteins, whey solids, and dairy calves. Each tanker of farm fluid milk provides enough whey and SMP solids to fatten 6 milk-fed veal calves. This appears to be a creative way for Canada to market the excess milk proteins left over from the soon to be historical Class 6 and Class 7 fluid milk indirectly through meat exports instead of directly as dairy exports.

- **Common Food Names and Geographical Indications**

The text of the USMCA on GIs generally reflects the earlier agreed provisions that were included in the trade agreement with Mexico and were covered in this ATAC's earlier report. These comments therefore focus primarily on one area of text that was not posted at the time of our review of the US-Mexico agreement (the US-Mexico side letter pertaining to prior users) and one notable area not cited in this ATAC's prior report.

Requirement for Parties to Pursue Solutions to GI Requests Arising from Trade Treaties

In clause 2(e) of Article 20.B.3, the USMCA includes an important new commitment specifying that the Committee on Intellectual Property Rights shall, upon request, "endeavor to reach a mutually agreeable solution before taking measures in connection with future requests of recognition or protection of a geographical indication from any other country through a trade agreement". This requirement for consultations and the directive to work to arrive at solutions of mutual interest to the Parties is a much-needed and very welcome addition to the Administration's ability to defend the interests of U.S. stakeholders against the predatory efforts of non-Parties to use trade treaties to erect barriers to trade in common product categories under the guise of GI protections.

Moreover, through its specific focus on GI applications arising in the context of trade agreements, this provision implicitly recognizes that GIs are treated uniquely among the various forms of IP by other countries. This disparate treatment of GIs, wherein other governments negotiate lists of specific GIs for protection in U.S. export markets, stands in contrast to the private-sector-driven and rules-based approaches to considering and registering other forms of IP. We applaud the Administration for its recognition of that unfortunate reality and for taking steps in this agreement to systematically combat that.

US-Mexico Side Letter on Prior Users

Another valuable commitment secured in this agreement is the side letter understanding established with Mexico regarding which portions of the supply chain qualify as “prior users”, as referenced in the updated provisions of the EU-Mexico FTA on GIs. That agreement’s GI provisions reportedly establish restrictions on the use of certain common names and in some of those cases provides temporary or permanent allowances for the continued use of the term by prior users of the term in Mexico. By clarifying that prior users include all elements of the supply chain, namely producers, distributors, marketers, importers and exporters, the letter maximizes the ability of U.S. companies to continue to export their products to this important market and of Mexican companies to maintain wider supply source options during the relevant period of time.

Overall

As indicated earlier, on the whole, this ATAC welcomes the establishment of new disciplines for an area of IP that has too often lacked the type of transparency and basic checks and balances already established for other forms of IP. These building block due process elements are expected to help to establish greater “transparency and procedural fairness”, as required by TPA language, and provide a basic structure on the topic of GIs from which the U.S. can build further in FTA negotiations to come. However, we have some remaining concerns and regret that the provisions do not appear to fully meet the TPA charge regarding “eliminating...the undermining of market access for United States products” given the exclusion of GI decisions made prior to its implementation from the agreement’s scope and we urge the Administration to improve upon these areas in future agreements. Although not sufficient to fully address this concern, we trust that, moving forward, vigorous enforcement of the elements noted in the first two sections above will help to more directly combat the harmful market access impairing actions of third-parties as they relate to GIs.

Respectfully submitted,

A handwritten signature in cursive script that reads "William W. Westman".

William W. Westman
Chair
Animal and Animal Products ATAC

Agricultural Technical Advisory Committee for
Trade in Animals and Animal Products

Members

American Farm Bureau Federation
American Sheep Industry
American Veal Association
Black Gold Ranch and Feedlot
Clayton Agri-Marketing, Inc.
Cow Camp, Inc.
Globex International
John B. Shawcroft Ranchers, LLP
McFadden Enterprises
MCT Dairies
National Bison Association
National Cattlemen's Beef Association
National Milk Producers Association
National Pork Producers Council
National Renderers Association
National Turkey Federation
Nature's SunGrown Foods, Inc.
North American Meat Institute
Pet Food Institute
South Dakota Animal Industry Board
Tyson Foods, Inc.
United Food & Commercial Workers
U.S.A. Poultry and Egg Export Council
U.S. Hide Skin and Leather Association
Walmart Inc.