Panel established pursuant to Article 28.7 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership

Canada — Dairy Tariff Rate Quota Measures

REPLY STATEMENT OF NEW ZEALAND

14 June 2023

I. INTRODUCTION

1. Thank you Chair, members of the Panel.

2. As set out in our Opening Statement this morning the resolution of this dispute comes down to three ***key phrases***:

    i. 'utilisation of a TRQ'

    ii. 'eligibility requirements'; and

    iii. '***an*** allocation'.

2. As we explained this morning, the **utilisation of a TRQ** includes three steps: obtaining an allocation, importing goods to market, and claiming preferential tariff treatment. A TRQ Is not utilised until all three steps have been completed.

3. An importer cannot utilise a TRQ without obtaining an allocation.

4. The term '**eligibility requirements'** is used consistently *throughout* the Agreement.[1]

5. *In all instances*, it means the requirements that an importer must meet in order to be eligible to apply for quota.

6. In *this context*, the reference to 'eligibility requirements' in Article 2.29(2)(a) *must* have the same meaning.

7. Because Parties are prohibited from unilaterally introducing *new* eligibility requirements - the eligibility requirements that an importer must meet under Article 2.30(1)(a) are those that are set out in a Party's Schedule (or introduced under Article 2.29(2)(b)-(c)).

8. Finally, the term '***an*** **allocation'** in the Processor Clause under Article 2.30(1)(b) means '*any* allocation'.

9. Any other interpretation would render the Processor Clause meaningless.

10. This is nothing more than 'basic logic'.[2]

11. In *this* Reply we will address some of the arguments raised by Canada in its opening statement, and its Rebuttal submission.

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1 New Zealand's Rebuttal Submission, at para 66.

2 USMCA Panel Report, *Canada - Dairy TRQ Allocation Measures*, at para 115.

12. *Other* arguments raised by Canada have been addressed in New Zealand's Written Submissions.

13. And we will provide the Panel with a written copy of *this* Reply tomorrow.

Butter

14. First, I would like to address the references Canada made this morning to the Butter TRQ fill-rates -

15. It is clear that in *some* circumstances – there will be commercial drivers strong enough to override the *clear disincentives* that Canada's pooling system creates.

16. *One example* - could be where demand for a product *exceeds a processor's own ability to supply* and imports are used to *top up* domestic supply to meet demand.

17. In such cases, domestic processors could import product without impacting their own interests.

18. That *may* be what is occurring for butter.

19. *Another* point raised in the Dairy Companies Association of New Zealand's (DCANZ) non-state entity submission – is the significant amount of quota that appears to be being transferred (at cost) to more willing importers.

20. We refer the Panel to paragraphs 11 and 9 of that Submission.

II. CANADA'S CPTPP NOTICES TO IMPORTERS ARE INCONSISTENT WITH ARTICLE 2.30(1)(B) CPTPP BECAUSE THEY 'LIMIT ACCESS TO AN ALLOCATION TO PROCESSORS'

21. Turning first to the Processor Clause contained in Article 2.30(1)(b)-

22. As set out in our Opening Statement this morning - the Processor Clause prohibits Parties from limiting access to ***any*** **allocation** to processors.

23. A Party will breach Article 2.30(1)(b) if they limit access to one, several or indeed all allocations available under a TRQ to processors.

Processor clause is not about non-processors

24. This morning, Canada tried to pretend that it can *comply* with the Processor Clause because 'its notices to importers permit every eligible non-processor that applies to obtain an allocation'.

25. This is *not* what the Processor Clause says. The Processor Clause very clearly prohibits Canada from limiting access to any allocation to processors.

The Processor Clause must be interpreted in a manner that gives *it* meaning

26. In its Rebuttal Submission and in its statement this morning, Canada has suggested that a Party is unlikely to actually be able to limit access to 99.99% of allocations to processors[3] -

27. Because a Party would breach *the obligation under* Article 2.30(1)(c) (to grant allocations in the amounts requested) – if it did so.[4]

28. All this means – however, is that *Article 2.30(1)(c)* has meaning and effect.

29. This *does not* address the fact that Canada's interpretation would render *the Processor Clause* as having no meaning.

30. Further – it is worth noting here that **Canada *does*** limit access to a **staggering percentage** of allocations to processors.

31. As set out in the table on page 29 of New Zealand's First Written Submission:

    a. Canada limits access to **100%** of allocations available under its Industrial Cheese TRQ to processors.[5]

    b. Canada limits access to **90%** of the allocations available under a further 11 of its TRQs to processors.[6]

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3 Canada's Rebuttal Submission, at para 169.
4 Canada's Rebuttal Submission, at para 169.
5 Industrial Cheese TRQ **[NZL-1].**
6 Whey Powder TRQ **[NZL-2]**, Yoghurt and Buttermilk TRQ **[NZL-3]**, Cream TRQ **[NZL-4]**, Ice Cream and Mixes TRQ **[NZL-5]**, Skim Milk Powders TRQ **[NZL-6]**, Butter TRQ **[NZL-7]**, Milk Powders TRQ **[NZL-8]**, Other Dairy TRQ **[NZL-9]**, Cream Powders TRQ **[NZL-10]**, Products of Natural Milk Constituents TRQ **[NZL-11]**, and Powdered Buttermilk TRQ **[NZL-12]**.

c. Canada limits **85%** of allocations under the remaining 4 TRQs to processors.[7]

32. If Canada is *permitted* to do this and *not* be in breach of the Processor Clause – then the Processor Clause clearly has no meaning.

The *Producer* Clause is not helpful to the interpretation of the Processor Clause

33. Canada has suggested that its interpretation is supported by the *Producer* Clause at the start of Article 2.30(1)(b).[8]

34. The *Producer* Clause prohibits Parties from granting 'any portion of the quota to a Producer group'.

35. The use of the term 'any' here **does not tell us anything** about the meaning of the term '***an*** allocation' in the Processor Clause.

36. It certainly doesn't suggest that the term 'an' in the Processor Clause cannot mean 'any'.

37. This is because the Parties **clearly** used the term '***an*** allocation' to mean '*any* allocation' in the **Domestic Production Clause**.

38. As noted in our Opening Statement – The phrase 'an allocation' in the Processor Clause has the same meaning as 'an allocation' in the Domestic Production Clause.[9]

39. The *Processor* Clause, *Domestic Production* Clause, and *Producer* Clause *all* guard against protectionism.

40. They do this by preventing Parties from administering their TRQs in a manner that *favours their domestic industry*.

41. The only way that the Processor Clause will *effectively* guard against protectionism – as it is so clearly intended to do – is if '*an* allocation' means *any* allocation.

Application: Moving quota between pools doesn't affect breach

42. Turning to the application of the Processor Clause -

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7 Cheese of All Types TRQ **[NZL-13]**, Concentrated Milk TRQ **[NZL-14]**, Milk TRQ **[NZL-15]**, and Mozzarella and Prepared Cheese TRQ **[NZL-16]**.

8 Canada's Rebuttal Submission at para 166.

9 New Zealand's Opening Statement, at paras 98 -104.

43. Canada has suggested in its Rebuttal Submission that it is not in breach of the Processor Clause because – on occasion - it allows quota to be moved into other pools – if it receives *no applications* for quota from its Processor and Further Processor pools.[10]

44. This does **not** alter the fact that access to the allocations in Canada's processor and further processor pools is limited to processors.

45. *All* Canada is saying is that it allows other importers to access this quota ***if there are no processors willing to take it.***

46. This is inconsistent with the Processor Clause.

III. CANADA'S CPTPP NOTICES TO IMPORTERS ARE INCONSISTENT WITH ARTICLE 2.29(2)(a) CPTPP BECAUSE THEY INTRODUCE NEW LIMITS AND ELIGIBILITY REQUIREMENTS ON THE UTILISATION OF CANADA'S DAIRY TRQS)

47. Turning to Article 2.29(2)(a).

48. That Article prohibits the **unilateral** introduction of new limits, conditions, and eligibility requirements that affect the utilisation of a TRQ for the importation of a good.

Article 2.29(2)(a) refers to the utilisation of a TRQ, not the utilisation of an allocation

49. As discussed this morning – the utilisation of a TRQ for the importation of a good *includes* the process of obtaining an allocation.

50. This means that Article 2.29(2)(a) prohibits the introduction of new limits, conditions, and eligibility requirements *that affect quota allocation.*

51. In its Opening Statement, **Canada has** - once again - ***effectively*** **argued** that Article 2.29(2)(a) only applies to the utilisation of *an* ***allocation***.[11]

52. This is not what the **text** of Article 2.29(2)(a) says.

53. Article 2.29(2)(a) very clearly refers to the utilisation of '*a TRQ* for the importation of a good'.

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10 Canada's Rebuttal Submission, at para 168.

11 Canada argues that 'utilisation' very clearly speaks to the actual importation of products benefitting from the preferential market access under a TRQ': Canada's First Written Submission, at para 134.

54. Article 2.29(2)(a) also expressly prohibits the unilateral introduction of new '**eligibility requirements'**.

55. As we have discussed already – the term 'eligibility requirements' is used **consistently** throughout the Agreement - to refer to the requirements that an importer must meet in order to be eligible *for a quota allocation*.[12]

56. It has the same meaning in Article 2.29(2)(a).

Under FCFS allocations are granted automatically

57. Let me move on to Canada's arguments regarding TRQs administered on a First-Come First-Served basis -

58. Canada has suggested that Article 2.29(2)(a) cannot use the language 'allocation' because it applies to TRQs that are administered on a First-Come First-Served basis.[13]

59. Importers have to obtain an allocation irrespective of whether a TRQ is administered First-Come First-Served or under an allocation mechanism.

60. When a TRQ is administered on a First-Come First-Served basis, an importer obtains an allocation automatically when they reach the border (provided there is quota left under the TRQ).

61. Indeed, Canada accepted this in its First Written Submission when it defined 'TRQ quantities' in Article 2.29(1) - (which also applies to TRQS that are administered on a First-Come First-Served basis) - as the 'specified amount *allocated* to individual importers'.[14]

Allocation data is not the same as utilisation data

62. Turning to Canada's arguments in its rebuttal statement regarding utilisation and allocation data -

63. Canada suggests that the fact that *Article 2.31(2)* requires Parties to publish both allocation data and utilisation data suggests that the utilisation of a TRQ does not include the allocation of quota.[15]

64. The answer to this is quite simple – Article 2.31(2) requires the publication of allocation data *and* utilisation data because these are ***different data sets***.

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12 New Zealand's Rebuttal Submission, at para 66.
13 Canada's Rebuttal Submission, at para 42.
14 Canada's First Written Submission, at para 91. See also paras 92, 95, and 97.
15 Canada's Rebuttal Submission, at para 79.

65. Obtaining an allocation is *only one* of the steps involved in the utilisation of a TRQ.

66. At any given time in the quota year there may be more quota allocated than fully utilised.

67. And some importers who have received quota will end up returning it.

68. As a result - Parties will have an interest in both sets of data being published.

69. The fact that Article 2.31(2) requires the publication of both these data sets ***does not suggest*** that allocation is not part of the process of utilising a TRQ.

Not reading *in* 'allocation' or *out* the list of examples.

70. Turning to Canada's arguments both this morning and in its Rebuttal Submission on the language in Article 2.29(2)(a) -

71. Canada has suggested that New Zealand is reading the term 'allocation' *in to* the text of Article 2.29(2)(a).[16]

72. And that New Zealand is reading *out* the illustrative list.[17]

73. Article 2.29(2)(a) does not need to expressly refer to '**allocation'** because it is already captured by the phrase 'utilisation of a TRQ'.

74. As we have explained – the utilisation of a TRQ for the importation of a good necessarily *includes* the process of obtaining an allocation.

75. New Zealand is also not reading *out* the **list in Article 2.29(2)(a)** – we are simply saying that it is not an *exclusive* list. Which is reflected in the word 'including'.

New Zealand does not read out 'utilisation of a TRQ for the importation of a good

76. Canada has further suggested -

77. - that New Zealand's interpretation would require the Panel to read *out* the phrase '*on the utilisation of a TRQ for the importation of a good*' entirely.[18]

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16 Canada's Rebuttal Submission, at paras 78, 83.
17 Canada's Rebuttal Submission, at para 92.
18 Canada's Rebuttal Submission, at para 92.

78. But – as New Zealand noted in its opening statement, the phrase 'on the utilisation of a TRQ for the importation of a good' is **key** to the interpretation of Article 2.29(2)(a).

79. If this phrase was removed, the scope of the obligation would be *unclear*.

80. New Zealand is *not* asking the Panel to read this phrase *out*.

81. New Zealand is asking the Panel to *give it meaning*.

82. The phrase 'utilisation of a TRQ for the importation of a good' makes it *clear* that Article 2.29(2)(a) applies to ***all*** limits, conditions, and eligibility requirements affecting the utilisation of a TRQ for the importation of a good – namely, those that affect the ability of an importer to:

    a. Obtain an allocation

    b. Import goods to market, and

    c. Claim preferential tariff treatment.

III. CANADA'S CPTPP NOTICES TO IMPORTERS ARE INCONSISTENT WITH ARTICLE 2.30(1)(A) CPTPP BECAUSE THEY EXCLUDE PERSONS WHO FULFIL CANADA'S ELIGIBILITY REQUIREMENTS FROM ACCESSING AN ALLOCATION

83. Turning to Article 2.30(1)(a) –

84. This obligation is **simple**.

85. It obliges Parties to allow persons who meet the eligibility requirements that are set out in their schedules - (or introduced through the process set out in Article 2.29(2)(b)-(c)) - 'to apply and to be considered for a quota allocation'.

86. Article 2.30(1)(a) refers to '*the importing* Party's eligibility requirements'.

87. As explained this morning - an importing Party's eligibility requirements are the eligibility requirements that are set out in their Schedule.[19]

[19] Or introduced through the process set out in Article 2.29(2)(b)-(c).

88. This is because these are the *only* eligibility requirements that a Party is allowed to apply.

89. The eligibility requirements set out in Canada's schedule are *not minimum requirements*.

90. If Canada introduces *other* eligibility requirements - without going through the process under Article 2.29(2)(b)-(c) - it will be in breach of Article 2.29(2)(a).[20]

Article 2.30(1)(a) is not a transparency obligation

91. Turning to Canada's claim that Article 2.30(1)(a) is a transparency obligation -

92. Canada claims that Parties are free to adopt new eligibility requirements at will – and that Article 2.30(1)(a) *simply* requires that they publish those requirements before the start of the quota year.[21]

93. Canada has described Article 2.30(1)(a) as 'fundamentally about transparency and predictability'.[22]

94. As discussed already, Parties are not allowed to introduce new eligibility requirements under Article 2.29(2)(a).

95. This means that the eligibility requirements referred to in Article 2.30(1)(a) *must* be those set out in a Party's Schedule.

96. Canada's interpretation of Article 2.30(1)(a) is *also* at odds with the *text*.

97. Article 2.30(1)(a) does *not* refer to transparency - *or* to the publication of a Party's eligibility requirements.

98. Article 2.30(1)(a) states that Parties must *allow* any person who meets their eligibility requirements to *apply* and *be considered* for quota.

99. This language – 'must allow', 'apply', and 'be considered' – makes it clear that Article 2.30(1)(a) is *fundamentally about access to quota*.

100. The Article preserves the eligibility requirements that were agreed between the Parties.

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20 That is, unless they go through the process set out in Article 2.29(2)(b)-(c).
21 Canada's First Written Submission, at para 162.
22 Canada's First Written Submission, at para 172.

101. By blocking eligible importers – *including retailers* – from applying and being considered for quota, Canada has breached Article 2.30(1)(a).

Canada's arguments around the large number of eligible applicants - accepts that it is using its pooling system to reduce the number of eligible applicants

102. Turning to Canada's arguments made this morning and in its Rebuttal Submission around the large number of quota applicants that it expects to receive -

103. What Canada is doing here is ***admitting*** that the purpose of its pooling system ***is in fact*** to limit the number of applicants who can apply and be considered for quota.

104. This is in breach of Article 2.30(1)(a).

105. Under that Article Canada is obliged to allow persons who meet its eligibility requirements to apply and be considered for quota.

106. It is *not* permitted to use its pooling system to reduce the number of eligible applicants.

Obligation to not discriminate against new entrants

107. I will now turn to Canada's arguments regarding its schedule -

108. Canada's schedule states that:

> Canada shall not discriminate against applicants who have not previously imported product subject to a TRQ but who meet the residency, activity and compliance criteria.

109. This makes it clear that that applicants must be able to show 'activity' in the relevant sector – *other than* through a history of importing.

110. *Again* – Article 2.29(2)(a) is *very* clear – Canada is *not* permitted to introduce *any* new eligibility requirements.

IV. CANADA'S CPTPP NOTICES TO IMPORTERS ARE INCONSISTENT WITH ARTICLE 2.29(1) CPTPP BECAUSE THEY DO NOT ADMINISTER CANADA'S TRQS IN A MANNER THAT ALLOWS IMPORTERS THE OPPORTUNITY TO UTILISE TRQ QUANTITIES FULLY

111. Turning to Article 2.29(1) - which obliges Parties to administer their TRQs in a manner 'that allows importers the opportunity to utilise TRQ quantities fully'.

TRQ quantities means the total quota available under a TRQ

112. As set out in our Opening Statement this morning – 'TRQ quantities' means the total volume (or quantity) of quota available under a TRQ.[23]

113. An importer will have no *opportunity* to utilise TRQ quantities if they cannot access an allocation.

114. This morning, Canada stated that CPTPP does not require Parties to guarantee full utilisation of its TRQs.

115. This is not the point. Canada *cannot* use this to deflect from its obligation to grant importers the *opportunity* to utilise them.

Article 2.29(1) does not need to include the term 'allocation'

116. Canada has suggested that Article 2.29(1) cannot apply to a Party's quota allocation process because it does not include the term 'allocation'.[24]

117. Canada's argument depends on the utilisation of TRQ quantities and quota allocation being separate processes.

118. There is no need for Article 2.29(1) to refer expressly to 'allocation' because this is *captured* by the phrase 'utilise TRQ quantities'.

NZ's interpretation does not render 'quantities' redundant

119. In a similar vein –

120. Canada has suggested that interpreting 'TRQ quantities' as meaning the total volume (or quantity) of quota under a TRQ would render the term 'quantities' *redundant*.[25]

121. To the contrary - the reference to 'TRQ *quantities'* in Article 2.29(1) serves an important function.

122. As noted in our Opening Statement - Article 2.29(1) refers to 'TRQ *quantities'* to **make it clear** that importers must have the opportunity to utilise the **total** volume of quota available under a

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23 New Zealand's Opening Statement, at para 196.
24 Canada's Rebuttal Submission, at para 27.
25 Canada's Rebuttal Submission, at para 29.

TRQ – not just a part of it – not a portion allocated into a pool – but **all** of it.

123. The same emphasis is reflected in the term '**fully'**.

124. This emphasis is **clearly needed**.

125. Indeed - if Canada was complying with its obligation to allow importers to utilise TRQ *quantities fully* - instead of splitting its quota between pools - we might not be here today.

'TRQ quantities' does <u>not</u> mean 'an allocation'

126. Turning to Canada's own interpretation of 'TRQ quantities' -

127. Canada has argued - once again - that 'TRQ quantities' means 'the specified amount allocated to individual importers'. [26]

128. Yet - 'The specified amount allocated to individual importers' - is *consistently* referred to in CPTPP as <u>*an allocation*</u>.[27]

129. The fact that Article 2.29(1) applies to TRQs administered on a First-come First-Served basis – does not support Canada's interpretation.[28]

130. As noted – importers <u>still receive allocations under a First-Come, First-Served system</u>.

131. Article 2.29(1) must be interpreted in accordance with the text actually used.

132. It does not refer to the utilisation of *an allocation*. It refers to the utilisation of *TRQ quantities.*

'Importer' does not mean an importer who has *already* received an allocation

133. I will now comment briefly on Canada's arguments regarding the term 'importer' - [29]

134. Canada suggested this morning that eligible applicants (such as retailers) are not '*importers'*.

135. If an applicant meets a Party's eligibility requirements, and is seeking to import goods under a TRQ – they *are* an *importer* for the

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26 Canada's First Written Submission, at para 91.
27 Set in in New Zealand's Rebuttal Submission, at para 25.
28 Canada's Rebuttal Submission, at para 32.
29 Canada's Opening Statement and Canada's First Written Submission at paras 94, 95.

purposes for Article 2.29(1).

Article 2.29(1) does not require proof of trade effects

136. To comment on Canada's arguments on demand -

137. Canada has reiterated the content of its economic reports regarding demand.

138. New Zealand has already made its position clear in its Opening Statement. [30]

139. Article 2.29(1) obliges Parties to grant importers the *opportunity* to utilise TRQ quantities fully.

140. Article 2.29(1) does not require proof of trade effects.

141. In the interests of time, I will not repeat those arguments here.

V. CANADA'S CPTPP NOTICES TO IMPORTERS ARE INCONSISTENT WITH ARTICLE 2.30.(1)(C) CPTPP BECAUSE THEY DO NOT ENSURE, TO THE MAXIMUM EXTENT POSSIBLE THAT ALLOCATIONS ARE MADE IN THE AMOUNTS THAT IMPORTERS REQUEST

142. Turning to Article 2.30(1)(c) -

143. This Article requires Parties to ensure, to the *maximum extent possible*, that allocations are granted in the amounts that importers request.

Article 2.30(1)(c) applies to Canada's allocation mechanism ('each' / 'made')

144. Canada has suggested this morning that the language 'each allocation' and 'made' in Article 2.30(1)(c) means it only applies when a Party is issuing individual allocations - and does not apply to the design of a Party's allocation mechanism.[31]

145. This is wrong. That 'each allocation is made in the amount requested' is the *outcome* that the obligation seeks to achieve.

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30 New Zealand's Opening Statement, at paras 207-211.

31 Canada's First Written Submission, at paras 210-211.

146. There is nothing in Article 2.30(1)(c) to suggest that the *only* time that Parties are obliged to take steps *to achieve this outcome* is when they are actually granting allocations.

147. To the contrary – the phrase 'shall ensure' and 'to the maximum extent possible' makes it clear that Parties must do everything possible – *including* in the design of their allocation mechanism - to grant allocations in the amounts requested.

Canada's interpretation would create a loophole under Article 2.30(1)(c)

148. Canada's interpretation would create a loop hole in Article 2.30(1)(c).

149. Parties could easily avoid the obligation *simply* by embedding restrictions on the amount that importers can request *into their allocation mechanism*.

150. Canada's allocation mechanism is a good example of this.

151. Canada's Notices:

a. allocate 100% of each TRQ into pools; and

b. state that quota will be allocated between applicants – not based on how much they request – but on an equal share or market share basis.

152. This means that, by the time Canada comes to actually allocating quota – (which is the only time that Canada argues it is subject to Article 2.30(1)(c)) – the amount of quota that individual applicants can receive is *completely predetermined*.

153. Not only would Canada's interpretation create a loophole within Article 2.30(1)(c) – Canada's own allocation mechanism demonstrates how that loophole could be exploited.

Parties do not need to re-design their allocation mechanism when a quota is oversubscribed

154. I will now comment briefly on Canada's arguments concerning oversubscription -

155. Canada makes the *strange* suggestion in its Rebuttal Submission – in order to meet the obligation under Article 2.30(1)(c) - Parties would need to *re-design* their allocation mechanism *when* it becomes oversubscribed.[32]

156. This does not make sense.

157. It is clear that Parties must **design** their allocation mechanisms in a manner that complies with their obligations under CPTPP - *taking into account* the possibility that there may be demand that exceeds the quota available.

158. This means that a Party's allocation mechanism must *both*:

    a. grant allocations in the amounts requested when there is sufficient quota to do so; and

    b. do everything possible to grant allocations in the amounts requested when there is oversubscription.

159. This is just common sense.

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[32] Canada's Rebuttal Submission, at para 192.

VI. CANADA'S PROCEDURES FOR ADMINISTERING ITS CPTPP TRQS ARE INCONSISTENT WITH ARTICLE 2.28(2) CPTPP BECAUSE THEY DO NOT ADMINISTER CANADA'S TRQS IN A MANNER THAT IS FAIR AND EQUITABLE

160. Turning finally to Article 2.28(2) -

161. That Article *simply* requires that a Party administer their TRQs in a way that is fair and equitable – from the allocation of quota, through to granting preferential tariff treatment at the border.

162. This morning and in its written submissions Canada has argued that a Party's allocation mechanism is not subject to the fair and equitable obligation in Article 2.28(2).

163. New Zealand refers the Panel to our written submissions, where this and other issues under this Article are elaborated on fully.[33]

164. Since Canada's Opening Statement said nothing beyond what was in its written pleading - we have nothing further to add.

165. This concludes New Zealand's Reply.

166. We welcome any questions from the Panel.

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[33] New Zealand's First Written Submission, from para 140 and New Zealand's Rebuttal Submission, from para 157.