

12 May 2022

CANADA – DAIRY TRQ ALLOCATION MEASURES

REQUEST FOR CONSULTATIONS BY NEW ZEALAND

1. Pursuant to Articles 28.3 and 28.5 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), New Zealand requests consultations with the Government of Canada with regard to measures concerning the allocation of dairy tariff rate quotas (TRQs) under CPTPP (dairy TRQ allocation measures).
2. Canada's dairy TRQ allocation measures encourage chronic underfill of its dairy TRQs, reduce their commercial value for exporting CPTPP Parties, and undermine the market access that was negotiated under CPTPP.
3. Canada maintains 16 dairy TRQs under CPTPP.¹ Canada's dairy TRQ allocation measures allocate the entire quota available under each TRQ into up to three 'pools'. These 'pools' can only be accessed by specific importer groups, in accordance with rules set out in Canada's dairy TRQ allocation measures. Each importer group is defined under Canada's dairy TRQ allocation measures, and importers that do not fall within a relevant pool are not eligible to apply for, or be allocated, quota. In addition, under Canada's dairy TRQ allocation measures, retailers are not eligible to apply for an allocation under Canada's dairy TRQs.
4. The measures at issue, including their adoption and maintenance (as such), as well as their application and administration by Canada (as applied), through its actions or omissions, in law and in fact, include, but are not limited to:
 - a. The following Notices to Importers, regarding Canada's dairy TRQs maintained under CPTPP:²
 - i. CPTPP: Skim Milk Powders TRQ – Serial No. 1052, dated 1 May 2021;
 - ii. CPTPP: Cream Powders TRQ – Serial No. 1047, dated 1 May 2021;
 - iii. CPTPP: Industrial Cheese TRQ – Serial No. 996, dated 1 October 2020;
 - iv. CPTPP: Other Dairy TRQ – Serial No. 1003, dated 1 October 2020;
 - v. CPTPP: Products Consisting of Natural Milk Constituents TRQ – Serial No. 1006, dated 1 October 2020;
 - vi. CPTPP: Powdered Buttermilk TRQ – Serial No. 1004, dated 1 October 2020;
 - vii. CPTPP: Milk TRQ – Serial no. 1048, dated 1 May 2021;

¹ Milk; Cream; Skim Milk Powders; Milk Powders; Cream Powders; Concentrated Milk; Yogurt and Buttermilk; Powdered Buttermilk; Whey Powder; Products Consisting of Natural Milk Constituents; Butter; Industrial Cheese; Mozzarella and Prepared Cheese; Cheeses of All Types; Ice Cream and Mixes; and Other Dairy: as set out in Appendix A ('Tariff rate quotas of Canada') of Canada's Schedule to Annex 2-D.

² 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.

- viii. CPTPP: Milk Powders TRQ – Serial No. 1050, dated 1 May 2021;
 - ix. CPTPP: Mozzarella and Prepared Cheese TRQ – Serial No. 997, dated 1 October 2020;
 - x. CPTPP: Ice Cream and Mixes TRQ Serial No 1001, dated 1 October 2020;
 - xi. CPTPP: Concentrated Milk TRQ – Serial No. 999, dated 1 October 2020;
 - xii. CPTPP: Cream TRQ – Serial No. 1041, dated 1 May 2021;
 - xiii. CPTPP: Cheeses of All Types TRQ – Serial No. 995, dated 1 October 2020;
 - xiv. CPTPP: Butter TRQ – Serial No. 1039, dated 1 May 2021;
 - xv. CPTPP: Yogurt and Buttermilk TRQ – Serial No. 1008, dated 1 October 2020;
 - xvi. CPTPP: Whey Powder TRQ – Serial No. 1044, dated 1 May 2021.
- b. The Notices to Importers, regarding Canada’s dairy TRQs maintained under CPTPP, that preceded the Notices listed at ‘a’;
 - c. The Export and Import Permits Act³, and any corresponding regulations.

as well as any amendments, replacements, related measures, or implementing measures to the above.

5. Canada’s measures appear to be inconsistent with several provisions of CPTPP, including Canada’s obligation to:
- a. ‘progressively eliminate its customs duties on originating goods in accordance with its schedule to Annex 2D’ under Article 2.4(2), and Appendix A of Canada’s Schedule to Annex 2-D;
 - b. ‘ensure that its procedures for administering its TRQs ... are fair and equitable’ under Article 2.28(2);
 - c. ‘ensure that its procedures for administering its TRQs ... are no more administratively burdensome than absolutely necessary’ under Article 2.28(2);
 - d. ‘administer its TRQs in a manner that allows importers the opportunity to utilise TRQ quantities fully’ under Article 2.29(1);
 - e. not ‘introduce a new or additional condition, limit or eligibility requirement on the utilisation of a TRQ for importation of a good, including in relation to specification or grade, permissible end-use of the imported product or package size, beyond those set out in its Schedule to Annex 2-D (Tariff Commitments)’ under Article 2.29(2)(a);
 - f. ‘ensure that ... any person of a Party that fulfils [Canada’s] eligibility requirements is able to apply and be considered for a quota allocation under the TRQ’ under

³ Export and Import Permits Act (R.S.C., 1985, c. E-19), <https://laws-lois.justice.gc.ca/eng/acts/E-19/index.html>.

Article 2.30(1)(a) and paragraph 3(c) of Appendix A of Canada's Schedule to Annex 2-D;

- g. 'ensure that ... it does not allocate any portion of the quota to a producer group' under Article 2.30(1)(b);
 - h. 'ensure that ... it does not ... condition access to an allocation on the purchase of domestic production' under Article 2.30(1)(b);
 - i. 'ensure that ... it does not ... limit access to an allocation to processors' under Article 2.30(1)(b);
 - j. 'ensure that ... each allocation is made in commercially viable shipping quantities and, to the maximum extent possible, in the amounts that importers request' under Article 2.30(1)(c); and
 - k. 'ensure that ... if the aggregate TRQ quantity requested by applicants exceeds the quota size, allocation to eligible applicants shall be conducted by equitable and transparent methods' under Article 2.30(1)(e).
6. We look forward to receiving your reply to the present request within the required timeframe set out in Article 28.5(2), and to fixing a mutually convenient date for consultations.