



September 12, 2016

The Honorable Steven Ciobo  
Minister for Trade, Tourism and Investment  
Post Office Box 6022  
Parliament House  
Canberra ACT 2600

Mrs. Cecilia Malmström  
EU Commissioner for Trade  
European Commission  
Rue de la Loi / Wetstraat 200  
1049 1049 Brussels  
Belgium

The Honorable Ildefonso Guajardo  
Mexico Secretary of Economy  
Paseo de la Reforma 296,  
Col. Juárez, Del. Cuauhtémoc, Ciudad de  
México. C.P. 06600

The Honorable Todd McClay  
Minister of Trade  
Private Bag 18888  
Parliament Buildings  
Wellington 6160

The Honorable Michael Froman  
United States Trade Representative  
600 17th Street, NW  
Washington, D.C. 20508

Dear Minister Ciobo, Commissioner Malmstrom, Secretary Guajardo, Minister McClay, and  
Ambassador Froman:

**Canada: Access for Dairy Products**

The dairy industries of Australia, the EU, Mexico, New Zealand and the USA wish to express our deep concern with the Agreement in Principle (“Agreement”) recently concluded between Canada’s dairy producers and processors<sup>1</sup>. By adopting this Agreement, Canada is contravening both its WTO and NAFTA trade obligations and undermining the intent of the pending TPP and CETA trade agreements. The Agreement both favors the substitution of Canadian domestic origin dairy ingredients for dairy ingredients imported from our countries, and subsidizes the export of Canadian dairy products to unfairly compete with our products in third country markets. We ask the authorities in Australia, the EU, Mexico, New Zealand and the USA to initiate a WTO dispute settlement proceeding to challenge this Agreement, once its details are

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<sup>1</sup> Dairy Farmers of Canada, Dairy Processors of Canada and provincial processor trade associations , the Canadian Milk Supply Management Committee including the Canadian Dairy Commission, and provincial Agriculture Ministries



announced, given its intended erosion of trading conditions in place at the time Canada negotiated prior trade commitments.

## Background

Canada operates a supply management system, regulated by Canada's Federal and Provincial governments, that restricts dairy imports via quotas and a set of prohibitive out-of-quota tariffs. In addition, in spite of trade agreement obligations, the supply management system has embarked on import replacement programs since the 1990s, with two related goals. First, to reduce the yearly structural surpluses of protein solids which could no longer be exported at subsidized prices as a result of Canada's obligations under the Uruguay Round Agreement on Agriculture (URAA) and subsequent Appellate Body rulings. And second, to limit imports and subsidize exports of further processed foods at competitive prices by employing the Special Class program to reduce the price of Canadian domestic dairy ingredients.

Numerous programs have imposed trade limitations over the past few years. Some examples of that deeply problematic policy approach by Canada include the following:

- Canada's compositional standards for cheese, implemented in 2008, which have intentionally limited imports of ingredients including casein, powdered Milk Protein Concentrate (MPC), Milk Protein Isolate (MPI) and Whey Protein Concentrate (WPC) as inputs into cheese making.
- Targeting imported products, such as cheese used on foodservice pizza and chocolate milk, by allowing access to lower-priced Canadian milk for use in processing into such products.
- Ostensibly temporary special classes of milk pricing, such as class 6 in Ontario which offers Canadian processors non-fat milk solids, at subsidized prices well below the domestic cost of production, for ingredient applications like skim milk powder, MPC and ultra-filtered milk. Broadly speaking the Agreement adopts this concept and nationalizes it.

In addition to these examples, several other programs and policy tools have also been instituted in Canada in recent years specifically in order to undermine market access secured in previous trade agreements.

## The Agreement in Principle ("Agreement")

The Agreement reached by Canada's dairy producers and processors on July 7, 2016 will, among other things, establish a new ingredient milk class to be priced at the lowest of the US, EU and Oceania price for solids-not-fat (SNF) for 7 years. This below cost pricing will apply to the manufacture of skim milk powder, liquid skim milk, liquid MPC (any liquid form of milk protein concentrate or milk protein isolate), whole milk powder, and similar products approved jointly by the producers and processors, dry MPC, casein, sodium caseinate, calcium caseinate, blended dairy powders and infant formula at a maximum of 4% of butterfat.



This newly introduced provision of below market price milk for the production of the listed dairy ingredients provides both an incentive to substitute those ingredients for their imported counterparts and a subsidy on the production of the end products containing those ingredients. Both of these elements violate Canada's obligations under a number of WTO and NAFTA agreement provisions.

Even more concerning is the prospect that new measures to enable the export of Canada's structural surplus of Skim Milk Powder (SMP) at below the cost of production reflect an attempt to circumvent the WTO Nairobi Ministerial Decision on Export Competition undertaking to terminate all export subsidies by the end of 2020, including Canada's standstill agreement in the Decision to hold export subsidy quantities to the levels achieved in the 2003-05 base period.

### **Canada's international trade agreement obligations**

The Agreement will undermine the value of our respective TRQ access negotiated under WTO, NAFTA, TPP and CETA agreements and otherwise impede our dairy trade. Further, our initial analysis of Canada's trade obligations against the measures in place and the Agreement lead us to conclude that there is ample justification for undertaking a legal challenge. In this regard we appreciate the efforts of our respective Governments to address the issue in WTO forums. Accordingly, we would welcome the opportunity to work with our governments to pursue the most effective methods possible to dissuade Canada from its course, including the utilization of dispute settlement under existing trade agreements. We are determined to seek redress to overturn the use of these measures.

### **Conclusion**

The dairy industries of Australia, the EU, New Zealand and the USA believe that the Agreement contravenes Canada's WTO and NAFTA obligations and similarly undermines the intent of CETA and TPP commitments. Furthermore, we are very concerned that Canada will continue to seek out measures to circumvent the Nairobi Export Competition Ministerial Decision to terminate all exports subsidies by the end of 2020. Canada's increasingly protectionist policies violate their international trade obligations, hold out the prospect of trade diversion with attendant global price-depressing impacts, and are in conflict with the principles of free markets and fair and transparent trade.

We therefore request the authorities of Australia, New Zealand, Mexico, the US and the EU Commission to initiate a WTO dispute settlement proceeding against Canada, once the Agreement details are announced, given its intended erosion of trading conditions in place at the time Canada negotiated prior trade commitments.

With best regards,



Acting President  
Australian Dairy Industry Council (ADIC)

Secretary General  
European Dairy Association (EDA)

Secretary General  
European Whey Products Association (EWPA)

Secretary General  
European Association of Dairy Trade (Eucolait)

Executive Director  
Dairy Companies Association of New Zealand (DCANZ)

President  
U.S. Dairy Export Council (USDEC)

President & CEO  
International Dairy Foods Association (IDFA)

President & CEO  
National Milk Producers Federation (NMPF)

General Director  
Camara Nacional De Industriales de la Leche (Canilec)  
Mexico National Chamber of Industrial Milk

Cc:

- The Honorable Barnaby Joyce MP, Deputy Prime Minister, Minister for Agriculture and Water Resources, Australia
- Mr Phil Hogan, EU Commissioner for Agriculture & Rural Development, European Commission
- Mr Jean-Luc Demarty, Director-General for Trade, European Commission
- Mr Jerzy Bogdan Plewa, Director-General for Agriculture & Rural Development, European Commission
- The Honorable Nathan Guy, Minister of Primary Industries, New Zealand
- Mr Martyn Dunne, Director General, Ministry for Primary Industries, New Zealand
- Dr David Walker, Deputy Secretary Trade and Economic, Ministry of Foreign Affairs & Trade, New Zealand
- The Honorable Tom Vilsack, Secretary, U.S. Department of Agriculture
- The Honorable Juan Carlos Baker, Deputy Secretary of Trade, Mexico