



March 5, 2021

Supply-Managed Trade Controls Division  
Global Affairs Canada  
111 Sussex Drive  
Ottawa Ontario K1A 0G2

Dear Sirs/Madams,

The National Milk Producers Federation (NMPF), the U.S. Dairy Export Council (USDEC), and the International Dairy Foods Association (IDFA) appreciate the opportunity to provide additional consultations under Phase II of the Comprehensive Review of the Allocation and Administration of Tariff Rate Quotas (TRQs) for Dairy, Poultry and Egg Products (the Review). We welcome Canada's initiative to update its TRQ procedures to ensure that access to Canada's dairy market is as close as possible to the market shares that would be expected in the absence of TRQ restrictions.

NMPF is the United States' national farm commodity organization that represents dairy farmers and the dairy cooperative marketing associations they own and operate throughout the United States. USDEC is a non-profit, independent membership organization that represents the export trade interests of U.S. milk producers, proprietary processors, dairy cooperatives, and export traders. IDFA represents the United States' dairy manufacturing and marketing industry and has a membership that represents 90 percent of the milk, cheese, ice cream, yogurt and cultured products, and dairy ingredients produced and marketed in the United States and sold throughout the world.

NMPF, USDEC, and IDFA most recently provided input via Canada's TRQ Administration Survey in Spring 2020 in response to the February 2020 invitation for comment by Global Affairs Canada. Those comments are attached and continue to reflect NMPF, USDEC, and IDFA positions on proposed options for TRQ allocation and administration except where otherwise refined below. The following comments elaborate NMPF, USDEC, and IDFA's positions on Canada's administration of Canada-U.S.-Mexico Agreement (CUSMA) TRQs in light of Canada's issuance of messages to industry and notices to importers for CUSMA TRQs implemented on July 1, 2020.

## **Phase II: Policy Options for the Administration of Supply-Managed TRQs**

**Reference Period:** No further comments.

**Normally Active:** Further to comments previously submitted, any threshold of activity should not prevent allocation to operators capable of filling the allocations, including new entrants. It also is not clear that any threshold on activity is consistent with the provisions of CUSMA. For instance, a requirement to be active in all 12 months of the reference period appears to be designed to preference the type of year-round activity in which processors consistently engage and discriminate against companies such as importers/distributors that may conduct greater amounts of business during certain parts of the year compared to others.

**Allocation Calculation for Processors/Distributors/Retailers and Allocation Calculation for Further Processors:** Further to comments previously submitted, Canada's proposed options to have separate allocation processes for processors/distributors/retailers and for further processors is fundamentally inconsistent with CUSMA provisions. To be clear, CUSMA dairy TRQs shall have no restrictions on or designations of allocations to distributors, retailers, processors, food service establishments or further processors and must be handled in a manner that is not discriminatory between the various types of users. CUSMA provides that "any person...that fulfills the importing Party's eligibility requirements is able to apply and be considered for a quota allocation under the TRQ" (Art. 3A.2(11)), and eligible applicants are simply defined to be "active in the Canadian food or agriculture sector," (Chapter 2, Appendix 2, Section A, Paragraph 3(C)) and would include for example, food retailers and food importers. CUSMA specifically and purposefully does not allow for limiting or designating allocations to a subset of those "active in the Canadian food or agriculture sector"<sup>1</sup> as Canada appears to be suggesting in its options.

In addition to the above, any allocation mechanism based on market share and limited to any type of processor would result in further inconsistency with CUSMA commitments to not condition access to an allocation based on the purchase of domestic production, or to provide for and not discriminate against new importers.

**Allocation Caps:** No further comments, with the understanding that this is in reference to the amount of quota that an individual entity receives.

**Minimum Allocations:** No further comments.

**Allocation of Unallocated Quota:** As noted in our previous comments, NMPF, USDEC, and IDFA support an option that will ensure that the TRQs can be filled efficiently while maximizing the value of the goods imported. For further clarification, NMPF, USDEC, and IDFA support Option 2, and that Canada will define "eligible applicants" in a manner consistent with CUSMA Appendix 2 to Chapter 2, and Article 3.A.2, including defining an "eligible applicant" as an applicant active in any part of the Canadian food or agriculture sector (which we note includes, for example, food retailers and food service establishments, among other entities) and ensuring that the allocation process is open to new importers. Option 1 is not acceptable, because it locks

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<sup>1</sup> Beyond the fundamental TRQ eligibility requirements allowed for in Art. 3.A.2 paragraph 7.b.i and 7.b.ii.

allocations to entrenched interests by placing unjustified market controls on reallocations and favors those who may not use their allocation. Option 3 is too broad by using the term “any requestor” since that also could result in allocations being made to entities that will not utilize the allocation.

**Transfer Policy:** No further comments.

**Return Date:** NMPF, USDEC, and IDFA support Option 1 as four months prior to the end of the TRQ should provide Canada sufficient time to reallocate unused allocations in a timely and transparent manner providing the greatest possible opportunity for the TRQ to be filled.

**Re-allocation of Returned Quota:** In further clarification to previous comments, NMPF, USDEC, and IDFA support Option 3, but modified to making returned quota available to any “eligible applicant”, with “eligible applicant” defined in a manner consistent with CUSMA (see above). Canada has an obligation to ensure that its TRQ administration enables importers the opportunity to fully utilize TRQ quantities. Option 1 and 2 would limit that opportunity by limiting allocations only to those entities that hold an allocation (and may not use them) or to a subset of allocation holders within a pool. Allocations must be given to those eligible applicants who will actually use the allocation and import the product.

**Chronic Return Penalty:** No further comments.

**Under-Utilization Penalty:** Further to previous comments, NMPF, USDEC and IDFA support consistently imposing penalties when an allocation is under-utilized as an important mechanism to promote full utilization of TRQs.

## **Phase II: Policy Options for the Allocation of Supply-Managed TRQs**

**WTO:** In addition to previously submitted comments, NMPF, USDEC, and IDFA do not support option 1 for the WTO fluid milk TRQ. NMPF, USDEC, and IDFA have objected to Canada’s failure to administer the WTO fluid milk TRQ through a TRQ import licensing/permit mechanism as it does with other TRQs. Instead, Canada makes the unverifiable assumption that cross border shoppers fill the WTO milk TRQ. We encourage Canada to reconsider its position and to operate the WTO fluid milk TRQ in a manner consistent with CUSMA provisions.

**CUSMA:** As noted above, in order for Canada’s TRQ allocations to be responsive to market conditions, allocations need to be given to eligible applicants that will actually import the product, and not to applicants that have little incentive to import. Further to previously submitted comments, **all of the options laid out in the Phase II: Policy Options for the Allocation of Supply-Managed TRQs for dairy are inconsistent with CUSMA, and as such NMPF, USDEC, and IDFA oppose them.** We strongly encourage that Canada fully abide by CUSMA and ensure that CUSMA TRQ allocations are available to all eligible applicants active in the Canadian food and agriculture sector, including but not limited to food retailers and food importers as allowed for in CUSMA, and that there are no limits on allocations to different types

of processors. Specifically, this means the following for each CUSMA dairy TRQ found at CUSMA Chapter 2, Appendix 2, Section B:

1. Milk: To be consistent with CUSMA, the quantity designated for allocation in the relevant CUSMA provisions may be processed into dairy products used as ingredients for further food processing, without designation as to the allocation being offered on a market share basis. In addition, there should be no constraint for any portion of the TRQ on the type of applicant, such as being a processor, retailer, food service establishment, distributor, etc., nor any preference granted to companies based on being a processor vs. a distributor vs. other entity in the supply chain. There should also be no designation as to the allocation being offered on a market share basis.
2. Cream: To be consistent with CUSMA, the quantity designated for allocation in the relevant CUSMA provisions may be processed into dairy products used as ingredients for further food processing, without designation as to the allocation being offered on a market share basis. In addition, there should be no constraint for any portion of the TRQ on the type of applicant, such as being a processor, retailer, food service establishment, distributor, etc., nor any preference granted to companies based on being a processor vs. a distributor vs. other entity in the supply chain. There should also be no designation as to the allocation being offered on a market share basis.
3. Butter and Cream Powder: To be consistent with CUSMA, the quantity designated for allocation in the relevant CUSMA provisions may be processed into dairy products used as ingredients for further food processing, without designation as to the allocation being offered on a market share basis. In addition, there should be no constraint for any portion of the TRQ on the type of applicant, such as being a processor, retailer, food service establishment, distributor, etc., nor any preference granted to companies based on being a processor vs. a distributor vs. other entity in the supply chain. There should also be no designation as to the allocation being offered on a market share basis.
4. Skim Milk Powder: To be consistent with CUSMA, there should be no constraint for any portion of the TRQ on the type of applicant, such as being a processor, retailer, food service establishment, distributor, etc., nor any preference granted to companies based on being a processor vs. a distributor vs. other entity in the supply chain, provided they are active in the Canadian food and agriculture sector. In addition, there should be no designation as to the allocation being offered on a market share basis.
5. Industrial Cheeses: To be consistent with CUSMA, there should be no constraint for any portion of the TRQ on the type of applicant, such as being a processor, retailer, food service establishment, distributor, etc., nor any preference granted to companies based on being a processor vs. a distributor vs. other entity in the supply chain, provided the product is used as an input for further food processing. In addition, there should be no designation as to the allocation being offered on a market share basis.
6. Cheese of All Types: To be consistent with CUSMA, there should be no constraint for any portion of the TRQ on the type of applicant, such as being a processor, retailer, food

service establishment, distributor, etc., nor any preference granted to companies based on being a processor vs. a distributor vs. other entity in the supply chain, provided they are active in the Canadian food and agriculture sector. In addition, there should be no designation as to the allocation being offered on a market share basis.

7. Milk Powders: To be consistent with CUSMA, there should be no constraint for any portion of the TRQ on the type of applicant, such as being a processor, retailer, food service establishment, distributor, etc., nor any preference granted to companies based on being a processor vs. a distributor vs. other entity in the supply chain, provided they are active in the Canadian food and agriculture sector. In addition, there should be no designation as to the allocation being offered on a market share basis.
8. Concentrated or Condensed Milk: To be consistent with CUSMA, there should be no constraint for any portion of the TRQ on the type of applicant, such as being a processor, retailer, food service establishment, distributor, etc., nor any preference granted to companies based on being a processor vs. a distributor vs. other entity in the supply chain. In addition, there should be no designation as to the allocation being offered on a market share basis.
9. Yogurt and Buttermilk: To be consistent with CUSMA, there should be no constraint for any portion of the TRQ on the type of applicant, such as being a processor, retailer, food service establishment, distributor, etc., nor any preference granted to companies based on being a processor vs. a distributor vs. other entity in the supply chain, provided they are active in the Canadian food and agriculture sector. In addition, there should be no designation as to the allocation being offered on a market share basis.
10. Powdered Buttermilk: To be consistent with CUSMA, there should be no constraint for any portion of the TRQ on the type of applicant, such as being a processor, retailer, food service establishment, distributor, etc., nor any preference granted to companies based on being a processor vs. a distributor vs. other entity in the supply chain, provided they are active in the Canadian food and agriculture sector. In addition, there should be no designation as to the allocation being offered on a market share basis.
11. Whey Powder: To be consistent with CUSMA, there should be no constraint for any portion of the TRQ on the type of applicant, such as being a processor, retailer, food service establishment, distributor, etc., nor any preference granted to companies based on being a processor vs. a distributor vs. other entity in the supply chain, provided they are active in the Canadian food and agriculture sector. In addition, there should be no designation as to the allocation being offered on a market share basis.
12. Products Consisting of Natural Milk Constituents: To be consistent with CUSMA, there should be no constraint for any portion of the TRQ on the type of applicant, such as being a processor, retailer, food service establishment, distributor, etc., nor any preference granted to companies based on being a processor vs. a distributor vs. other entity in the supply chain, provided they are active in the Canadian food and agriculture sector. In

addition, there should be no designation as to the allocation being offered on a market share basis.

13. Ice Cream and Ice Cream Mixes: To be consistent with CUSMA, there should be no constraint for any portion of the TRQ on the type of applicant, such as being a processor, retailer, food service establishment, distributor, etc., nor any preference granted to companies based on being a processor vs. a distributor vs. other entity in the supply chain, provided they are active in the Canadian food and agriculture sector. In addition, there should be no designation as to the allocation being offered on a market share basis.
14. Other Dairy: To be consistent with CUSMA, there should be no constraint for any portion of the TRQ on the type of applicant, such as being a processor, retailer, food service establishment, distributor, etc., nor any preference granted to companies based on being a processor vs. a distributor vs. other entity in the supply chain, provided they are active in the Canadian food and agriculture sector. In addition, there should be no designation as to the allocation being offered on a market share basis.

For purposes of minimizing unwarranted burdens on businesses and trade by having multiple TRQ administration methods, NMPF, USDEC, and IDFA urge Canada to have the same allocation and administration procedures for its WTO dairy TRQs as it will have when its CUSMA TRQ administration and allocation procedures are aligned with Canada's CUSMA obligations.

We further remind Canada of its obligations under CUSMA Article 3.A.2(6)(b) to provide the U.S. government at least 45-day notice prior to the proposed effective date of any new or additional condition, limit, or eligibility requirement for CUSMA TRQs, and that Canada must hold any consultations requested as a result of that notice promptly.

Again, thank you for the opportunity to provide additional comments through this consultation process. We welcome the opportunity to provide ongoing advice on TRQ administration, including the business impacts of proposed changes.

Sincerely,



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National Milk Producers Federation &  
U.S. Dairy Export Council



Becky Rasdall  
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*Attachments (2)*