

On December 9, 2020, the United States requested consultations with Canada pursuant to Articles 31.2 and 31.4 of the United States-Mexico-Canada Agreement (“USMCA”), with regard to measures of Canada through which Canada allocates its dairy tariff-rate quotas (“TRQs”) under the USMCA (“dairy TRQ allocation measures”). The United States and Canada held consultations, but unfortunately, these consultations failed to resolve the matter. Pursuant to Article 31.6.1 of the USMCA, the United States is providing to Canada written notice of the U.S. request to establish a panel. As set out in Article 31.6.4 of the USMCA, “[o]n delivery of the request, the panel is established.”

Canada’s dairy TRQ allocation measures set limits on the quantity of certain dairy products¹ that may be imported at a lower (within access) rate of duty. Furthermore, through the dairy TRQ allocation measures, Canada reserves a percentage of those within-access quantities for particular importer groups. For example, Canada is dividing each individual TRQ into multiple allocations, or pools of TRQ volume, and is reserving access to the largest pool exclusively for processors, and is, in some cases, reserving access to another pool exclusively for so-called “further processors”. For all of its dairy TRQs, Canada reserves a percentage of the TRQ for processors, and for ten of the TRQs,² an additional percentage is reserved for so-called “further processors.”³ These measures are reflected in legal instruments that include, but are not limited to, the following notices to importers published by Global Affairs Canada on June 15 and October 1, 2020, and May 1, 2021, concerning the allocation of Canada’s TRQs,⁴ operating separately or together with the Export and Import Permits Act (“EIPA”)⁵ and any corresponding regulations:

1. CUSMA: Milk TRQ – Serial No. 1015, dated June 15, 2020;
2. CUSMA: Milk TRQ – Serial No. 1049, dated May 1, 2021;
3. CUSMA: Cream TRQ – Serial No. 1016, dated June 15, 2020;
4. CUSMA: Cream TRQ – Serial No. 1042, dated May 1, 2021;
5. CUSMA: Skim Milk Powder TRQ – Serial No. 1017, dated June 15, 2020;
6. CUSMA: Skim Milk Powder TRQ – Serial No. 1053, dated May 1, 2021;
7. CUSMA: Butter and Cream Powder TRQ – Serial No. 1018, dated June 15, 2020;
8. CUSMA: Butter and Cream Powder TRQ – Serial No. 1040, dated May 1, 2021;

¹ Butter and cream powder, cheeses of all types, concentrated milk, cream, ice cream and ice cream mixes, industrial cheeses, milk powders, milk, other dairy, powdered buttermilk, products consisting of natural milk constituents, skim milk powder, whey powder, and yogurt and buttermilk.

² Butter and cream powder, ice cream and ice cream mixes, industrial cheese, milk powder, other dairy, powdered buttermilk, products consisting of natural milk constituents, skim milk powder, whey powder, and yogurt and buttermilk.

³ For 13 of the TRQs, 10 to 15 percent is additionally reserved for distributors. Thus, for all of Canada’s dairy TRQs, 100 percent of the TRQ has been allocated among processors, “further processors”, and distributors.

⁴ 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.

⁵ Export and Import Permits Act (R.S.C., 1985, c. E-19), <https://laws-lois.justice.gc.ca/eng/acts/E-19/page-4.html#h-203129>.

9. CUSMA: Industrial Cheeses TRQ – Serial No. 1019, dated June 15, 2020;
10. CUSMA: Industrial Cheeses TRQ – Serial No. 1031, dated October 1, 2020;
11. CUSMA: Cheeses of All Types TRQ – Serial No. 1020, dated June 15, 2020;
12. CUSMA: Milk Powders TRQ – Serial No. 1021, dated June 15, 2020;
13. CUSMA: Milk Powders TRQ – Serial No. 1051, dated May 1, 2021;
14. CUSMA: Concentrated or Condensed Milk TRQ – Serial No. 1022, dated June 15, 2020;
15. CUSMA: Yogurt and Buttermilk TRQ – Serial No. 1023, dated June 15, 2020;
16. CUSMA: Powdered Buttermilk TRQ – Serial No. 1024, dated June 15, 2020;
17. CUSMA: Whey Powder TRQ – Serial No. 1025, dated June 15, 2020;
18. CUSMA: Whey Powder TRQ – Serial No. 1045, dated May 1, 2021;
19. CUSMA: Products Consisting of Natural Milk Constituents TRQ – Serial No. 1026, dated June 15, 2020;
20. CUSMA: Ice Cream and Ice Cream Mixes TRQ – Serial No. 1027, dated June 15, 2020; and
21. CUSMA: Other Dairy TRQ – Serial No. 1028, dated June 15, 2020.

The United States considers that Canada’s dairy TRQ allocation measures are inconsistent with several provisions of the USMCA:

- (1) The measures are inconsistent with Article 3.A.2.11(b) because Canada limits access to an allocation to processors, for example, by reserving access to an allocation or pool of TRQ volume exclusively for processors or so-called “further processors”.
- (2) The measures are inconsistent with Articles 3.A.2.4(b) and 3.A.2.11(e) because Canada is not providing “fair” and “equitable” procedures and methods for administering its TRQs.
- (3) The measures are inconsistent with Article 3.A.2.11(c) because Canada fails to ensure that, “to the maximum extent possible”, the allocation is made “in the quantities that the TRQ applicant requests” as a result of reserving access to shares of the TRQ for processors and so-called “further processors”.
- (4) The measures are inconsistent with Article 3.A.2.6(a) because they “introduce a new or additional condition, limit, or eligibility requirement on the utilization of a TRQ” that are “beyond those set out in [Canada’s] Schedule to Annex 2-B.”

Accordingly, pursuant to Article 31.6.1 of the USMCA, the United States is providing written notice of its request to establish a panel to examine this matter, which concerns perishable goods, with the terms of reference as set out in Article 31.7 of the USMCA. The

United States proposes that, pursuant to Article 31.9.1(a) of the USMCA, the panel be comprised of three members.