



USMCA Canada Dairy Case

STATE OF PLAY

BACKGROUND

In January 2022, the U.S Trade Representative (USTR) won a USMCA dispute settlement case against Canada regarding its failure to meet its USMCA dairy tariff-rate quota (TRQ) allocation commitments. The narrow nature of the panel ruling and Canada's continued disregard for its dairy market access commitments led the U.S. to initiate a second dispute settlement on January 31, 2023. A panel ruling is expected in Q4 2023.



USMCA established 14 different TRQs that provide enhanced market access for U.S. dairy products into the Canadian market. The TRQ administration rules that Canada is using to handle these TRQs do not comply with its USMCA commitments in a number of areas.

Canada uses an allocation process that awards the vast majority of the TRQ volumes to Canadian processors of the particular product covered by the TRQ. This approach provides only very limited access to the TRQs to distributors, while excluding retailers, food service companies and others from accessing the TRQs entirely. This is clearly intended to discourage full utilization of the USMCA dairy market access allotments on both a volume and value basis.

To address this, USTR launched USMCA's first dispute settlement case against Canada in May 2021 to seek reforms in how Canada allocates its USMCA dairy TRQs; the U.S. prevailed in that case but Canada has continued to ignore its commitments. Following the first case, Canada made only minor changes to its dairy TRQ allocation policies. USTR initiated a new panel in January 2023 to hear this second dispute. In line with the USMCA timeline for dispute settlement procedures, briefs have been filed in the case and oral arguments will take place this summer. The panel is expected to rule on the case this Fall.

THE SCOPE OF THE SECOND USTR DISPUTE PANEL REQUEST INCLUDES THE FOLLOWING:

1. Exclusion of certain types of importers, including retailers and food service operators from eligibility to apply for USMCA dairy TRQ allocations,
2. Allocation of dairy TRQs on a market share basis with different criteria for different segments of eligible applicants,
3. Restriction on dairy TRQ access by imposition of a 12-month activity requirement for applicants and recipients, and
4. Provisions that do not allow importers the opportunity to utilize TRQ quantities fully and does not ensure that there is a mechanism for the return and reallocation of unused allocations in a timely and transparent manner that provides the greatest possible opportunity for the TRQ to be filled.

NMPF and USDEC are working to secure full use and value of the USMCA dairy TRQs. Although Canada has alleged that these cases are about its supply management program, they are not. They are simply about making the best use of the limited access expansion Canada agreed to provide under USMCA. USMCA does not eliminate tariffs on all dairy trade.