

# Briefing Paper: Canada

## Dairy Issues State of Play Summary



### Dairy's priorities regarding Canada's implementation of USMCA dairy provisions are two-fold:

1. Dairy tariff-rate quota (TRQ) administration that fully complies with USMCA commitments. The U.S. Trade Representative (USTR) initiated a second USMCA dispute settlement case against Canada in January 2023 to challenge how Canada is administering its USMCA dairy TRQs.
2. The importance of full implementation and compliance of Canada's dairy policy structure changes pertaining to its elimination of Classes 6 & 7 and related commitments.



### DAIRY TARIFF RATE QUOTAS (TRQS)

USMCA established 14 different TRQs that provide enhanced market access for U.S. dairy products into the Canadian market. These commenced with the implementation of USMCA on July 1, 2020. Some TRQs operate on an Aug - July dairy marketing year; others operate on a calendar year basis from Jan - Dec.

The TRQ administration rules that Canada is using to handle these TRQs do not comply with its USMCA commitments in a number of areas. One of the most obvious problems is Canada's decision to allocate the vast majority of each TRQ to Canadian processors, who have little incentive to import, while granting only very limited access to the TRQs to distributors, and excluding retailers, importers, and others from accessing the TRQs entirely. We are deeply concerned that this, and other TRQ administration decisions, are intended to discourage full utilization of the USMCA dairy market access allotments on both a volume and value basis. Both concerns have proven to be problems with Canada's past use of similar TRQ allocation procedures for its CPTPP TRQs.



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To address those problems, USTR launched USMCA's first dispute settlement case against Canada in May 2021 to enforce our dairy market access rights under the agreement. Despite the U.S. prevailing in that case, Canada failed to meaningfully amend its TRQ allocation policies, prompting USTR to initiate a new panel in January 2023. Briefs have been filed and oral arguments will take place in the Summer of 2023. A ruling is expecting in Fall of this year.

### DAIRY PRICING AND EXPORT POLICY DEVELOPMENTS POST-USMCA

USMCA required Canada to take a number of actions to curtail the harmful effects of its Classes 6 and 7 milk pricing policies.

1. Eliminate its milk pricing Classes 6 and 7 and to price dairy proteins in a manner in line with a formula established in USMCA. Canada appears to have done this to date.
2. Establish export quotas to trade and manage Canada's obligation to impose surcharges on excessive exports of dairy proteins that still benefit from Canada's dairy programs. USMCA established those surcharges on exports over certain volume thresholds for skim milk powder, milk protein concentrate (tariff line 040490 only) and infant formula (tariff line 190110 only). To date, Canada appears to be complying with the letter of the law on those export parameters while shirking USMCA's intent by exporting unlimited protein quantities under other tariff lines. This practice undermines USMCA's intention to discipline Canada's ability to unfairly offload excessive quantities of dairy protein products into global markets.

