

May 19, 2023

Canadian Designated Office- CPTPP
111 Sussex Drive, 5th Floor
Ottawa, ON,
Canada K1A 0G2

By e-mail: Disputes-Differends@international.gc.ca

Dear Designated Office,

Retail Council of Canada (RCC) thanks the Panel for the opportunity to provide comments on allocation of Dairy TRQs to the Panel established pursuant to Article 28.7 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). RCC believes that the allocation of some degree of quota to retailers would promote competitive pricing, provide greater access to a larger selection of products for customers, and ensure that quota is fully utilized to its potential. This has long been our position.

RCC has been given leave to provide written views in the dispute. Our members are solely positioned to provide comment due to their unique understanding of the Canadian retail landscape and knowledge of buying practices, as well as consumer demand, and we hope to use this knowledge to inform the dispute settlement process and ensure that the best possible outcome is reached.

Our submission complies with Rules 63 and 65 of the Rules of Procedure Under Chapter 28 (Dispute Settlement) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership and shall address the specific issues of fact or law directly relevant to any factual or legal issue under consideration by the Panel and only the issues of fact and law described in our application for leave. Our submission is compliant with the requirements of Appendix 4 of the Rules of Procedure Under Chapter 28 (Dispute Settlement) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.

Excluding retail from dairy tariff-rate quota allocations hinders product availability and affordability for Canadian consumers;

RCC represents grocers, general merchandisers and others who sell dairy products and quick service restaurants. Our grocery members represent over 95% of the market in Canada. They provide essential services and are an important source of employment in large and small

communities across the country. They have strong private label programs and sell products in every food category. For the purpose of this document, we will use the term retail/retailers to include all of these merchants.

When major Canadian retailers are canvassed, they are in agreement that if they were given quota allocations that allowed them to buy product from CPTPP members directly, this would be highly beneficial to Canadian consumers, as it would allow them to purchase product that is in many cases more affordable, particularly with regard to sourcing for private label brands, often the most affordable product lines at major grocers. It is our view that this can be done in a way that allows for and encourages equitable quota utilization, where those parties, whether they be processors, distributors, or retailers, who demonstrate that they are utilizing their quota fully will have future quota allocated accordingly. It is clear from the language of the CTPPP that retail is the type of party that would be considered eligible, and we would otherwise be able to engage in these dealings directly, were the procedures for administering TRQs not unfair and inequitable.

When retail has been given quota in the past, it has been shown a very high rate of usage when compared to processors and distributors. Retail is talented at efficiently monitoring the evolution of Canadian dairy supply and demand throughout the year to ensure that the right dairy ingredients and products are purchased to meet overall demand in the Canadian economy.

Contrary to the Canadian government's assertion in its written submission of April 20, 2022, Canadian retailers are approached frequently about selling dairy products from current and future CPTPP countries like New Zealand and the United Kingdom. As New Zealand has pointed out in its rebuttal of May 11, 2023, the expert reports submitted by Canada do not address the question of whether more trade would occur under CPTPP dairy TRQs if Canada's TRQ administration was less restrictive and more aligned with the market liberalising object and purpose of CPTPP. By gatekeeping TRQ access to processors and distributors, the Canadian government is going against the ethos of providing choice and value to all participants in the food industry and indeed to its citizens. This concerns and surprises us, particularly in these times of economic uncertainty.

RCC's position is that by opening up the TRQ to retail, the competitive landscape will broaden, as processors and distributors will no longer have complete control of the market. This will always benefit the Canadian consumer and be more evenly distributed through the full range of participants in the Canadian market for dairy foods, rather than the truncated version favoured by the Canadian government and by the producer and processor interests. Our ask is *not* to have processors and distributors removed from the equation, as they have done as regards retail, but merely to occupy an appropriate space in the market, and allow space for others.

Eligibility for TRQ's should be based on use, as applicants should only be able to apply for quota within the category they operate in;

As we saw in New Zealand's submission, and in other disputes of a similar nature (e.g., the ongoing dispute under CUSMA) the Canadian government has been focused on excluding would-be eligible quota holders from the vast majority of available TRQs, choosing instead to give almost the entirety to internal processors and distributors. Because of this exclusionary practice, non-resident entities are constrained by the tiny to non-existent market share they are given, and not able to develop any market penetration, so while demand for their products might be there, there is little visibility. For example, many New Zealand processors have active commercial relationships with many of the major multinational quick service companies globally, but have not been able to explore the opportunity in Canada. This is inefficient and goes against the stated purpose of the CPTPP to reduce barriers and facilitate trade.

The current status quo allows for entities who act as processors, distributors, and in some cases, further processors to be allocated quota for retail-ready products, rather than just for industrial products for further processing, which is more logical and follows industry norms. By instead ruling that applicants should apply for quota within and with an allocation appropriate to, the category in which they operate, negotiations of sale will be conducted on a much more level playing field, reducing price markups and delivering on the end goal of fair prices for Canadian consumers. Much energy and cost is currently expended by CPTPP members trying to access the Canadian market, as there is consumer demand for the product, while quota handed to processors sits unused, as we can see with fill rates for New Zealand products other than butter, which does have a high fill rate (96%). For the last years data was available, Canada's fill rates for milk, cream, concentrated milk, yogurt, buttermilk powder, and whey powder from CPTPP members were all 0%.¹ This is not the result the CPTPP was designed to achieve. There are a distinct lack of penalties for unused quota under the current system, so processors have no incentive to utilize their full share. Our proposal is simple: that quota allocation should be based on use. If retail is shown not to use the quota allocated to us, the evidence will bear that out, but as it stands, retail is shown to be a very efficient user of the quota it does receive.

As to likely utilization rates if retailers were eligible for dairy TRQs under the CPTPP, the Comprehensive and Economic Trade Agreement (CETA) Cheese Tariff Rate Quota Access provides a useful indication. Under the CETA, fine cheeses quota (as distinct from industrial cheese from the EU, for which there is a smaller separate quota) is split evenly between cheese manufacturers on the one hand and distributors and retailers on the other. It is further subdivided in each category between large (20%) and SME manufacturers (30%) and large distributors and retailers (20%) and

¹ https://www.international.gc.ca/trade-commerce/controls-contrôles/supply_managed-gestion_offre.aspx?lang=eng&type=Utilization%20Tables#data

SME distributors and retailers (30%) with the threshold as between the latter two groups being 20,000kg.

Processors and producers have previously implied that retailers and distributors would not or were not taking up their fine cheese quota allocations under CETA, arguing that it should be reassigned to processors instead. The table below refutes that claim.² Self-evidently it is not possible that retailers have let much of their allocation go unutilized given the overall take-up rates.

Year	CETA Cheese Tariff Rate Quota Access Level (kg)	TRQ Imports	Utilization
2019	8,000,000	7,811,644	97.6%
2020	10,667,000	10,234,030	95.9%
2021	13,333,000	13,075,725	98.1%
2022	16,000,000	15,384,877	96.2%

How Canada can allocate its TRQs to best promote affordability, efficiency of product use, and availability.

Allocation of TRQs should be based on use. Currently, processors are in the business of selling their unused import quotas, which drives up the end price for the consumer. The Canadian government's assertion that processors have a limited ability to negotiate sale prices ignores the fact that retail also has limited ability in these negotiations, and has to absorb any increases passed on regardless of supply. Because retailers are not given quota allocation of their own, they are forced to purchase *only* from importers, despite some dairy products imported directly by retail being in some cases half the cost. Milk is perhaps a loss leader, selling below cost at retail stores every single day, as stated in testimony given by Canada's largest grocer in front of the Agriculture and Agri-Food Committee on March 8. Retailers are huge consumers of dairy product, so even if some quota allocation is given to them, they will still be heavy purchasers of domestic processors

² <https://www.eics-scei.gc.ca/report-rapport/APRMT61C-C-19.htm> shows that 7,811,644 of the total allocation of 8,000,000kg was taken up.

<https://www.eics-scei.gc.ca/report-rapport/APRMT61C-C-20.htm> shows that 10,234,030kg of the total allocation of 10,667,000kg was taken up.

<https://www.eics-scei.gc.ca/report-rapport/APRMT61C-C.htm> shows that 13,075,725kg of the total allocation of 13,333,000kg was taken up.

<https://www.eics-scei.gc.ca/report-rapport/APRMT61C-C-22.htm> shows that 15,384,877kg of the total allocation of 16,000,000kg was taken up.

and distributors, particularly as most of the product sub-categories contemplated as the most amenable to international trade under CPTPP are more specialized in nature.

Again, we have a tangible example of this with cheese imports under CETA, where though retail is given a relatively small amount of quota, with the rest reserved for processors and distributors, retailers still have to lease amounts at or above their own quota in order to fulfill demand. Because of this, it is very difficult to grow product availability, as retail must instead focus on ensuring that the product supply they do have is not disrupted by issues at the processor level or in the distribution process. Retail will use these supply chain investments and lessons learned. The best value for Canadians purchasing dairy product will be achieved by providing quota to processors, distributors, *and* retailers.

The expectation among member countries when the CPTPP was formed was that this would give market access to a wide range of countries that would be beneficial to all parties, but instead we have seen the Canadian government's policies on dairy TRQ allocation create artificial barriers and prevent entities such as retailers from engaging directly with other CPTPP countries, a clear distortion of the willing buyer-willing seller relationship.

In summation, retail is a key player in the supply chain, and should be allocated TRQs as such. We have well demonstrated that when given quota, it is utilized effectively and to the benefit of Canadian consumers, and the purpose of trade agreements such as CPTPP are to facilitate trade, not discourage it. RCC thanks you for the opportunity to provide written views, and we hope that our points are well received. Please do not hesitate to reach out with any comments or questions regarding our submission.

Sincerely,



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About RCC

RCC is a not-for-profit industry-funded association that represents small, medium, and large retail businesses in every community across the country. As the Voice of Retail™ in Canada, we proudly represent more than 54,000 storefronts in all retail formats, including department, grocery, specialty, discount, independent retailers, online merchants and quick service restaurants. Retail is Canada's largest private-sector employer with over 2 million Canadians working in our industry. The sector annually generates over \$85 billion in wages and employee benefits. Retail Council of Canada (RCC) members represent more than two-thirds of core retail sales in the country.