

**THE COMPREHENSIVE AND PROGRESSIVE AGREEMENT FOR TRANS-PACIFIC  
PARTNERSHIP (CHAPTER 28 DISPUTE SETTLEMENT)**

**WRITTEN SUBMISSION OF D. TYERS FOODS INTERNATIONAL INC. AND  
FOODTEC CANADA INC.**

**IN THE MATTER OF: Canada - Dairy Tariff-Rate Quotas Allocation Measures (CDA  
NZ-2022-28-01)**

**Issue Date:** 05/18/2023

INTRODUCTION

D. Tyers Foods International Inc. (DTFI) and FoodTec Canada Inc. (FTC), in our request to the Panel asking for standing to put in a submission, we had explained, who we are, what we do and our significant role in CPTPP dairy products being imported into Canada.

DTFI and FTC collectively are one of the largest, if not the largest importer/distributors/sellers of CPTPP dairy products.

The topics that we will address are:

1. TRQ allocation
2. The timing of initial allocation
3. The importance of an efficient transfer system
4. The timing of turnback allocation
5. For CPTPP dairy trade to be successful, TRQ'S must end up in the hands of those organizing the whole commercial transaction.
6. An example of one difficult experience FTC had with Global Affairs (GA) (confidential)
7. Demand in Canada for New Zealand dairy products
8. Further Processors and Industrial TRQ

TRQ ALLOCATION

Canada's position, that a majority of the TRQ's should be allocated to Dairy Processors, as they are the best situated in determining what products should be imported and the timing of these products, it is in disagreement with what actually happens.

Since Supply Management (SM) inception Canadian Dairy Processors have not had a decision-making role in how much milk is required or the timing of when the milk required. This role is played by the Canadian Dairy Commission (CDC) and specifically by the Canadian Milk Supply Management Committee (CMSMC). The CMSMC is made up of dairy farmers and provincial bureaucrats. Processors do not have a seat but have listening status only.

If an individual processor had a financial responsibility to pay the costs of the disposal of surplus milk, one could argue that they should have these decision-making powers. The fact is that the Dairy Farmers pay the total bill for surplus dumped milk.

If Processors since 2017 were given a new role, starting with CETA, increased by CPTPP, and then furthered by CUSMA, someone forgot to tell the Processors, about their new role. As a major player in CPTPP our two companies source our TRQ requirements from these same Processors, both large and small. It had never been said why they were granted TRQ.

The question then becomes who actually organizes the purchase, transportation and the sale of CPTPP dairy products? GA for the convenience of their method of allocation and administration segregates into the categories of Processor, Further Processor, Distributor, all as importers, however there is no recognition for the role of a Trader other than lumping them in with Distributors. The term Trader is an internationally recognized word and is defined as “facilitators of trade or a person who buys and sells goods, currency or stocks” Most distributors have never imported a dairy product and in most cases, dairy is only a portion of their lineup. Understanding how foods get distributed in Canada over our large geographic region, supports this claim.

At the same time, Traders often do not own a warehouse, nor do they own a truck, but use third party services across all regions of Canada. Traders however play the major role in sourcing the right product that can be sold in Canada. Traders and distributors are not the same, but both play an important role.

Who has invested and developed the experience of importing dairy products? The Canadian Processor have not as imports make up a very small percentage of their business. Their real focus is on making and selling their own dairy products. The distributor’s focus is distributing all food products, on occasion nationally but mostly regionally. The Trader sources the product, finds the customer, calculates the financial viability, organizes transportation, and shoulders the risk.

Our position is that Foodservice and Retailers partially due to SM, have no experience nor have invested in acquiring any dairy import experience. These groups, however, will have an opportunity to touch all the imported dairy products, as they play their role. One only needs to look at how retailers and foodservice operate in other countries.

Under the present GA application process, an applicant is only asked the minimum quantity they would accept. GA calculated distribution to Processors is based on their dairy activity in the domestic market. A Processor might only need 50,000 kg but are allocated 500,000 kg. This results in TRQ allocations with no intended use, therefore, chronic turn back.

### ALLOCATION TIMING

If a TRQ allocation starts January 1st, to make use of all twelve months, an importer requires three months’ notice. The same for TRQ’s starting mid-year. The present seven to fifteen days of notice do not work as we lose the first few months of the allocation period.

## EFFICIENT TRANSFER SYSTEM

GA got off to a rocky start, when they started questioning why the companies who received an original allocation wanted to transfer. Due to this line of questioning GA caused commercial delays. This could suggest that GA was questioning their initial decisions on allocation. This caused transfer delays of up to a month. These delays have improved. Timely transfers are critical to the success of our business activities.

## TIMING OF TURNBACK

Turnback timelines set at 2/3<sup>rd</sup> of the way through the TRQ year results in insufficient time available to place an order, make a product, transport the product, and clear customs. Sailing time from New Zealand to east coast Canada alone is 42 days.

The impression left is “if a Processor receiving an original allocation cannot commercially make it happen, they would prefer it go unused.

If product could be sourced in time, for example, from a bonded warehouse, import would surge in a small window. This will result in a scenario that the GA say they are trying to avoid.

To date no penalties have been applied for the nonuse of TRQ's. Covid is GA's reasoning, however GA has only declared that penalties “may “apply. Going forward full utilization of products that make commercial sense will only be achieved when there are penalties for chronic turn back. We believe that these companies who consistently turnback quota have no intention of importing.

Six months, which is halfway through any TRQ year, is plenty of time for a serious importer to know what their requirements will be.

## DEMAND FOR NEW ZEALAND DAIRY PRODUCTS

Canada represents that the demand for NZ products is limited due to type of product and distance from Canada. It is agreed that the Canadian consumer is not aware of the significant role New Zealand's product play on the world market. For years using WTO cheese TRQ, New Zealand shipped bulk product to Canada, not for retail. At the same time Canada's Dairy Farmers, Dairy Processors and Dairy Importers know about the reputation that New Zealand holds regarding dairy research, dairy processing, and dairy transport logistics. They are the best in the world and achieve a premium for their product.

## FURTHER PROCESSING AND INDUSTRIAL TRQ

The Canadian milk classification does play a role in limiting commercial opportunities. Canada's represents that there are five (5) classes, however, fail to acknowledge that there are in fact thirty-one (31) classes when sub classes are counted. Class 5A, 5B and 5C will always be a low

margin competitive market. Further processors that use these classes receive products at a subsidized price. As a Distributor/Trader under CPTPP we are not allowed to hold Industrial TRQ, as we are neither a Processor nor a Further Processor. Canada does however acknowledge the importance of the distributor/trader in serving the Further Processors with Class 5 product.

Our companies have been successful in serving the Further Processors, using the domestic Class 5 scheme, using Import for Re-export (IREP) Duty Deferrals and by finding a friendly Further Processor, who will act as an importer of record, sell the product to us, which we in turn sell to our Further Processing customer. All of this is done at the cost being both time and money.

There are ways to make CPTPP work. Our companies have never been contacted or consulted by Global Affairs even though we have offered our expertise.

### SUMMARY

DTFI and FTC have been successful over the last 31 years, even within the SM environment. The SM system is not Free Market but instead Command Economics.

The TRQ initial allocation needs to be changed to a more equitable allocation based on who are the real importers. The timing of both the initial and turn back allocation need to be addressed for Canada to fulfill its CPTPP trade obligations.

Real success will be achieved when every TRQ, that is financially viable, is filled. The financial viability should not be decided by a government official, but by the marketplace.

The present allocation system will not achieve this type of success. The present system will Fail by Design. We hope it was not Designed to Fail.

We hope that our information will help the Tribunal arrive at the right decision.

**Signed in the original by:**



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