

**SUBMISSION OF THE
INTERNATIONAL CHEESE COUNCIL OF CANADA IN THE MATTER OF
CANADA - DAIRY TARIFF-RATE QUOTAS ALLOCATION MEASURES 2023**

May 19th, 2023

Submitted by:

A handwritten signature in black ink, appearing to read "Joe Dal Ferro". The signature is fluid and cursive, with a long, sweeping underline that extends to the left.

**Joe Dal Ferro
Chair**

I. Introduction

Under the CPTPP (Comprehensive and Progressive Agreement for Trans-Pacific Partnership), which entered into force on December 30, 2018 for Canada, Australia, Japan, Mexico, New Zealand, and Singapore, Canada agreed to provide additional market access to parties for supply-managed goods through the creation of three new cheese tariff rate quotas (TRQs). Since then, however, Canada's TRQ administration and allocation practices have effectively limited the realization of this negotiated market access, leading to this trade dispute. This submission will exclusively comment on matters of fact related to the Cheeses of All Types TRQ. It is based on International Cheese Council of Canada (ICCC) members' and associate members' experience with Canada's TRQ allocation and administration system as it pertains to the CPTPP.

It is the ICCC's view that Canada continues to fail to live up to its CPTPP commitments vis-à-vis cheese TRQ allocation. Accordingly, to assist the panel in the determination of the dispute's outcome, the ICCC has structured its submission as follows:

- **Section II** presents the ICCC, its role in Canada as well as its members and associate members.
- **Section III** discusses what constitutes a commercially viable shipping quantity.
- **Section IV** provides evidence asserting that it is generalized industry practice for distributors to indicate on their supply-managed TRQ dairy application forms that the minimum quantity of quota they will accept is one kilogram – *even with an equal share allocation mechanism*.
- **Section V** provides insights regarding the negative effects that Canada's approach to CPTPP TRQ allocation and administration has had on the ICCC's membership.
- **Section VII** presents the affidavit referenced in Section IV.

II. The International Cheese Council of Canada

Based in Ottawa (Canada), the ICCC is an association of small- and medium-sized cheese importers and their suppliers. Founded in 1976, we are the only association in Canada exclusively dedicated to the importation of cheese into Canada. Our members are Canadian importers of cheese; our associate members include cheese producers and processors from various countries, including New Zealand, which have entered into international trade treaties with Canada. This allows us to provide a multi-jurisdictional perspective on the matter at hand.

The ICCC works on behalf of its members and associate members to ensure that Canada's cheese TRQs are put in the hands of those most likely to use it (i.e., traditional importers), as such an outcome consistently increases quota fill rates – to everyone's benefit.

ICCC members – traditional importers, also known as distributors – play an essential role in the Canadian economy and in the international marketplace. For over 40 years, they have built a stellar track record of responsible stewardship of Canada's cheese TRQs by consistently meeting annual activity tests and maximizing fill rates as well as breaking ground in new markets. Moreover, they have successfully grown the Canadian market through creative marketing and by providing more choice to consumers. They have successfully introduced new cheeses from different countries – broadening Canadians' tastes for imported cheeses, products which were then reproduced in the domestic market by Canadian processors. In the process, ICCC members have created value-added, long-term jobs. ICCC members have developed the unique expertise

and experience necessary to the procurement of international specialty cheeses, the management of its import logistics, and its distribution through national networks. Many traditional importers have a high level of expertise regarding product selection and supply which takes into account both domestic and imported supply, given that they distribute both across the country.

Traditional importers' interests, when importing cheeses, are aligned with those of average Canadian consumers, who are seeking choice, quality, variety and competitive prices on grocery store shelves and in restaurants.

The ICCC has co-existed with Canada's supply-managed dairy sector for over four decades. The ICCC accepts the rationale underlying Canada's supply management system. However, it also must be acknowledged that Global Affairs Canada's TRQ allocation practices have led Canada's trade partners to contend that Canada has not lived up to its commitment in international treaties. Our experience is that the exporters we deal with – located in Canada's most valued trade partners – have legitimate complaints which, if left unaddressed, will put Canada's supply management system at risk. With regards to Canada-New Zealand trade, ICCC members are active traders availing themselves of access gained via the WTO Non-EU and CPTPP TRQs.

The ICCC is a not-for-profit corporation which draws its revenues exclusively from annual dues paid by members and associate members. The ICCC was assisted in its submission by its government relations firm, *PAA Advisory / Conseils* as well as *Mills & Mills LLP*, who aided in the preparation of the affidavit. Below is a list of the ICCC's members and associate members.

ICCC Members	ICCC Associate Members
<ul style="list-style-type: none"> • Bosa & Co. Ltd. (Bosa Foods) • B.Terfloth & CIE (Canada) Ltd. • Colombo Importing Ltd. • Dancheese Ltd. • Finica Foods Specialties Ltd. • Jan K. Overweel Limited • Krinos Foods Canada Ltd. • Norseland Inc. • Ronald A. Chisholm Limited • Switzerland Cheese Marketing Inc. • Top's Importing Ltd. • Tree of Life Canada ULC 	<ul style="list-style-type: none"> • Ambrosi SpA • Cono Kaasmakers • Coombe Castle International Ltd. • Fonterra • Friesland Campina Consumer Dairy North America • IGOR s.r.l. • Sartori Cheese • Snowdonia Cheese Company • Swissexport • Zanetti SpA

III. Commercially Viable Shipping Quantities

To aid the panel in its assessment of Canada's allocations policies with respect to the CPTPP Cheese of All Types TRQ, the ICCC will explain what is considered a "commercially viable shipping quantity" via sea for industry. The ICCC contends that allocations for this TRQ have not met this standard.

The ICCC's position (based on decades of experience) is that a commercially viable shipping quantity equates to approximately 20,000 kgs, or 20 tons, which is the ideal weight to ensure quality of cheese throughout transit. The type of cheese which is being imported will also affect the total amount of cheese which can be loaded at once. Typically, soft cheeses load less cases

per pallet and hard cheeses load more cases per pallet. Anything substantially lower is commercially non-viable given that the costs of transportation, marketing and development are divided over a smaller quantity of product, which drives up the per kg cost. Basing allocations on this standard facilitates shipping and commerce and keeps transaction costs down.

This 20,000 kg standard is used by the cheese importing industry as it translates across both maritime and land shipping. Indeed, with regard to maritime shipping, cheese importers typically use 40-foot refrigerated containers to transport cheese from the export country (e.g., New Zealand) to Canada. These containers – commonly known as “reefers” – can typically support a load of up to a maximum of 23,000-26,000 kilograms of cheeses, depending on which container company is contracted and the time of year that the container is shipped¹². Taking into account the weight of the wood pallets – and that the type of cheese will affect the total amount of cheese which can be loaded at once (as explained above) – an average commercially viable shipping quantity via sea is around 20,000 kgs of cheese products.

Even when TRQ allocation holders import quantities below 20,000 kgs – the 20,000 kgs standard stands. We can provide three reasons why shipments can stand below 20,000 kgs – which is understood in our industry as the threshold for commercial viability.

- First, importers have at times been constrained to import quantity under 20,000 kgs since the implementation of CPTPP due to the allocation policies that Canada (i.e., GAC) has chosen. ICCC members have been forced to adapt, at considerable cost, including to their suppliers and to Canadian consumers. Under ideal circumstances, importers would have the discretion to administer their quota allocation – of a commercially viable size – choosing to either exercise it all at once or to spread it throughout the year.
- Second, the type of cheese will influence the final volume and weight of a shipment. There is a saying in the cheese importing industry that you may “cube out before you weigh out” – meaning that one may fill a container before hitting the weight limit.
- Lastly, importers may sometimes opt to send shipments smaller than 20,000 kgs – at either no profit or a loss to them – to avoid significant retailer fines stemming from the risk of a late shipment.

IV. Generalized Distributor Industry Practice Regarding Supply-Managed TRQ Dairy Application Forms

The ICCC posits that it is generalized industry practice for distributors to indicate on their supply-managed TRQ dairy application forms that the minimum quantity of quota they will accept is one kilogram. While the CPTPP Cheeses of All Types TRQ uses an equal share mechanism (and therefore the amount of quota that distributors will receive is determined by the amount of distributors that apply for an allocation), distributors regardless fill out the question addressing the minimal quantity that they will accept to ensure that they will receive an allocation – so that they can participate in transfers (the transaction of transferring a portion of an allocation from one allocation holder to another, within a certain TRQ for a fee). In Section VII, we have provided an affidavit from Joe Dal Ferro, ICCC Chair.

¹ [40-foot Container - Dimensions, Measurements and Weight | iContainers](#), accessed May 11, 2023.

² <https://www.hapag-lloyd.com/en/services-information/cargo-fleet/container/40-reefer-high-cube.html>, accessed May 11, 2023.

Indeed, given that distributors of specialty imported cheeses depend on regular, reliable and consistent access to quota, they must ensure that they receive an allocation of quota year over year. As participants in GAC's quota system, distributors can only access transfers if they have received an initial allocation. Distributors are regularly compelled to resort to transfers as a result of the suboptimal allocation policy under the CPTPP Cheeses of All Types TRQ and their need to fulfill long-term contracts with retailers and cheese exporters. Taking this into account, it has therefore become generalized industry practice for distributors to indicate on their supply-managed TRQ application forms that the minimum quantity of quota they will accept is one kilogram. By doing so, distributors ensure that they will receive an allocation and therefore be able to participate in the quota transfer market.

This perverse and undesirable practice should not be taken as evidence that Canada's allocation system ensures that TRQ applicants receive allocations that they consider to be commercially viable or that importers receive allocations in the quantities that they request, as claimed in the Canadian submission³. Rather, importers are not given a substantive opportunity to request the amount that they require as they are essentially compelled to "game" the system in order to guarantee an allocation. By no means do distributors desire or "accept" an allocation of one kilogram. Rather, they *settle* for this nominal minimum allocation.

V. Consequences of Canada's Approach to CPTPP TRQ Allocation on Members and Suppliers

While the CPTPP has opened new markets, Canada's approach to TRQ allocation and administration has not allowed ICCC members to fully realize the market access that was committed to in the agreement. The allocation mechanism used by GAC has several negative effects on our Canadian members and their New Zealand-based suppliers. Due to privacy concerns, answers from the ICCC membership survey are not attributed to specific companies or individuals.

- *Uncertainty*: Given the allocation mechanism used by the CPTPP Cheeses of All Types TRQ, distributors – many of whom depend on transfers to meet their business obligations - face the prospect of starting each year not knowing exactly how much quota they will get, and when. This systemic uncertainty creates predictability issues for all: importers who struggle to create long-term business relationships and exporters who are challenged in their production planning. This is counter-productive to the building of a successful long-term supplier-importer relationship, and undermines prospects of achieving full quota utilization.
- *Transfers*: As a result of not having enough access to CPTPP cheese quota, members have often had to resort to various band-aid "solutions". Some have extensively relied on other quota holders – through transfers – however, this is an imperfect solution as many quota holders are loathe to share their valuable quota. This costly solution allows distributors to put together enough quota to develop and sustain a financially sound cheese import program. However, these transfers – which create unnecessary and burdensome transaction costs⁴ – are ultimately passed down to the consumer and unnecessarily increase the costs of products. It is also worth noting that even the process

³ Canada's initial submission, para. 241.

⁴ Currently, the transfer fee for CPTPP Cheeses of All Types is approximately \$0.25-\$1.00/per kilo.

of finding available quota for transfer generates increased costs for companies: ICCC members have reported an increase in personnel and processes necessary to search out and confirm CPTPP TRQ holders willing to transfer quota.

- *Lost Opportunities:* The lack of quota available for distributors has stifled their economic growth. Indeed, members have had to turn down potential contracts and even cancel existing contracts. At least one ICCC member has had to cancel a contracted purchase of New Zealand cheese with three suppliers due to a lack of quota. This member estimates the cancellation represents a loss of approximately \$1,000,000 CAD per year. Another has testified that the lack of available CPTPP cheese quota has taken him out of the food service business. The short return period has also presented challenges for importers. One of our members had to abandon plans to use returned quota to import New Zealand cheeses, creating a stress on existing trade relationships. More generally, it is impossible to fully quantify the scale of lost opportunity that distributors have faced – the relationships that they could have built, the markets they could have developed, etc.
- *Interest in Canada-New Zealand Trade:* The allocation mechanism employed by GAC has stifled some ICCC members' interest in investing in the trade relationship. Indeed, given the lack of quota available and the lack of available resources within their companies, they have had to disregard New Zealand as a source of supply. This is despite their interest in importing New Zealand's highly-regarded grass-fed provenance products. Should the allocation method change for the better (and we hope it will), our members can and will import more products from New Zealand. Contrary to Canada's claims that there is a lack of interest among Canadian importers in bringing product to Canada from New Zealand⁵, ICCC members have a strong interest in importing the country's dairy products. Indeed, one of our members indicated that, should his company get access to more CPTPP Cheeses of All Types quota, he would expand his already vast range of food service cheese imports to include products from New Zealand.
- *Unfair Competition:* The ICCC is quite concerned with the unfair competition created by the CPTPP Cheeses of All Types allocation mechanism. Indeed, despite Canada having yielded only a rather small percentage of market share in the CPTPP, GAC's approach of allocating 85 percent of the import quota to Canada's domestic processors compels New Zealand producers and processors to negotiate access to Canadian market with the very Canadian companies which whom their products would be in competition.

VI. Conclusion

The ICCC urges panel members to consider the negative effects endured by ICCC Members, Associate Members and other industry stakeholders as a result of Canada failing to respect both the text and the spirit of its CPTPP trade obligations. The ICCC hopes that during its deliberations, the panel can benefit from ICCC members' lived experience and expertise as demonstrated above and that it will take into account the specific issues of fact raised in this submission.

⁵ Canada's initial submission, para. 116.

VII. Appendix (International Cheese Council of Canada's Affidavit)

INTERNATIONAL CHEESE
COUNCIL OF CANADA
CONSEIL CANADIEN DES
FROMAGES INTERNATIONAUX

Affidavit of the International Cheese Council of Canada (ICCC)

STATEMENT OF IDENTITY:

My name is Giuseppe (Joe) Dal Ferro, I am 63 years old and currently reside at 3961 Rolling Valley Drive Mississauga, Ontario (L5L 5P3). I currently serve as the President of Finica Food Specialties Ltd. and the Chair of the International Cheese Council of Canada (ICCC):

- I have been the President of Finica Food Specialties Ltd. since 2021. Finica Food Specialties Ltd is an importer and distributor of specialty artisan cheese and gourmet food items from around the world, active since 1968.
- I have been involved in the cheese importing industry for over 17 years. Before joining Finica Food Specialties Ltd., I previously served as the President of Switzerland Cheese Marketing Inc. from 2009 to 2021, a company responsible for the importation and promotion of cheeses from Switzerland into Canada.
- Since 1995, a representative from Finica Food Specialties Ltd. has been a Director of the International Cheese Council of Canada.
- The International Cheese Council of Canada is an association of small- and medium-sized cheese importers and producers which has existed since 1976. ICCC Members are Canadian importers of cheese; our Associate Members include cheese producers from various countries which have entered into international trade treaties with Canada.
- As part of my role as President of Finica Food Specialties Ltd., I serve as the representative of Finica Food Specialties Ltd. on the Board of the International Cheese Council of Canada.
- Since May 25th, 2022, I have served as Chair of the International Cheese Council of Canada. I previously served as the Vice-Chair from 2015 to May 2022 as part of my role at Switzerland Cheese Marketing Inc. and Finica Food Specialties Ltd.

STATEMENT OF TRUTH:

- I, Giuseppe Dal Ferro, swear that the information in my sworn statement is truthful to the best of my knowledge and understanding.


STATEMENT OF FACTS:

- According to Global Affairs Canada, distributors are defined as businesses that sell "cheese and that re-sell it to other businesses"¹.
- The International Cheese Council of Canada's members who are eligible for quota, including Finica Food Specialties, qualify as distributors, in Global Affairs Canada's quota system.
- Distributors of specialty imported cheeses depend on regular, reliable and consistent access to quota.

¹https://www.international.cc.ca/trade-commerce/controls-contrôles/notices-avis/995_2.aspx?lang=eng

- All allocations granted by Global Affairs Canada expire at the end of the TRQ year and applicants, such as distributors, must re-apply every year².
- As participants in Global Affairs Canada's quota system, distributors can only turn to transfers if we have received an initial allocation from Global Affairs Canada.
- Distributors regularly turn to transfers as a result of the *CPTPP Cheeses of All Types TRQ* suboptimal allocation policy and their need to fulfill long-term contracts with retailers and cheese exporters.
- A transfer is the transaction of transferring a portion of an allocation from one allocation holder to another, within a certain supply-managed tariff rate quotas (TRQ), for a fee.
- Allocation holders must get Global Affairs Canada to approve each transfer request.
- As such, when filling out the application form for *CPTPP Cheeses of All Types TRQ*, it has become generalized industry practice for distributors to indicate on their supply-managed tariff rate quotas (TRQ) application forms that the minimum quantity of quota they will accept is 1 kilogram.
- By doing so, distributors ensure that they will receive an allocation and therefore be able to participate in quota transfer market.
- This does not mean that distributors like Finica Food Specialties Ltd. desire an allocation of 1 kilogram. Rather, they will settle for a minimum allocation of such size to ensure that they will be able to get access to transfers.

SWORN before me at the City of
 Toronto, Province of Ontario this 3rd
 day of May, 2023.



 A Commissioner, etc.
 P.J. Westlake

Paul J. Westlake
 Barrister & Solicitor

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² https://www.international.gc.ca/trade-commerce/controls-controles/notices-avis/trq_info_ct.aspx?lang=eng