



# POLICY BRIEF

## Summer 2023

### CANADA ADMONISHED FOR FAILURE TO LIVE UP TO CPTPP DAIRY IMPORT OBLIGATIONS

In early September, a CPTPP<sup>1</sup> disputes panel decision was released in favour of New Zealand, finding that while member countries have the discretion to adopt and design their own import quota allocation system, Canada failed to exercise that discretion in a manner consistent with its market access commitments under the trade agreement.

The dispute revolved around Canada's administration of tariff-free quotas for imported dairy goods, which according to CPTPP commitments was supposed to amount to 3.3% of Canada's domestic market. Canada's system of distributing the import quotas (called tariff rate quotas, or TRQs) highly favoured domestic dairy processors (an obvious conflict of interest) to the exclusion of other parties interested in importing foreign product. Domestic processors were provided around 80% of the available TRQs, which were rarely activated. The CPTPP panel found that Canada's TRQ administration structure essentially assured a gross underfill of the negotiated import quotas. In 2021-22, for instance, the fill rate for 13



Dairy cows in Surrey, B.C. THE CANADIAN PRESS/Darryl Dyck

of the 16 subject dairy TRQs was 10% or below, with many lying dormant at zero.

Staying true to the politics of supply management, the government of Canada focused on a small part of the panel's ruling, [claiming victory](#) in the confirmation that Canada, like any member, has

---

*1. The Comprehensive and Progressive Agreement for Trans-Pacific Partnership came into force in December 2018 for Australia, Canada, Japan, Mexico, New Zealand and Singapore. Other members — Brunei, Chile, Malaysia, Peru, Vietnam and the UK — have since or are in the process of working through the ratification process.*

the right to develop its own TRQ Administration structure. The GOC response, however, ignored the most significant part of the [ruling](#) which indicated that in the exercise of that discretion, Canada had negated its dairy access commitments under the CPTPP, which was not permissible.

The panel concluded that Canada failed to design and operate a TRQ administration system that allowed dairy TRQ quantities to be fully utilized. Canada will now have to work with New Zealand to demonstrate that sufficient changes are being made to the TRQ administration process to bring Canada in line with its commitments, or face further proceedings with respect to implementation.

This CPTPP ruling marks a new era in dispute resolution proceedings between international trading partners. This dispute is noteworthy in three respects:

### **1. DAIRY ACCESS COMMITMENTS IN TRADE AGREEMENTS.**

Canada has used a complex TRQ administration structure in the past to mitigate concessions made in trade negotiations. The CPTPP ruling confirms that the dairy access terms promised at the conclusion of negotiations must be observed in implementation.

The US has also challenged Canada's dairy TRQ administration structure under the CUSMA<sup>2</sup>, with a decision expected in the coming months. And paying close attention to both proceedings is Europe, ever eager to fully realize the dairy access terms that were negotiated under the CETA<sup>3</sup>. Canada's domestic dairy industry — living in a bubble known as supply management — may soon be contending with the full extent of market access commitments made in three recent trade agreements.

### **2. HEIGHTENED IMPORTANCE TO REGIONAL AGREEMENTS.**

The rules-based system would appear to be alive and functioning, at least for members of regional trade pacts. The WTO dispute settlement process continues to be in a state of limbo, putting in question the relevance of the international trade organization. Countries are instead finding redress for alleged trade non-compliance by turning to regional trade agreements, skipping Geneva (the WTO headquarters) altogether. This puts more weight and relevance on entering regional trade alliances.

### **3. TRANSPARENCY IS POSSIBLE IN TRADE RULE ENFORCEMENT.**

This dispute also demonstrates that trade obligations can be enforced in an effective and efficient manner, with transparency and industry (private party) involvement.

The dispute panel took about 18 months to arrive at a decision, which included submissions entered by various private industry representatives both from Canada and New Zealand. By comparison, the WTO dispute settlement process is cumbersome, lengthy, and conducted government-to-government behind closed doors...when it operates at all.

Those with trade and investment interests in the Indo-Pacific region, and beyond, take note. And to our friends and colleagues in Canada's supply management sectors — brace yourselves.

---

*2. The Canada-US-Mexico Agreement replaced the NAFTA in 2020.*

*3. The Canada-EU Comprehensive Economic and Trade Agreement came into force in 2017.*