



February 27, 2020

Ambassador Gregg Doud
Chief Agricultural Negotiator
Office of the United States Trade
Representative
600 17th Street NW
Washington, DC 20508

The Honorable Ted McKinney
Under Secretary of Agriculture for Trade and
Foreign Agricultural Affairs
U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, DC 20250

Dear Ambassador Doud and Under Secretary McKinney,

The United States-Mexico-Canada Agreement (USMCA) makes tremendous strides to modernize trade and facilitate the smooth flow of U.S. dairy products throughout North America. Thanks to USTR and USDA's leadership of the strong interagency team that provided trade negotiators support on specifics, USMCA brings increased certainty to the U.S. dairy industry by addressing Canada's discriminatory Class 7 dairy pricing policy, expanding critical market access and defending common cheese names, among other accomplishments. America's dairy farmers, manufacturers and exporters are grateful for this new agreement that establishes fairer trade rules for American-made dairy exports; we were delighted to help celebrate its passage last month.

As both USDA and USTR now turn their attention towards implementing and ratifying USMCA, it is important that your offices work proactively with Canada and Mexico to outline U.S. expectations regarding how they will implement and enforce key USMCA provisions to prevent bad-faith actors from undermining the full intent of USMCA's dairy provisions. The benefits to U.S. dairy and the communities supported by dairy exports that the administration worked so hard to secure will only be fully realized if our trading partners adhere faithfully not just to the letter of their commitments under USMCA, but to its spirit as well.

Canada:

Canada, in particular, has a long history of intentionally using policy tools to manipulate its access commitments and protect its tightly controlled dairy market. In light of this clear track record, the U.S. dairy industry strongly encourages USTR and USDA to be clear in outlining U.S. expectations for how USMCA dairy provisions are implemented, to carefully evaluate any dairy proposals issued by Canada, and ultimately to hold Canada strictly responsible for abiding by the intent of this new trade treaty.

There are several issue areas in U.S.-Canada trade that should command the USTR and USDA's dedicated attention and a forward-leaning posture during this critical stage of working to shape how Canada moves to implement USMCA:

Dairy Pricing Policies

- **Export Surcharges:** The export surcharges that USMCA mandates be applied to Canadian skim milk powder (SMP), milk protein concentrate (MPC – including chapter

35) and infant formula exports over certain volume thresholds must be implemented in a manner that results in a genuine disincentive to sales over those volume levels rather than a manner whereby companies view the charge as a mere cost of doing business or see its punitive value offset with other benefits provided by the Canadian government or dairy system. Properly administered, this provision will be an essential tool in constraining Canada's ability to dump unlimited quantities of dairy products onto global markets.

- **New Pricing Policy Details:** Canada must not effectively recreate the harmful impacts of the policy programs that USMCA eliminates. USMCA requires the elimination of Canada's highly trade-distortive Classes 6 and 7 milk pricing schemes six months after implementation of USMCA. Following that, Canada will reclassify the products and establish prices based on their end use¹. Key to the success of these revisions is ensuring that the new pricing policy determines end use based on the final product in which an ingredient is used and that the new pricing policy does not replicate the market effects of Classes 6 and 7 under a different name promoting exports of any milk protein product, thus doing again exactly what the US government worked so hard to prevent.

TRQ Administration

- **Maximizing TRQ Fill Rates and Value:** Canada's TRQs must be administered in a manner that ensures that those procedures are not wielded to dampen TRQ fill-rates nor the value of products that can be imported under the TRQs. Past actions under Canada's other trade treaties suggest a dispensation toward administering TRQs in a manner designed to discourage utilization and/or foster lower returns for TRQ products; this must not be the case under USMCA. In addition, it will be important to ensure that the end-use restrictions on certain TRQs are not implemented in an unduly restrictive manner that thwarts the ability of U.S. exporters to fully fill the established TRQs at advantageous price points.

Additive Nature of USMCA Market Access Commitments

- **New Market Access vs. Current Duty-Free Programs:** Another important implementation oversight area lies in the need to ensure that dairy market access granted under USMCA by Canada is provided in addition to that already extended under earlier agreements and programs including Canada's WTO commitments and its existing levels of dairy imports under Canada's Duties Relief Program and Import for Re-export Program. A USTR's USMCA Dairy Fact Sheet noted, the market access in USMCA is "[in] addition to the \$600 million worth of poultry and egg products that the United States exported to Canada in 2017..."² A situation whereby Canada "pays" for the new market access commitments established for dairy under USMCA by simply cutting back on the scope or volume of dairy products allowed under the Duties Relief Program (DRP) and/or the Import for Re-export Program (IREP), or by effectively penalizing companies that continue to import dairy under those programs, would directly contradict the intent of this agreement to expand access to the Canadian dairy market and must be avoided.

¹ With the exception of skim milk powder (SMP), milk protein concentrate (MPC) and infant formula, for which Canada will establish new pricing structures based on a formula set out in the agreement

² <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/fact-sheets/market-access-and-dairy-outcomes>

Mexico:

USMCA also established a ground-breaking precedent to strengthen safeguards that protect U.S. companies' rights to use common food names, including two side letter agreements with Mexico that provide clear market access assurances for U.S. common name dairy products. The importance of stringent enforcement of these agreements has come into sharp focus as Mexico and Europe move toward implementation of the trade agreement they reached in 2018. USTR and USDA must proactively engage in addressing and then subsequently carefully monitor the following issues to protect common name products:

Non-exhaustive List of Commonly Used Cheese Names

- A side letter to USMCA establishes a non-exhaustive list of commonly produced products that Mexico may not restrict moving forward, including terms such as mozzarella, cheddar, havarti, swiss, and others. As USTR has noted, this was one of the most “notable achievements concerning agriculture” in USMCA.³³ As the European Union (EU) is expected to continue to seek to chip away at our rights to use these terms, it is essential that the U.S. secure clarity at the outset during this implementation stage of how Mexico plans to amend its IP and regulatory structures in order to uphold this clear prohibition on restrictions on the use of these terms.

US-Mexico Side Letter on Prior Users of GIs

- Another valuable commitment secured in USMCA is a second side letter with Mexico clarifying that “prior users” granted grandfathering rights under the 2018 EU-Mexico trade agreement includes all elements of the supply chain, namely producers, distributors, marketers, importers and exporters. Properly implemented, this letter will maximize the ability of U.S. companies to continue to export their products to this important market and of Mexican companies to maintain wider supply source options. Here too, it is critical that the U.S. insist that Mexico translate this clear commitment effectively into its IP, trade and regulatory provisions so that, for instance, if a retailer or distributor purchased parmesan from one U.S. company, they retain the right to purchase parmesan from any other U.S. company as well moving forward.

Intellectual Property Chapter Provisions on GIs

- USMCA contains a number of notable due process and consultation advancements with respect to how countries handle GI applications and oppositions, some of which go above and beyond Mexico's prior commitments under the CPTPP. Draft Mexican IP legislation introduced last year had key gaps in it that would fail to comply with these requirements; we urge active work during this implementation stage to ensure those areas are remedied before activation of USMCA.

Due Process for Ongoing Legal Actions

- Mexico must respect ongoing litigation brought by the Consortium for Common Food Names regarding the constitutionality of Mexico's process during the trade negotiations with the EU and the resulting provisions that restrict common food names. The U.S.

³³ <https://ustr.gov/sites/default/files/files/Press/fs/USMCA/USMCA-Agriculture.pdf>

should insist that the rule of law prevail, and these cases be judged on their merits to avoid a short-circuiting of the justice system in Mexico.

Although not directly addressed in USMCA, we are also concerned that Mexico appears to be taking other steps that run counter to the intention of USMCA to provide for smooth trade flows and transparent operations. For instance, Mexico has developed a draft conformity assessment proposal for cheese that treat imports significantly less favorably than domestic products, including a requirement for each lot of imported cheese to be tested to prove compliance with specifications, while Mexican companies are only required to test twice a year. Additionally, the Mexican Ministry of Health has of late been curtailing its engagement with key stakeholders both in the private sector and the U.S. government in a manner that limits transparency with respect to the basis for actions the Health Ministry is taking. It is unacceptable for either Mexico or Canada to institute new nontariff trade barriers in response to U.S. efforts to facilitate trade by implementing USMCA.

If Canada and Mexico implement USMCA as negotiated and agreed-upon, it will strengthen exports of high-quality U.S. dairy products and secure real benefits for our industry. Under USMCA, U.S. dairy exports will ultimately increase by more than \$314 million a year, according to the International Trade Commission. These dairy sales will have a positive effect on American farmers, bolstering dairy farm revenue by an additional \$548 million over the first six years of implementation.

These data points underscore the critical importance of ensuring that the trade rules that you diligently fought for are followed in both letter and spirit.

The U.S. dairy industry sincerely appreciates all of the hard work that you have already invested into improving trade for U.S. dairy exports. We are committed to working alongside your offices, as well as other government and industry stakeholders, to ensure USMCA's provisions are implemented with good faith and enforced accordingly.

Sincerely,



Thomas J. Vilsack
President and CEO
U.S. Dairy Export Council



James Mulhern
President and CEO
National Milk Producers Federation