

INTERNATIONAL TRADE

U.S. SENATORS RESPOND TO NEWS OF CANADIAN DAIRY INDUSTRY CHANGES

by: Brenda C. Swick and Dylan E. Auguso

In August, [we wrote](#) about a tentative, new deal between Canadian dairy farmers and processors that will allow Canadian processors to buy domestic milk ingredients at world market prices. We noted that the changes contemplated under the new nationwide pricing arrangement would have a drastic effect on American processors in the Midwestern and Northeastern United States. The arrangement aims to incentivize the use of Canadian domestic ingredients, and in doing so, is expected to significantly reduce American dairy exports of ultrafiltered (also known as diafiltered) milk into Canada.

Ultrafiltered milk from the U.S. has enjoyed access to the Canadian market as a duty- and quota-free import into Canada under the *North American Free Trade Agreement* (“**NAFTA**”). However, under the new arrangement, Canadian solid non-fats, including ultrafiltered milk, will be sold at world market prices, therefore extinguishing the price advantage that existed for American imports.

The national arrangement comes shortly after Ontario has implemented a similar regime for domestic products in that province.

U.S. Senators Urge the USTR to Act

The news of Canada’s new pricing arrangement has not gone unnoticed amongst Capitol Hill. This week, senators from American states expected to be most deeply affected by the new deal urged U.S. Trade Representative Michael Froman to investigate whether the new deal amounted to an infringement of Canada’s obligations under its free trade agreements. Senators Charles Schumer (New York) and Tammy Baldwin (Wisconsin) set forth their concerns in an [August 31 letter](#) to Froman and Tom Vilsack, Secretary of the U.S. Department of Agriculture, noting, “It is troubling that these dairy pricing programs appear to be designed in ways to intentionally displace current US imports...Companies from our states inform us that they have already lost considerable export sales as a result of the Ontario dairy policy introduced this past spring.”

Concerns with Canada’s Trade Commitments

Baldwin and Schumer concentrated their concerns with the new pricing arrangement on Canada’s international trade commitments, noting “...we have serious doubts as to how the [the Ontario] program would be compliant with Canada’s NAFTA and WTO obligations. We

are concerned that Canada now intends to build upon this model by putting in place a similar policy at the national level to discourage U.S. dairy exports and we urge you to investigate the trade compliance of this action.”

They closed their letter with a call to action for Froman and Vilsack: “Canada cannot be allowed to continually impair the value of concessions the U.S. previously secured under our prior trade agreements. We urge you to exhaust all potential avenues to bring Canada into compliance with its trade commitments.”

The Office of the U.S. Trade Representative and the U.S. Department of Agriculture have yet to comment on the letter or Canada’s new nationwide dairy arrangement.

Previous U.S. Concerns with Canadian Dairy Industry Changes

This is not the first time that American politicians have expressed concerns regarding Canada’s commitments under its international trade agreements because of changes to its dairy policy. In June of this year, the National Milk Producers Federation (“**NMPF**”) and its congressional supporters complained of Canada’s efforts to restrain the importation of ultrafiltered milk duty- and quota-free at a Ways & Means Trade subcommittee hearing on agricultural trade barriers.

NMPF Chairman Randy Mooney testified that Canada’s new dairy policy was a “clear violation” of its obligations under the Canada-US bilateral trade agreement, which have since been incorporated into NAFTA.

Likewise, Trade Subcommittee Chairman Dave Reichert (WA) stated that Canada “...simply cannot go back on its commitments in TPP and NAFTA and limit imports of U.S. dairy products through protectionist regulatory changes, as it is proposing.” He urged the subcommittee to clearly and publicly reject Canadian actions to erect new barriers in the dairy trade.

Stay Tuned for Details

The Canadian Dairy Commission (“**CDC**”) is not releasing any details about the new dairy arrangement until it is ratified by industry participants. While initial timelines predicted its ratification in September 2016, latest comment from the CDC has postponed their timeline until late fall.

Dickinson Wright’s International Trade Group continues to monitor all changes to the Canadian dairy industry and what they mean for Canadian producers and US producers and exporters seeking access

to Canadian markets. The Office of the US Trade Representative's investigation and response to these changes is forthcoming and Dickinson Wright will provide further updates as they become available.

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