

U.S. Initiates Formal USMCA Trade Dispute with Canada Over Tariff-Rate Quotas

On May 25, 2021, the Office of the U.S. Trade Representative [requested the initiation of a dispute settlement panel](#) under the terms of the United States-Mexico-Canada Agreement (USMCA) to challenge Canada's allocation of dairy tariff-rate quotas (TRQs), i.e. the ability to apply for reduced-tariff Canadian import of enumerated U.S. dairy products, to only processors and not retailers, an action which the United States alleges is in violation of the USMCA. Canadian processors would be direct competitors of U.S. dairy product manufacturers and unlikely to be interested in utilizing the TRQs set aside in the USMCA to import U.S. dairy products. The trade dispute, the subject of a December 9, 2020, request for consultation made to Canada, will now be decided by formal USMCA dispute resolution procedures.



OFFICE *of the* UNITED STATES TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT

Dispute Panel Finds Canada's Dairy TRQ Allocation to be in Violation of USMCA Agreement

- Article 3.A.2.11(b): "A party administering an allocated TRQ shall ensure that ... (b) unless otherwise agreed by the parties, it does not allocate any portion of the quota to a producer group, condition access to an allocation on the purchase of domestic production, or limit access to an allocation to processors."
- [Final Panel Report](#) (Dec. 20, 2021)
 - *"... the Panel finds that Canada's practice of reserving TRQ pools exclusively for the use of processors is inconsistent with Canada's commitment in Article 3.A.2.11(b) of the Treat not to "limit access to an allocation to processors"*
- [Office of the U.S. Trade Representative, Press Release](#) (Jan. 4, 2022)
 - *"... the United States has prevailed in the first dispute settlement panel proceeding ever brought under the United States-Mexico-Canada Agreement (USMCA). A USMCA panel agreed with the United States that Canada is breaching its USMCA commitments by reserving most of the in-quota quantity in its dairy tariff-rate quotas (TRQs) for the exclusive use of Canadian processors"*

Canadian Government's Proposal for New Allocation and Administration Changes for Dairy TRQs

- [Public Consultations: CUSMA Dairy Tariff Rate Quotas \(TRQs\) Panel Report Implementation – Proposed Allocation and Administration Policy Changes](#) (last modified Mar. 1, 2022)

Allocation Policy Changes

| CUSMA TRQ | Current Policy | Proposed Policy |
|-------------|---|--|
| Milk | <p>85% is allocated to processors on a market share basis, for milk in bulk (not for retail sale) to be processed into dairy products used as ingredients for further food processing.</p> <p>15% is allocated to distributors on an equal share basis.</p> | <p>85% is allocated to processors and distributors on a market share basis (using one market share calculation for all applicants) for milk in bulk (not for retail sale) to be processed into dairy products used as ingredients for further food processing.</p> <p>15% is allocated to processors and distributors on a market share basis (using one market share calculation for all applicants) for any milk (no end-use requirement).</p> <p>Applicants may apply for both pools.</p> |

Canadian Proposal Generates Harsh Response from U.S. Dairy Community

- [National Milk Producers Federation and U.S. Dairy Export Council](#), Press Release (Mar. 3, 2022)
 - *“All that American dairy farmers want is fair and good-faith implementation of USMCA’s dairy provisions. That doesn’t seem like a high bar, yet it appears to be insurmountable for Canada based on yesterday’s proposed dairy TRQ scheme changes ... We urge the administration to demand that Canada go back to the drawing board until it can genuinely deliver on providing the U.S. dairy industry the full benefit of USMCA.”*
- [International Dairy Foods Association](#), Press Release (Mar. 4, 2022)
 - *“The plan makes true access to the Canadian market unattainable through a series of gimmicks. It comes as no surprise that Canada is unwilling to reform their trade-distorting practices on dairy.”*
- [Edge Dairy Farmer Cooperative](#), Press Release (Mar. 4, 2022)
 - *“Excluding retailers from the new proposal will continue to keep out an important and growing segment of U.S. dairy. We urge the U.S. government to continue to work with Canada in seeking meaningful reforms that bring our important trading partner into compliance with its USMCA obligations”*

Statement by Minister Ng on dairy tariff rate quota policies under CUSMA

From: [Global Affairs Canada](#)

Statement

May 16, 2022 - Ottawa, Ontario - Global Affairs Canada

The Honourable Mary Ng, Minister of International Trade, Export Promotion, Small Business and Economic Development, today issued the following statement regarding the publication of Canada's new dairy tariff rate quota (TRQ) policies under the Canada-United States-Mexico Agreement (CUSMA):

"Following public consultations from March 2 to April 19, Canada has published new CUSMA dairy TRQ allocation and administration policies. The CUMSA dispute settlement panel's report ruled in favour of Canada in a majority of the claims. The new policies address the sole finding of a CUSMA dispute panel that Canada's practice of reserving TRQ pools exclusively for the use of dairy processors is inconsistent with the Agreement. The new policies end the use of processor-specific TRQ pools.

Statement from U.S. Trade Representative Katherine Tai

May 16, 2022

WASHINGTON – United States Trade Representative Katherine Tai released the following statement in response to the Canadian government’s publication of new dairy tariff-rate quota (TRQ) policies:

“The United States is deeply disappointed by Canada’s announcement today regarding its dairy tariff-rate quotas. Our top priority remains ensuring that U.S. workers, producers, farmers, and exporters benefit from the market access they were promised under the United States – Mexico – Canada Agreement – and I communicated this directly to Canada before it published today’s notices. To date, we have not seen the promises by Canada in the USMCA fully realized. We will evaluate all options, and work with stakeholders and members of Congress, as we determine our next steps in the coming days.”



OFFICE *of the* **UNITED STATES TRADE REPRESENTATIVE**
EXECUTIVE OFFICE OF THE PRESIDENT



Executive Order on Promoting Competition in the American Economy

JULY 09, 2021 • PRESIDENTIAL ACTIONS

- Directs USDA to consider issuing **new rules under the Packers and Stockyards Act** making it easier for farmers to bring and win claims, stopping chicken processors from exploiting and underpaying chicken farmers, and adopting anti-retaliation protections for farmers who speak out about bad practices.
- Directs USDA to consider issuing **new rules defining when meat can bear “Product of USA” labels**, so that consumers have accurate, transparent labels that enable them to choose products made here.
- Directs USDA to develop a plan to **increase opportunities for farmers to access markets and receive a fair return**, including supporting alternative food distribution systems like farmers markets and developing standards and labels so that consumers can choose to buy products that treat farmers fairly.
- Encourages the FTC to **limit powerful equipment manufacturers from restricting** people’s ability to use independent repair shops or do DIY repairs—such as when tractor companies block farmers from repairing their own tractors.”
- Secretary Vilsack directed to:
 - (1) within 180 days, to **submit a plan** to promote competition in agricultural industries and to support value-added agriculture and alternative food distribution systems, listing specific means to accomplish those objectives;
 - (2) within 300 days, in consultation with the Federal Trade Commission, to **submit a report** on the effect of retail concentration and retailers’ practices on competition in the food industries and means to enhance access to markets; and
 - (3) **submit a report**, in consultation with Department of Commerce and United States Patent and Trademark Office, outlining concerns and strategies for increasing competition in the intellectual property system in seed and other input markets.

THE WHITE HOUSE



BRIEFING ROOM

Addressing Concentration in the Meat-Processing Industry to Lower Food Prices for American Families

SEPTEMBER 08, 2021 • BLOG

White House Announces Intent to Address Effects on Consumers, Farmers and Ranchers of Meat Processing Industry Consolidation

On **September 8, 2021**, The White House published a policy outline on its official website titled [“Addressing Concentration in the Meat-Processing Industry to Lower Food Prices for American Families”](#) and conducted a [Press Briefing](#) with Agriculture Secretary Vilsack and National Economic Council Director Brian Deese in support. According to the document and Press Secretary Jen Psaki, the administration will address the following: (a) a “corporate consolidation problem with meat-processing giants;” (b) measures to reduce consumer prices and increase farmer and rancher earnings and “create a more competitive food supply chain;” (c) “stepping up antitrust enforcement;” and (d) legislation “to make cattle markets more transparent and fair.”



FACT SHEET: The Biden-Harris Action Plan for a Fairer, More Competitive, and More Resilient Meat and Poultry Supply Chain

JANUARY 03, 2022 • STATEMENTS AND RELEASES

[Action Plan for a Fairer, More Competitive, and More Resilient Meat and Poultry Supply Chain](#)

The plan encompasses four primary focus areas to increase competition in the meat and poultry industries:

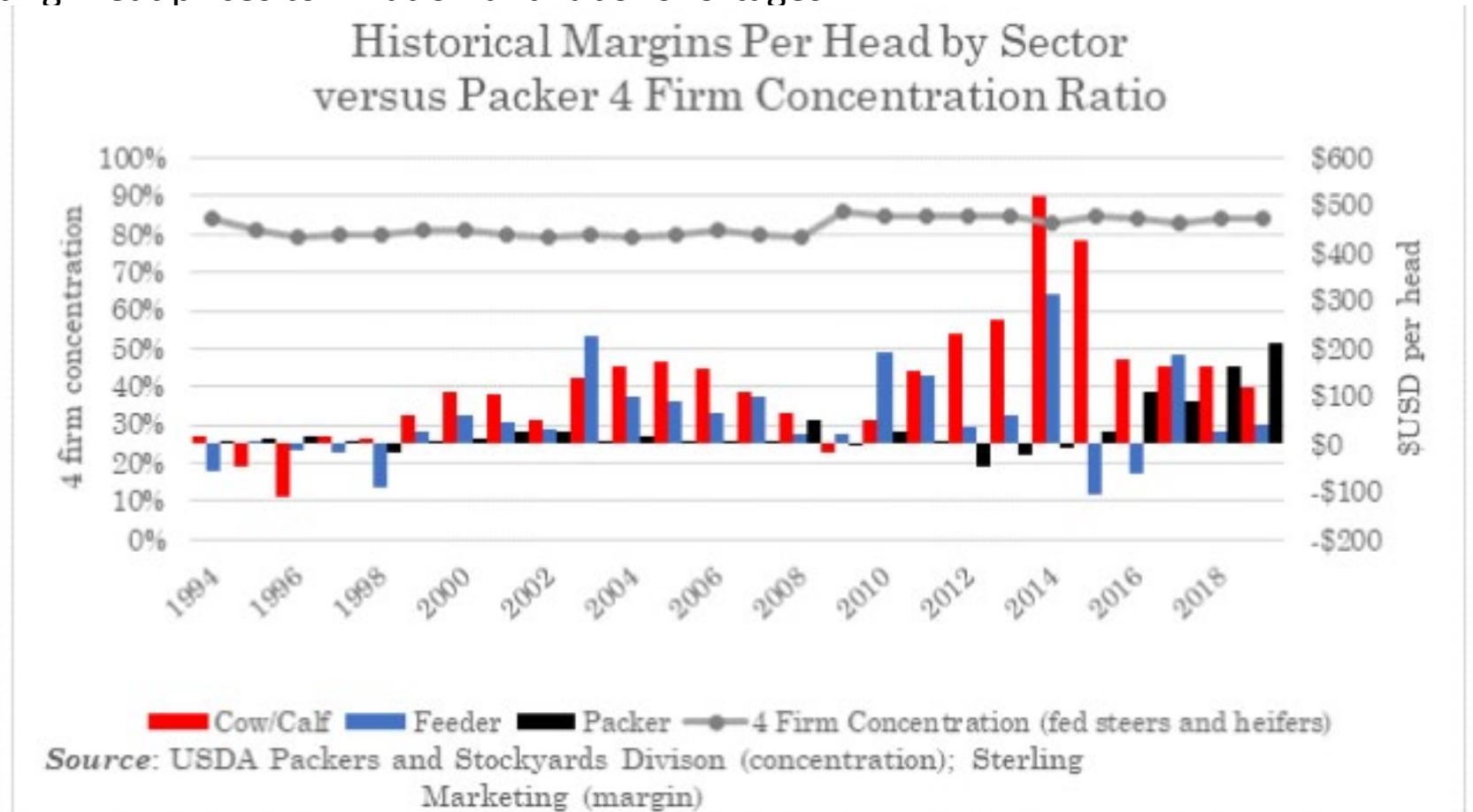
- 1) a [joint initiative](#) between the U.S. Department of Agriculture (USDA) and the Department of Justice (DOJ),
- 2) \$1 billion in funding to expand independent processing facilities and support workers,
- 3) new regulations for the “[Packers and Stockyards Act](#)” (PSA) and “[Product of USA](#)” labeling, and
- 4) increased market transparency through new [market reports](#).

Under the new USDA/DOJ [initiative](#), the agencies will develop a streamlined process by February 2, 2022 for concerned producers to submit complaints regarding potential PSA and antitrust violations, in which the agencies state they will “protect the confidentiality of the complainants, if they so request, to the fullest extent possible under the law” and “support[] the strongest possible whistleblower protections.” The agencies also state that they will cooperate to share information and case data and that USDA will refer potential PSA violations to the DOJ for antitrust enforcement.

Protein Sector response?

In response to the roundtable announcement, **North American Meat Institute** issued a [press release](#) denouncing the administration's efforts and attributing meat prices to inflation and labor shortages.

"The chart below shows that since 1994, profit margins have varied between all sectors of the fed cattle market with no one sector benefiting consistently at the expense of another."





HOME > ISSUE TRACKERS > AGRICULTURAL ANTITRUST

AGRICULTURAL ANTITRUST



ALL ISSUE TRACKERS

AGRICULTURAL ANTITRUST

Scope of the Agricultural Antitrust Issue Tracker

Litigation - Federal (59)

Litigation - State (1)

BIDEN ADMINISTRATION'S FIRST 100 DAYS ON FOOD AND AGRICULTURAL POLICY

BIOENGINEERED FOOD DISCLOSURE

CELL-CULTURED FOOD REGULATIONS

CERCLA / EPCRA REPORTING

COVID-19

DICAMBA

GENETICALLY MODIFIED SALMON

GLYPHOSATE

H-2A PROGRAM

Scope of the Agricultural Antitrust Issue Tracker

This issue tracker focuses on criminal and civil litigation to enforce antitrust laws and regulations in place in the United States for agricultural products. The litigation covered is not exhaustive but focuses on selected cases receiving national attention. This issue tracker covers the period from 2018 to the present.

Litigation - Federal

1. Food Lion, LLC et al. v. Dairy Farmers of America, Inc. (USDC M.D. North Carolina, No. 1:20-cv-442)

4.2.21 - Parties [filed](#) a joint stipulation of dismissal of case with prejudice.

3.3.21 - according to a [mediator's report](#), complete settlement of the case was reached at mediation conferences held Feb. 22-23, 2021. While the report states that a settlement agreement is in preparation, no details of the settlement have been released.

2.24.21 - The district court filed an entry of settlement, which sought to compel the company to divest one of the three North Carolina Dean Foods processing facilities it obtained in its April 2020 bankruptcy sale acquisition of Dean Foods.

7.24.20 - The district court [issued](#) an order denying Defendant's motion to dismiss.