



## **Agricultural International Trade Legal Update: May 2021 – May 2022**

Below is a listing of selected legal and regulatory developments relating to agricultural international trade issues during the past year.

### **United States Twice Rejects Canada's USMCA Dairy Tariff-Rate Quota Proposals**

On May 5, 2022, U.S. Trade Representative Katherine Tai [met](#) with Canadian Minister of Trade Mary Ng in Ottawa and thereafter publicly announced, amongst other things, the "importance of Canada fully meeting its USMCA commitments, including its allocation of dairy tariff-rate quotas." This was the first meeting of the top trade officials from each country since the January 4, 2022, disclosure of the [December 20, 2021 USMCA Arbitration Panel Final Report](#) concluding, in response to U.S. allegations, that Canada breached Article 3.A.2.11(b) of the United States-Mexico-Canada Agreement (USMCA) by reserving dairy tariff-rate quotas exclusively for the use of Canadian dairy processors. This was also the first public statement by Tai that Canada's first attempt to satisfy U.S. demands to cure the breach, a March 1, 2022 [proposal of revised TRQs allocation and policy changes](#), had been formally rejected.

### **U.S. and Japan Announce Beef Tariff Safeguard Trigger Agreement**

On March 24, 2022, Office of the U.S. Trade Representative (USTR) Secretary Katherine Tai, with U.S. Department of Agriculture (USDA) Secretary Tom Vilsack, [announced](#) that the United States and Japan have agreed to a new "three trigger" beef tariff safeguard agreement, which the agencies state will decrease the likelihood that Japan will impose higher tariffs on U.S. beef imports. The agreement requires that all three "triggers" are met before Japan may impose additional beef tariffs: 1) U.S. beef imports must surpass the original safeguard level established under U.S.-Japan Trade Agreement; 2) Total beef imports from the United States and signatories to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) must surpass the CPTPP safeguard level; and 3) U.S. beef imports in a given year must surpass U.S. beef imports from the previous year. The countries have yet to finalize the text of the agreement, but, according to the announcement, plan to do so and publish the final agreement at the "soonest, appropriate time."

### **USDA Publishes Report Detailing 2018 Retaliatory Tariffs' Effects**

On January 11, 2022, the U.S. Department of Agriculture (USDA) Economic Research Service (ERS) published a report titled "[The Economic Impacts of Retaliatory Tariffs on U.S. Agriculture.](#)" ERS was directed to prepare the report by the Consolidated Appropriations Act of 2021, signed into law on December 27, 2020. The report details the effects of retaliatory tariffs on U.S. exports imposed in 2018 by Canada, China, the European Union, India, Mexico, and Turkey in response to the U.S.'s 2019 Section 232 tariffs on steel and aluminum imports and Section 301 punitive tariffs on Chinese imports. The tariffs increased the price of U.S. agricultural products in those markets, anywhere from 2% to 140% and created overall U.S. agricultural product export losses valued at \$27 billion between 2018 and the end of 2019. Lost Chinese agricultural trade accounts for 95% of the total, with soybeans making up 71%, pork 6%, specialty crops 6%, and sorghum 5%. U.S. market share of Chinese agricultural imports decreased from 20% in 2017 to 12% in 2018 and further decreased to 10% in 2019. Canadian and Mexican tariffs were removed in May 2019 and some tariff exemptions were granted by China after the U.S.-China Phase One Trade Agreement



signed on January 15, 2020. However, some retaliatory tariffs and resulting losses and loss of market share remain to date. The report concludes, “U.S. agricultural exports to China rebounded and hit record levels in 2020; however, some of this increase was likely driven by factors unrelated to trade policy, including China’s pig-herd recovery in the wake of African Swine Fever and resulting increased feed demand. However, U.S. market share has not fully recovered to pre-retaliatory levels 1 year out from the Phase One Agreement signing.”

### **India Allows U.S. Pork Imports**

On January 10, 2022, U.S. Agriculture Secretary Tom Vilsack and Trade Representative Katherine Tai [announced](#) that the Indian government has approved for import into India U.S. pork and pork products previously disallowed.

### **Dispute Panel Finds Canada’s Tariff-Rate Quota Allocation in Violation of USMCA Agreement**

On January 4, 2022, U.S. Trade Representative Katherine Tai [announced](#) that a dispute settlement panel, convened under the United States-Mexico-Canada Agreement (USMCA), found that Canada’s practice of reserving most of the country’s dairy tariff-rate quotas (TRQs) to Canadian processors was in violation of the USMCA. In accordance with the USMCA, Canada maintains [fourteen dairy TRQs](#), which allow for reduced import tariffs on those products. According to the panel’s final [report](#), since 1995, Canada has reserved access to 85–100% of those dairy TRQs exclusively for Canadian dairy processors—a supply side party in Canada’s dairy market—disallowing equal TRQ access to retailers—a demand side party. The panel found that Canada’s practice of reserving TRQs for processors was in violation of [USMCA Article 3.A.2.11\(b\)](#) in failing to “ensure that” the country’s practice “does not . . . limit access to an allocation to processors.”

### **National Cattlemen’s Beef Association Asks USDA to Suspend Brazilian Beef Imports Due to Delayed Animal Health Reporting**

On November 12, 2021, the National Cattlemen’s Beef Association (NCBA) sent a [letter](#) to Agriculture Secretary Tom Vilsack asking the U.S. Department of Agriculture (USDA) to indefinitely suspend Brazilian beef imports into the United States until USDA conducts a risk assessment review of the Brazil’s Ministry of Agriculture, Livestock, and Food Supply (MAPA). Also [announced](#) by NCBA, the letter cited two June 2021 cases of atypical bovine spongiform encephalopathy identified in Brazil that were not reported to the World Organization for Animal Health (OIE)—which requires countries to report such findings within 24 hours—until September 3, 2021. The letter included additional examples of Brazil’s delayed OIE reporting from 2019, 2012, and 2014 and stated that “Brazil’s history of failing to report incidences of BSE calls into question its commitment to reporting other significant diseases such as African Swine Fever, Avian Influenza, or Foot-and-Mouth Disease.” NCBA asked that the beef suspension continue “until MAPA makes systemic changes and takes necessary steps to demonstrate Brazil’s commitment to an objective, science-based regulatory system that restores confidence in Brazil’s participation in the global food supply.”

### **Customs and Border Protection Detain Tomatoes from Two Mexican Producers Due to Forced Labor**

On October 21, 2021, the U.S. Customs and Border Protection (CBP) [announced](#) its issuance of a Withhold Release Order (WRO) against Mexican tomato farms Agropecuarios Tom S.A. de C.V., Hortícola S.A de C.V., and their subsidiaries due to evidence of forced labor on the farms. According to the announcement, CBP will detain all fresh tomatoes from the farms arriving at all U.S. ports of entry. CBP stated that, during its investigation, it found at least five of the [International Labor Organization’s indicators of forced labor](#): abuse of vulnerability, **deception**, withholding of wages, debt bondage, and abusive working and living conditions. CBP specified that the WRO only applies to fresh tomatoes from the identified farms and their subsidiaries.



### **EU Parliament Passes Farm to Fork Resolution**

On October 20, 2021, the European Parliament [announced](#) that Members of the European Parliament (MEPs) voted October 19, 2021, to adopt resolution [2020/2260](#), "A Farm to Fork Strategy for a fair, healthy and environmentally friendly food system." The "Farm to Fork Strategy" recommends multiple strategies to produce sustainable, healthy food and safeguard farmer income and food security. Such strategies include member state-binding pesticide reduction targets, agricultural emissions reduction targets, rigid biomass-based renewable energy criteria, and phasing out the use of cages in animal farming. The resolution provides a framework for future European Commission [legislation](#). According to the announcement, the vote passed with 452 votes in favor, 170 against, and 76 abstentions.

### **EU Postpones Dairy Export Health Certificate Deadline until January 2022**

On August 10, 2021, the European Commission entered [Implementing Regulation \(EU\) 2021/1329](#), which extends the deadline by which U.S. dairy product imports must be accompanied by health certificates from August 21, 2021, to January 15, 2022. According to an August 13, 2021 [announcement](#) from the U.S. Department of Agriculture's (USDA) Agricultural Marketing Service (AMS), AMS will issue the new health certificates through its [EU Dairy Export Certification Programs](#). AMS will require producers and "entities throughout the supply chain" to maintain records showing that milk products produced for European Union (EU) export comply with either [Grade "A" Pasteurized Milk Ordinance](#) or [USDA AMS Milk for Manufacturing Purposes](#) program requirements. AMS states that it will inspect existing records and certify milk sources during compliance audits for current EU Somatic Cell Count and Bacteria Standard Plate Count requirements.

### **Agriculture Trade Groups Advocate for WTO Reform**

On July 23, 2021, thirty-three U.S. agricultural trade organizations sent a [letter](#) to U.S. Ambassador Katherine Tai and Agriculture Secretary Tom Vilsack supporting World Trade Organization (WTO) reform and encouraging the two executives to promote their [principles and priorities](#) in the upcoming [12<sup>th</sup> Ministerial Conference](#). The groups call for market-based and sustainable trade liberalization and a more effective and efficient dispute settlement system. Also, they stress that the WTO should establish a graduation process to require that "significant developing country agriculture exporters meet the same level of ambition as developed countries." Signatories included American Farm Bureau Federation, American Soybean Association, Bayer US, National Association of State Departments of Agriculture, National Corn Growers Association, North American Meat Institute, and the U.S. Soybean Export Council.

### **EU Parliament, Council Announce New Common Agricultural Policy**

On June 25, 2021, the European Commission [announced](#) that, after three years, the European Parliament and Council have agreed upon a new [Common Agricultural Policy](#) (CAP). The new CAP will include rigorous environmental standards, provide support for young farmers, and mandate adherence to European social and labor law. According to the announcement, all farms must dedicate at least 3% of "arable land . . . to biodiversity and non-productive elements" and member states "must allocate at least 25% of their income support budget to ecoschemes" which compensate producers for implementing "climate and environmentally-friendly practices" like organic farming and integrated pest management.

### **U.S. International Trade Commission Continues Investigation into Honey Imports from Argentina, Brazil, India, Ukraine, and Vietnam**

On June 4, 2021, the U.S. International Trade Commission (USITC) [announced](#) that it will continue its [antidumping duty investigation of raw honey imports](#) from Argentina, Brazil, India, Ukraine, and Vietnam, initiated by the commission on May 12, 2021. The commission determined that reasonable indication exists that the honey imports, purportedly sold below market value in the United States, are materially injuring the U.S. honey industry. According to import statistics listed by USITC, nearly \$900 million of honey has been imported into the United States from the five countries since 2018.



## United States 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. For more background, see *Agricultural Law in the Spotlight (December 10, 2020)*, [Office of U.S. Trade Representative Disputes Canada’s Tariff-Rate Quotas for Dairy Products in First USMCA Enforcement Action](#).

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### CENTER MISSION AND BACKGROUND

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