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Act Now to Take Advantage of New Opportunities to Import US Dairy and Poultry Under New Trade Deal

Brenda C. Swick

October 9, 2018

Last week, the US, Canada, and Mexico finally reached an agreement in principle to replace the North American Free Trade Agreement (NAFTA). After much lengthy and intense negotiation, the text of the United States-Mexico-Canada Agreement (USMCA), the new tri-party trade deal, has been released.

There is an implementation process required under Canadian law before the USMCA comes into effect in Canada. The agreement still must be signed, ratified, and implemented by each country. Under Article 34.5, the USMCA will come into force on the first day of the third month following the final party completing its implementation procedures under its domestic law.

As those in the restaurant industry (including franchisors and franchisees) know, there is very limited opportunity to import US dairy, poultry and egg products into Canada because of Canada's restrictive supply management system.[1] However, the USCMA offers new opportunities to increase imports of these lower priced US products duty-free - opening up avenues for cost savings up and down the supply chain.

Restaurant industry participants should also be taking this opportunity to review their sourcing strategies to take advantage of the other opportunities to import additional quantities of these supply managed products, under Canada's other new trade agreements, in particular, the Canada EU Comprehensive Trade Agreement (CETA) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

Act Now to Ensure Access to US Imports

To take advantage of this new access to additional (duty free) US imports, restaurant industry participants should consider the following steps:

1. Monitor the implementation of the USMCA into Canadian law in order to know precisely when and how the new quotas will come into effect.
2. Immediately make submissions to Global Affairs making it clear that your company wants access to the new US import quota.
3. Watch for Global Affairs announcement on the rules that will apply to the new quotas including how they will be allocated to individual companies under the *Export and Import Permits Act*. Often the government will publish these notices in advance in order to seek industry comment. Those

operating in the restaurant industry wishing access to this new source should be ready to comment on the notice, to ensure that the allocation methodology adopted by the government promotes their interests. For example, it may be that a certain percentage of the total quota for a particular product should be set aside for the restaurant industry in Canada and then distributed among applicants in that sector, or be directly allocated to those operating in the restaurant sector. In addition, the restaurant industry may have an interest in ensuring easy transferability of quota among quota holders. Others may favour a first come first serve basis of allocation. There are many different ways to allocate quota and these should be explored to assess those which best promote your company's bests interests.

4. Be ready to immediately apply for quota as soon as Global Affairs publishes its notice and opens up the quota year to new imports.

Increased Import Quotas for US Ingredients

The following sets out the increases in quotas for most of the US imports over the first six years of the agreement. Starting in the seventh year the quota for each US product will increase 1% a year for the subsequent 13 years.

Milk

Up until new there has been a very small quota for US milk. Under the first year of the agreement, the quota for US milk will increase to 8,333 metric tonnes (MT); in year two, 16,677; in year three, 25,000; the fourth 33,333; then 41,667 in the fifth year and 50,000 MT in the sixth year. Up to 85% of this new quota will be allocated to further processing.

Cream

Under the first year of the agreement, the quota for US cream alone will increase to 1,750 MT; in year two, 3,500; in year three, 5,250; the fourth 7000; then 8,750 in the fifth year and 10,500 MT in the sixth year. Up to 85% of this new quota will be allocated to further processing.

Products of Natural Milk Constituents

Under the first year of the agreement, the quota for imports of US natural milk constituents will increase to 460 MT; in year two, 920; in year three, 1,380; the fourth 1,840; then 2,300 in the fifth year and 2,760 MT in the sixth year.

Ice-Cream and Ice-Cream Mixes

Under the first year of the agreement, the quota for imports of US ice-cream and ice-cream mixes will increase to 115 MT; in year two, 230; in year three, 345; the fourth 460; then 575 in the fifth year and 690 MT in the sixth year.

Skim Milk Powder

Under the first year of the agreement, the quota for US skim milk powder will increase to 1,250 MT; in year two, 2,500; in year three, 3,750; the fourth 5000; then 6,250 in the fifth year and 7,500 tonnes in the sixth year. Up to 85% of this new quota will be allocated to further processing in year 1 but this percentage will be reduced over the following five years.

Butter, Cream Powder

Under the first year of the agreement, the quota for US butter will increase to 750MT; in year two, 1,500; in year three, 2,250; the fourth 3,000; then 3,750 in the fifth year and 4,500 MTin the sixth year. Up to 85% of this new quota will be allocated to further processing.

Cheeses for Industrial Use

Under the first year of the agreement, the quota for US industrial cheeses will increase to 1,042 MT; in year two, 2,083; in year three, 3,125; the fourth 4,167; then 5,280 in the fifth year and 6,250 MT in the sixth year.

Cheese of All Types

Under the first year of the agreement, the quota for US cheeses will increase to 1,042 MT; in year two, 2,083; in year three, 3,125; the fourth 4,167; then 5,280 in the fifth year and 6,250 MT in the sixth year.

Yogurt and Buttermilk

Under the first year of the agreement, the quota for US yogurt will increase to 689 MT; in year two, 1,378; in year three, 2,068; the fourth 2,757; then 3,446 in the fifth year and 4,135 MT in the sixth year.

Whey Powder

Under the first year of the agreement, the quota for US whey powder will increase to 689 MT; in year two, 1,378; in year three, 2,068; the fourth 2,757; then 3,446 in the fifth year and 4,135 MT in the sixth year. Import quotas on certain US whey powders will be eliminated by year 10.

Concentrated Milk

Under the first year of the agreement, the quota for US concentrated milk will increase to 115 MT; in year two, 460; in year three, 690; the fourth 920; then 1,150 in the fifth year and 1,380 MT in the sixth year.

Milk Powders

Under the first year of the agreement, the quota for US milk powders will increase to 115 MT; in year two, 230; in year three, 345; the fourth 460; then 575 in the fifth year and 690 MT in the sixth year.

Powdered Buttermilk

Under the first year of the agreement, the quota for US powdered buttermilk will increase to 87 MT; in year two, 113; in year three, 260; the fourth 347; then 433 in the fifth year and 520 MT in the sixth year.

Chicken

Up until new there has been a very small quota for US poultry. Under the first year of the agreement, the quota for US chicken will increase to 47,000 MT; in year two, 49,000; in year three, 51,000; the fourth 53,000; then 55000 in the fifth year and 57,000 MT in the sixth year. Products covered by the poultry quota include: whole chickens, cuts and offal; poultry fat; sausages, plus prepared or preserved check meat and liver.

Improved Access To Competitive Sources of Ultrafiltered Milk

Under the USMCA, Canada has also agreed to eliminate its Class 6 and 7 milk categories and associated pricing schedules for skim milk, skim milk proteins and other components and ultrafiltered/diafiltered milk, within six months after the agreement comes into effect. Canada had created the Class 7 pricing agreement in order to restrict cheaper US imports of these ingredients into Canada by allowing Canadian dairy processors to buy these ingredients at the cheaper world market price rather than the higher supply managed price. American producers, particularly of ultrafiltered milk, which is not subject to import quotas, argued that the world price reference undercut them from shipping to the Canadian market. Importers of these ingredients will now continue to have access to the cheaper US imports of ultrafiltered milk and other ingredients.

Please contact Brenda C. Swick, Tegan O’Brien or another member of the Competition, International Trade & Foreign Investment Team for further information.

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[1] Canada's supply management system for its dairy sector supports milk prices at high levels relative to world market prices through quotas on domestic production together with high tariff levels and tariff-rate quotas that restrict imports of dairy products.

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This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.