ANNEX 3-B

AGRICULTURAL TRADE BETWEEN CANADA AND THE UNITED STATES

CANADA AND THE UNITED STATES

Section A: Tariff Classifications

1. Canada shall notify the United States of any change to Canada's Schedule to the Customs Tariff that increases the customs duty applied to a dairy, poultry or egg product when imported into Canada from the United States[1] prior to finalization of such change. To the maximum extent possible, Canada shall provide such notification immediately after publication of the proposal for the change, so as to provide a sufficient opportunity for the United States to review the proposal prior to its implementation. If the United States requests, Canada shall promptly provide information to the United States, and respond to questions from the United States, pertaining to any change to Canada's Schedule to the Customs Tariff that increases the customs duty applied to a dairy, poultry or egg product when imported into Canada from the United States, whether or not the United States has been previously notified of the change.

2. The United States shall notify Canada of any change to the Harmonized Tariff Schedule of the United States that increases the tariff rate applied to a sugar, sugar containing (SCP), or dairy product when imported into the United States from Canada[2] prior to finalization of such change. To the maximum extent possible, the United States shall provide such notification immediately after publication of the proposal for the change, so as to provide sufficient opportunity for Canada to review the proposal prior to its implementation. If Canada requests, the United States shall promptly provide information to Canada, and respond to questions from Canada, pertaining to any change to the Harmonized Tariff Schedule of the United States that increases the tariff rate applied to a sugar or dairy product when imported into the United States from Canada, whether or not Canada has been previously notified of the change.

3. On the request of the other Party, a Party shall meet to discuss any measures or policies that may affect trade between the Parties of a sugar, SCP, dairy, poultry or egg product within 30 days of the request.

[1] For purposes of this paragraph, a "change to Canada's Schedule to the Customs Tariff that increases the customs duty applied to a dairy, poultry, or egg product when imported into Canada from the United States" means a change to Canada's Schedule to the Customs Tariff that changes the classification of any good not previously classified under a tariff item listed in Appendix A that results in the good being classified under a tariff item listed in Appendix A.

[2] For purposes of this paragraph, a "change to the Harmonized Tariff Schedule of the United States that increases the tariff rate applied to a sugar, sugar containing, or dairy product when imported into the United States from Canada" means a change to the Harmonized Tariff Schedule of the United States that changes the classification of any good not classified before the change under a tariff item listed in Appendix B to this Annex that results in the good being classified under a tariff item listed in Appendix B.

Section B: Tariff-Rate Quota Administration

1. For the purposes of this Section:

allocation mechanism means any system where access to the tariff-rate quota (TRQ) is granted on a basis other than first-come first-served.

tariff rate quota means a mechanism that provides for the application of a preferential customs duty at a certain rate to imports of a particular originating good up to a specified quantity (in-quota quantity), and at a different rate to imports of that good that exceed that quantity.

2. For the purposes of Section A, TRQs means only those TRQs established under this Agreement as set out in a Party's Schedule to Annex 2-B (Tariff Commitments). For greater certainty, this Section shall not apply to TRQs set out in a Party's Schedule to the WTO Agreement.

3. Each Party shall implement and administer TRQs in accordance with Article XIII of GATT 1994, including its interpretative notes, the Import Licensing Agreement and Article 2.15 (National Treatment and Market Access for Goods – (Transparency in Import Licensing). All TRQs established by a Party under this Agreement shall be set out in that Party's Schedule to Annex 2-B (Tariff Commitments).

4. Each Party shall ensure that its procedures for administering its TRQs:

(a) are transparent;

(b) are fair and equitable;

(c) use clearly specified timeframes, administrative procedures, and requirements;

(d) are no more administratively burdensome than necessary;

(e) are responsive to market conditions; and

(f) are administered in a timely manner.

5. The Party administering a TRQ shall publish on its designated website at least 90 days prior to the beginning of the TRQ year all information concerning its TRQ administration, including the size of quotas and eligibility requirements.

6. Each Party shall administer its TRQs in a manner that allows importers the opportunity to utilize TRQ quantities fully.

(a) Except as provided in subparagraph (b) and (c), no Party shall introduce a new or additional condition, limit, or eligibility requirement on the utilization of a TRQ for

importation of a good, including in relation to specification or grade, permissible end-use of the imported product, or package size beyond those set out in its Schedule to Annex 2-B (Tariff Commitments)]. For greater certainty, this paragraph shall not apply to conditions, limits, or eligibility requirements that apply regardless of whether or not the importer utilizes the TRQ when importing the good.

(b) A Party seeking to introduce a new or additional condition, limit, or eligibility requirement on the utilization of a TRQ for importation of a good shall notify the other Party at least 45 days prior to the proposed effective date of the new or additional condition, limit, or eligibility requirement. Another Party with a demonstrable commercial interest in supplying the good may submit a written request for consultations within 30 days of the notification to the Party seeking to introduce the new or additional condition, limit, or eligibility requirement. On receipt of such a request for consultations, the Party seeking to introduce the new or additional condition, limit, or eligibility requirement shall promptly undertake consultations with the other Party, in accordance with Article [XX] (Transparency).

(c) The Party seeking to introduce the new or additional condition, limit, or eligibility requirement may do so if another Party with a demonstrable commercial interest in supplying the good has not submitted a written request for consultations within 30 days of the notification pursuant to subparagraph (b) or, in the case where another Party has submitted a written request for consultations pursuant to subparagraph (b) if:

(i) it has consulted with the other Party; and

(ii) the other Party has not objected, after the consultation, to the introduction of the new or additional condition, limit, or eligibility requirement.

(d) A new or additional condition, limit, or eligibility requirement that is the outcome of any consultation held pursuant to subparagraph (c) shall be circulated to the other Party prior to its implementation.

7. Notwithstanding paragraph 6, a Party shall not implement a condition, limit, or eligibility requirement:

(a) regarding the quota applicant's nationality, or headquarters location; or

(b) requiring the quota applicant's physical presence in the territory of the Party, except that a Party may require that the quota applicant either:

(i) do business and have a business office, or

(ii) have an employee, an agent for service of process, or a legal representative, in the territory of the Party.

8. Upon entry into force of this Agreement as between Canada and the United States, if either Party maintains a TRQ in its Schedule to Annex 2-B (Tariff Commitments) that is applicable to goods of the other Party, and that is administered through issuance of permits by either Party, the Party maintaining the TRQ shall have:

(a) consulted with the other Party with respect to all procedures for the allocation and use of the TRQ, and any condition or requirement applicable on or in connection with the allocation or use of the TRQ; and

(b) promulgated and implemented regulations or policies containing all of its procedures for the allocation and use of the TRQ and any condition or requirement of that Party applicable on or in connection with the allocation or use of the TRQ.

9. In the event that access under a TRQ is subject to an allocation mechanism, the Party administering the TRQ shall prior to any change to the allocation mechanism:

(a) publish for public comment proposed regulations or policies containing all of its procedures for the allocation and use of the TRQ and any condition or requirement applicable on or in connection with the allocation or use of the TRQ no less than 60 days in advance of the date on which comments are due;

(b) take any comments into account in the development of the final regulations or policies; and

(c) promulgate, implement, and publish the final regulations or policies on its designated website at least 90 days prior to the beginning of each TRQ year.

10. When a TRQ is administered by an allocation mechanism, the Party administering the TRQ shall provide that the allocation mechanism that it uses allows for importers that have not previously imported the product subject to the TRQ (new importers), and that meet all eligibility criteria other than import performance, to be eligible for a quota allocation. Each such Party shall not discriminate against new importers when allocating the TRQ.

11. The Party administering the allocated TRQ shall ensure that:

(a) any person of the other Party that fulfils the importing Party's eligibility requirements is able to apply and to be considered for a quota allocation under the TRQ;

(b) unless otherwise agreed, 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;

(c) each allocation is made in commercially viable shipping quantities and, to the maximum extent possible, in the amounts that the TRQ applicant requests;

(d) an allocation for in-quota imports is applicable to any tariff lines subject to the TRQ and is valid throughout the TRQ year;

(e) if the aggregate TRQ quantity requested by applicants exceeds the quota size, allocation to eligible applicants shall be conducted by equitable and transparent methods;

(f) applicants have at least four weeks after the opening of the application period to submit their applications; and

(g) quota allocation takes place no later than four weeks before the opening of the quota period, unless the allocation is based in whole or in part on import performance during the 12-month period immediately preceding the quota period. If the Party bases the allocation in whole or in part on import performance during the 12-month period immediately preceding the quota period, the Party shall make a provisional allocation of the full quota amount no later than four weeks before the opening of the quota period. All final allocation decisions, including any revisions, shall be made and communicated to applicants by the beginning of the quota period.

12. If less than 12 months remain in the first TRQ year on the date of entry into force of this Agreement, the Party shall make available to quota applicants, beginning on the date of entry into force of this Agreement, the quota quantity established in its Schedule to Annex 2-B (Tariff Commitments), multiplied by a fraction the numerator of which shall be a whole number consisting of the number of months remaining in the TRQ year on the date of entry into force of this Agreement, including the entirety of the month in which this Agreement enters into force, and the denominator of which shall be 12. The Party shall make the entire quota quantity established in its Schedule to Annex 2-B (Tariff Commitments) available to quota applicants beginning on the first day of each TRQ year that the quota is in operation.

13. The Party administering a TRQ shall not require the re-export of a good as a condition for application for, or utilization of, a quota allocation.

14. Any quantity of goods imported under a TRQ under this Agreement shall not be counted towards, or reduce the quantity of, any other TRQ provided for such goods in a Party's Schedule to the WTO Agreement or under any other trade agreements.[3]

15. When a TRQ is administered by an allocation mechanism, a Party shall ensure that there

[3] For greater certainty, nothing in this paragraph shall prevent a Party from applying an in-quota rate of customs duty to goods from another Party, as set out in that Party's Schedule to Annex 2-B (Tariff Commitments), that is different than the rate applied to the same goods of non-Parties under a TRQ established under the WTO Agreement. Further, nothing in this paragraph requires a Party to change the in-quota quantity of any TRQ established under the WTO Agreement.

is a mechanism for the return and reallocation of unused allocations in a timely and transparent manner that provides the greatest possible opportunity for the TRQ to be filled.

16. Each Party shall publish on a regular basis on its designated publicly available website information concerning amounts allocated, amounts returned and, if available, quota utilization rates. In addition, each Party shall publish on the website designated to provide TRQ information the amounts available for reallocation and the application deadline, at least two weeks prior to the date on which the Party will begin accepting applications for reallocations.

17. Each Party shall identify the entity or entities responsible for administering its TRQs and designate and notify at least one contact point, in accordance with Article 30.5 (Administrative and Institutional Provisions –Agreement Coordinator and Contact Points), to facilitate communications between the Parties on matters relating to the administration of its TRQs. Each Party shall promptly notify the other Party of any amendments to the details of its contact point.

18. If a TRQ is administered by an allocation mechanism, the name and address of allocation holders shall be published on the designated publicly available website.

19. If a TRQ is administered on a first-come, first-served basis, the importing Party's administering authority shall publish over the course of each year, in a timely and continually on-going manner on its designated website, utilization rates and remaining available quantities for that TRQ.

20. When a TRQ of an importing Party that is administered on a first-come, first-served basis fills, that Party shall publish a notice to this effect on its designated publicly available website within 10 days.

21. When a TRQ of an importing Party that is administered by an allocation mechanism fills, that Party shall publish a notice to this effect on its designated publicly available website as early as practicable.

22. On written request of the exporting Party, the Party administrating a TRQ shall consult with the exporting Party regarding the administration of its TRQ within 30 days of the request, under normal circumstances.

Section C: Dairy Pricing and Exports

1. This Section applies to any milk class pricing system for dairy[4] adopted or maintained by a Party.

2. For the purpose of this Section:

[4] For Canada, milk class pricing system refers to price setting under the supply management system for dairy. For the United States, milk class pricing system refers to price setting under the federal milk marketing orders.

assumed processor margin means the estimated cost to a processor of converting raw milk into a specified manufactured wholesale commodity or milk product, which may then be used in the calculation of a milk class price and may also be referred to as a make allowance;

dairy year means August 1 to July 31;

eligible goods means goods that a processor may manufacture using the milk or milk components provided at the milk class price;

infant formula means a good defined by HS Code 1901.10 containing more than 10% on a dry weight basis of cow milk solids;

milk class means an end use for which processors may utilize milk or milk components provided at milk class prices;

milk class price means the price, minimum price, or milk component price at which milk or milk components are billed or provided to processors based on their end use;

milk component means butterfat, protein, other solids, and any other component of milk for which a Party sets a milk class price;

milk protein concentrate means goods defined by HS Code 0404.90;

skim milk powder means goods defined by HS Code 0402.10;

USDA nonfat dry milk price means the nonfat dry milk price published by the United States Department of Agriculture ("USDA") in its Announcement of Class and Component Prices, as used in the calculation of the Nonfat Milk Solids price in the United States; and

yield factor means the estimated ratio of a given volume of skim milk powder to the volume of non-fat solids required to manufacture that volume skim milk powder as determined by the Party.

3. Canada shall ensure that milk class 6 and milk class 7, including their associated milk class prices, are eliminated six months after entry into force of this Agreement.

4. Six months after entry into force of this Agreement, Canada shall ensure that products and ingredients formerly classified under milk classes 6 and 7 shall be reclassified and that their associated milk class prices shall be established appropriately based on end use.

5. Notwithstanding paragraph 4, Canada shall ensure that the prices for non-fat solids used to manufacture milk protein concentrates, skim milk powder, and infant formula shall be no lower than the applicable price determined by the following formula:

(The USDA nonfat dry milk price

minus

Canada's applicable processor margin)

multiplied by

Canada's yield factor.

6. Paragraph 5 shall not apply to domestic sales of milk components for non-human consumption, such as for use as animal feed.

7. Canada shall monitor its global exports of milk protein concentrates, skim milk powder, and infant formula and provide information regarding those exports to the United States as specified in paragraph 12.

8.

(a) In a given dairy year, if the total global exports of milk protein concentrates and skim milk powder from Canada exceed the following thresholds:

Year	MPC plus SMP Thresholds
1	55,000 MT
2	35,000 MT

then, Canada shall apply an export charge of CAD 0.54 per kilogram to global exports of these goods in excess of the thresholds set out above for the remainder of the dairy year.

(b) In a given dairy year, if global exports of infant formula from Canada exceed the following thresholds:

Year	Infant Formula Thresholds
1	13,333 MT
2	40,000 MT

then, Canada shall apply an export charge of CAD 4.25 per kilogram to global exports of these goods in excess of the thresholds set out above for the remainder of the dairy year.

9. With regard to the thresholds established in paragraph 8(a) and 8(b), after Year 2 each threshold shall increase at a rate of 1.2 percent annually on a dairy year basis.

10. Each Party shall publish on or linked to a central government website, the information listed in the subparagraphs to this paragraph. Each Party shall publish this information on entry into force of this Agreement for existing measures. Thereafter, a Party shall publish the information as soon as possible:

(a) laws and regulations at the central or regional level of government of a Party that govern or implement a milk class pricing system for dairy, including any modification, replacement, or amendment thereof;

(b) the assumed processor margin;

(c) each milk class price, including for each milk component by each milk class;

(d) the yield factor;

(e) requirements, terms, and conditions for obtaining and using milk and milk components at milk class prices, including:

(i) list or description of the goods for which processors are eligible to receive milk or milk components at a milk class price; and

(ii) list or description of the products that eligible goods can be used to manufacture;

(f) the milk utilization and sales by milk class and month, including quantities sold, prices, and revenues for milk and each milk component.

11. Before introducing a new milk class, changing an existing milk class, introducing a new milk class price, or changing an existing milk class price, a Party shall:

(a) notify the other Party or publicly announce its intent to introduce or amend a milk class or milk class price, so as to provide a sufficient opportunity for the other Party to review the proposed measure or policy containing the new or amended milk class or milk class price prior to its implementation;

(b) consult with the other Party upon request or allow participation in its public regulatory process regarding the proposed measure or policy containing the new or amended milk class or milk class price, and take any comments into account in the decision to introduce or change the milk class or milk class price; and

(c) publish the final measure or policy, and allow an interval of at least one calendar month between the publication of the final measure or policy and its effective date.

12. Further to paragraph 7, Canada shall make available to the United States data regarding Canada's global exports of milk protein concentrates, skim milk powder, and infant formula, at the six digit HS Code level, on a monthly basis, and no later than 30 days after the close of each month.

13. Within 30 days of a request from a Party, the Parties shall meet in a jointly agreed location, or by electronic means, to discuss any matter associated with the application of this Section.

14. Recognizing that new products and new consumer preferences may impact the demand for and exports of skim milk powder, milk protein concentrates, and infant formula, if the trade monitoring mechanism established in paragraphs 7-9 is unsatisfactory to either Party, the Parties shall within 30 days of a written request of a Party enter consultations to consider and, if appropriate, seek to amend the provisions of paragraphs 7-9 through Article 34.3 (Final Provisions – Amendments).

15. Five years after entry into force and every two years thereafter, Canada and the United States shall meet to consider whether conditions have changed such that this section should be removed or modified. Modifications, including removal, may be made at this time or at any other time by mutual consent of Canada and the United States.

Section D: Grain

1. Each Party shall accord to originating wheat imported from the territory of the other Party treatment no less favorable than that it accords to like wheat of national origin with respect to the assignment of quality grades, including by ensuring that any measure it adopts or maintains regarding the grading of wheat for quality, whether on a mandatory or voluntary basis, is applied to imported wheat on the basis of the same requirements as domestic wheat.

2. No Party shall require that a country of origin statement be issued on a quality grade certificate for originating wheat imported from the territory of the other Party, recognizing that phytosanitary or customs requirements may require such a statement.

3. At the request of the other Party, the Parties shall discuss issues related to the operation of a domestic grain grading or grain class system, including issues related to the seed regulatory system associated with the operation of any such system, through existing mechanisms. The Parties shall endeavor to share best practices with respect these issues, as appropriate.

4. Canada shall exclude from transport rates that are subject to the Maximum Grain Revenue Entitlement, established under the *Canada Transportation Act*, or any modification, replacement, or amendment thereof, agricultural goods originating in Canada and shipped via west coast ports for consumption in the United States.

Section E: Other

1. Canada shall ensure that imports of dairy, poultry or egg products eligible for Canada's Duties Relief Program ("DRP") and Import for Re-export Program ("IREP") as of September 1, 2018, continue to be eligible for these programs, as well as any subsequent or successor programs to DRP and IREP, as long as Canada maintains such programs.

2. Notwithstanding the product-specific rules of origin in Annex 4-B of this Agreement, the rule of origin for a good traded between the United States and Canada in subheading 1517.10 shall allow a change from heading 15.11 or any other chapter.

3. For the purposes of paragraphs 4-7, "product of Canada" shall be determined based on U.S. general requirements utilized to determine country eligibility under its WTO TRQ obligations.

4. Consistent with Article XIII of the GATT 1994, the United States shall allocate to Canada:

   (a) a share of the in-quota quantity of the refined sugar TRQ[5] of not less than 10,300 metric tons, raw value, for sugar that is a product of Canada; and

   (b) a share of the in-quota quantity of the SCP TRQ[4] of not less than 59,250 metric tons for SCPs that are the product of Canada.

5. Further to Paragraph 4, the United States shall permit access for sugar that is the product of Canada to any in-quota quantity of the refined sugar TRQ that is not allocated among supplying countries. The United States shall permit access to the unallocated amounts in a tariff-rate quota period without regard to whether the share allocated to Canada for that period has been filled.

6. Further to Paragraph 4, if the United States allocates the refined sugar TRQ reserved for specialty sugar, the United States shall do so consistent with its WTO obligations and in consultation with Canada.

7. Further to Paragraph 4, where for any TRQ period Canada informs the United States that Canada will not supply the full amount of the share of SCP TRQ allocated to Canada as described in Paragraph 4, the United States shall transfer the quantity of the share that Canada will not supply to the quantity of SCP TRQ that is not allocated among supplying countries. The United States shall provide Canada reasonable advance notice of the date upon which such a transfer will take effect. Any transfer under this paragraph will not affect the amount of the share of the SCP TRQ allocated to Canada pursuant to Paragraph 4 in subsequent TRQ periods.

[5] Refined sugar TRQ is as provided for in Additional U.S. Note 2 to chapter 17 of the Schedule of the United States annexed to the *Marrakesh Protocol to the General Agreement on Tariffs and Trade 1994*.
[4] SCP TRQ is as provided for in Additional U.S. Note 6 to chapter 17 of the Schedule of the United States annexed to the *Marrakesh Protocol to the General Agreement on Tariffs and Trade 1994*.

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