

## Global Affairs Canada

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### Notice to Importers

#### Dairy – CETA Cheese Tariff Rate Quota (TRQ) (Items 141 to 157 on the *Import Control List*)

Serial No. 895

Date: August 1, 2017

This Notice to Importers is provided pursuant to Section 6.2 of the *Export and Import Permits Act* (EIPA) and will remain in effect until further notice.

#### In Brief

Imports of cheese into Canada are subject to import controls under Canada's EIPA. Accordingly, an import permit issued by Global Affairs Canada is required for shipments of cheese to enter Canada.

Under the Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union (EU) and its Member States, Canada agreed to establish a tariff rate quota (TRQ) of 16,000,000 kilograms for EU cheeses.

Import permits for shipments of cheese destined to the Canadian market are issued to allocation holders under the CETA TRQ for cheeses of all types, which is administered by Global Affairs Canada.

This Notice to Importers sets out the policies and practices pertaining to the administration of the CETA Cheese TRQ, including the allocation, underutilization, return, and transfer policies. This Notice also explains how to apply for import permits.

#### Summary of Key Dates and Access Quantity for the 2017 Allocation Year

2017 – TRQ Year: September 21 to December 31

- Access Quantity: 745,299 kilograms (prorated for the period from September 21 to December 31, 2017)

Application Deadline: September 8, 2017

- Reference Period for assessing applicant's eligibility for an allocation: October 1, 2015 to September 30, 2016

Date of Allocation Issuance and Opening of the TRQ for imports: October 2, 2017

Date for Returning Unutilized Quota: November 1, 2017 (no later than 12:00h, Eastern Time)

- Reallocation of Returned Quota: November 2, 2017 (17:00h, Eastern Time)

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#### 1. Purpose

### 1.1 The purpose of this Notice is:

- a. To set out the policies and practices pertaining to the administration of the CETA cheese TRQ;
- b. To invite applications for allocation under the TRQ for the next allocation year; and
- c. To explain how to apply for permits for imports of cheese.

## 2. Definitions

“Cheese” means a product that is included in Items 141 to 157 on the *Import Control List*.

“Cheese Manufacturer” means an establishment that manufactures cheese in its own provincially-licensed or federally-registered facility.

“Small/medium-sized Cheese Manufacturer” means a cheese manufacturer whose annual use of milk for cheese production is 50,000,000 litres or less.

“Distributor” means an establishment that buys cheese and resells it to other businesses.

“Market Share” means an applicant’s level of activity in the cheese sector in relation to the total activity of the other applicants within a group and pool under the TRQ.

“New Entrant” means:

- a. For the first five years following the provisional application of CETA, an eligible applicant who is not an allocation holder under Canada’s cheese TRQ under the World Trade Organization (WTO).
- b. As of Year six following the provisional application of CETA, an eligible applicant who is not an allocation holder under Canada’s WTO cheese TRQ or did not receive an allocation of the TRQs established under CETA in the preceding year.

N.B., A “New Entrant” will be treated as such for a period of three years.

“Retailer” means an establishment that buys cheese and sells it directly to final consumers.

“Small/Medium-Sized Enterprise” means an eligible applicant whose allocation under its group and pool would amount to less than 20,000 kilograms.

“Reference period” means the period of time used to measure an applicant’s activity in the Canadian cheese sector. For the purpose of this Notice this period is from October 1 to September 30 immediately preceding the applicable allocation year.

## 3. General information

### 3.1 Background

3.1.1. In accordance with its commitments under CETA, Canada has in place a TRQ for imports of cheese from an EU country or other CETA beneficiary.

3.1.2. Under Canadian TRQs, in any given year, a predetermined quantity of imports of a good controlled under the EIPA can enter Canada at a lower rate of duty, while imports over this quantity are subject to higher rates of duty. The TRQs therefore have three components: an import access quantity negotiated with Canada’s international trade partners; a within access commitment rate of duty that applies to imports up to the access level; and a higher, over access commitment rate of duty for imports over the access level.

3.1.3. The within and over access rates of duty that apply to imports of cheese can be found in the Schedule to the *Customs Tariff*.

3.1.4. Pursuant to the EIPA and its corresponding regulations, when deciding whether to issue an import allocation or whether to consent to a transfer, the Minister shall take into account whether the import allocation holder has furnished false or misleading information in connection with any reports required by the Act or the regulations made under the Act or by any condition of an import allocation or import permit during the 12-month period preceding the period in respect of which the import allocation or transfer is to apply. Furthermore, the Minister may attach conditions to import allocations and/or to import permits, and may amend, suspend, cancel or re-instate import permits and allocations.

3.1.5. Failure by an applicant to provide any information requested by Global Affairs Canada, or failure to comply with any condition of an allocation or permit issued pursuant to the EIPA, may result in the rejection of the application for an allocation under the CETA cheese TRQ, the reduction or cancellation of an allocation issued pursuant to the EIPA, or the cancellation of associated permits.

### 3.2 Access quantity

3.2.1. The access quantity for the CETA cheese TRQ will be phased in over five years, in six installments:

- 2017 – The access quantity is 2,667,000 kilograms. However, since the CETA is to be provisionally applied as of September 21, the access quantity will be prorated to 745,299 kilograms, which represents the remaining period of 2017.
- 2018 – The access quantity will be 5,333,000 kilograms;
- 2019 – The access quantity will be 8,000,000 kilograms;
- 2020 – The access quantity will be 10,667,000 kilograms;
- 2021 – The access quantity will be 13,333,000 kilograms ;
- 2022 and onward – The access quantity will be 16,000,000 kilograms.

3.2.2. The TRQ allocation method allows for new entrants each year. During the phase-in period from 2017 to 2021, at least 30 percent of the TRQ will be available to new entrants every year. After the end of the phase-in period from 2022 and in subsequent years, at least 10 percent of the TRQ quantity will be available for new entrants.

### 3.3 Allocation period

3.3.1. The allocation year for the CETA cheese TRQ extends from January 1 to December 31, inclusive.

3.3.2. Exceptionally for Year one of CETA, the first allocation year for the CETA cheese TRQ will extend from September 21, 2017 to December 31, 2017 inclusive. Please note that for Year one of CETA, the CETA cheese TRQ will open for import on October 2, 2017.

3.3.3. Eligibility for an allocation, and the size of that allocation, will be assessed on the basis of each applicant's activity in his/her respective group or pool in the cheese sector during the reference period of October 1 to September 30 immediately preceding the applicable allocation year. An applicant must be a resident of Canada and be active in the Canadian cheese sector regularly during the reference period and the allocation year.

## 4. Products covered

4.1. This Notice pertains to Items 141 to 157 of the *Import Control List* (ICL), namely EU originating cheese under heading No. 04.06 in the list of tariff provisions set out in the Schedule to the *Customs Tariff*.

4.2. Importers who require a determination as to whether the product they intend to import is eligible under the CETA cheese TRQ are encouraged to obtain an advance tariff classification ruling from the appropriate regional client service office of the Canada Border Services Agency (CBSA).

## 5. Allocation policy

5.1 The CETA cheese TRQ is allocated to two groups:

- Cheese manufacturers; and
- Distributors and retailers.

5.2 The percentage of the TRQ that is available for a given year is allocated in the following way:

- 50 percent of the TRQ is allocated to the cheese manufacturers group:
  - 30 percent is allocated to the small and medium-sized cheese manufacturers pool;
  - 20 percent is allocated to the large cheese manufacturers pool.
- 50 percent of the TRQ is allocated to the distributors and retailers group:
  - 30 percent is allocated to the small and medium-sized enterprise distributors and retailers pool;
  - 20 percent is allocated to the large distributors and retailers pool.

5.3. The TRQ is allocated on a market share basis. Eligible applicants receive an allocation proportional to their respective market shares in relation to the total market calculated within their respective group and pool under the TRQ.

5.4. Eligible applicants are eligible to apply under only one group during any given allocation year under the CETA cheese TRQ.

5.5. For the purpose of this Notice, where two or more applicants are related persons, they shall be eligible for only one allocation. To determine which persons are related, applicants are required to provide a list of "related persons". A definition of related persons may be found in Appendix 4, "Information Concerning Related Persons".

5.6. In the case of separate applications from related applicants involving a parent company and one or more subsidiaries, only the application nominated by the parent company will be eligible. If the parent company does not make such a nomination in writing, it shall be made by Global Affairs Canada.

5.7. Allocations to individual eligible applicants will normally be capped at a maximum 20 percent of this CETA cheese TRQ.

5.8. In order to ensure that allocations are issued in economically viable quantities, applicants whose market share calculation does not result in an allocation of 1,000 kg or greater will normally not be issued an allocation, unless they have indicated in their applications that they will accept a lesser amount based on the market share calculation.

5.9. To ensure an orderly transition between allocation years, eligible applicants may receive, upon Global Affairs Canada's receipt of a complete application, advances of up to 30 percent of their initial allocation in the previous allocation year. Advances to applicants likely to be subject to an under-utilization penalty will be evaluated on a case-by-case basis.

5.10. All import allocations expire at the end of each allocation year and all applicants interested in receiving an import allocation must reapply each year.

5.11. In the event that the TRQ is not fully allocated, available quantities will be offered immediately to eligible applicants in proportion to their allocation, or on demand if quantities still remain after the first offer.

## 6. Allocation to the cheese manufacturers group

6.1. The cheese manufacturers group is divided into two pools:

- A pool for small and medium-sized cheese manufacturers; and
- A pool for large cheese manufacturers.

6.2. An eligible cheese manufacturer's market share is calculated on the basis of the kilograms of cheese manufactured by the applicant during the reference period in relation to the total market calculated within the applicant's pool.

## 7. Allocation to the distributors and retailers group

7.1. The distributors and retailers group is divided into two pools:

- A pool for small and medium-sized enterprise distributors and retailers; and
- A pool for large distributors and retailers.

7.2. An eligible distributor's market share is calculated on the basis of the kilograms of cheese that the applicant sold to other businesses during the reference period in relation to the total market calculated within the applicable pool. Sales to other distributors, sales to related persons and sales of cheese directly to final consumers should not be included in the applicant's calculation of cheeses sold to other businesses.

7.3. An eligible retailer's market share is calculated on the basis of the kilograms of cheese the applicant purchased and subsequently sold to final consumers during the reference period in relation to the total market calculated within the applicable pool.

7.4. Whether an eligible applicant will receive an allocation under the small/medium-sized enterprise distributors and retailers pool or the large distributors and retailers pool will be determined on the basis of the applicant's market share under the distributors and retailers group. Distributors and retailers whose market share under the distributors and retailers group amounts to less than 20,000 kilograms will be considered under the small/medium-sized enterprise distributors and retailers pool.

## 8. How to apply for an allocation

8.1. For the 2017 allocation year, applicants who wish to apply for an allocation under this TRQ are invited to submit their completed application form and any other relevant documents no later than September 8, 2017.

8.2. For 2018 and all subsequent allocation years, applicants who wish to apply for an allocation under this TRQ are invited to submit their completed application form and any other relevant documents no later than November 15 immediately preceding the opening of the allocation year.

8.3. All applicants for an allocation are required to include as part of their application:

- a sworn affidavit;
- a letter from an independent qualified professional (normally an accountant) verifying the information included in the application;
- a monthly breakdown of activities in the cheese sector.

8.4. For the purpose of this Notice, an "accountant" is defined as a member in good standing of one of the professional accounting bodies in Canada, who is registered with his/her provincial professional organization to provide accounting services and is independent from the applicant (i.e., is not an owner, a partner, a director, or an employee of the company applying for an import allocation).

8.5. All appendices to the application should be in the exact format of the models attached to this Notice. Any changes to the wording of the appendices will normally not be permitted. Any change to the appendices should be discussed and submitted in advance to be validated by Global Affairs Canada.

8.6. The information that the applicant provides will be considered when allocating the TRQ. Global Affairs Canada retains the right to request additional information. Applicants may be required to provide evidence of their activities. Accountants may be asked to explain the procedures used in greater detail and may be asked to provide Global Affairs Canada with copies of all working documents. Any costs associated with a request for additional information will be borne by the applicant. Failure to provide information requested may result in the application being deemed incomplete.

8.7. The declaration in the application form allows Global Affairs Canada and its representative access to any information pertaining to the applicant in relation to the application for an import allocation or to subsequent applications for, or concerning the use of, import permits that is in the files of Agriculture and Agri-Food Canada or the Canadian Food Inspection Agency. Normally, applicants are informed of any such requests for information.

8.8. Section 18 of the EIPA forbids any person to knowingly induce, aid or abet any other person to contravene any of the provisions of the EIPA. Such contraventions by an applicant or its accountant may lead to prosecution for offenses under the EIPA.

8.9. Applicants are invited to send their applications by E-MAIL to the CETA Mailbox. Applicants sending their application by e-mail should be prepared to present the original version of their application upon Global Affairs Canada's request. Failure to do so may lead to the cancellation of any allocation issued pursuant to the application and/or the cancellation of associated permits.

8.10. Applications sent by MAIL or COURIER should be addressed to the quota manager of the CETA cheese TRQ at Global Affairs Canada. The mailing address of the Trade Controls Policy Division can be obtained on the Global Affairs Canada website, under Contact Us.

8.11. For legibility reasons, applications sent by facsimile will not be accepted.

8.12. Applications postmarked after the deadline immediately preceding the opening of the allocation year, or in a format other than that required, will

normally not be considered. Lost applications will not normally be considered without acceptable proof that they were sent before the deadline (e.g., courier receipt).

## **9. Underutilization, returns and reallocation**

### **9.1 Underutilization**

**9.1.1.** Allocation holders with a utilization rate less than 95 percent in the previous allocation year may have their allocations adjusted downward by an under-utilization penalty for the new allocation year<sup>1</sup>.

**9.1.2.** For allocation holders that under-utilized in the previous allocation year, allocations in the new allocation year will be reduced by the percentage of the allocation not utilized in the previous allocation year<sup>2</sup>.

**9.1.3.** Allocation holders that under-utilized during the previous allocation year will be advised of the applicable under-utilization penalty before the allocations are finalized for the new allocation year.

### **9.2. Returns**

**9.2.1.** For the 2017 allocation year, allocation holders may return any portion of the balance of their allocation no later than November 1, 2017. Any portion of an allocation that is returned by this date will be considered as having been used for the purposes of administering the under-utilization policy.

**9.2.2.** For 2018 and all subsequent allocation years, allocation holders may return any portion of the balance of their allocation no later than August 1 of the allocation year. Any portion of an allocation that is returned by this date will be considered as having been used for the purposes of administering the under-utilization policy.

**9.2.3.** Allocation holders that return 20 percent or more of their allocation for two consecutive years may have their allocation reduced in the next allocation year by the amount of quota they returned averaged over those two consecutive years. This provision will not normally apply to small/medium-sized enterprises, small/medium-sized cheese manufacturers and new entrants, as defined in the Notice,

**9.2.4.** Allocation holders that returned 20 percent or more of their allocation for two consecutive years will be advised of the applicable penalty before the allocation is finalized for the new allocation year.

### **9.3. Reallocation**

**9.3.1.** Returned quantities will normally be made available immediately the day after the return deadline to eligible allocation holders in the distributors and retailers groups who have not returned any unused quantity of their allocation. The reallocated quantity will be in proportion of the applicant's allocation, or on demand if quantities still remain after the first offer.

## **10. Transfer policy**

**10.1.** The Minister may allow the transfer of allocations between allocation holders. All requests for allocation transfer must be referred to Global Affairs Canada for consideration. Requests must be made by way of the [CETA Cheeses - Import Allocation Transfer Request form](#).

## **11. Import permit**

### **11.1. Types of permits**

**11.1.1.** An import permit issued by Global Affairs Canada is required for every shipment of cheese covered by this Notice to enter Canada. For a given shipment, importers may either present a shipment-specific import permit or invoke the appropriate General Import Permit (GIP).

**11.1.2.** Cheese imported directly into a bonded warehouse does not require either a specific import permit or a GIP. However, an import permit is required to move goods out of a bonded warehouse for consumption in Canada.

### **11.2. Shipment-specific import permits**

**11.2.1.** Shipment-specific import permits are normally issued on demand to allocation holders up to the amount of their allocation under the CETA cheese TRQ. Shipments entering Canada under a shipment-specific import permit can normally do so at the within access rate of duty as long as there is sufficient quota remaining.

**11.2.2.** To claim the within access rate of duty for a shipment, the importer must present the shipment-specific import permit to the CBSA at the time of final accounting.

**11.2.3.** Shipment-specific import permits will not normally be issued retroactively for shipments that have already been imported into Canada, including under the authority of a GIP, regardless of the importer's allocation.

**11.2.4.** For a shipment-specific import permit to be considered valid, the name on the permit must match exactly the name of the importer on the CBSA's B3 customs entry and related documents at time of final accounting. Furthermore, the quantity on the permit must be the same as the net quantity on the Customs invoice. It is incumbent on the recipient of the permit to ensure that a permit application is made in the name of the importer of record and

includes the correct quantity. Questions about the proper procedures to fill out customs entry documents should be addressed to local CBSA officials.

### 11.3 General Import Permit

11.3.1. The GIP that applies for cheese is *General Import Permit (GIP) No. 100 – Eligible Agricultural Goods*. There is no limit to the quantities of industrial cheese that may enter Canada under the GIP; however, such imports will be subject to the higher over access rate of duty.

### 11.4 How to apply for a permit

11.4.1 Information about the permit application process, including information about fees, the monthly billing system, information required from applicants and the permit application form, is available on the Global Affairs Canada website: [Applying for an Import Permit](#).

## 12. Contact us

12.1. Contact details the Trade Controls Policy Division and the Help Desk are available on the Global Affairs Canada website: [Contact Us](#)

12.2. For directory assistance, you may call 343-203-6820.

1 The utilization rate (%) will be calculated for every allocation holder as follows:

$$\text{Utilization Rate (\%)} = (\text{Actual Level of Use (kg)} / \text{Total Allocation Granted (kg)}) \times 100\%$$

Where:

$$\text{Actual Level of Use (kg)} = \text{Permits Used (kg)} + \text{Returns (kg)} + \text{Transfers Out (kg)}$$

And:

$$\text{Total Allocation Granted (kg)} = \text{Initial Allocation (kg)} + \text{Transfers In (kg)} + \text{Reallocation of returns (kg)}$$

2 The under-utilization penalty will be calculated as follows:

$$\text{Underutilization Penalty (kg)} = \text{Pre-penalty Allocation (kg)} \times \text{Underutilization Rate (\%)}$$

Where:

“Pre-penalty Allocation (kg)” is the allocation that the allocation holder would have been eligible for in the new allocation year, if the allocation holder had not under-utilized in the previous allocation year.

And:

$$\text{Underutilization Rate (\%)} = 100\% - \text{Utilization Rate (\%)}$$

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