

Global Affairs Canada

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> Notice to Importers - CETA Cheese Tariff Rate Quota (TRQ) - Appendix 4

Notice to Importers

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

Appendix 4 – Related Persons

1. For the purposes of this Notice to Importers, persons are related to each other and are related persons if they are:

- a. relatives of one another;
- b. corporation and
 - i. a person who controls the corporation,
 - ii. any person who is a member of a related group that controls the corporation,
 - iii. any person who is a relative of any person who controls the corporation, or
 - iv. any person who is a relative of any person who is a member of a related group that controls the corporation; or
- c. two corporations
 - i. controlled by the same person, related group, or unrelated group,
 - ii. one of which is controlled by one person and that person is a relative of a person who controls the other corporation,
 - iii. one of which is controlled by one person and that person is a member of a related group that controls the other corporation,
 - iv. one of which is controlled by one person and that person is a relative of any member of a related group that controls the other corporation,
 - v. one of which is controlled by one person and that person is a relative of each member of an unrelated group that controls the other corporation,
 - vi. one of which is controlled by a related group, a member of which is also a member of another related group that controls the other corporation,
 - vii. one of which is controlled by a related group, a member of which is a relative of any member of another related group that controls the other corporation, or
 - viii. one of which is controlled by a related group, each member of which is a relative of at least one member of another related group that controls the other corporation.

2. Notwithstanding section 1, for the purposes of this Notice to Importers, persons shall normally be deemed related to each other and to be related persons if they are not dealing with each other at arm's length in respect of the import, purchase and/or sale of the products covered by this Notice.

3. For the purposes of this Notice to Importers:

- a. "arm's length" means the relationship that exists between parties that are self-interested, who are seeking to maximize their respective positions, and who act severally and independently from each other - it is a question of fact whether persons not related to one another within the meaning of section 1 of this appendix were at a particular time dealing with each other at arm's length;
- b. "common connection" may be evidenced by, for example:
 - i. a provision in a formal agreement,
 - ii. conduct, or
 - iii. a business or family relationship;
- c. "economically dependent" means a state when the ongoing operations of a corporation depends upon the majority of its business volume coming from one source;
- d. "person" means an individual or a corporation;
- e. "related group" means two or more persons that have a common connection;
- f. "relative(s)" are persons connected by blood, marriage, common-law partnership, adoption or affinity regardless of age or relationship;
- g. "unrelated group" means two or more persons that have no common connection.

4. For the purposes of this Notice to Importers:

- a. "control" means ownership of such a number of shares as carries with it the right to a majority of the votes in the election of the board of directors.
 - i. In addition to this definition, the following also applies:
 1. ownership of more than one-third of the shares and less than a majority of the shares of a corporation may be presumed to constitute control of that corporation unless it can be established that the corporation is not controlled in fact by the owner of those shares
 2. a person who has an option or a right under a contract, in equity or otherwise, in any capacity, to shares in a corporation, or

to acquire shares in a corporation, or to control the voting rights of shares in a corporation may be presumed to control that corporation unless it can be established that the corporation is not controlled in fact by the person who has this option or right;

3. where any person, related group, or unrelated group owns a large debt of a corporation which may become payable on demand or a substantial investment in retractable preferred shares that person, related group, or unrelated group may be presumed to control that corporation unless it can be established that the corporation is not controlled in fact by the owner(s) of that debt or retractable preferred shares
 4. where a corporation has commercial activities, contractual agreements, or arrangements with any person, related group, or unrelated group that could make this corporation economically dependent on this person, related group, or unrelated group, then that person, related group, or unrelated group may be presumed to control that corporation unless it can be established that the corporation is not controlled in fact by the person, related group, or unrelated group that has commercial activities, contractual agreements or arrangements with that corporation
 5. where any person, related group, or unrelated group possesses unique expertise or experience that is critical for the ongoing operations of a corporation that person, related group, or unrelated group may be presumed to control that corporation unless it can be established that the corporation is not controlled in fact by the person, related group, or unrelated group that possesses the unique expertise or experience
- b. "control in fact" means an ability to change or determine the composition of the board of directors or an ability to direct the business and affairs of the corporation.

5. For the purposes of this Notice to Importers:

- a. where two corporations are related to the same third corporation within the meaning of this Notice to Importers, they are related to each other;
- b. a corporation can be controlled or controlled in fact by a person, related group, or unrelated group notwithstanding that the corporation is also controlled by another person, related group, or unrelated group;
- c. a person can be considered to be related to himself, herself, or itself for the purpose of establishing that persons are related to each other and are "related persons".

Date Modified: 2017-07-28