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Chief Agriculture Negotiator

Négociateur principal en agriculture

Your file / Votre référence

Our file / Notre référence

March 15, 2006

Don Jarvis  
President and CEO  
Dairy Processors Association of Canada  
205 - 408 Queen Street  
Ottawa, ON K1R 5A7

Dear Mr. Jarvis:

Thank you for your letter of February 28, 2006, concerning the Dairy Farmers of Canada's proposal to use Article XXVIII negotiations as a means to address issues arising out of a recent ruling from the Federal Court of Appeal on the tariff classification of a milk protein isolate (MPI).

You specifically asked for clarifications on 1) import levels of MPIs used in dairy products; 2) the required compensation under Article XXVIII; 3) the possibility of using global safeguards; and 4) the impact of Article XXVIII with respect to other international trade agreements to which Canada is a party.

*1) import levels of MPIs used in dairy products*

We do not possess any exact data on the levels of MPIs imported into Canada for dairy processing. However, we estimate that somewhere between 3000 to 5000 tonnes of imported MPIs were used by the dairy processing sector in 2005.

*2) the required compensation under Article XXVIII*

With respect to the compensation to be provided under Article XXVIII as a result of the adoption of a new tariff rate quota that replaces an unlimited tariff concession, it should be noted that Article 6 of the Understanding on the Interpretation of Article XXVIII of the General Agreement on Tariffs and Trade 1994 specifies that the amount of this compensation should exceed the amount of trade actually affected by the modification, and this compensation should be based on the greater of:

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- (a) the average annual trade in the most recent representative three-year period, increased by the average annual growth rate of imports in that same period, or by 10 per cent, whichever is the greater; or
- (b) trade in the most recent year increased by 10 per cent.

As for any negotiations, the results of Article XXVIII negotiations are not necessarily completely pre-determined in advance as World Trade Organization maintain some flexibility. However, the specificity of the outcome envisaged under Article 6 of the Understanding provides limited grounds for any negotiating party to refuse a legitimate Canadian offer and to retaliate. Note that paragraph 2 of Article XXVIII provides that the negotiations can include compensatory adjustment with respect to other products and that Article XXVIII does not preclude retaliation from affecting other products.

*3) the possibility of using global safeguards*

You asked whether global safeguards could be used in the event that we witnessed a spike in imports of MPIs. In order to apply global safeguard measures, it would need to be demonstrated that MPIs and milk are like goods, or directly competitive goods. I should also note that under North America Free Trade Agreement (NAFTA), global safeguard measures could only be applied to imports from Mexico and the U.S. if these countries' imports accounted for a substantial share of total imports or if they contributed significantly to the serious injury, or threat thereof, caused by imports. As it stands now, most imports of MPIs are entering Canada from non-NAFTA countries. If we could take action to restrict imports from these countries, our expectation would be that the current imports could be replaced by imports from the U.S. or Mexico.

*4) the impact of Article XXVIII with respect to other international trade agreements*

It is the government's view that, as a result of our NAFTA commitment, higher tariffs implemented as a result of Article XXVIII negotiations could not be applied to the U.S. and Mexico.

I hope that this information responds to your questions. Please feel free to contact me if I can be of any further assistance.

Again, thank you for writing on this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Verheul", written in a cursive style.

Steve Verheul

c.c.: Andrew Marsland, Assistant Deputy Minister, AAFC  
Len Edwards, Deputy Minister, AAFC  
Laurie Throness, Chief of Staff to the Honourable C. Strahl  
Richard Tudor Price, Strategic Policy, AAFC  
Larry Malloy, Chief of Staff to the Honourable D. Emerson  
John Core, Chairman, Canadian Dairy Commission