

**BEFORE THE PANEL ESTABLISHED PURSUANT TO  
ARTICLE 28.7 OF THE COMPREHENSIVE AND  
PROGRESSIVE AGREEMENT FOR TRANS-PACIFIC  
PARTNERSHIP**

***Canada – Dairy Tariff-Rate Quota (TRQ) Allocation  
Measures***

(CDA-NZ-2022-28-01)

**Japan's Oral Statement at the  
Hearing**

14 June 2023

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### **LIST OF ABBREVIATIONS**

<b>ABBREVIATION</b>	<b>DESCRIPTION</b>
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
CUSMA	Canada-United States-Mexico Agreement
VCLT	Vienna Convention on the Law of Treaties
WTO	World Trade Organization

**I. Introduction**

1. Madame Chair, distinguished Members of the Panel, Japan welcomes this opportunity to present its views today.
2. This is the first dispute settlement case under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership ("CPTPP"), in which New Zealand claims that Canada's dairy tariff rate quota mechanism is inconsistent with various provisions. Japan expresses its views due to its systemic interest in the interpretation and application of the CPTPP, without taking a position on specific facts or legal claims of this case.

**II. Importance of the CPTPP Dispute Settlement System**

3. The dispute settlement system under Chapter 28 of the CPTPP contributes to ensuring the rights and obligations of each Party under the CPTPP. Japan is confident that the Panel will fulfil the important duty entrusted to it and that the disputing Parties are able to address their concerns through this panel proceeding. This process will demonstrate that the dispute settlement system promotes effective implementation of the CPTPP.
4. Japan also stresses the importance of third-party participation in panel proceedings to express their views under Article 28.14 of the CPTPP, considering that panel findings may have a substantial impact on implementation of the CPTPP.

**III. Reference to Findings of Dispute Settlement Bodies Established Under Other International Agreements When Interpreting CPTPP Provisions**

5. One of the points being discussed in this panel proceeding is how the Panel may treat findings of dispute settlement bodies established under other international agreements, in particular the Canada-United States-Mexico Agreement ("CUSMA"), in relation to Article 28.12.3 of the CPTPP. On the one hand, New Zealand argues that the findings of the CUSMA panel in *Canada – Dairy TRQ Allocation Measures* are "highly pertinent" for the Panel's review.<sup>1</sup> On the other hand, Canada highlights that "the approach followed by [the CUSMA] panel is not binding on this Panel, which must conduct its own [Vienna Convention on the Law of Treaties (1969) ("VCLT")] analysis".<sup>2</sup> Japan expressed its views on this point in its third-party submission, without taking a position on the substance of the findings in the CUSMA panel report or their relevance to this case. Considering the significance of third-party participation, Japan elaborates its views on this point.
6. According to Articles 28.12.1 and 28.12.2 of the CPTPP, a panel's function is to "make an objective assessment of the matter before it" and to "make the findings, determinations and recommendations ... necessary for the resolution of the dispute" "in a manner consistent with [Chapter 28] and the Rules of Procedure". A CPTPP panel is required to make its own "objective assessment" on the rights and obligations at issue by interpreting the relevant provisions of the CPTPP. When making such own assessment, it can be useful in some cases to consider findings of dispute settlement

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<sup>1</sup> New Zealand's first written submission, para. 72. Australia seems to support this statement, although it recognizes that "the Panel is not bound by [the CUSMA panel's] decision" (Australia's third-party submission, para. 18).

<sup>2</sup> Canada's first written submission, para. 193. (footnote omitted)

bodies established under other international agreements for further clarification of rights and obligations under the CPTPP.

7. Nevertheless, Article 28.12.3 of the CPTPP requires that, when performing its "function", a panel interpret the provisions of the CPTPP "in accordance with the rules of interpretation under international law as reflected in Articles 31 and 32 of the [VCLT]".<sup>3</sup> Even when different international agreements use similar or "identical"<sup>4</sup> wording in a specific provision, the rights and obligations may not necessarily be "identical". This is because they differ in respects such as their contracting parties, object, purpose and context, as well as the background and circumstances of their conclusion.
8. In addition, with regard to the difference in the contracting parties, Japan also notes that the Parties to the CPTPP which are not Parties to the CUSMA do not have an opportunity to express their views on the interpretation of the CUSMA.
9. With these points in mind, the Panel is required under Article 28.12.1 of the CPTPP to make its own objective assessment in this case.

#### **IV. Conclusion**

10. Madame Chair and distinguished Members of the Panel, this concludes Japan's statement. Japan also thanks Canada's Responsible Office for its excellent organisation and coordination of the logistics for this hearing.

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<sup>3</sup> Japan's third-party submission, para. 3.

<sup>4</sup> See, e.g., Australia's third-party submission, para. 18.