

**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)

THIRD PARTY WRITTEN SUBMISSION

OF JAPAN

2 May 2023

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LIST OF ABBREVIATIONS

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

I. INTRODUCTION

1. Japan welcomes the opportunity to present its views to the Panel. While Japan does not take any position on the specific facts or the legal claims of this case in this submission, Japan expresses its views on certain issues relevant to the current proceeding because of its systemic interest in the interpretation and application of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership ("CPTPP").

II. FUNCTION OF PANELS, RULES OF INTERPRETATION IN DISPUTE SETTLEMENT PROCEDURES AND REFERENCE TO FINDINGS OF DISPUTE SETTLEMENT BODIES UNDER OTHER INTERNATIONAL AGREEMENTS WHEN INTERPRETING PROVISIONS OF THE CPTPP

2. Given that this case is the first dispute settlement proceeding initiated under Chapter 28 (Dispute Settlement) of the CPTPP, Japan would like to take this opportunity to confirm the function of panels and the applicable rules of interpretation.
3. 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". Article 28.12.3 of the CPTPP requires that a panel, when performing its functions, 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 *Vienna Convention on the Law of Treaties (1969)*" ("VCLT"). In addition, the same Article provides that "[w]ith respect to any provision of the WTO Agreement that has been incorporated into this Agreement, the panel shall also consider relevant interpretations in reports of panels and the WTO Appellate Body adopted by the WTO Dispute Settlement Body".
4. In this regard, Japan notes that New Zealand's first written submission refers to the final report of the panel in *Canada – Dairy TRQ Allocation Measures* under the United States-Mexico-Canada Agreement ("USMCA"), as "highly pertinent" for the Panel's review because of "the parallels between the USMCA and CPTPP Processor Clauses",¹ particularly for the interpretation of the term "an allocation".² On the other hand, Japan also notes Canada's first written submission stating that "the determination and the analytical approach followed by [the abovementioned] panel is not binding on this panel"(footnote omitted) and that "if the Panel considers that the [abovementioned panel's] decision is at all relevant to its analysis, the Panel should closely appraise the persuasive value of that determination".³

¹ New Zealand's first written submission, para. 56.

² New Zealand's first written submission, para. 72. See also New Zealand's first written submission, para. 78 and fn 102 thereto, which refers to the interpretation of the term "processor" by the USMCA panel.

³ Canada's first written submission, para. 193.

5. Japan does not take any specific position on the findings or the relevance of the USMCA panel report to this case. At the same time, Japan wishes to remind the Panel of the necessity of following "the rules of interpretation under international law as reflected in Articles 31 and 32 of the [VCLT]", as required by Article 28.12.3 of the CPTPP. If the Panel refers to interpretations made by dispute settlement bodies established under other international agreements as part of the grounds of its legal analysis in interpreting CPTPP provisions, Japan will pay close attention to whether such analysis and subsequent determination by the Panel remain consistent with the abovementioned provision regarding the rules of interpretation.

III. CONCLUSION

6. Japan reiterates its gratitude to the Panel for the opportunity of presenting its views in connection with this dispute and the interpretation and application of the CPTPP.
