

United States dairy industry urges stronger action against Canada

By CAROL RYAN DUMAS
Capital Press

Nearly 70 U.S. dairy companies and associations are urging U.S. Trade Representative Katherine Tai to hold Canada's feet to the fire in its market access obligations under the U.S.-Mexico-Canada Agreement.

They want the ambassador to initiate a dispute settlement case with the Canadian government over its administration of dairy tariff-rate quotas if there is not an immediate positive resolution reached in consultation.

Canada agreed to new market access for U.S. dairy products through TRQ allocations in the USMCA, but Canada is circumventing its obligations, the groups said in a letter to Tai.

Canada has awarded the vast majority, 85%, of TRQs to processors — in many cases ones that are competing directly against the type of products the U.S. wants to ship to Canada, Shawna Morris, vice president for trade with U.S. Dairy Export Council and National Milk Producers Federation, said in a podcast.

"The way Canada is handling its market access under USMCA is likely to result in fewer shipments and lower value shipments than we had anticipated we'd be able to get under USMCA," she said.

Canada's TRQ allocations are designed to discourage the full utilization and value of the TRQs, limiting U.S. dairy imports, according to the U.S. Dairy Export Council and National Milk Producers Federation.

With the bulk of TRQ access reserved for processors, only a small amount is left for distributors and retailers are cut out from TRQ access, Morris told Capital Press.

"It's these latter two groups that we think have the strongest incentives to actually purchase U.S. dairy products, and we want to make sure they have a greater role in the process," she said.

The U.S. Trade Representative's office requested consultation with Canada over the issue in December. If ongoing consultation and a USMCA Free Trade Com-

mission meeting this week do not result in immediate resolution, the groups are calling for additional enforcement action.

The dairy industry wanted to send the letter ahead of this week's meeting to make sure it was clear the industry is eager for enforcement action to move forward, she said.

It's hard to know how the meeting will turn out, but every time there is a session — particularly led by the U.S. trade representative — there's a strong possibility of success, she said.

The U.S. dairy industry worked with the U.S. trade representative's office and Congress to secure strong enforceable dairy provisions in the USMCA, and knew proper implementation and enforcement would be critical, said Krysta Harden, president and CEO of the Dairy Export Council.

"This is why we need USTR to take bold action to ensure the U.S. dairy industry fully benefits from the hard-fought wins included in the USMCA," she said.



Shawna Morris



Capital Press File

Members of Congress are asking the attorney general to provide an update on the investigation of major meatpacking companies.

Lawmakers urge movement on meatpacker investigation

By CAROL RYAN DUMAS
Capital Press

On Monday, 16 members of Congress prodded Attorney General Merrick Garland to update them on the investigation into the four meatpackers that dominate the U.S. market.

Sen. John Thune and Rep. Dusty Johnson, both R-S.D., led 14 of their colleagues in urging Garland to continue the U.S. Department of Justice investigation into the meatpackers.

The letter also requested that DOJ update Congress on the probe, according to a press release from Johnson.

Nearly a year ago, DOJ sent civil investigation demands to the meatpackers, but no results have been made public.

In fact, the lawmakers said in the letter, there is no information to even suggest whether the investigation has concluded.

"It is critically important that producers have fair and transparent markets for the commodities they produce. We urge the DOJ Antitrust Division to continue vigilance and where possible

provide updates of findings," the lawmakers said.

They cited the market disruption from a 2019 fire at a beef processing plant in Kansas and pandemic-disrupted markets and plant closures. Huge spreads between fed cattle prices and the price of boxed beef sprang from those events.

"With a tight supply chain, any change in processing capacity can have a dramatic impact on cattle prices, preventing producers from capturing margin from boxed beef rallies," the lawmakers said.

In May of 2020, former President Donald Trump asked DOJ to investigate the large price disparities.

"While black swan events do not always prove wrongdoing, additional attention can reinforce confidence in the system," the lawmakers said.

National Cattlemen's Beef Association hopes the lawmakers' request will be met at DOJ with the urgency it warrants.

Despite strong consumer demand and the economy reopening across much of the country, cattle produc-

ers face significant business challenges, said Ethan Lane, NCBA vice president of government affairs.

They are contending with high market volatility, drought and high input costs, and they can't capture the value they deserve for the high-quality product they supply, he said.

There's a large supply of cattle at one end and a high demand for U.S. beef at the other, but the middle is being choked by the lack of processing capacity, he said.

"It's in the best interests of both producers and consumers for the Department of Justice to get to the bottom of the current market dynamics and assess why they seemingly always result in producers getting the short end of the deal," he said.

"Cattle producers deserve to know whether or not the price disparity that has plagued our market is the result of anti-competitive or other inappropriate practices in the packing sector," he said.

NCBA hopes to see results from the attorney general soon, he said.

Federal law doesn't pre-empt \$25 million glyphosate verdict

By MATEUSZ PERKOWSKI
Capital Press

Federal law does not pre-empt legal claims that glyphosate herbicides cause cancer, the 9th U.S. Circuit Court of Appeals has ruled in upholding a \$25 million judgment against Monsanto.

A jury determined in 2019 that exposure to glyphosate in Roundup products had caused plaintiff Edwin Hardeman's non-Hodgkin's lymphoma, awarding him \$80 million in damages.

That amount was knocked down to \$25 million by a federal judge, who decided the original amount was unconstitutionally excessive.

Monsanto — a major seed and chemical producer that has since merged with Bayer — challenged the verdict before the 9th Circuit, arguing that Hardeman's claims shouldn't have even reached the jury.

The Federal Insecticide, Fungicide and Rodenticide Act pre-empted the lawsuit because the U.S. Environmental Protection Agency determined that glyphosate doesn't require a cancer risk label, according to Monsanto.

The allegation that Monsanto was liable for a "failure to warn" about cancer risks under California law must fail because that state imposes labeling requirements that are different from FIFRA, the company said.

However, the 9th Circuit has now rejected that interpretation, ruling that California law doesn't conflict with



The 9th U.S. Circuit Court of Appeals has upheld a \$25 million judgment against Monsanto for selling Roundup herbicide without a cancer warning.

FIFRA in regard to warning labels.

"We conclude that Hardeman's failure-to-warn claims based on Roundup's labeling are consistent with FIFRA and thus are neither expressly nor impliedly pre-empted," the 9th Circuit said.

The EPA's approval of Monsanto's label for glyphosate doesn't necessarily prove the company complied with FIFRA — it's merely a "rebuttable presumption" that can still be overruled by a judge or jury, the 9th Circuit said.

Likewise, it would not have been impossible for Monsanto to warn of glyphosate's cancer risk under FIFRA's labeling rules, the ruling said. "Because Monsanto could comply with both FIFRA and California law, FIFRA did not impliedly pre-empt Hardeman's state failure-to-warn claims."

The 9th Circuit's ruling

contradicts the legal position of the EPA, which argued the pesticide registration process pre-empts lawsuits against products whose labels have been approved by the agency.

The pesticide industry, represented by CropLife America, claimed the judgment against Monsanto sets a dangerous precedent "well beyond Roundup and glyphosate."

"The district court's decisions under review raise the fundamental question of whether specific pesticide labeling requirements imposed by EPA in the exercise of expert scientific judgments under FIFRA can be overridden by the verdicts of lay juries under state law across a wide array of regulated pesticides," the organization argued.

Aside from the question of federal pre-emption, the 9th Circuit ruled that expert testimony regarding the link between glyphosate and cancer was properly admitted in the lawsuit.

The original punitive damages awarded by the jury were "grossly excessive," but the reduced amount didn't violate Monsanto's due process rights, the ruling said.

"Ultimately, evidence of Monsanto's conduct — downplaying concerns and failing to fully assess Roundup's safety after being alerted to possible risks — supports that Monsanto acted with 'indifference to or a reckless disregard of the health or safety of others,'" the 9th Circuit said, citing case law.

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