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union farmer newsletter

NFU calls for Fertilizer Price Investigation

Farmers are facing massive increases in the cost of fertilizer. For example, for NFUO President Don Ciparis's farm, fertilizer prices went up 144-220% between April 7 and December 13 of 2021. Meanwhile, the big fertilizer companies -- Nutrien, Yara, CF Industries, and Mosaic – that dominate the North American fertilizer market are making record profits. Nutrien predicts its 2021 profits be twice its 2020 level, going from $3.7 Billion to $7.1 Billion US dollars EBITDA.

Over this past year there has been an ongoing discussion in the media about the impact on our economy from increased costs due to supply chain problems, COVID related problems, increasing energy costs, etc. For farmers, these problems make our net income go down. How is it that when fertilizer companies operate in the same economy their incomes skyrocket? It may come down to plain old profiteering.

When the four biggest companies in sector control over 40% of the market, they have the power to behave in a monopolistic fashion. Customers and suppliers dealing with them are faced with a take-it-or-leave-it situation when it comes to prices. This is certainly the case with fertilizer in Canada.

The NFU has previously shown how fertilizer companies can manipulate their costs and charges to increase their profits at the expense of farmers. Doug Scott, NFU Board member from Alberta noted that the only consistent difference between 2020 and 2021 is that the price of grain went up. He said "It seems obvious that lack of competition in the fertilizer business allows companies to raise prices to match or overtake commodity prices, regardless of their internal cost structures. Fertilizer companies are making windfall profits, while farmers are facing massively increased costs after many did not grow much of a crop in 2021 because of the drought."

All of the Business Risk Management Programs under the Canadian Agriculture Partnership rely on a substantial level of taxpayer support, which Canadians generally agree to do in order to maintain a viable farming sector. Anticompetitive corporate behaviour and gouging will drive many farmers out of business, but equally important, exorbitant fertilizer prices will cause Business Risk Management programs to function as a conduit that flows hundreds of millions of taxpayer dollars to the corporations engaged in the profiteering. Rather than restraining anti-competitive behaviour, government programs may be enabling or even funding it.

We believe that the only way to get to the bottom of these price increases is for an independent body like the House of Commons Agriculture Committee to investigate all of the factors that contribute to fertilizer pricing in Canada. On January 13, the NFU wrote to the House of Commons Agriculture Committee urging it to investigate the all factors that contribute to fertilizer pricing in Canada as soon as possible.

To read the NFU's letter go to www.nfu.ca/fertilizer-inquiry . ▪

You can call, write or email your own Member of Parliament to share your own concerns about fertilizer prices too.

Use your postal code to find your MP's contact information. Go to:

https://www.ourcommons.ca/Members/en

CUSMA Dairy Trade Dispute

–by Cathy Holtslander, NFU Director of Research and Policy

On January 4, 2022, the decision in the very first trade dispute under CUSMA (the new NAFTA) was announced. The USA said Canada's approach to allocating TRQs for dairy imports was not in compliance with the agreement. The tribunal found in favour of the USA. But what does this mean for our farmers?

Background

Canada is the USA's largest market for high value food products. Trade deals have been prying open our markets to imports from the USA – and displacing Canadian-produced foods – since the Free Trade Agreement of 1988 was signed. Our supply management system still stands between American food processors and their ambitions for even greater access to our profitable consumer market. It is not surprising that the first trade dispute under CUSMA was about dairy.

Under CUSMA (the New NAFTA or USMCA) Canada has agreed to create "Tariff Rate Quotas" (TRQs) that permit tariff-free imports of 14 types of dairy products from the USA. The maximum quantity of imports allowed in each category is set according to a schedule that gradually increases the allowable volume of US sourced-products in each category annually for 19 years. Any imports above these TRQ amounts are subject to high tariffs, making them uneconomic. Up to 85% of the milk, cream, and butter and cream powder TRQs must be for importation in bulk (not retail sale) to be processed into dairy products used as ingredients for further processing. A tariff is a tax charged on imports.

In December 2020 the Trump administration initiated this trade challenge, claiming Canada was not complying with the spirit of the trade deal by not allocating TRQs in a way that maximizes benefits to US dairy interests.

In January 2021 a group of our US allies urged the Biden administration to drop the trade challenge. See *Op Ed: US farm groups and unions ask Biden to end CUSMA attack on Canada's supply management system* at www.nfu.ca/op-ed-cusma-attack However, the US proceeded, initiating a dispute arbitration panel process in May 2021.

The decision

The Panel finds that Canada's practice of reserving TRQ pools exclusively for the use of processors is inconsistent with Canada's commitment in Article 3.A.2.11(b) of the Treaty not to "limit access to an allocation to processors."

Canada Dairy TRQ Final Panel Report.pdf
https://bit.ly/3ra3aoD

The dispute panel's decision focuses on the method Canada uses to divvy up TRQs among importers. Canada created a pool of potential importers eligible to apply for a portion of the TRQ. In most of the 14 categories, 85 to 100 percent of these potential importers are processors (buying raw milk) or further processors (buying dairy products from processors as ingredients for their products). Having separate pools for importers who are processors or further processors versus those who are distributors helps Canada maintain stability and predictability in the dairy system.

The decision requires Canada to change the way TRQs are allocated, but does not dictate what approach Canada must use – as long as non-processors have some access to TRQs. And, the decision does not compel Canada to ensure that all of the potential dairy imports available under the TRQs are filled.

Canada's deadline for compliance is February 3, 2022. The devil will be in the details as to what new allocation system Canada creates. The American dairy lobby would gain if Canada imports more altogether, and/or if a higher proportion of the dairy Canada imports is processed in the USA where American processors could reap the value-added profits.

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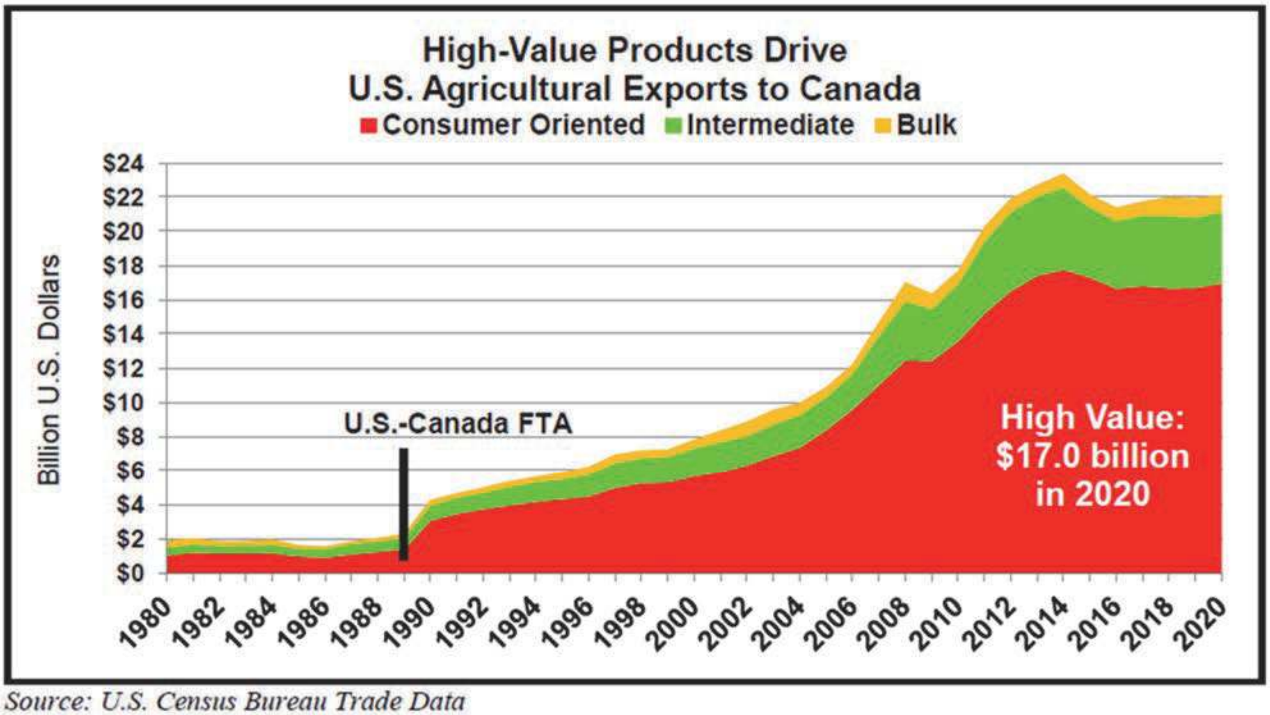
US-based retailers operating in Canada, such as Walmart, would also benefit from importing bottled milk, packaged cheeses, etc., directly from their US suppliers. If a new TRQ approach favours increased processing in the USA and Canadian processors' revenue drops as a result, it could lead to pressure on our farmgate prices and further loss of market share for Canadian dairy products. ▪



Graph source: High-Value Exports Reach Highest Level Since 2016, USDA GAIN Report Number: CA2021-0030, May 2021

Farmers Beware the Variety Use Agreement

–by David Gehl and Cathy Holtslander

The eagerly awaited annual seed guides have arrived bringing farmers reliable information on which to base this year's variety choices. These publications have a long history of providing objective, unbiased, science-based information. Data in the seed guides predict the agronomic performance, crop quality, and disease reactions expected from the crops in farmers' fields. The seed guides also present information regarding the varieties' intellectual property status. While often overlooked when choosing a new variety, this information should be considered -- especially now that some varieties are being sold with a Variety Use Agreement (VUA). The VUA is a pilot project of the industry group, Seeds Canada where some companies make specific new varieties available only under a contract requiring the farmer to pay the company a fee every time they use the variety for farm-saved seed.

Farmers should be aware of the history of the VUA and what it means for their right to use farm saved seed.

Prior to February 27, 2015, Canada operated under the UPOV 78 Plant Breeders Rights (PBR) framework, which does not restrict farmers' use of farm-saved seed for planting subsequent crops. Since the government amended Canada's *Plant Breeders Rights Act* on February 27, 2015, new varieties have been released under the UPOV 91 PBR framework. UPOV 91 gives plant breeders sweeping rights over seed, but includes the *farmers' privilege* entitling farmers to reproduce, condition, and store varieties for use as seed on their own farms without further royalty payment.

Under UPOV 91, royalties to the PBR holder can be collected only once per sale, generally when the initial seed is sold, but if that is not possible, the law permits companies to collect a royalty on the harvested crop instead. *(continued on page 4...)*

Farmers Beware the Variety Use Agreement, from page 3

Farmers probably remember the 2019 consultations where they were asked whether they wanted the farmers' privilege eliminated, and to instead pay mandatory "end point royalties" on their entire crop or to have "trailing contracts" that would require them to pay a royalty on their farm-saved seed. The answer was a resounding "No!"

Despite farmers' clear answer, Seeds Canada is now test-driving a voluntary trailing contract system with their VUA project. Farmers who participate sign a contract where they agree to pay the company whenever they use farm-saved seed of the variety. The VUA allows the seed company to collect revenue from these farmers every year after their initial purchase of the variety. When Parliament was debating the UPOV 91 PBR Act amendments, farmers fought hard to protect the ability to freely use farm-saved seed. Farmers who agree to VUAs are apparently willing to surrender this principle.

Comparing the intellectual property (IP) status of cereal listings in the current seed guide with previous years shows a trend towards more royalty-generating varieties. In 2015, the Saskatchewan Seed Guide listed 193 cereal crop varieties: 21% (41) with no PBR and 79% (152) with UPOV 78. None had restrictions on producers' ability to save and plant the seed on their farms. In the 2022 Saskatchewan Seed Guide 15.2% (30 varieties) have no PBR, 20.8% (41) have UPOV 78, and 61.4% (121) have UPOV 91 PBR – and **5 (2.5%)** of these are listed as having a **Variety Use Agreement (VUA)**, which can only be accessed by farmers who sign a contract agreeing to pay the company an annual fee in order to use their own farm saved seed to sow future crops.

The *Saskatchewan Seed Guide 2022* contains an explanation of PBRs, including a description of VUAs. It states that the purchaser of a VUA variety commits to pay the variety owner an annual "Variety Use Fee" every time that they grow farm-saved seed from that variety, incorrectly claiming this fee is a "royalty". This restriction on the use of farm-saved seed appears to be an attempt to use commercial contracts to supersede the *farmers' privilege* provisions under UPOV 91. Indeed, Canada's PBR Act includes clauses that allow regulations to be passed to remove or restrict *farmers' privilege*. So, the VUA pilot project may also be intended to normalize paying companies for farm saved seed in order to make it easier for Seeds Canada to convince the federal government to introduce regulatory changes that would make royalty payments on farm saved seed mandatory on all UPOV 91 varieties. Even without regulatory change, if, as proposed by Seeds Canada, VUAs are widely applied when new varieties are released, there will be a massive transfer of wealth from farmers to seed companies. Farmers clearly have a choice. It's time for Canadian farmers to vote with your feet and reject the VUA varieties! ▪

David Gehl is a seed grower and retired civil servant. He was Head of the Agriculture and Agri-Food Canada Seed Increase Unit at Indian Head, Sask. for twenty-five years. Currently, he represents the NFU on the Variety Registration Task Team, a part of the CFIA's Seed Regulatory Modernization process.

Cathy Holtslander is the Director of Research and Policy at the National Farmers Union. She provides research support to advance NFU policy recommendations and, in collaboration with NFU members, analyses and critiques existing agriculture and related policies.

Gene Editing News

Dr. Ricarda Steinbrecher, biologist and molecular geneticist based in Oxford, UK, gave an extremely informative and accessible explanation of how the new gene editing techniques work and what they can do – as well as their limitations and risks – at our January 27 NFUniversity class. If you missed it, you can watch it at www.nfu.ca/nfuniversity/past-classes/ .

In March, the CFIA intends to announce the final version of its regulatory guidance, largely unchanged from the version presented during public consultations. It would lead to most gene edited seed being exempt from any regulatory oversight and gene edited seed varieties being put on the market without identifying them as such. To send a message to Minister Bibeau urging her to stop this change, visit www.nfu.ca/GMseedaction . Additional information about the issue is also posted on that page.