The Trajectory of Three Marketing Boards in Canada: Gone, Going… and Curiously Persistent

BRYAN P. SCHWARTZ*

INTRODUCTION

Government operated single-desk marketing boards were a feature of the Canadian agricultural economy for much of the 20th and 21st centuries. However, their future viability and existence is now the subject of increasing criticism and doubt. This essay seeks to explain general trends by comparing and contrasting the past, present, and projected future of three schemes: the Canadian Wheat Board (CWB), the Freshwater Fish Marketing Corporation (FFMC), and the Canadian Dairy Commission (CDC).

At one time the CWB was the largest grain marketing board in the world[1], but after briefly being reduced to an option for producers as a dual-desk marketing board, the CWB has now been fully privatized. The FFMC has lost exclusive control in many jurisdictions, most recently ceasing to operate as a single-desk entity in Manitoba, and now operating as a single-desk only in the Northwest Territories. At the same time, the CDC continues to persevere despite both international pressure from partners to new free trade agreements that seek to reduce its authority, and domestic criticism that it is inefficient, hurts the disadvantaged, and stifles innovation.

* Professor and Asper Chair in International Business and Trade Law, Faculty of Law, University of Manitoba, Co-Editor-in-Chief, Manitoba Law Journal.

1 Brian Mayes, "Blame Canada: American Trade Complaints against the Canadian Wheat Board" (2002) 2 Asper Rev of Intl Bus and Trade L 135 at 135 [*Mayes*].

This essay reviews the theory of marketing boards and then compares the histories of the three different boards, the current developments in their operation, and the likely future of the boards or their successors. Comparing and contrasting the lifecycles of the boards is intended to provide greater insight into the fate of each. Examining the boards in such a way seeks to explain why they emerged in the first place, such as harsh market conditions for producers. This paper will also discuss why single desk marketing schemes persist despite changes in initial conditions. One explanation for this includes the successful lobbying of producers and administrators who favour retention of the current system. The existence of the scheme itself may provide its beneficiaries with economic incentives for maintaining it and logistical advantages against other parties (for example, unorganized consumers) who seek to change it. Factors particular to the Canadian political system also influence the existence of marketing boards. Canada's geographically based electoral system and its chronic concern with national unity can help insulate a marketing system from change despite widespread domestic criticism and international pressure.

Furthermore, this paper will examine circumstances that tend to result in a winding-down of a system. These include dissatisfaction among producers themselves, who may become larger, more sophisticated, and more confident in their ability to find and reach markets by themselves, as well as factors that tend to assist in overcoming political resistance to change, including international pressure, incremental reduction in the authority of the single desk, and compensation for producers.

SINGLE-DESK MARKETING BOARDS AND SUPPLY MANAGEMENT

A single-desk marketing board is typically arranged so that, via a government mandate, producers of a certain good are compelled to sell all of the goods they produce to the marketing board. This effectively gives the marketing board complete control over the sale of the good.[2] The board typically oversees many aspects of the sale process.

---

2 Freshwater Fish Marketing Corporation, "About Us" (2010), online: *Freshwater Fish Marketing Corporation* <www.freshwaterfish.com/content/pages/about-us> [https://perma.cc/EHH4-3UT9] [*Freshwater Fish Marketing Corp*]; Larry Martin & Kate Stiefelmeyer, "Assessment of Dual Marketing Alternatives for the Freshwater Fish

This includes testing for quality control, funding research, marketing and advertising the product, and in some cases even processing the good.[3] The board attempts to court purchasers (and often processors) through the marketing of the good, ultimately selling the product,[4] after which the expenses of running the board are subtracted[5] and the remaining funds are divided amongst the producers in accordance with the quantity of the good they produced.[6] Typically a single-desk marketing board can be characterized as a 'monopsony,' a system characterized by a market where there is only one buyer (in contrast to a monopoly, in which there is only one seller in a market).

In a supply-managed system, like the one used in in Canada's dairy industry, the marketing board controls supply in addition to performing the general functions of a single desk marketing board.[7] Supply management is a system where producers are only allowed to produce a specified amount of a good (in contrast to other systems where producers produce as much of the good as they can).[8] Typically, producers are assigned a quota by the marketing board that prescribes how much of the good they are permitted to produce, allowing the board to control resource production levels.[9] Situations where a marketing board exerts strict control over the supply chain are referred to as government-managed cartels.[10] There are cases where single-desk marketers also practice supply

---

Marketing Corporation: FINAL REPORT" (2006) George Morris Centre at 7 [*Martin & Stiefelmeyer*].

3 *Freshwater Fish Marketing Corp*, *supra* note 2.

4 *Martin & Stiefelmeyer*, *supra* note 2 at 7.

5 *Ibid*.

6 *Ibid*.

7 Canadian Dairy Commission, "Home: Canadian Dairy Commission" (15 April 2020), online: *Canadian Dairy Commission* <https://cdc-ccl.ca/index.php/en/canadian-dairy-commission-2/> [https://perma.cc/6QFM-VSV7] [*Dairy Commission Home*].

8 Canadian Dairy Commission, "Supply Management and the dairy industry" (11 March 2020), online: *Canadian Dairy Commission* <https://cdc-ccl.ca/index.php/en/supply-management/> [https://perma.cc/7T8Z-DWVA].

9 *Dairy Commission Home*, *supra* note 7.

10 *The Competition Act* (Canada) prohibits producers from entering agreements to fix prices, allocate markets and restrict outcome, an organization known as a cartel. Yet, in supply management this is exactly what the marketing board is granted power to do. Boards like the CDC are able to collaborate in a way to reduce supply and

management, which leads to what numerous critics have termed a "private tax on consumers."[11] Correspondingly, the prices paid by consumers in these systems are significantly higher than they would be under free market conditions.[12] With only one buyer, the price of the good is not determined competitively as in a free market but set by the governing marketing board.

Marketing boards have become the subject of increasing scrutiny over the past few decades. The marketing boards chosen for analysis in this essay exist in three different stages: the CWB has been privatized, the FFMC has experienced significant downsizing and no longer functions as a monopsonistic body in any of the provinces, while the CDC continues to hold strong in spite of international pressure. Ultimately, aspects of the boards' composition, producers, and circumstances lead to arguments against single-desk marketing and supply management, discussion on

---

increase profits at the expense of consumers, rather than competing in an open market. This has left many critics terming supply-managed industries as government-managed cartels. William BP Robson & Colin Busby, "Freeing Up Food: The Ongoing Cost, and Potential reform, of Supply Management" (April 2010) 128 C.D. Howe Institute: Backgrounder <https://poseidon01.ssrn.com/delivery.php?ID=931009020100123070083110094101015098096084018006060085124105031024105027086026086096056033123048021034111127094082103102066088123076062000041113088092027101069094123005012001093089091095119086093109069085095006115080109002028121095027031074111080080107&EXT=pdf> [https://perma.cc/C9E7-2XSV] at 1.

11 A private taxation on consumers refers to the situation created by supply management: "...state-sanctioned anti-competitive conduct that transfers value from consumers and potential market entrants to incumbent private interests". The point here is that consumers ultimately are left footing the bill for this government intervention to help the private interests of producers. Robert Mysicka & Marty McKendry, "Beer Butter and Barristers: How Canadian Governments Put Cartels before Consumers" (May 2013) 382 *CD Howe Institute* <https://www.cdhowe.org/sites/default/files/attachments/research_papers/mixed/Commentary_382_0.pdf> [https://perma.cc/A98B-B6ZR] at 5.

12 Mark Mike, "Canada's dairy cartel vs. consumers" (20 November 2011), online: *Fraser Institute* <https://www.fraserinstitute.org/article/canadas-dairy-cartel-vs-consumers> [https://perma.cc/3Z5M-N536] [*Mike*]; Lucas Powers, "Does supply management really mean Canadians pay more for milk" (3 June 2016), online: *CBC News* <https://www.cbc.ca/news/business/milk-dairy-cost-supply-management-1.3612834> [https://perma.cc/Y9JA-N27L].

difficulties with respect to reform, and finally, hypotheses on the future of these organizations.

CANADIAN WHEAT BOARD

A Brief History of the Canadian Wheat Board

The CWB was created in 1935 with the passing of the *Canadian Wheat Board Act*.[13] In 1931 over 25% of Canada's population resided in the Prairie Provinces, with 1/3 of Canadians actively farming.[14] Consequently, farming was a major force in Canada's economy,[15] with wheat and flour products comprising over a quarter of Canadian exports.[16] The first incarnation of the CWB came about during World War I (WWI), "as a result of a centralized allied *purchasing* agency, a centralized *selling* agency- the Board of Grain Supervisors- was established in Canada in 1917". [17] For a one-year period following the war, the Canadian government operated the CWB on an initial price-pooling and payment basis.[18] After this, a number of farmers participated in co-operatives known as "wheat pools"[19] established by each of the three Prairie Provinces. By 1929 these cooperatives had created a centralized selling agency, were marketing over 50% of Canadian grain, and had begun to offer initial payment to farmers for their goods.[20] However, prices of wheat plummeted during the Great

---

13 *Canadian Wheat Board Act*, RSC 1985, c C-24.

14 Vernon Fowke, *Canadian Agricultural Policy: The Historical Pattern*, (Toronto: University of Toronto Press, 1946) at 248.

15 *Ibid*.

16 Statistics Canada, "Canada's Leading Domestic Exports, Fiscal Years 1980, 1900, 1910, 1920, 1930 and 1936" (12 February 2009), online: *Statistics Canada* <https://www65.statcan.gc.ca/acyb02/1937/acyb02_19370518000x-eng.htm> [https://perma.cc/Z7PY-FABP].

17 Andrew Schmitz & Hartley Furtan, *The Canadian Wheat Board: Marketing in the New Millennium*, (Regina, SK: Canadian Plains Research Center, 2000) at 19 [*Schmitz & Furtan*].

18 *Ibid*.

19 Jacqueline Nelson, "The Wheat Board (1935-2012)" (2011) 84:19 Canadian Business 13 at para 2 [*Nelson*].

20 *Schmitz & Furtan*, *supra* note 17.

Depression, putting the wheat pools on the verge of bankruptcy and making them no longer able to pay out farmers.[21] The federal government initially attempted to intervene on behalf of the wheat pools' precarious economic situation by guaranteeing loans to the pools. Eventually, after increasing pressure from farmers, the government decided that they should maintain control over the market, and elected to do so through the establishment of the most modern iteration of the CWB in 1935.[22] While the Stamp and Turgeon royal commission determined that the CWB was actually "not necessary and the problem was one of over-supply", eventually politics won out[23] and in 1943, the government decided to make membership in the CWB mandatory in order to control inflation and ensure a reliable supply of grain to Britain during World War II (WWII).[24] The mandatory membership policy was adopted "…as a temporary, wartime expedient to resolve the extraordinary issues with which it was immediately confronted."[25] While support for the first CWB was largely due to farmers' "perceived sense of disempowerment and exploitation," the original monopoly mandate "was most directly instituted to control wheat supplies during [WWII]."[26]

Much like the introduction of income tax during WWI, the CWB's existence continued long after serving its original purpose.[27] Britain was Canada's primary export market, and a mandatory CWB allowed Canada

---

21 *Nelson*, *supra* note 19 at para 2.

22 *Ibid.*

23 Stan Benda, "From the Land that Brought you William Shatner: A Warp Speed Overview of Canadian Agricultural Law and History" (2011) 16:2 Drake J Agric L 207 at 223 [*Benda*].

24 Charles F Wilson, *A Century of Canadian Grain: Government Policy to 1951* (Saskatoon: Western Producer Prairie Books, 1978) at 777.

25 *Ibid* at 782.

26 Derek G Brewin, "Limitations on the Market Power Generated by the Single Desk of the Canadian Wheat Board" (2014) 62:4 Can J of Agric Econ 491 at 493 [*Brewin*].

27 Canada, Royal Grain Inquiry Commission, *Report of the Royal Grain Inquiry Commission* (Ottawa: JO Paternaude, ISO Printer to the King's most excellent Majesty, 1938) at 183-191. It is interesting to note than in the pages cited Turgeon states his belief that the board should not be made permanent as it would harm producers at home and cause problems with trading partners. He states his belief that in normal circumstances there should be no mandated board.

to send a stable supply of wheat to Britain after the war.[28] Additionally, a major reason for continuing the monopsony was the belief that it would improve market power, thereby allowing the CWB to negotiate more effectively with large grain companies and help maximize returns for individual farmers.[29]

Before its dismantlement and sale, the CWB held a monopsony over barley, malt barley, durum and wheat produced by farmers in Alberta, Saskatchewan, Manitoba, and a small part of British Columbia.[30] Farmers in Western Canada were required to sell their total production of these grain varieties to the CWB.[31] The process began with farmers shipping their grain to the CWB's grain elevators and receiving an initial payment for their product that was less than the expected return once it was sold in the market.[32] At the end of the crop year the CWB would make a final payment to farmers, which would ensure that they received their full return (minus their share of the CWB's pooled operating costs).[33] The CWB was responsible for both marketing and selling the grain of each farmer under its jurisdiction.[34]

The CWB was owned and operated entirely by the Canadian Government until:

Eventually, farmers regained some control in 1998, when leadership of the organization was passed to them. Ten elected growers formed a board of directors along with five government members, and soon farmers were helping set their own prices for wheat and controlling delivery options.[35]

---

28 Colin A Carter, "The Canadian Wheat Board: Its Role in North American State Trading" (1998), online: *University of California Agricultural Issues Centre* <https://aic.ucdavis.edu/oa/stecwb.pdf> [https://perma.cc/H6NA-HFT6] at 5.

29 George E Britnell & VC Fowke, *Canadian Agriculture in War and Peace 1935-1950* (London: Oxford University Press, 1962) at 196.

30 *Canadian Wheat Board Act*, RSC 1985, c C-24, s 2 & s 45(1).

31 *Ibid*, s 45(1).

32 William E Morris, *Chosen Instrument II, A History of the Canadian Wheat Board: New Horizons* (Winnipeg: Canadian Wheat Board, 2000) at 4.

33 *Ibid*.

34 *Canadian Wheat Board (Interim Operations) Act*, SC 2011, c C-5, s 14.

35 *Nelson*, *supra* note 19.

However, under this new system the CWB was still an involuntary monopsony. It was not until 2012 that the monopsony on wheat and other grain products ended, and the CWB went through a transition period. After this time, selling to the board became voluntary. The *Marketing Freedom for Grain Farmers Act* instituted a timeline for the privatization of the CWB.[36] The board had until 2016 to come up with a privatization plan and until 2017 to implement it.[37] The board became fully privatized when it was sold to G3 Global Grain Board in July of 2015.[38]

Opposition to the CWB

Many farmers became increasingly upset by the involuntary nature of the CWB. Membership was mandatory, and those who contravened the system were subject to harsh penalties. For example, in 2002 Jim Chatenay was sentenced to sixty-two days in prison for refusing to pay a $2000 fine after donating a bushel of wheat worth $4 to an agricultural youth club.[39] This situation demonstrates an inherent problem in government-managed cartels: they restrict producers' right to manage their own products. Many farmers who opposed the CWB felt that a monopsony hurt them because it created missed market opportunities.[40] They believed that they should be able to sell their grain to whomever they wanted.[41] Instead of being able

---

36 *Marketing Freedom for Grain Farmers Act*, SC 2011, c 25 [*Marketing Freedom for Grain Farmers Act*]; Janyce McGregor, "Canadian Wheat Board prepares for corporate takeover" (1 December 2014), online: *CBC News* <https://www.cbc.ca/news/politics/canadian-wheat-board-prepares-for-corporate-takeover-1.2853874> [https://perma.cc/E3M9-LCVP] at para 7 [*McGregor*].

37 *Ibid*.

38 The Canadian Press, "Ottawa Closes Sale of Canadian Wheat Board, Name Changes to G3 Canada Ltd." (31 July 2015), online: *CBC News* www.cbc.ca/news/canada/saskatchewan/ottawa-closes-sale-of-canadian-wheat-board-name-changes-to-g3-canada-ltd-1.3175983 [https://perma.cc/9AJT-4562].

39 CBC News, "Alberta farmers jailed over wheat exports" (31 October 2002), online: *CBC News* <www.cbc.ca/news/canada/alberta-farmers-jailed-over-wheat-exports-1.329406> [https://perma.cc/KJC5-3YCB].

40 *Ibid*.

41 Milton Boyd, "Removal of the Canadian Wheat Board Monopoly: Future Changes for Farmers and the Grain Industry" (2011) 115 Frontier Center for Public Policy 4 at

to choose between several grain processors (as they are now able to do), farmers had to sell to the CWB regardless of the price the board decided to charge.[42]

Another problem with the CWB monopsony was that it caused a lack of competition, which gave rise to conditions that could stifle innovation. Farmers had no incentive to innovate in order to reduce costs, no impetus to seek out better contracts for sale of grain, and no control over pricing or sale. As a result of the supply management system, farmers could not lose or gain a contract on the basis of market competition because the market was strictly controlled using a quota system. However all of this changed with the creation of the voluntary system. Now, several competitors must innovate to reduce their bottom line so that they can vie for larger contracts and sell their product at a lower price. Under a voluntary system, producers are rewarded for their innovation. This allows goods to be produced at a lower price, thereby creating a competitive advantage. With the existence of more than one buyer in the system, producers are also encouraged to find more competitive contracts for their sales of grain. Finally, a failure to innovate can cause some producers to be pushed out by more dynamic and innovative competitors if they fail to keep up.

In response to criticisms regarding the transition to a post-single-desk era, it is important to remember what the situation was like before voluntary marketing and subsequent privatization. A 2008 study conducted by Informa Economics found that the CWB was failing farmers. The conclusions drawn by this report demonstrated that the CWB did not achieve better results than an average farmer would marketing their grain on their own.[43] Moreover, the report found that for the three year period ending in 2006, the annual cost of inefficiency

---

7 [*Boyd*].

42 It is difficult to measure the level of the inefficiencies and trade barriers caused by the Canadian Wheat Board since there are no tariffs. Not having tariffs allows the government to hide the level of inefficiencies. This problem has resulted in the WTO supporting the idea of using tariffs instead of quotas or prohibitions as they provide a measurable statistic.

43 Informa Economics, "An Open Market for CWB Grain: A Study to Determine the Implications of an open Marketplace in Western Canadian Wheat, Durum and Barley for Farmers" (June 2008), online: *Government of Alberta* <http://farmersforjustice.com/pdf/Informa%20Final%20Report.pdf> [https://perma.cc/TP2D-EPZE].

through the CWB's marketing was roughly $300 million per year.[44] This comparison was shown by the evolution of non-board grains and their ability to reduce inefficiency and compete in the market.[45] When CWB grains are compared with grains marketed outside the CWB's jurisdiction, the results demonstrate inefficiency and a stifling of innovation. Non-wheat board grain marketing has evolved, allowing farmers to cut inefficiencies and maximize returns.[46] It could be inferred from this that given some time to get through the growing pains of the recent switch from a single-desk system, that Canada's wheat producers will adapt and find greater efficiencies in the marketing of their grains.

The report also found that there has been a marked decrease in wheat and barley production in Western Canada:

> …wheat acreage in Canada has dropped approximately 9.6 million acres or 28% since the mid-1980's. Feedgrain crops, as a group, have also declined slightly with a 5% drop, with barley acreage decreasing by 12% compared to oats and corn (non-board feed crops), that have increased by 18% and 19% respectively. Meanwhile, oilseeds have increased by 82% and special crops have increased by 303%. [47]

These figures demonstrate that while non-board grain production increased, at the same time, there was a marked drop in CWB marketed grains. This alone does not show a causal link between farmers' dissatisfaction with the CWB marketing and the drop in CWB marketed grain. However, a stronger causal connection can be found when comparing these figures to Eastern Canadian Farmers who were not under the CWB monopsony. In fact, wheat acreage increased by over 33% in Ontario over the same period, with the largest increase occurring in 2003 after the switch to a voluntary marketing organization.[48] This was also the case internationally, where among all major wheat exporters, Canada had the largest decline in wheat acreage (largely as a result of Western-Canadian producers).[49] While some farmers and activists are not happy

---

44 *Ibid* at 60.

45 *Ibid* at 59.

46 *Ibid.*

47 *Ibid* at 78.

48 *Ibid* at 79.

49 *Ibid* at 80.

about the privatization of the CWB, it appears that their romanticized image of the organization is not entirely accurate.

On a similar note, the CWB failed to foster any "value-adding" ("anything that enhances [a] raw commodity so that end users pay more for it") to the Canadian wheat market that would be expected from a player of its size.[50] Some theorized that the CWB's ability to exert control over the price of wheat in Western Canada had in fact significantly stunted the growth of the value-added industry.[51] Given that the value-added wheat industry in the United States grew at almost twice the rate of the Canadian industry in the 1990s,[52] it was argued that the elimination of the CWB as a single-desk marketer of wheat could also lead to an increased entrepreneurial spirit and investment in the value-added wheat industry in Western Canada.[53]

Further incentive to change or abolish the CWB came from the nature of the industry itself. Grain farming in Canada, and the needs of grain farmers, had significantly evolved over the past century. When the CWB was created in the 1930s, wheat farms were an average of 300 acres in size.[54] In contrast, modern wheat farms are often 3000-6000 acres or more in size[55] with an average value of $2.9 million in 2017.[56] The sheer size and value of a grain farm has necessitated an increase in producers' business acumen and a continued desire to compete for market share. Farmers in the 1930s were industrious, but they were not the educated, well-connected, and sophisticated business people of today's agricultural industry.[57] While the farmers of the past were content with having another organization operate the business side of their farms, modern farmers can run businesses, make contracts, and explore new markets on their own,

---

50 Larry Martin, Holly Mayer & Jerry Bouma, "Benefits and Costs of a Voluntary Wheat Board for the Province of Alberta" (March 2002) *George Morris Centre* at 4.

51 *Ibid* at 2.

52 *Ibid* at 3.

53 *Ibid* at 53.

54 *Boyd*, *supra* note 41 at 7.

55 *Ibid*.

56 Statistics Canada, "Farm Financial Survey, 2017" (2017), online: *Statistics Canada* <https://www150.statcan.gc.ca/n1/daily-quotidien/190215/dq190215f-eng.htm> [https://perma.cc/H8VL-32R3].

57 *Boyd*, *supra* note 41 at 4.

without being confined to the CWB's single-desk monopsony.[58] Technological changes have also played a role in the shift away from the CWB, in that many farmers in the 1930s had no way of knowing prices, connecting with potential clients, and generally maintaining complex business arrangements. Now farmers can use smartphones and computers to check the price of wheat at any time, connect with potential or current clients, and create and maintain complex business affairs. The widespread proliferation of telecommunications and Internet services has enabled farmers to run the business side of their operations more effectively and with increased ease, requiring less intervention from the CWB on their behalf.

The market for wheat has also changed since the inception of the CWB. The crisis of the Great Depression no longer exists, inflation in the wheat market is no longer a major concern, and liberalized markets and world pricing preclude Canada from controlling the price of wheat the way it did during WWII. Additionally, Britain is no longer the largest importer of Canadian wheat, rendering that advantage of the CWB obsolete.[59] The modern agricultural and economic climate is vastly different than that of the early years of the CWB, and the single desk monopsony system has become ineffectual.

One of the more significant driving forces behind the disbanding of the CWB was international pressure.[60] The trend in many developed countries has been the elimination of large agricultural monopolies, and many of Canada's trading partners and prospective partners had little tolerance for the negative trade consequences that the CWB caused.[61] The United States often voiced its opposition to the CWB, stating that its monopsony powers gave it an unmerited advantage in the American

---

58 *Ibid* at 4, 7.

59 Alberta Wheat Commission, "The Canadian Wheat Brand" (2015), online: *Alberta Wheat Commission* <https://albertawheat.com/prices-planning-purchasing/the-canadian-wheat-brand> [https://perma.cc/XYF6-YPYM].

60 Stefanie Proulx, "The Rise and Fall of the Canadian Wheat Board: A Historical Analysis" (23 July 2012) [unpublished, archived at online: *University of Ottawa*] <https://www.ruor.uottawa.ca/bitstream/10393/23856/1/PROULX,%20St%C3%A9fanie%2020125.pdf> [https://perma.cc/56SX-GGU9].

61 *Ibid*.

marketplace.[62] In response, Canadians would argue that American importers prefer "higher quality Canadian wheat" and that the United States' supply is insufficient.[63] The implementation of the *Canada-United States Free Trade Agreement*[64] (CUSTA) in 1989 further complicated relations by leading to an elimination of tariffs and import quotas between Canada and the United States in the wheat trade.[65] The wheat trade quickly became a political issue in the United States, as private farms believed that the CWB had competitive advantages as a monopsony.[66] Initial complaints revolved around freight subsidies for CWB grain shipments.[67] These complaints, coupled with relentless pressure from American grain producers,[68] resulted in the United States International Trade Commission's 1994 investigation into the CWB's operations and a questioning of whether or not it was violating CUSTA.[69] The Commission "focused on whether wheat and related products were being imported under such conditions "…as to render or to tend to render ineffective, or materially interfere with…" the price support program conducted by the US for wheat."[70] At the conclusion of the investigation, three of the six commissioners found that the wheat imports from Canada were violating the agreement.[71] In response to the Commission's report, Canada agreed to limit its wheat exports and a Joint Commission on Grains was established.[72] The Joint Commission recommended the elimination of "excessive discretionary pricing practices" in both Canada and the United

---

62 Steve McCorristona & Donald MacLaren, "Do state trading exporters distort trade?" (2007), 51:1 Euro Econ Rev 225 at 228.

63 *Mayes*, *supra* note 1 at 140.

64 *Canada-United States Free Trade Agreement Implementation Act*, SC 1988, c 65.

65 Julian M Alston, Richard S Gray & Daniel A Sumner, "Wheat Disputes Under NAFTA (Conference Paper/Presentation)" (2001) 16842 Ag Econ 143 at 144.

66 *Ibid* at 146.

67 *Ibid* at 145.

68 *Ibid.*

69 *Ibid* at 147.

70 *Mayes*, *supra* note 1 at 143.

71 *Ibid.*

72 *Ibid.*

States.[73] However, because the findings were not binding, they ultimately had very little impact .[74]

Internationally, wheat-exporting nations such as the United States contended that the CWB gave Canadian producers an unfair advantage, because:

> "The CWB, through initial price guarantees, subsidizes the farmer; ... the setting of initial prices distorts production; and ...the CWB has been used by the Canadian government to implement the UK wheat agreement, providing credit sales to foreign markets, such as Russia and Poland, and blocking sales to the United States."[75]

This international pressure culminated in 2002 when the United States launched a WTO complaint against Canada asserting that,

> "the Canadian Wheat Board Export Regime is inconsistent with Canada's obligations under Article XVII: 1 of the General Agreement on Tariffs and Trade 1994; and [that] certain measures relating to Canada's bulk grain handling system and to the transportation of grain by rail in Canada are inconsistent with Canada's obligations under Article III:4 of the GATT 1994."[76]

In addition to global pressure, there was also internal pressure from Canadian farmers to eliminate the CWB's monopsony. This included an attempt to deregulate Canadian barley exports to the United States with the goal of creating a continental market whereby barley could pass freely between the United States and Canada, circumventing the restrictions of the CWB.[77]. The catalyst for this event was the increasing discrepancy between American and Canadian feed prices.[78] Pressure from farmers led the then Progressive-Conservative government to adopt a regulation in

---

73 *Ibid.*

74 *Ibid.*

75 *Schmitz & Furtan*, *supra* note 17 at 104.

76 World Trade Organization, "Canada – Measures Relating to Exports of Wheat and treatment of Imported Grain (Appellate Body Report)" (30 August 2004), online: *WTO* <https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=(@Symbol=%20wt/ds276/ab/r*%20not%20rw*)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#> [https://perma.cc/YDD8-88Y3] at 1-2.

77 Jane Matthews Glen, "The Canadian Wheat Board, Socio-Economic Vulnerability and the Neo-liberal State" (2015) 5:1 Onati Socio-Legal Series 135 at 141.

78 *Ibid.*

1993 ending the CWB's monopsony over barley.[79] However, the initiative was successfully challenged by the Saskatchewan Wheat Pool shortly thereafter, and was struck down six weeks later because it was "outside the powers of government under the Act (Saskatchewan Wheat Pool 1993)."[80] The striking down of the regulation was a major factor in motivating unhappy producers to join a group called "Farmers for Justice" who protested against the CWB's continued control over the barley market. They engaged in a number of acts of protest and defiance against the CWB, including transporting wheat and barley across the border without a permit, which resulted in harsh penalties (including jail time).[81] Members of the group included people like Jim Chatenay, the farmer in the previous example who was moving grain across the border in protest against the CWB, and Andy McMechan, a Manitoban who spent 155 days in jail for transporting grain to the United States in protest.[82] After the CWB started to wind down in 2012, then Prime Minister Stephen Harper issued a pardon for all farmers charged in relation to CWB protests.[83]

Disassembling the CWB

The intense pressure to eliminate the CWB did not result in a simple removal of the organization. After being a fixture in the Canadian agricultural industry for over seventy years, the CWB had become institutionalized. CWB workers launched a series of advertisements in an attempt to promote the board and undermine the government's plan to eliminate the single-desk marketing system.[84] The Government of Canada issued a directive to the CWB that it must refrain from using farmer funds

---

79 *Ibid.*

80 *Ibid.*

81 *Ibid.*

82 Colby Colsh, "Want Political Change? Talk to a Farmer" (6 November 2011), online: *Maclean's* <www.macleans.ca/authors/colby-cosh/want-political-change-talk-to-a-farmer/> [https://perma.cc/7GRK-AC6U].

83 Laura Payton, "Harper Pardons Farmers Arrested Under Old Wheat Board Law", (1 August 2012) online: *CBC News* <www.cbc.ca/news/politics/harper-pardons-farmers-arrested-under-old-wheat-board-law-1.1146436> [https://perma.cc/NZ9H-QHX4].

84 *Canadian Wheat Board v Canada (Attorney General),* [2010] 3 FCR 374 at para 14, 2009 FCA 214 [*CWB FCC*].

to advocate for itself, as that was not the purpose of the organization.[85] The CWB's refusal forced the government to take action, and while the CWB was successful at the Federal Court of Canada, the Federal Court of Appeal subsequently overturned the ruling.[86] The Court of Appeal agreed with the government, holding that the CWB's mandate was to market wheat, and that they could not advocate "on matters of public policy [by] using producer funds."[87]

Although producers vocally protested against the board, the CWB endured because many farmers felt that they benefitted from it.[88] These farmers believed that while the CWB restricted their freedom to sell on the open market, the board continued to benefit them overall through its enhanced bargaining strength.[89] In 2011, a non-binding plebiscite on the issue revealed that 51% of barley farmers and 62% of wheat farmers still supported the CWB.[90] The vote was held in response to a public statement from the then Minister of Agriculture, the Honourable Gerry Ritz, who said that the CWB was going to be stripped of its monopsony powers.[91] However, there was significant criticism surrounding how the vote was conducted.[92] Given that employees of the CWB administered the plebiscite, questions arose over its legitimacy.[93] Additionally, the plebiscite's significance may have been undermined by the fact that it only assessed the interests of farmers. The interests of processors, consumers, and taxpayers, who may also have been negatively affected by the CWB, were not considered.

---

85 *Ibid* at para 3.

86 *Ibid*; *Canadian Wheat Board v Canada (Attorney General)*, [2009] 2 FCR 347, 2008 FC 769.

87 *CWB FCC*, *supra* note 84 at para 54-55.

88 *Boyd*, *supra* at note 41 at 6.

89 *Ibid*.

90 Lorne Gunter, "Ottawa delivers freedom to farmers over protests of Wheat Board" (13 September 2011), online: *National Post* <https://nationalpost.com/opinion/lorne-gunter-ottawa-delivers-freedom-to-farmers-over-protests-of-wheat-board/wcm/f6a9dbf4-995e-4560-9836-faa62d29bd07/> [https://perma.cc/AA25-2W9X] [*Gunter*].

91 *Ibid*.

92 *Ibid*.

93 *Ibid*.

On July 31, 2012, as a result of both internal and external pressure, the government announced that the CWB would no longer be a mandatory single-desk marketing board.[94] Standing in front of a large ceremonial clock bearing the title "Marketing Freedom", the Honourable Gerry Ritz ushered in the new era of voluntary grain marketing.[95] The government's multi-year plan to eliminate the single-desk CWB began with the passage of the *Marketing Freedom for Grain Farmers Act* in 2011, which changed the directorial structure of the board from being run by farmer-elected directors to government appointees; the CWB was tasked with creating a privatization plan that would be in place by 2017, or it would face dissolution.[96] The privatization of the CWB commenced and culminated with Saudi Arabian-owned grain company G3 Global Grain Group buying a controlling stake in the CWB in April 2015.[97]

> "G3 Global Grain Group will get 50.1 per cent of the company in exchange for an investment of $250 million. The other 49.9 per cent will be kept in trust for farmers who deliver grain to the board. Any farmer who does deliver will get $5 per tonne in equity in the organization. In seven years, G3 Global Group has the option to buy back the shares from farmers at market value."[98]

Since farmers' shares could be bought back, the government did not receive any money for the "sale" of the CWB. Additionally, the future price of the shares is based on fair market value and is therefore unknown.

---

94 This was part of a plan to ultimately privatize the Canadian Wheat Board. The first stage of which was to make it a dual-desk marketing system whereby producers can choose whether to sell to CWB. Kate Stiefelmeyer et al, "The Move to A Voluntary Canadian Wheat Board: What Should be Expected?" (2011) George Morris Centre 2011 at 2.

95 This occurred at a Saskatoon press conference after the passage of the Marketing Freedom for Grain Farmers Act. Jake Macdonald, "Why so Many Farmers Miss the Wheat Board" (November 27, 2012), online: *The Globe and Mail* <www.theglobeandmail.com/report-on-business/rob-magazine/why-so-many-farmers-miss-the-wheat-board/article21810531/> [https://perma.cc/A9LQ-FBEH].

96 *Marketing Freedom for Grain Farmers Act*, *supra* note 36; *McGregor*, *supra* note 36.

97 G3 Grain Group is a joint venture between Bunge Canada and SALIC Canada, which is a subsidiary of Saudi Agricultural and Livestock Investment Company. Chinta Puxley, "Canadian Wheat Board Goes Private with Government's Sale to G3 Global Grain Group" (15 April 2015), online: *Financial Post* <http://business.financialpost.com/news/canadian-wheat-board-goes-private-with-governments-sale-to-g3-global-grain-group> [https://perma.cc/6SKX-XE5P].

98 *Ibid.*

While this has led some critics to claim that the government "gave away" the CWB,[99] Morris W. Dorosh notes: "Critics of this transaction are right when they say the government gave the asset away. What they miss is that there was so little appeal in the CWB as a going concern that no better terms could be found."[100] It was only after a number of possible plans and transactions were considered that the Government decided to proceed with the G3 buyout offer, and given the highly competitive and well-established nature of the international grain market, the CWB remains a small player in this industry even with the finances of its new controlling partners behind it.[101]

The Effect of the Canadian Wheat Board Sale and Future Considerations

While there were mixed feelings among farmers over the privatization of the CWB, in the immediate wake of its privatization both producers and administrators experienced growing pains. Many farmers were optimistic immediately following the end of the monopsony. In the summer of 2013 a bumper crop coincided with high market prices on grains.[102] Unfortunately, the optimism soon turned to frustration for many farmers, as the actual sale and delivery of Canadian wheat overseas became "paralyzed with incompetence."[103] The problems of unorganized and ill-equipped producers trying to get grain to market were many:

> Overloaded elevators stopped taking delivery of wheat, and not just because of an overabundance of product—trains were unavailable. Flotillas of empty ships sat at

---

99 Morris W Dorosh, "Modified Wheat Board: Why Canada Gave CWB Away" (13 May 2015), online: *Financial Post/National Post* <http://business.financialpost.com/fp-comment/modified-wheat-board-why-canada-gave-cwb-away> [https://perma.cc/2V4G-4Y93].

100 *Ibid.*

101 *Ibid.*

102 Bumper crop refers to a crop where the harvest yield is unusually high relative to expected yield.

103 Jake Macdonald, "Why so Many Farmers Miss the Wheat Board" (27 November 2012), online: *The Globe and Mail* <www.theglobeandmail.com/report-on-business/rob-magazine/why-so-many-farmers-miss-the-wheat-board/article21810531/> [https://perma.cc/A9LQ-FBEH] at para 12 [*Macdonald*].

> anchor in Vancouver's English Bay with their meters running, waiting for weeks for wheat that never arrived. Cash-strapped farmers were forced to buy storage bins at $60,000 apiece to keep their crop from rotting. When farmers found an elevator that would take their grain, some got half the money received under the CWB, and were charged twice as much to ship it.[104]

A 2014 Review of Canada's Transport System noted that while many weaknesses in the transportation system were found, the results were mitigated when considering the 2013-14 year's record-high crop and subsequent severe winter. Even with transportation and weather-related difficulties, record high levels of grain were still delivered that year.[105] The 2013 bumper crop of 77 million metric tonnes was 28% higher than the previous 2008 bumper crop of 60 million metric tonnes.[106] The extraordinary circumstances of the 2013-14 crop year cannot be discounted when considering the severity of the 2014-15 year's losses, as the losses were being measured against the output from an extraordinarily high-yield year. Even after accounting for these factors, some "growing pains" (and potentially some associated losses) should be allowed for given the immediate shift made from a highly entrenched system that was in existence for the better part of a century. For those transportation issues that remained intolerable, the report provided a number of recommendations aimed at enhancing the efficient movement of grain in order to alleviate the problems that occurred during the transition period.[107]

Following the shift to a voluntary organization, some critics formed groups to protest the disassembly of the CWB. One of the most vocal groups was "The Canadian Wheat Board Alliance",[108] which engaged in

---

104 *Ibid.*

105 Canada, Ministry of Transportation, *Pathways: Connection Canada's Transportation System to the World*, vol 1 (Ottawa: Canada Transport Act Review, 2015) online: <www.tc.gc.ca/eng/ctareview2014/CTAR_Vol1_EN.pdf > [https://perma.cc/73DU-CN6U] at 149.

106 *Ibid* at 152.

107 The recommendations center on the removal of bottlenecks in the transport of grain including, improving off farm storage, as current storage can only hold roughly 20% of production. *Ibid* at 157.

108 The CWB Alliance is a non-governmental organization without any partisan ties, and seeks to lobby on behalf of farmers for their right to market through the Canadian

advocacy in support of maintaining the status quo. After Ottawa dismantled the farmer-owned CWB, another group of four farmers, who called themselves the "Friends of the Canadian Wheat Board", launched a class action lawsuit, valued at $17 billion, against the federal government. The suit alleged that Ottawa expropriated 3,337 railway cars through the collapse of the CWB, and that by doing so, the federal government had seized property owned by CWB shareholders. [109] The Federal Court struck down a number of sections of the claim, and in 2015 the Supreme Court of Canada declined to hear an appeal from the group.[110] In June 2019, the Friends of the Canadian Wheat Board continued their fight. Appearing in the Court of Queen's Bench in Manitoba, they argued that the Harper government had incorrectly held $150 million dollars that should have been returned to farmers upon the CWB's dismantlement in 2012.[111] The judgment was delivered on October 30, 2019.[112] Justice Martin granted Canada's motion to strike out the amended statement of claim, writing that, "in the context of the law and litigation process" the claim had no chance of succeeding.[113]

Another group of Manitoba farmers have also called for the return of the CWB's monopsony on wheat and barley export sales. Led by a former CWB Director, on February 10th, 2016 more than 50 grain producers in Manitoba voted unanimously for the return of the CWB's monopsony.[114] Agriculture Minister Lawrence MacAulay said that a transition back to a single-desk system would not happen and that the board is still operating

---

Wheat Board. Canadian Wheat Board Alliance, "About", online: *Canadian Wheat Board Alliance* <www.cwbafacts.ca/about/> [https://perma.cc/MQ5S-XZB4].

109 *Macdonald*, *supra* note 103.

110 Janyce McGregor, "Supreme Court won't hear farmers' appeal of $17B wheat board lawsuit" (9 April 2015), online: *CBC News* <https://www.cbc.ca/news/politics/supreme-court-won-t-hear-farmers-appeal-of-17b-wheat-board-lawsuit-1.3026578> [https://perma.cc/X79X-YA2H].

111 Glenda-Lee Vossler, "Canadian Wheat Board Court Case Continues" (3 June 2019), online: *Highriver Online* <https://www.highriveronline.com/ag-news/canadian-wheat-board-court-case-continues> [https://perma.cc/FP8D-ZE9L].

112 *Dennis v The Attorney General of Canada et al*, 2019 MBQB 153.

113 *Ibid* at para 44.

114 Robert Arnason, "Producer Meeting Calls for CWB Return" (16 February 2016), online: *The Western Producer* <www.producer.com/2016/02/producer-meeting-calls-for-cwb-return/> [https://perma.cc/V5FC-ARLE].

in the competitive grain-handling business with no ties to government.[115] He continued by noting that the government would look at implementing new trade regulations and rules to ensure fair returns for farmers, and reiterated that under rules set forth by the WTO, state-run trading monopolies cannot be reformed after they have been disbanded.[116]

Yet another group that has taken issue with the transition has been the Union of Canadian Transportation Employees. In the summer of 2018, the Saudi-owned G3 Global Grain Group came under fire following the emergence of diplomatic tensions between Saudi Arabia and Canada which led to the Saudi government's decision to stop buying Canadian grain.[117] The decision resulted in the Union of Canadian Transportation Employees issuing a press release calling for the Canadian government to buy back its majority interest in the CWB, stating that the recent events were proof that G3 could not be trusted to uphold the interests of Canadian farmers.[118]

Although some farmers have been pessimistic about the market situation post-monopsony, there are still many who remain optimistic about a Wheat Board-less future. This includes the President of the Canada Grains Council, Tyler Bjornson, who said in an interview with *The Producer* in 2017 that: "The mood in the industry over not only this year but also for growth prospects and value creation in general are very positive."[119] This is also evinced by optimism about the continued coordination, investment and innovation in the transportation of grain from people like Brennan Turner of FarmLead online grain marketplace, who opined that improvements in coordination between railway

---

115 Karen Briere, "CWB Not Coming Back, Say Liberals" (18 February 2016), online: *The Western Producer* <www.producer.com/2016/02/cwb-not-coming-back-say-liberals/> [https://perma.cc/DQD9-6HAX].

116 *Ibid.*

117 Rahul Kalvapalle, "Union calls on Trudeau government to buy back Canadian Wheat Board from Saudi interests" (24 August 2018), online: *Global News* <https://globalnews.ca/news/4406012/canadian-wheat-board-saudi-arabia-union/> [https://perma.cc/3RTC-A8RP].

118 *Ibid.*

119 Ed White, "Grain Industry Positive in post-CWB Era", (7 April 2016), online: *The Western Producer* <www.producer.com/2016/04/grain-industry-positive-in-post-cwb-era/> [https://perma.cc/FTP7-A9BG] at para 2.

companies and elevators should help ameliorate the transportation issues that overshadowed the first few years of voluntary marketing.[120] Furthermore, the addition of foreign international grain traders could bring more diversity growth to the industry as grain traders…

> From…around the world are looking to grab a piece of Canada's wheat market. China's state-owned Cofco Agri Ltd. is hiring three grain traders for an office in Manitoba. That follows moves by Swiss-Based Glencore PLC and the state-owned Saudi Agricultural & Livestock Investment Co. to establish a foothold in Canada.[121]

While some growing pains have arisen from the elimination of the CWB monopsony, there are undoubtedly reasons to remain positive regarding future opportunities for farmers. It is still too early to say that the move to a private system has put farmers in a worse position than they would have been under a single-desk system. While it may be more difficult for smaller, less business-savvy farmers to adjust to the need to market their own grain, the trend in agriculture has been towards the consolidation and corporatization of farms. Larger outfits with greater business acumen have reason to be optimistic as they can now market their grain to whomever they please and garner the best possible price on the free market. With increasing foreign interest in Canadian grain trade and improvements to grain transport, it seems natural that enterprising farmers should be optimistic in this environment.

FRESHWATER FISH MARKETING CORPORATION

History of the FFMC

The FFMC has kept a lower profile than its counterparts, the CDC and the CWB. There are fewer studies and discussions about the FFMC and it admittedly affects a smaller number of people. Freshwater fish regulation falls under both federal and provincial jurisdiction. The federal

[120] *Ibid* at para 6.

[121] Jen Skerrit, "Foreign Traders Moving in on Canadian Wheat Market", (16 June 2016), online: *The Globe and Mail* <www.theglobeandmail.com/report-on-business/economy/foreign-traders-moving-in-on-canadian-wheat-market/article30495508/>[https://perma.cc/3LNF-AVMB].

government has jurisdiction over the seacoast and inland fisheries, and the provinces have jurisdiction where the property on which fisheries operate is privately owned.[122] In Alberta, Saskatchewan, and Manitoba, federal authority over fisheries has been delegated to the provinces,[123] whereas freshwater fisheries remain exclusively under federal jurisdiction in the Northwest Territories and Nunavut.[124] After the federal *Freshwater Fish Marketing Act*[125] was passed, the FFMC "acquired exclusive rights to fish harvested from over 400 lakes located in the Prairies, northwestern Ontario, and the Northwest Territories."[126] "Each province then voluntarily opted into the FFMC through separate agreements and enabling legislation."[127] The FFMC operates as a single-desk marketing organization. At its inception, it held a monopsony over fish produced in Manitoba, Saskatchewan, Alberta, the Northwest Territories, and Northwestern Ontario.[128]

The FFMC was created as a result of recommendations from the Commission of Inquiry in 1965.[129] The Prairie Provinces had commissioned an inquiry on the status of the fishing industry and its producers after many fishers voiced concerns about poor returns and a weak market position.[130] The Commission found that fishers were experiencing poor results because of a weak export market.[131] This

---

122 Joseph Quesnel, "Free to Fish: How a Freshwater Fish Monopoly is Impoverishing Aboriginal Fishers" (September 2012), online (pdf): *Frontier Center For Public Policy*, Policy Series No 141 <https://fcpp.org/files/1/PS141_FFMC_SP07_F2.pdf> [https://perma.cc/VW5Q-57TP] at 7 [*Quesnel*].

123 *Ibid.*

124 *Ibid.*

125 *Freshwater Fish Marketing Act*, RSC 1985, c F-13 [*FFMA*].

126 *Quesnel*, *supra* note 122 at 8.

127 *Ibid.*

128 Freshwater Fish Marketing Corporation, "2004/2005 Annual Report" (2005), online: *Freshwater Fish Marketing Corporation* <http://www.freshwaterfish.com/system/files/FFMC%20AR%202004-2005_.pdf> [https://perma.cc/DY85-DBAY] at 11.

129 *Quesnel*, *supra* note 122 at 7-8.

130 Manitoba, *A History of Manitoba's Commercial Fishery*, by Karen Nicholson (Manitoba: Historic Resources Branch, May 2007) at 112.

131 *Ibid* at 6.

situation was occurring because there was a surplus of Canadian fish exporters and a lack of American fish importers. [132] This imbalance caused a reduction in negotiating power and poor returns for fishers.[133] Additionally, because most fishers were relatively poor and unable to procure gear and boats out-of-pocket, any equipment they purchased relied on future profits.[134] Those using this strategy were undertaking an exceptional risk, as they would not know until the end of the year what their fish would be worth, and could only hope that it would be enough to cover the money they had already spent.[135] In response to the issues discovered in the report, the Commission of Inquiry recommended the creation of the FFMC,[136] which was subsequently created by the enactment of the *Freshwater Fish Marketing Act* in 1969.[137]

The FFMC provides initial payments in a pool system, and final payments after the end of the season.[138] The corporation is governed by a board of directors that includes a president, a chair, one director on behalf of each of the participating provincial and territorial governments (for a total of five), and four other directors.[139] All board positions are federal Order-in-Council appointments, and five are based on recommendations from participating provinces and territories. The FFMC employs more than 180 full-time production staff, plus administrative staff and seasonal workers.[140] Approximately 1,650 fishers catch fish across the FFMC's mandated region, which are then purchased and graded throughout a complex supply chain, with a central processing plant in Winnipeg.[141]

---

132 *Ibid.*

133 *Ibid.*

134 *Ibid* at 7

135 *Quesnel*, *supra* note 122 at 7.

136 Canada, *Report of Commission of Inquiry into Freshwater Fish Marketing* (Ottawa: Queen's Printer, 1966) at VII.

137 *FFMA*, *supra* note 125.

138 *Quesnel*, *supra* note 122 at 9.

139 *Ibid.*

140 Freshwater Fish Marketing Corporation, "2018 Annual Report", online: *Freshwater Fish Marketing Corporation* <http://www.freshwaterfish.com/system/files/FFMC-2018-AnnualReport-REVISED%20FINAL-Aug8-2018.pdf>[https://perma.cc/VQF5-7KM3] at 9.

141 *Ibid.*

The FFMC describes its mandate as "giv[ing] our region's many small fishing communities the marketing strength of a larger organization," which enables fishers to "access more markets around the world and receive top-dollar for their catch."[142]

The FFMC cites its four key benefits as: promoting an orderly market and price maintenance; providing access to foreign markets with reduced risks to local fishers; ensuring food safety and security; and promoting economic development, particularly in Northern and Indigenous communities.[143]

FFMC Criticisms and Failures

Over time, the FFMC's corporate governance and management received increasing vocal criticism. The criticism also stemmed from the perception that the corporation was failing to fulfill its mandate to effectively market fishers' catch and maximize the potential profits earned by fishers under their purview.

Issues relating to management and corporate governance were part of a troubled history that plagued the FFMC for years. In 2010, the Office of the Auditor General gave the FFMC a failing grade resulting from deficiencies in governance and operations.[144] The Office's Special Examination Report stated that the FFMC needed to improve its corporate governance by improving strategic planning, risk management, and performance measurement. The Auditor General's Office deemed the FFMC's food safety and quality assurance practices to be adequate but concluded that its capital asset management and procurement practices

---

142 Freshwater Fish Marketing Corporation, "Freshwater FAQ," (2016), online: *Freshwater Fish Corporation* <www.freshwaterfish.com/content/pages/freshwater-faq#3>[https://perma.cc/3TNL-8CR4].

143 Freshwater Fish Marketing Corporation, "Five-Year Corporate Plan Summary," (October 2011) online: *Freshwater Fish Marketing Corporation* <www.freshwaterfish.com/system/files/FFMC%20CORPORATE%20PLAN%20-%20SUMMARY-2011-12%20%5Bposted%20June%2022-12%5D.pdf> [https://perma.cc/F3JT-948V] at 2 [*Corporate Plan*].

144 Elizabeth Thompson, "Former Crown corporation boss says he was fired for trying to fight corruption" (23 December 2016), online: *CBC News* <https://www.cbc.ca/news/politics/government-freshwater-fish-fired-salkeld-1.3911608> [https://perma.cc/2FC8-LTG4] [*Thompson*].

were weak. The FFMC agreed with and responded to all of the Report's recommendations,[145] but did little in actually changing their policy and practices to effectively address the Report's findings. Some of the continuing problems regarding the FFMC's management were further highlighted by a Winnipeg Free Press report in June 2018 which showed that injuries at the Transcona processing plant occurred at least three times more frequently than the industry norm.[146] This finding was further evidence that the organization was being poorly run and was paying insufficient attention to proper workplace safety and regulations.

Issues of flawed corporate governance also extended to the spending habits of FFMC personnel in management. In 2012, the Canadian Taxpayers Federation released documents in response to an access to information request showing that the FFMC had spent $2435 on five nights in a Paris hotel room, $594 for two colleagues to eat three meals in New York City, and $1281 for a membership to Glendale Golf and Country Club.[147] John Wood, the then-CEO of the FFMC, defended the expenses, saying that the expenses were not out of line and that they represented the cost of doing business.[148] Naturally, this did not fare well with critics of the FFMC, many of whom were struggling fishers. Furthermore, single-desk cartels often ultimately pass the higher prices on to consumers, effectively creating a system where consumers are paying higher prices to fund the advertising and corporate expenses of the FFMC – this trend will be more fully elucidated in the analysis of the Canadian dairy industry below. Thus, even if the corporation is not receiving tax dollars, consumer dollars are still paying for the arguably unnecessary luxuries that the FFMC's CEO was attempting to defend, making the corporation's spending habits very much the consumers' business.

---

145 *Corporate Plan*, *supra* note 143 at 5.

146 Dylan Robertson, "Liberals appoint panel to probe Freshwater Fish Marketing Corp" (21 September 2018), online: *Winnipeg Free Press* <https://www.winnipegfreepress.com/local/liberals-appoint-panel-to-probe-freshwater-fish-marketing-corp-494007051.html>[https://perma.cc/Y7M2-S239] [*Robertson*].

147 CBC News, "Tax watchdog raps fish marketing costs" (27 March 2012), online: *CBC News* <https://www.cbc.ca/news/canada/manitoba/tax-watchdog-raps-fish-marketing-costs-1.1188040> [https://perma.cc/S7LR-NHLG].

148 *Ibid*.

Scandals plaguing the FFMC were not limited to executive spending habits. In 2016, the President of the FFMC, Donald Salkeld, was suspended and then fired by Fisheries and Oceans Canada on unspecified allegations.[149] Fishers were unhappy with the news, stating that this turmoil came at the worst time, during the busy season and a pivotal election with respect to the future of the FFMC.[150] John Wood, Salkeld's predecessor, was reinstated in Salkeld's place. In response, Salkeld claimed that he had been fired for challenging the status quo in regards to the corruption he had uncovered within the FFMC organization.[151] Salkeld announced his own plans to create a rival fish processing plant in Gimli, Manitoba to compete in the market once Manitoba finalized its exit from the single-desk monopsony marketing system.[152] The scandals associated with management issues certainly did not help the case for the FFMC's necessity and benefits, and a federal investigation into FFMC leadership did not bolster fishers' confidence in the FFMC.

The FFMC was also criticized for inadequately fulfilling its mandate to market fishers' catch and maximize their profits. Fish prices and total sales were steadily declining under the FFMC regime.[153] Increasing transportation costs for the industry were further exacerbated by the fact that there was only one processing plant, located in Winnipeg, serving the entire FFMC. Even with freight subsidies, production continued to decline due to a lack of profitability.[154] This was evidenced by some allocated quota going unused as the price paid to fishers by the FFMC no longer made fishing a profitable operation.

A report by the George Morris Centre also showed there was an unmet demand for fish resulting from the operation of the FFMC.[155] Growing demand overseas could prove "beneficial to the commercial fish

---

149 Bartley Kives, "Fish Corp. Boss Faces Allegations", (17 March 2016), online: *Winnipeg Free Press* <https://www.winnipegfreepress.com/local/fish-corp-boss-faces-allegations-372309301.html> [https://perma.cc/ZH4D-B8YT].

150 *Ibid.*

151 *Thompson*, *supra* note 144.

152 *Ibid.*

153 *Martin & Stiefelmeyer*, *supra* note 2 at 35.

154 *Ibid* at 15.

155 *Quesnel*, *supra* note 122 at 14.

industry, which independent fishers free of the FFMC could take advantage of" and an emphasis on organic and healthy foods could advantage FFMC fishers who operate without fish farms. [156] The George Morris Centre report further opined that the FFMC was not doing an adequate job of increasing demand for their product through marketing, which caused the fishers who were forced to use their services to lose opportunities. Further to the report's findings, many individual fishers criticized the FFMC's failure to export to new markets, create innovative fish products, and effectively market their fish.[157]

The FFMC's alleged failures to properly capitalize on emerging markets and opportunities were made obvious when the Marine Stewardship Council gave 'sustainable status', a certification that had never before been awarded in North America, to the pickerel and northern pike catch in Waterhen Lake, Manitoba. Lorne Huhtala, President of the Waterhen Lake Fishermen's Association, confirmed that fishers "had spent seven years pursuing eco-certification partly to attain a higher price for their [product]".[158] John Wood, the former President and CEO of the FFMC (the same former president who attempted to justify expensive meals and hotel stays), stated that while this certification might assure a sustainable catch, it would not command a higher price. "Consumers won't pay more for fish simply to save the environment," Wood said.[159] Aside from the dubiousness of Wood's assertion, Waterhen fishers expressed frustration about being denied the opportunity to independently market the unique features of their catch.[160]

The frustration felt by fishers was compounded by the fact that the FFMC had returned a decreasing percentage of its sales revenue to its producers over the last several years. Data from 2001 to 2010

---

156 *Ibid* at 23.

157 Bartley Kives, "Fish-sale Rules Rapped" (24 April 2013), online: *Winnipeg Free Press* <www.winnipegfreepress.com/local/fish-sale-rules-rapped-204436381.html> [https://perma.cc/L9HY-8YQ9].

158 Bartley Kives, "Eco label no cash cow for Waterhen fishers" (27 August 2014), online: *Winnipeg Free Press* <https://www.winnipegfreepress.com/local/eco-label-no-cash-cow-for-waterhen-fishers-272834591.html>[https://perma.cc/6UHG-VQ7L].

159 *Ibid.*

160 *Ibid.*

demonstrates declining payments to fishers for all species.[161] Over the ten year period "one sees a gradual dip in the initial and final payments made to commercial fishers by the FFMC, even in higher end-species such as pickerel." to fishers.[162] The rising cost of living also affected fishers' returns. In Manitoba, "the Consumer Price Index (a good accurate barometer of rising costs) rose steadily while payments to fishers declined."[163] It should also be noted that while the revenue portion paid to fishers declined, gross sales from 2005 to 2014 remained stable (taking into account inflation).[164]

The FFMC also focused its marketing on certain species of fish, namely pickerel and whitefish. Many fishers, particularly those in the North, typically caught more 'rough' fish, like carp and mullet "which are not as lucrative and which the FFMC is not good at marketing."[165] Deterred by the high cost of shipping compared to the low returns[166], and in the hope of catching more profitable fish, fishers were dumping millions of pounds of less-profitable fish into Manitoba lakes every year.[167]

Dean Rennie,[168] a graduate student at the University of Manitoba whose Masters research examined the participation of Indigenous producers in the freshwater fish industry surrounding Lake Winnipeg, estimated that fishers in the Lake Winnipeg commercial fishery throw

---

161 *Quesnel*, *supra* note 122 at 11.

162 *Ibid.*

163 *Ibid.*

164 Freshwater Fish Marketing Corporation, "2013/14 Annual Report (April 30, 2014) at 18, online (pdf): *Freshwater Fish Marketing Corporation* <http://www.freshwaterfish.com/system/files/FFMC%20AR%202014%20Web.pdf> [https://perma.cc/HA42-3AHF].

165 *Ibid* at 4.

166 Government of Manitoba, "Fisheries Envoy Final Report" (March 2017), online (pdf):<https://digitalcollection.gov.mb.ca/awweb/pdfopener?smd=1&did=25823&md=1> [https://perma.cc/JSX8-8PLD] at 5.

167 Sheldon Birnie, "Freshwater Food Security: A profile of the Grand Rapids Fishermen's Co-Op" (1 March 2013), online: *Briarpatch Magazine* <http://briarpatchmagazine.com/articles/view/freshwater-food-security>[https://perma.cc/XXK8-KXXR] [*Birnie*].

168 Manitoba Alternative Food Research Alliance, "Dean Rennie", online: *Manitoba Alternative Food Research Alliance* <http://www.localandjust.ca/about/students/dean-rennie/> [https://perma.cc/QK6H-2FN6].

away approximately three million pounds of fish annually (roughly 3720 kilograms every day).[169] The profitability of pickerel over other varieties of fish, and the nature of the FFMC's quota system, caused fishers to discard or waste a substantial volume of fish, since it was more profitable to put the fish that sell at higher prices towards fulfilling the quota and it was illegal to simply give away the by-caught fish that would net less money.[170] While a local Winnipeg charity, Winnipeg Harvest, lobbied the government to donate the unwanted fish to their food bank program rather than to let it go to waste, there has yet to be any development on allocating the wasted food.[171]

One intended result of dismantling the FFMC was to create space in the industry for a processing and marketing organization specializing in marketing 'rough' species of fish in Northern Manitoba. This would theoretically allow Northern fishers to attain better prices for their product and pay less for shipping fish, as exemplified by the experience of Robert Gaudry, a Metis fisher in St. Laurent, Manitoba, who received an exemption from the FFMC so that he could sell his own fish. He made four times as much as he would have had he sold his product through the FFMC.[172] Many Northern fishers also argued that the FFMC was not taking advantage of the large Chinese rough species market and was ultimately preventing fishers in the North from reaping the benefits of this demand.[173]

Northern fisheries and Indigenous fishers did not act as mere observers of the events that were unfolding. They took proactive steps towards liberating the fishing industry from the FFMC's control. Some

---

169 *Birnie, supra* note 167 at para 4.

170 According to Lake Manitoba fisherman Bruce Benson, pickerel typically sells for twice as much as whitefish, leading him and others to throw out other varieties of fish, including whitefish, in order to get the most money for their quota. Ben Miljure, "Fishermen Say Quota System Forces Them to Waste Fish" (12 October 2014), online: *CTV News* <http://winnipeg.ctvnews.ca/fishermen-say-quota-system-forces-them-to-waste-fish-1.2051218> [https://perma.cc/2ET4-RCD4].

171 *Ibid.*

172 Don Marks, "Fish or cut bait: Fishers want to market 'rough' stuff abroad" (22 October 2010), online: *Winnipeg Free Press* <www.winnipegfreepress.com/opinion/analysis/fish-or-cut-bait-fishers-want-to-market-rough-stuff-abroad-65456902.html> [https://perma.cc/L7BH-QSBQ].

173 *Ibid.*

Indigenous community members approached export organizations about how to develop their own independent fish processing businesses,[174] while other organizations demonstrated their ability to find their own buyers. For example, WMM Fisheries Co-operative Ltd., which represents approximately 300 fishers in the Manitoba Interlake region, obtained a license to sell rough fish to an Illinois marketing company that specializes in finding markets for low-value fish.[175]

The Illinois-based company was re-selling the fish to a New York processing plant that was a customer of the FFMC. Since this violated the terms of the license, the co-operative was ordered to stop, and when they did not, they had their license revoked, one of their shipments seized, and were charged with three counts of selling without a license. The judge found that WMM Fisheries could have earned $300,000 from the illegal sale instead of the $130,000 they would have received from the FFMC.[176] These ideas and initiatives seemed to indicate that if the FFMC were to be dismantled, it would not take long until Indigenous communities could revive their fishing industries with corporations under their own control. Revived fishing industries could have substantial positive spin-off effects for the economies of these reserves, potentially leading to significant increases in community welfare.[177]

The situation was even more concerning for Northern fishers, on whom the FFMC's policies had the greatest negative impact, and the

---

174 *Quesnel*, *supra* note 122 at 15.

175 Aldo Santin, "Fishermen's co-op fined in monopoly dispute" (27 May 2013), online: *Winnipeg Free Press* <www.winnipegfreepress.com/local/Fishermens-co-op-fined-in-monopoly-dispute-209093011.html> [https://perma.cc/G28J-BM4X].

176 *Ibid.*

177 The Freshwater Fish Marketing Corporation can issue Export Development Licenses (EDL) and Special Development licenses (SDL) under section 22 of the *Freshwater Fish Marketing Act*. This approach however, is insufficient to solve the problem. The FFMC maintains that "no licence will be granted that could cause a decrease in aggregate returns to all fishers". There are also many other requirements which can be found on the FFMC's website: Freshwater Fish Marketing Corporation, "Schedule A: Policy for Export Dealers Licenses" (20 April 2010), online: *Freshwater Fish Marketing Corporation* <www.freshwaterfish.com/system/files/EDL%20POLICY%20%28REVISED%29-Apr20-2010.pdf> [https://perma.cc/27EJ-9XB6]; The requirements are so stringent that only two Export Development licenses were issued from 2006-2007. No reasons were provided for why other applications failed (*Martin & Steifelmeyer*, *supra* note 2 at 16).

majority of whom – between 70% and 80% – are Indigenous.[178] It has been suggested that FFMC policies undermine the self-sustainability of many Northern Indigenous communities.[179] Joseph Quesnel opines that "no other group under the FFMC mandate is more adversely affected than Aboriginal fishers."[180] Fishing tops the list of traditional Indigenous economic activities and the preservation of the industry is a "major way to allow First Nations to remain in touch with this traditional lifestyle and closer to the land."[181] In 2010, Manitoban First Nations Chiefs held a Special Chiefs Meeting on fishing in Winnipeg that focused primarily on alternatives to the FFMC monopsony.[182] The Manitoba Metis Federation (MMF) favoured leaving the FFMC,[183] while the Assembly of First Nations (AFN) supported a new relationship with First Nations founded upon meaningful involvement in all aspects of fisheries management and decision making."[184] The AFN's 2013 Report to the United Nations Special Rapporteur on the Rights of Indigenous Peoples stated that "First Nations are angry at the lack of economic opportunities afforded to First Nations from the operations of the FFMC."[185] First Nations community members were not content to market their catch through a board that they felt did not help to further their self-sustainability.

With such significant problems occurring in the freshwater fishing industry, and the criticism already levelled at the FFMC, the corporation's

---

178 *Quesnel*, *supra* note 122 at 15.

179 *Ibid* at 6.

180 *Ibid* at 15.

181 *Ibid.*

182 *Ibid* at 6.

183 Manitoba Metis Federation, "Annual General Report: Our Time Has Come" (2013), online: *Manitoba Metis Federation* <www.mmf.mb.ca/docs/aga_annual_report_2013.pdf> [https://perma.cc/PXV4-Y75X].

184 Assembly of First Nations "Marketing/International Trade- Barriers, Opportunities, and Best Practices" (2011), online: *Assembly of First* <https://www.afn.ca/uploads/files/env/national_overview_of_first_nation_fisheries_and_policy_considerations.pdf> [https://perma.cc/4ST6-4P3F].

185 Assembly of First Nations, *2013 Report to the United Nations Special Rapporteur on the Rights of Indigenous Peoples* (Ottawa: Assembly of First Nations, 2013) at 29.

ability to address current issues was naturally questioned.[186] The FFMC's failure to explore new export markets, create innovative fish products, and effectively market the positive aspects of fish (wild caught, natural, organic etc.) has been criticized.[187] Additionally, the fact that there is only one processing facility (located in Winnipeg) [188] has also been problematic for many fishers.[189] These problems largely centre on the nature of single-desk marketing boards, in that there are few ramifications for underperformance. If the Corporation performs poorly, they do not go out of business. All fish producers were still required to sell their products to the FFMC, no matter how low of a return they were given.[190] The only way that the FFMC would lose producers is through their exit of the fishing industry.

Under a single-desk marketing system, there is a reduced incentive for the marketing corporation to innovate or try different strategies. The lack of competition does not allow for competing ideas to determine consumer tastes and the efficacy of marketing strategies. In markets with more than one marketing agency, there would be more marketers employing new and different marketing methods. The successful marketing methods would then be employed by other marketers, and producers would be able to switch agencies if they wanted, creating an incentive for agencies to perform well. This system would ostensibly allow the freshwater fish marketing industry to respond to consumer tastes more quickly than under the current system, since consumer feedback (through sales) would determine the success or failure of certain marketing tactics. Furthermore, an increase in the number of marketers would result in a stronger desire to develop new fish products to compete more effectively against other marketers.

Moreover, an inherent problem with a single-desk marketing agent, like the FFMC, is that it could not consider the needs of fishers across its entire territory. If the single-desk marketing system was eliminated, more

---

186 *Ibid* at 5.

187 *Quesnel*, *supra* note 122 at 14.

188 *Ibid* at 16.

189 Bartley Kives,"Fish-sale Rules Rapped" (24 April 2013), online: *Winnipeg Free Press* <www.winnipegfreepress.com/local/fish-sale-rules-rapped-204436381.html> [https://perma.cc/75PZ-QQGR].

190 *Quesnel*, *supra* note 122.

processors like Community Development First could emerge and help alleviate geographical issues that plague the market .[191] Fishers catch a wide variety of fish species over a large and diverse geography stretching from Northern Manitoba to just outside Winnipeg.[192] Some fishers catch massive quantities of fish and some only catch a few.[193] The FFMC system was set up in such a way that it punished Northern fishers with increased transportation costs, since the lone FFMC processing facility was located at the South basin of Lake Winnipeg (Transcona).[194] It was very expensive for a single fisher in Northern Manitoba to ship his or her catch to Winnipeg, especially if he or she was only shipping small amounts. This situation was further exacerbated by the fact that fish need to be fresh, and thus have to be shipped from Northern Manitoba to Winnipeg very frequently for processing (products must be processed in under a week).[195] Even the freight subsidies offered were not enough to adequately alleviate costs for all fishers in the FFMC's area of operation.

Further evidence that local marketing boards or processing plants could be effective and profitable for Northern fishers lies in the real-life example of Robert Gaudry, the Métis fisherman in St. Laurent who received an exemption from the FFMC to sell his own fish and eventually made four times the amount that he would have had he sold his fish through the Corporation.[196] Gaudry attributed his success to being able to sell locally-processed 'rough' fish – mainly mullet and carp – at a higher price, whereas under the FFMC, fishers "throw away thousands of tonnes of fish every year, because it is the wrong kind of fish… and the cost to ship it to the FFMC's single processing plant in Winnipeg is simply not worth it."[197] Gaudry's massive growth in profits after receiving an

---

[191] Community Development First is a corporation who has tentative plans to open a processing plant in Northern Manitoba if the provincial government does away with mandatory FFMC marketing. Murray McNeil, "New Plant Would be a Reel Asset" (31 May 2016), online: *Winnipeg Free Press* <www.winnipegfreepress.com/business/new-plant-would-be-a-reel-asset-381345921.html>[https://perma.cc/7FN4-X4EW].

[192] *Quesnel*, *supra* note 122 at 15.

[193] *Ibid.*

[194] *Ibid.*

[195] *Ibid* at 16.

[196] *Ibid* at 6.

[197] *Ibid* at 6.

exemption is a strong indication that Northern fishers can market their catch more effectively than a single-desk marketing board could.

Finally, one of the main issues with the FFMC that leads to both loss of profits and massive environmental waste, is the fact that the Corporation does not distinguish between fish species when distributing quotas.[198] As a result, fishers will often dump the 'rough' fish that they catch in hopes of catching more profitable species of fish to put towards the quota.[199] Having multiple fish marketers in a free market is a possible solution, whereby each would specialize in marketing a specific species of fish. If the FFMC were to be dismantled, a processing and marketing organization could form in Northern Manitoba and specialize in marketing the 'rough' fish that would otherwise be thrown away in favour of catching more profitable fish to meet the quota. Ideally this would allow Northern fishers to get a far better price for their product while paying much less to transport their fish to the single central processing plant. However, under a single-desk marketing monopsony such a setup is illegal.

The FFMC Today

Ontario, Alberta, and the Northwest Territories

Regions within the FFMC's mandate have responded to these criticisms in various ways. Ontario withdrew from the FFMC's mandate in 2011 in favour of an open market.[200] In 2014 Alberta followed suit and closed its commercial in-land fishery, although it remains a signatory to the act.[201] In February 2010, the Northwest Territories Fishermen Association voted in favour of withdrawing from the FFMC.[202] However this decision was

---

198 *Birnie, supra* note 167.

199 *Ibid.*

200 Fisheries and Oceans Canada, "Ministerial Advisory Panel on the Freshwater Fish Marketing Corporation" (8 July 2019), online: *Government of Canada* <https://www.dfo-mpo.gc.ca/fisheries-peches/initiatives/freshwater-marketing-commercial-poisson-eau-douce-eng.html> [https://perma.cc/73DU-834S] [*Fisheries and Oceans Canada*].

201 *Ibid.*

202 Hay River Hub, "Fishermen vote to keep Freshwater" (8 September 2010), online: *Hay River Hub* <http://www.hayriverhub.com/archvs/100908yhnu.pdf> [https://perma.cc/K39Z-LDWM].

ultimately reversed and the Northwest Territories are currently the only participating jurisdiction under the act.[203]

Saskatchewan

Saskatchewan withdrew from the FFMC's mandate in 2012. Now, "commercial fishers and fisher organizations in the province sell fish to FFMC on an open market through guaranteed multi-year supply contracts."[204] This garnered some criticism before the Intergovernmental Affairs and Justice Committee, with community member Buckley Belanger condemning the Minister of First Nations and Métis Relations, the Honourable Ken Cheveldayoff, for the province's limited consultation with Indigenous peoples on the decision to leave the Corporation.[205] In April 2011, Doyle Vermette, Opposition Whip and Critic for Northern Saskatchewan[206], questioned the Minister about whether the Saskatchewan government would be providing financial support to fishers now that they had left the FFMC monopoly. The Honourable Ken Cheveldayoff, stated that: "fishers wanted the ability to market their fish wherever they saw fit."[207] He maintained that he did not think it was the role of government to invest directly in facilities like Northern fish-processing plants.[208] Despite the negative reaction to the decision to leave the FFMC,

---

203 *Fisheries and Oceans Canada*, *supra* note 200.

204 Fisheries and Oceans Canada, "Transformation on the Freshwater Fish Marketing Corporation: Ministerial advisory panel" (22 July 2020), online: *Fisheries and Oceans* Canada <https://www.dfo-mpo.gc.ca/fisheries-peches/consultation/ffmc-cpea/transformation-ffmc-cpea-eng.html> [https://perma.cc/47ET-6JKL] at Appendix A [*Ministerial Advisory Panel Report*].

205 Saskatchewan, Legislative Assembly, *Standing Committee on Intergovernmental Affairs and Justice,* Hansard No 34 (11 May 2010) at 576 (Buckley Belanger).

206 Doyle Vermette is the Opposition Whip and holds critic responsibilities for Northern Saskatchewan, Saskatchewan Government Insurance, and the Saskatchewan Transportation Corporation. He was also the associate critic for First Nations and Metis Relations. Legislative Assembly of Saskatchewan, "Mr. Doyle Vermette-New Democratic Party" (2019), online: *Legislative Assembly of Saskatchewan* <https://www.legassembly.sk.ca/mlas/template/?first=Doyle&last=Vermette> [https://perma.cc/A2L8-JH7X].

207 Saskatchewan, Legislative Assembly, *Standing Committee on Intergovernmental Affairs and Justice*, Hansard No 39 (4 May 2011) at 646.

208 *Ibid* at 647.

Saskatchewan's withdrawal has had a relatively minimal impact on the Corporation's operations. In its 2019 report, the FFMC stated that it was using long-term supply contracts with open market fishers to secure fish supply and that 95% of Saskatchewan fishers had signed such agreements with the corporation.[209] However, the proportion of FFMC's total fish volume provided by Saskatchewan fishers has reduced since the province withdrew from the *Freshwater Fish Marketing Act.* In 2013, Saskatchewan fishers delivered approximately 17% of FFMC's fish by volume [210] , in 2016, that number had dropped to 15%.[211] It is possible that this number will continue to decline as fishers are allowed to sell their fish outside of the FFMC's monopolistic marketing scheme.

Manitoba – Transitionary Pains or a Flawed Open Market?

On August 16th, 2016, the Progressive Conservative government of Manitoba announced their intention to opt out of Manitoba's participation in the FFMC single-desk monopsony system.[212] In 2017 Manitoba officially withdrew from the act, which lead to the creation of an open market in the province. [213] The FFMC is no longer the only institution permitted to sell out of the province.[214] The withdrawal from the *Freshwater Fish Marketing Act* was intended to give fishers options to market their own catch. This would allow them to "get the best dollar for their product" and thereby overcome some of the criticisms often raised against the FFMC.[215] In response to the decision, MMF president David

---

[209] Freshwater Fish Marketing Corporation, "2019 Annual Report" (2019) at 32-33, online (pdf): *Freshwater Fisk Marketing Corporation"* <http://www.freshwaterfish.com/system/files/2019FFMC-Annual%20Report-FINAL-%20ENG-July31-2019NEW.pdf> [https://perma.cc/9YVL-SFG3] [*FFMC 2019 Report*].

[210] *Corporate Plan*, supra note 143 at 3-4.

[211] *Ministerial Advisory Panel Report, supra* note 204 at Appendix A.

[212] Government of Manitoba, "Manitoba Government Announces Marketing Flexibility for Freshwater Fishers" (16 August 2016), online: *Government of Manitoba* <http://news.gov.mb.ca/news/index.html?item=38972&posted=2016-08-16> [https://perma.cc/Y37K-ZVD8].

[213] *Fisheries and Oceans Canada, supra* note 200.

[214] *Ministerial Advisory Panel Report, supra* note 204 at Appendix A.

[215] Laura Glowacki, "Manitoba to allow fishermen to market their own catch" (16 August

Chartrand espoused cautious optimism regarding the government's plans and called for a coordinated response that would include input from fishers across the province, while the opposition NDP expressed skepticism and raised fears over fishers' ability to effectively transition to an open market. [216] Meanwhile, fishers themselves reacted with enthusiasm and support. One commercial fisher described the upcoming change as "incredible", and that it would "…revolutionize the industry and completely change fishermen's lives."[217]

Following the institution of the new regime a year later, much of the optimism surrounding Manitoba's exit from the FFMC regime quickly waned in response to the transitionary troubles relating to new regulatory commercial rules that would govern the new open market system. Although Sustainable Development Minister Rochelle Squires pointed to more than 23 meetings with over 425 commercial fishers within the course of a year following the pronouncement of Manitoba's exit from the FFMC system, not all commercial fishers were satisfied with the transition. Brothers Bruce and Brad Benson, expressed anger over what they felt was a lack of sufficient consultation with fishers such as themselves over the new regulations. They stated "there is nobody more concerned about the sustainability of the fishery than the commercial fishers. We have the most to lose. We want a sustainable fishery."[218]

Issues regarding the transition from the single-desk monopsony system to an open market were not limited to disgruntled fishers who felt that they were not properly consulted on the new regime. Some of the NDP's earlier fears about fishers not being properly equipped to transition to an open market were realized when many fishers faced the prospect of missing payments from fish marketing corporations, with estimates that fishers were owed in the range of $1 million mere weeks after the switch to

---

2016), online: *CBC News* <https://www.cbc.ca/news/canada/manitoba/manitoba-allow-fishermen-market-1.3723818> [https://perma.cc/S2ZZ-NTHU] at para 5.

216 *Ibid* at para 13.

217 *Ibid* at para 10.

218 Bryce Hoye, "'They just don't know': Angry fishers say province didn't consult them on new commercial rules" (07 December 2017), online: *CBC News* <https://www.cbc.ca/news/canada/manitoba/manitoba-commercial-fishing-industry-regulations-1.4438811> [https://perma.cc/C3JB-WZEA].

a privatized marketing system.[219] Northern Walleye Inc, a fish marketing company headed by former FFMC president Donald Salkeld, had contracted with four Manitoba fisheries to sell their product to a U.S. based company that decided not to pay, a problem that Salkeld claimed was due to fishers producing 400% of what they had initially estimated they would produce.[220] The situation highlighted a distinct problem associated with the transitionary phase: there was not actually a proper system in place that could have assured predictability on both the part of fish producers and fish marketers. Manitoba's exit from the single-desk monopsony model meant that fishers were forced to assume the risks of operating in a free-market themselves, with no assurances or guarantees of certainty in terms of how many of their fish would actually be sold.

However, the problems associated with this transitionary phase should not be confused as problems inherent to open market systems more generally. There have been growing indications of commercial fishers' intentions to form their own independent co-operatives, indicating a willingness to adapt to the new market realities.[221] Even more promising is that the interest in such co-operatives included participation from Indigenous organizations, with the MMF giving $100,000 to one such cooperative to assist with its start-up costs.[222] The active participation of Indigenous groups is a positive and encouraging sign of progress relative to the disadvantaged position many of them faced throughout the FFMC's regime. Some analysts foresee an expanded role for northern Indigenous fishers under the new system.[223] This potential trend is bolstered by a more educated workforce than the one that existed when the FFMC was first created, as well as Manitoba fishers' belief in their ability to develop new

---

219 Jade Markus "'It's a mess': Manitoba fishers missing close to $1 million in payments" (15 January 2018), online: *CBC News* <https://www.cbc.ca/news/canada/manitoba/it-s-a-mess-manitoba-fishers-missing-close-to-1-million-in-payments-1.4487242> [https://perma.cc/K52W-997L].

220 *Ibid.*

221 *Thompson*, *supra* note 144.

222 Joseph Quesnel, "End of fish monopoly a boon for northern fishers" (29 May 2018), online: *Winnipeg Free Press* <https://www.winnipegfreepress.com/opinion/analysis/end-of-fish-monopoly-a-boon-for-northern-fishers-483906783.html> [https://perma.cc/55JP-W4TP].

223 *Ibid.*

value-added products and to process and market their fish more effectively using the Internet and other technologies. An early sign to support such optimistic outlooks is MMF President David Chartrand stating that Chinese delegates had already approached the MMF in order to broker deals that could see Manitoba fish being exported to Chinese markets.[224]

Given these positive signs, analysts pointing to transitionary pains as indications that the open market is inferior to the previous single-desk FFMC marketing board system may be judging matters too prematurely. The FFMC's evolution will ostensibly follow a path similar to the CWB. Wheat farmers were initially divided over the issue to privatize or not, however wheat farmers have now adapted to the new market reality, with Canada continuing to be the sixth-largest wheat grower in the world.

Ministerial Advisory Panel Report on the FFMC

In 2017 the Canadian government participated in discussions with harvesters and communities on the future of the FFMC and found that while many still valued the Corporation and the services it provided, harvesters sought more control over their industry.[225] Given these engagements, in September of 2018, the federal Liberal government established an advisory panel to review the FFMC and research ways to assist the board in remaining modern and competitive in a post-single desk monopsony open market.[226] The report, published in July 2019[227], ultimately recommended that the federal government consider replacing the FFMC with a co-operative agency using a three-year transitionary plan.[228]

---

224 *Ibid.*

225 *Fisheries and Oceans Canada, supra* note 200.

226 *Robertson, supra* note 146.

227 Minister of Fisheries and Oceans Canada, *Report of the Ministerial Advisory Panel on the Transformation of the Freshwater Fish Marketing Corporation* (2019), online: *Government of Canada* <https://waves-vagues.dfo-mpo.gc.ca/Library/40799542.pdf> [https://perma.cc/RD3Z-2EQQ].

228 Dylan Robertson, "Panel suggests turning fish agency into co-operative within three years" (9 July 2019), online: *Winnipeg Free Press* <https://www.winnipegfreepress.com/local/panel-suggests-turning-fish-agency-into-co-operative-within-three-years-512456822.html> [https://perma.cc/TPH5-MRMK].

The recommendation was crafted in response to the FFMC's troubled past of mismanagement, high injury rate, scandalous personnel expenses and poor audits. The panel's report also addressed the organization's poor fit in an industry in which it no longer commands a monopolistic role in any province or territory save for the Northwest Territories.[229] The recommendation was predicated on the Panel's two core considerations: first, that the existing system and model was unsustainable in an open market with incoming competitor firms and organizations, and second, that the FFMC's complete and full dissolution was not an option on the table.[230] In its recommendations, the report called for increased fisher participation in the FFMC by drawing members from fishers and fisher organizations and enhanced communication between fishers and the FFMC board and management.[231] It also recommended a strengthening of FFMC corporate operations that would include aforementioned improved meaningful communications between the various stakeholders, as well as a theoretical New Fisher Organization to replace the FFMC that could establish and implement the transformational objectives.[232] The report was not ignorant of the various obstacles and difficulties that would inevitably arise with such a radical restructuring of the FFMC, and it recognized the pains that would be associated with shifting the structure to that of a co-operative. Such a transformation would require disparate groups of different fishing industry stakeholders to voluntarily agree to address goals and objectives together using a holistic and comprehensive strategy that is not required with standard business corporations.[233]

Following the release of the report, the Canadian government stated that any decisions on the future of the FFMC would be made "in an open and transparent manner with harvesters, Indigenous and other communities, industry, provinces and territories and other partners in the freshwater fishing industry."[234] The government outlines on its official website that "in the meantime, the FFMC will continue to provide its

229 *Ibid.*

230 *Ministerial Advisory Panel Report*, *supra* note 204.

231 *Ibid* at s 7(2)(1).

232 *Ibid* at s 7(3)1.

233 *Ibid* at s 4(3).

234 *Fisheries and Oceans Canada*, *supra* note 200.

highly valued services to harvesters and their communities."[235] In its 2019 Annual Report, the FFMC stated that "the development of the open fish supply market created by the withdrawal of successive provinces from the *Freshwater Fish Marketing Act* covers 95% of the Corporation's supply base."[236] The Corporation recognized that, given the highly competitive nature of open markets, "competitors that may have more extensive or more specialized processing and marketing capabilities may be able to affect the Corporation's operations and financial performance." [237]

CANADIAN DAIRY COMMISSION

A Brief History of the CDC

Prior to the creation of the CDC, there was no formalized national program or agency in place to regulate the sale and production of dairy products. That is not to say that the federal and provincial governments did not have an active role in dairy regulation, the federal government had been involved in the dairy industry since the turn of the 20th century[238] and most provinces had some statutory scheme relating to milk production and sale. However provincial dairy farmer organizations were often fragmented and disorganized,[239] they had no way of dealing with dairy products that crossed provincial boundaries or were exported overseas.[240] Additionally, it was almost impossible for the majority of dairy producers to make a stable living, with the only exception being some fluid milk producers who lived in close proximity to large urban markets."[241]

Surplus management was also a major issue in Canadian dairy following WWII. Prior to the war, Canada's exports of cheese and butter

---

235 *Ibid*.

236 *FFMC 2019 Report, supra* note 209.

237 *Ibid*.

238 Canada, The Canadian Dairy Commission, *The Canadian Dairy Commission: A 40-Year Retrospective*, (Ottawa: Canadian Dairy Commission, 2006) at 8 [*Canadian Dairy Commission* 40].

239 *Ibid* at 1.

240 *Ibid* at 2.

241 *Ibid* at 3.

had been declining, but during WWII dairy exports drastically increased, resulting in increased production in Canada. Following the end of WWII, demand for Canadian imports waned as European production increased again, and Canada's primary focus shifted to its domestic market.[242] The state of the Canadian dairy industry prior to the formation of the CDC was 'chaotic'[243]:

> There were separate groups for various commodities-fluid milk, cheese, concentrated milk products, farm-separated cream- all not surprisingly, vying to protect their own empires, such as they were. Shortages and surpluses of milk plagued the market-place. There were inequities throughout the farming, processing and transportation sectors, and they differed by province…In the 1960's there were nearly 175,000 dairy farmers across the country. Most had limited knowledge about prices and pricing systems. They knew little or nothing about what was happening across the industry.[244]

In response to these issues, the federal and provincial governments engaged in a number of programs and policies to try and stabilize the market. One such initiative was the passing of the *Agricultural Stabilization Act* in 1958.[245] The Agricultural Stabilization Board (ASB) was created to administer the Act[246] and while the ASB was able to reduce the disparity between prices received for fluid milk and for industrial milk[247], two major issues still plagued the dairy industry. Firstly, there was a lack of clear and meaningful coordination between federal and provincial policies, "there were a large number of processors and distributors… and numerous dairy famers with little collective bargaining power"[248] and there was no central mechanism in place to control production.

---

242 Export Action Global, "Are Canadian Consumers and Farmers Better Off with the Canadian Model?" (April 2018), online (pdf): *Export Action Global* <https://www.exportactionglobal.com/wp-content/uploads/2018/04/Dairy-Systems-Around-The-World_Export-Action-Global_April-2018.pdf> [https://perma.cc/3C68-MD2Z] at 5.

243 *Canadian Dairy Commission 40*, *supra* note 238 at 1.

244 *Ibid.*

245 *Ibid* at 8.

246 *Ibid.*

247 *Ibid.*

248 *Ibid* at 1.

Government initiatives lacked coordination and failed to perform effectively as milk production control mechanisms.[249] These failures led to the convening of the 1963 Canadian Dairy Conference, which in turn led to the formation of the Canadian Dairy Advisory Commission.[250] A report was released in 1965 following the establishment of the Dairy Advisory Commission that recommended the creation of Canadian Dairy Commission (CDC) as an effective means to control milk production and co-ordinate federal and provincial policies.[251] The CDC was officially established in 1966 through the *Canadian Dairy Commission Act* (CDCA).[252]

There were a number of factors that led to the formation of the CDC. Dairy farmers, particularly in Quebec and Ontario, became increasingly combative and organized as their incomes continued to decline. These events culminated in a massive demonstration organized by the Ontario Farmers Union, the Ontario Federation of Agriculture, and l'Union Catholique des Cultivateurs du Québec where over 20,000 farmers stormed the Parliament building in Ottawa in 1967.[253] This reaction was largely a result of discontent stemming from the overproduction and rising costs that plagued the 1960's.[254] In addition to quelling future demonstrations, there were also specific political goals behind creating the CDC: "[t]he minority governments of the Pearson Liberals (1963-65 and 1965-68) were eager to court voters in Central Canada, where the dairy sector was concentrated."[255]

---

249 *Ibid.*

250 *Ibid* at 22.

251 Martha Hall Findlay, "Supply Management: Problems, Politics and Possibilities" (2012) 5:19 *U of Calgary School of Public Policy* <https://www.policyschool.ca/wp-content/uploads/2016/03/supply-management-hall-findlay.pdf> [https://perma.cc/HX2C-LXYH] at 2 [*Findlay Supply Mgmt Problems*].

252 Canada, Canadian Dairy Commission, *Canadian Dairy Commission Annual Report 15-16*, (Ottawa: Canadian Dairy Commission, 2016) at 50 [*CDC 2015-2016*].

253 *Canadian Dairy Commission 40*, *supra* note 238 at 18.

254 Kevin George Wipf, *From Farm Crisis to Food Crisis*: Neoliberal Reform in Canadian Agriculture and the Future of Agri-Food (PhD Thesis, Department of Political Science, University of Alberta, 2013) [unpublished] at 36, online (pdf): <https://era.library.ualberta.ca/files/kw52j9276/Dissertation%20-%20Wipf.pdf> [https://perma.cc/J9N6-78LZ].

255 *Ibid.*

The CDC was created to appease Canadian producers and appeal to voters. While its mandate has evolved over time, it has historically reflected the same two goals:

> …to provide efficient producers of milk and cream with the opportunity of obtaining a fair return for their labour and investment and to provide consumers of dairy products with a continuous and adequate supply of dairy products of high quality.[256]

The CDC has attempted to fulfill this mandate by engaging in supply management, beginning with the issuance of Subsidy Eligibility Quotas (SEQs).257 The SEQ system was largely ineffectual in that it did little to control the production of milk. "Dairy producers were allows to ship amounts of milk in excess of their SEQ limit. Furthermore, some producers did not have a quota, and these producers were allowed to enter the market at any time."258 The shortcomings of this system led to the adoption of the Interim Comprehensive Milk Marketing Plan in 1970, which eventually led to the formation of the Canadian Milk Supply Management Committee,259 a committee that then subsequently evolved

---

[256] Colin Busby & Daniel Schwanen, "Putting the Market Back in Dairy Marketing" (March 2013) 374 CD Howe Institute, online: <https://ideas.repec.org/a/cdh/commen/374.html> [https://perma.cc/3P2U-LEH9] at 1.

[257] SEQ's were allotted on the basis of previous years deliveries and would establish a quota for which the producer's milk production would be subsidized. Producers registered through the CDC and were given SEQ's then processors were given pre-printed shipment receipts and were to keep track of shipments from producers so that the CDC could account for how much of the subsidy quota a producer was entitled to. The quota itself was by no means a straightjacket. Producers could supply more milk than their quota and sell it into the industrial market. Moreover, producers who did not have quotas could bypass the SEQ system all together and sell to the industrial market. Additionally, in attempt to phase out inefficient production phase-out settlements were offered to producers who delivered fewer than 12,000 pounds of milk or 420 pounds of butterfat. *Canadian Dairy Commission 40*, *supra* note 248 at 34.

[258] Sylvain Charlebois, Wolfgang Iangenbacher & Robet Tamilia, "The Canadian Dairy Commission: An Empirical Survey on its Relevance in Today's Civil Society" (2007), online (pdf): *University of Regina* <http://uregina.ca/~volodin/CLV.pdf> [https://perma.cc/F56P-XB4G] at 5 [*Charlebois et al*].

[259] The Canadian Milk Supply Management Committee began in Ontario and Quebec, but by 1974 all the provinces except for Newfoundland had entered into the committee. Newfoundland as a smaller producer of dairy and a non-signatory to the National Milk Marketing Plan, maintains an observer status with respect to national

into the present-day National Milk Marketing Plan. The current system of supply management has three pillars: price setting, protection from foreign competition, and formal control of supply.

The first pillar of the current plan is price setting. The CDC sets prices for dairy products nationally. The CDC will initially set a target price range by analyzing costs, market conditions, and stakeholder input, taking into account both fair return for producers and current production levels.260 Provincial boards then use the target price range to establish their own pricing.261 Pricing of milk can vary further because the same milk under this model will fetch different prices depending on its usage. For instance, fluid milk would have a higher price than less perishable milk products like cream and skim milk powder.262 Pricing is further complicated by sub-class distinctions within certain categories of products (e.g. within the cheese category, there are sub-classes of pricing based on the type of cheese). It seems that despite attempts to simplify pricing by having it set nationally by the CDC, the calculation of price remains complex.

The next pillar of supply management is protection from foreign competition. In order for the Canadian government to maintain the price levels set by the CDC, the government must protect the industry from foreign competitors that would undercut those prices. This goal is achieved largely by allowing only a small quota of foreign dairy products to be marketed in Canada, and through the application of high tariffs on foreign products (e.g. as high as 300% in the case of butter) that essentially kill any incentive for foreign competition.263 While these types of protection remain in use thus far, they are becoming increasingly difficult to justify in the face of increased international economic liberalization and trade agreements.264

---

milk marketing activities. *Ibid.*

260 *Findlay Supply Mgmt Problems*, *supra* note 251 at 4.

261 *Ibid.*

262 *Ibid.*

263 *Ibid.*

264 *Ibid.* In the face of a number international trade agreements and membership in Organizations such as the World Trade Organization, these protectionist policies are often challenged and criticized, but so far have managed to be maintained. This point will be discussed later in this essay.

The final pillar of supply management exercised by the CDC is the formal control of supply. The effects of overproduction on the overall scheme are of serious concern, and therefore the CDC mitigates the risk of oversupply by controlling the amount of milk produced and sold. This involves issuing production and sale quotas to dairy farmers (i.e. an allowance to produce and sell a certain amount of milk). The Milk Supply Management Committee begins by determining the national production level. Provincial marketing boards are then authorized to manage their internal markets through the issuance and administration of quotas265, which are then sold and exchanged on centralized exchange markets.266 Quotas are closely monitored and adjusted by the CDC on a monthly basis, this allows the Commission to "adjust the production quota every month to reflect changes in the domestic demand for milk products, as well as changes in planned exports."267 The goal of these adjustments is to manage dairy production in order to "minimize the possibility of shortages or surpluses in the domestic market."268

The combination of these three pillars effectively cushions the Canadian dairy producers from the risks of the free market, specifically, the inability to determine prices, potential challenges from foreign competition, and a lack of control over supply. Through this system, farmers are given abnormally high returns at the expense of high consumer prices. In fact, Canadian farm gate prices (the price per hundredweight [cwt] that a farmer is paid for their raw milk product) are nearly twice as high in comparison to other European and commonwealth jurisdictions.269 These abnormally high returns, combined with

---

[265] *Benda*, *supra* note 23 at 237.

[266] Canadian Dairy Commission, "Index" (15 January 2014), online: *Canadian Dairy Commission Website* <https://cdc-ccl.ca/index.php/en/canadian-dairy-commission-2/> [https://perma.cc/HC2M-KFKP].

[267] *CDC 2015-2016*, *supra* note 252 at 19.

[268] *Ibid.*

[269] In January 2010 according to a study produced by the Informa Economics for the International Dairy Foods Association compared Milk Supply Control programs it was found that Canada had the highest farm gate pricing in the study. Canada's pricing was $ 32 per cwt, compared to $15 in New Zealand and the US and $17 in the EU. Informa Economics, "An International Comparison of Milk Supply Control Programs and Their Impacts" (September 2010), online: *Informa Economics* <http://future.aae.wisc.edu/publications/Informa_Supply_Control_Impacts_0910.p

inefficiencies and distortions caused by a supply-managed system, mean that consumers of dairy products in Canada pay almost double or triple the prices paid by consumers in countries that have unprotected, market-based systems for their dairy industry, such as New Zealand.270 It is estimated that the average Canadian family spends an additional $300 a year on milk alone because of supply management, a figure that does not include other dairy products such as yogurt, cheese, ice cream and butter.271 If not for the CDC's artificial protection from foreign competition, producers in countries like New Zealand, the United States and Australia would flood the Canadian market with lower cost alternatives, driving dairy prices down and farmer returns down with them.

Originally Canada simply banned the importation of any supply-managed dairy, however 1995 negotiations of the General Agreement on Trade and Tariffs (GATT) forced minimal changes to the policy.272 The changes allowed trivial amounts of imports into the country under low tariffs (e.g. the amount of yogurt permitted to be imported into Canada per year, before prohibitive tariffs are applied, works out to be approximately the volume of one rounded teaspoon per Canadian).273 The GATT permits Canada to set high tariffs once the import quota has been met.274 The import quota was so low however that the change in trade policy had a negligible effect on market prices. The high tariffs applied to over-quota goods effectively make it impossible for countries to

---

df> [https://perma.cc/M4TK-BCJ5] at 14.

[270] *Mike*, *supra* note 12.

[271] Martha Hall Findlay, "Politicians need courage to dismantle supply management" (21 June 2012), online: *The Globe and Mail* <https://www.theglobeandmail.com/news/politics/second-reading/politicians-need-courage-to-dismantle-supply-management/article4359234/> [https://perma.cc/J2NU-2KRA].

[272] Mike Gifford, "Canada's dairy industry: can supply management survive an open trade environment" (1 November 2005), online: *Policy Options* <https://policyoptions.irpp.org/magazines/canada-us-trade-tensions/canadas-dairy-industry-can-supply-management-survive-an-open-trade-environment/> [https://perma.cc/3XBZ-F78U] [*Gifford*].

[273] Michael Hart, "Great Wine Better Cheese: How Canada can Escape the Trap of Agricultural Supply Management" (2005) 90 CD Howe Institute Backgrounder 1 at 3.

[274] *Ibid*.

export supply-managed dairy goods into Canada, at least without taking staggering losses or dealing with terrible margins (for example, the tariff on cheese is 238%,275 while the tariff on butter is nearly 300%).276 Since countries with market-based dairy industries could turn a profit even with tariffs set at 50% or 100%,277 tariffs need to be kept very high in order to discourage foreign competition.

Advantages of a Supply-Managed Dairy Industry

Before engaging in a critique of supply-managed dairy in Canada, a few of the potential benefits of the system should be outlined.[278] It is often argued that the benefits of supply management are two-fold: first, it provides dairy producers with a steady livable income; and second, it provides consumers with better quality dairy products than they would receive under a free market system.[279] There is no question that this system of supply management provides higher incomes to farmers who have dairy quotas. In fact, the average net worth of dairy farmers in Canada is valued at well over $2.5 million,[280] resulting in a net annual income for dairy

---

[275] *Ibid* at 24.

[276] *Ibid.*

[277] This analysis is based off the price differences cited above.

[278] For a recent presentation of the claimed advantages of the system by the industry associations themselves see: Alberta Milk, "Why should our Government continue to support supply management" (2020), online: *Alberta Milk* <https://albertamilk.com/ask-dairy-farmer/why-should-our-government-continue-to-support-supply-management/> [https://perma.cc/L96C-46A9]; Trevor Hargreaves & Cecilia Ho, "What Is In Store For The Future Of Canada's Supply Management System?" (2020), online: *BC Dairy Association* <https://bcdairy.ca/milk/articles/what-is-in-store-for-the-future-of-Canadas-Supply-Management-System#:~:text=By%20utilizing%20supply%20management%2C%20Canadian,industry%20leading%20food%20safety%20standards.> [https://perma.cc/YQ7N-QJUM]; Pierre Lampron, "DFC Responds to Globe and Mail on Supply Management" (29 March 2018), online: *Dairy Farmers of Canada* <https://dairyfarmersofcanada.ca/en/dairy-in-canada/dairy-news/dfc-responds-globe-and-mail-supply-management> [https://perma.cc/NAM4-5HEF].

[279] Bruce Muirhead, "Crying Over Spilt Milk: The History of Dairy Supply Management and its Role in Recent Trade Negotiations" (2014) 30 CIGI Papers at 11 [*Muirhead*].

[280] Martha Hall Findlay, "Why The Dairy Industry's Defence of Supply Management is So Flawed", (May 2014), online: *Macleans*

farms of over $130,000 in 2015,[281] far higher than the average Canadian income.

It has been argued that supply management can help protect producers and, ultimately, the family farm. However, Bruce Muirhead notes that:

> The number of Canadian Dairy farms has fallen dramatically over the past 60 years… a trend that has been evident in all other industrialized countries as well. Using the example of Ontario over the period from 1970 to 2000, the number of active dairy farmers dropped by 84 percent, while the volume of milk produced has increased by 515 percent.[282]

Dairy farm numbers have indeed 'fallen dramatically'. In 1967 there were over 174,000 dairy farms in Canada, compared to the 10,371 that existed in 2019.[283] While the decrease in number of dairy farmers in Canada is not a direct result of supply management, as this same trend occurs in other non-supply managed industries, it becomes clear that supply management is a common factor that has not fulfilled its goal of keeping Canadian dairy farms operational.

It is also claimed that supply management is necessary in order to make Canadian producers competitive, particularly with respect to the heavily subsidized United States market. For example:

> …the US federal government subsidizes dairy production using a number of instruments, including its milk marketing orders, which set the minimum price for dairy products, the Milk Price Support Program that keeps market prices artificially high, and the Milk Income Loss Contract, among others. These subsidies represent about 40 percent of US dairy farmer incomes.[284]

<www.macleans.ca/economy/economicanalysis/why-the-dairy-industrys-defence-of-supply management-is-so-flawed/>[https://perma.cc/5ZME-TGAX] [*Findlay Flawed Defence*].

281 *Ibid.*

282 *Muirhead*, *supra* note 279 at 15.

283 Michael Grant et al, "Reforming Dairy Supply Management: The Case for Growth" (2014) The Conference Board of Canada at 11 [*Grant et al*]; Canadian Dairy Information Centre, "Number of farms, dairy cows and dairy heifers" (27 February 2020), online: *Government of Canada* <https://www.dairyinfo.gc.ca/eng/dairy-statistics-and-market-information/farm-statistics/farms-dairy-cows-and-dairy-heifers/?id=1502467423238> [https://perma.cc/LS5S-FS4J] [*Dairy Farm Statistics*].

284 *Muirhead*, *supra* note 279 at 15.

The United States has subsidized its dairy industry in the past and it continues to do so. However, according to a 2014-2016 study conducted by the OECD, producer support in Canada and the United States, as measured by the percentage producer support estimate (PSE), was very similar. The level of support in both countries was 9% of total farm receipts; in Canada dairy producers accounted for more than 40% of the PSE, while in the United States, sugar comprised the largest portion of the PSE.[285] Moreover, as noted in the OECD report, milk and dairy are no longer supported by minimum prices in the US.[286] Canadian dairy farmers enjoy fixed prices and receive extensive support, yet dairy products in Canada remain more expensive than in the United States.

Supporters of supply management often argue that the money paid to Canadian producers is not a government subsidy. However, in the case of dairy marketing, the distinction appears to be irrelevant. In practice, supply management seems to have the same effect as a subsidy in that consumers bear the onus of supporting this system, albeit through paying higher prices at the checkout rather than by paying for subsidies through their taxes.

With respect to the claim that supply management assures a higher quality of product, some theorists argue that if the system of supply management of the dairy industry were eliminated, the Canadian market would be flooded with milk products that contain harmful hormones or that are a generally inferior quality.[287] Supporters of supply management argue that for consumers, "the benefits of supply management include access to a safe, tested and reliable supply of high quality products at

285 OECD Publishing, "Agricultural Policy Monitoring and Evaluation 2017: Canada" (2017), online: *OECD* <https://read.oecd-ilibrary.org/agriculture-and-food/agricultural-policy-monitoring-and-evaluation-2017/canada_agr_pol-2017-8-en#page3> [https://perma.cc/5MLR-WQB6] at 3; OECD Publishing, "Agricultural Policy Monitoring and Evaluation 2017: United States" (2017), online: *OECD* <https://read.oecd-ilibrary.org/agriculture-and-food/agricultural-policy-monitoring-and-evaluation-2017/united-states_agr_pol-2017-29-en#page1> [https://perma.cc/9HQR-V6F7] at 1.

286 OECD Publishing, "Agricultural Policy Monitoring and Evaluation 2015: United States" (2015), online: *OECD* <https://read.oecd-ilibrary.org/agriculture-and-food/agricultural-policy-monitoring-and-evaluation-2015/united-states_agr_pol-2015-27-en#page1> [https://perma.cc/K3YG-Q2KJ] at 288.

287 *Findlay Flawed Defence*, *supra* note 280.

affordable prices."[288] They argue that because dairy farmers receive a fair return, they are not forced into the "factory farming model that has become increasingly common in some areas of the United States."[289] As a result, cows are given greater individual attention and are therefore healthier and provide safer milk.[290] However, as noted by Martha Hall Findlay, this criticism does not add up:

> We all want to ensure the quality of all of our food, not just dairy, poultry and eggs. And we do so by regulation, food labelling and food inspection. Some (including this author) would argue that we don't do well enough in that regard, but the economic structure of supply management has nothing to do with it. The fear-mongers claim that without supply management, we will 'let in U.S. milk that is laced with hormones.' It is true that some U.S. dairies use hormones for their herds—just as most Canadian beef farmers do. But the control for that is at the border—not pricing, but control over content.[291]

Additionally, food safety is "a focal point" in both Canada and the United States.[292] Given this, it becomes clear that justifications for supply management grounded in claims of higher quality products and preservation of the Canadian farming lifestyle are problematic. The assertion that supply management ensures farmers "receive a stable income in exchange for producing high quality food, while not costing tax payers a penny" simply does not hold true.[293] This is even more apparent when the negative effects of supply management are assessed.

A Critique of the Supply-Managed Dairy Industry

Criticisms of Canada's dairy supply management system tend to fall into two major areas: domestic and international policy considerations. In terms of domestic policy, supply management not only prevents producers from selling to whom they please, but also limits the amount of a good

---

288 Alan McIsaac, "The Case for Supply Management" (2008) 31:3 Can Parliamentary Rev 18 at 19 [*McIsaac*].

289 *Ibid.*

290 *Ibid.*

291 *Findlay Flawed Defence, supra* note 280.

292 *Benda, supra* note 23 at 240.

293 *McIsaac, supra* note 288 at 20.

that can be produced on the basis of the producer's quota. Furthermore, when it comes to efficiency, supply management creates a system that does little to reward or promote efficiency and innovation, since producers who can produce a good at a lower cost are still only allowed to produce the good to their quota amount. This means that enterprising producers are discouraged from taking advantage of efficiencies and innovation to increase their production and earn more money, since any additional investment in technology or production may be difficult to recoup. This in turn may cause a lack of incentive to explore alternative production methods and innovations designed to bring down the cost of production. A report conducted by the Conference Board of Canada highlights the fact that:

> Dairy supply management operates by setting target prices based largely on average costs of production. But since the average costs include many inefficient dairy farms, it generates prices that are higher than if Canada organized its dairy farm assets under the most efficient dairy farms.[294]

This system effectively allows less-efficient dairy farmers to benefit and remain viable because the target milk prices are based on averages that include the least-efficient producers. The system also simultaneously discourages those producers from investing in additional or updated production technology that would improve efficiency because even if they did produce more efficiently, they could not sell additional milk to recoup the investment costs because of production quotas. As Angela Lee writes, "Canada's anachronistic agricultural supply management policies…have been lambasted for breeding inefficiency, institutionalized entitlement, and complacency."[295] The current system encourages large-scale production with no financial incentive for using more sustainable or smaller-scale practices.[296] Supply management has made "Canadian farms smaller, less able to vertically integrate and to take full advantage of the many modern management tools and information systems that have transformed whole industries."[297] The intention of this analysis is not to

---

[294] *Grant et al*, *supra* note 283 at ii .

[295] Angela Lee, "The Stakes in Steak: Examining Barriers to and Opportunities for Alternatives to Animal Products in Canada" (2018) 41:1 Dal LJ 219 at 244 [*Lee*].

[296] *Ibid.*

[297] Robert D Tamilia & Sylvain Charlebois, "The importance of marketing boards in

suggest that all dairy producers are inefficient, but merely to indicate that inefficient producers are not subject to the same consequences and incentives regarding efficiency that they would be in the open market.

Not only is supply management sustaining and encouraging inefficiency, but it also hampers entrepreneurial and ambitious producers from expanding their operations. The ever-increasing price of quotas, coupled with the inability of less-efficient producers to rent their quota to more efficient producers, has resulted in Canadian dairy producers taking on a higher debt-to-asset ratio over the course of the previous decade (2001-2011).[298] The average annual interest payment Canadian dairy farmers made on their debts in 2011 was $38,000.[299] This burden of debt-servicing is disproportionately borne by the more efficient and entrepreneurial producers. Higher levels of debt only further exacerbate pricing, as the larger producers lobby for higher prices and resist reductions in order to recover the cost of financing increasingly inflated quota pricing.[300]

High milk prices for consumers are partially the result of increasingly inflated quota values during the production process. Quota worth for a single dairy cow averages around $30,000, and the average farm's total quota value hovers at roughly $2 million,[301] not including the costs of equipment, land, staffing or any other expenses incurred through the regular operations of a dairy farm. These quotas "have become hefty entrance barriers for new comers in some agricultural commodity industries."[302] Attempting to enter the dairy market as a producer would prove a difficult task that requires a significant capital investment, making entry for newcomers difficult, if not impossible. Additionally, these sorts of restrictions are rarely seen in other industries.[303]

Canada: a twenty-first century perspective" (2007) 109:2 British Food J 119 at 140 [*Tamilia & Charlebois*].

298 *Grant et al*, *supra* note 283 at 22.

299 *Ibid.*

300 *Ibid* at 23.

301 Daniel A Sumner, Joseph Balagtas & Martha Hall Findlay, "Dairy Policy in Canada and the United States: Protection at Home or International Trade?" (2014) 17 One Issue Two Voices at 11 [*Sumner*].

302 *Tamilia & Charlebois*, *supra* note 297 at 138.

303 *Ibid*.

The most significant argument against supply-managed dairy on domestic policy grounds is that consumers shoulder the cost of supply management. The amount Canadians pay for dairy products is much higher than the market value:

> A family that buys an average of 4 litres (just over a gallon) of milk a week will pay close to $150 a year more than it should, not to mention the much higher prices it also pays for cheese, yogurt, and ice cream, plus chicken and eggs. Canadian consumers are paying a major premium, estimated at well over $300 for the average family a year, to benefit barely 16,000 farmers.[304]

In fact, the amount that Canadians pay for dairy is at least double the amount paid in other jurisdictions without supply management, like New Zealand.[305] The system effectively places a dairy tax on consumers. While there is no formal government subsidy funded by tax dollars, ultimately the taxpayer is still subsidizing the dairy industry by paying exorbitant government-mandated prices.[306] In the end it is consumers, food processors, and middlemen that pay for the economic benefits that dairy farmers receive, not the government.[307]

The artificially high prices on milk products are disproportionately harmful to Canadians living in poverty.[308] Milk, cheese, and butter, are all staples of a healthy Canadian diet, and when these products cost more, low income Canadians need to allocate a greater percentage of their income to purchasing these types of goods than do higher-income Canadians.[309] The artificial inflation of dairy prices is a policy that hurts already-struggling citizens the most,[310] since this consumer demographic is

---

304 *Sumner, supra* note 301 at 12.

305 Patricia L Williams, Lynn McIntyre & Theresa N Glanville, "Milk Insecurity: Accounts of a Food Insecurity Phenomenon in Canada and its Relation to Public Policy" (2010) 5:2 J of Hunger & Environmental Nutrition 142 at 144 [*Williams, McIntyre & Glanville*].

306 *Sumner*, *supra* note 301 at 12.

307 *Tamilia & Charlebois, supra* note 297 at 135.

308 Christopher Sarlo, Larry Martin & Ian Lee, "Milking the System: How Agricultural Supply Management Impedes Trade Opportunities and Egregiously Transfers Income" (2012) Macdonald Laurier Institute 1 at 15 [*Sarlo, Martin & Lee*].

309 Ryan Cardwell, Chad Lawley & Di Xiang, "Milked and Feathered: The Regressive Welfare Effects of Canada's Supply Management Regime" (2015) 41:1 Can Public Policy 1 at 2 [*Cardwell, Lawley & Xiang*].

310 *Sarlo, Martin & Lee*, *supra* note 308.

most likely to have to substitute dairy products for less nutritious and cheaper, non-dairy options. A study conducted by Patricia Williams, et al., found that substitution, rationing, and sacrificing were not uncommon solutions for low-income single mothers who could not afford the milk they needed for their children.[311] Unfortunately this precludes children from receiving essential nutrients from dairy products.[312] Supply management of dairy can be damaging when it sacrifices the health of impoverished families in order to bestow a benefit upon a handful of producers.

The effect of higher dairy prices on lower income Canadians has been explored through empirical research. A recent study conducted by researchers at the University of Manitoba further explored the regressive effects of supply management in the dairy sector, finding that the supply management system effectively transfers money from a large number of lower-income consumers to a small number of higher-income dairy producers.[313] The study begins by establishing that "[a]s of 2009, the average Canadian household income was approximately $68,000 compared to $110,000 for dairy-producing households."[314] The study resulted in the finding that "that the poorest households incur a burden relative to income that is five times larger than that of the richest households."[315] The study also found that homes with children tend to spend more on dairy products, and as a result, these homes shoulder larger economic burdens because of the supply managed system.[316] The policy of supply management evidently has a disproportionate and regressive effect on the poorest and most at risk populations: low income households and households with children.

Not only are consumers burdened with higher prices, they are also given fewer product purchasing options. Tariff rates on imports are so high, and the number of exempt products so low, that most Canadians only have the option of purchasing Canadian-made dairy products.

---

311 *Williams, McIntyre & Glanville*, *supra* note 305 at 150.

312 *Ibid.*

313 *Cardwell, Lawley, & Xiang*, *supra* note 309 at 2.

314 *Ibid.*

315 *Ibid* at 8.

316 *Ibid.*

Canadians cannot choose to buy less expensive or more popular items originating from other countries–simply because they are unavailable or extremely expensive. Canadian food processors are also hampered by Canada's dairy policies. These policies make it too expensive to process food in Canada and resell on the international market thereby creating a detrimental economic effect:

> Companies that make butter, cheese, yogurt, and ice cream are forced to pay milk prices that exclude them from competing anywhere outside Canada. True, they have a captive Canadian market, but it is tiny compared with global opportunities. The system dissuades processors from expanding their plants in Canada, let alone from setting up any new ones; instead, they take their capital investments abroad, along with the jobs that result from them.[317]

In addition to issues stemming from the domestic dairy market, dairy producers have a difficult time competing in (and are effectively neutralized from participating in) the much larger international markets, for two key reasons. First, according to a 2002 ruling by the World Trade Organization (WTO), the supply management program in Canada is deemed to be an export subsidy,[318] meaning that exports of dairy products from Canada must fall within the WTO export subsidy limit. The second reason producers have difficulty competing in international markets is that even the products that fall within the subsidy limit are subject to the artificially high costs paid by consumers as a result of farmers' quota costs. High prices on domestically produced dairy make selling the goods on the international markets difficult. Prices need to remain high in order to recoup costs (and generate a profit) for farmers, but the high prices make it nearly impossible for Canadian producers to compete in an international market where high prices can be undercut nearly every time.

---

317 Saputo Dairy, Canada's largest dairy producer, has recently expanded into Australia; this is but one example of this phenomenon. *Sumner*, *supra* note 301 at 13.

318 Al Mussel, "Special Report: The WTO Export Decision: What Next for Growth in the Canadian Dairy Industry?" (21 January 2003), online: *Ideas Economic Literature* <https://ideas.repec.org/p/ags/gmcesr/18142.html> [https://perma.cc/U5UK-FCWE] at 3. For a description of the latest restrictions on Canadian dairy exports to the United States see: Al Mussell, "Milk Supply Management After CUSMA: An Economic Policy Analysis" (2019), online (pdf): *Agri-Food Economic Systems, Guelph* <https://wcds.ualberta.ca/wp-content/uploads/sites/57/2019/05/p-025-036-Mussell-WCDS-2019-Milk-Supply-Management-After-CUSMA.pdf> [https://perma.cc/S9HS-7S9M].

This is problematic when viewed in light of the Organization for Economic and Development's (OECD) finding that as the world's population increases, the global dairy industry will have the strongest demand growth of all agricultural products.[319]

In their most recent forecast for the period of 2013-2022, the OECD predicted that:

> …global butter demand (volumes) is expected to increase by 21 per cent, cheese by just over 11 per cent, and whole milk powder by 13 per cent over the forecast horizon. The OECD/FAO expects demand to be flat in most developed markets, meaning that most of the dairy demand growth is in emerging markets in Asia and Africa. [320]

While Canada struggles to price milk affordably enough to be competitive on an international scale, other countries that are more efficiently equipped (e.g. New Zealand) will reap the benefit of this rising demand by selling their milk to other countries at prices that Canadian producers cannot compete with.[321] New Zealand provides an example of how deregulation has made the country a major player on the world dairy scene.[322] Since the abolishment of its dairy board's monopoly in 2001, the country has become a benchmark for world dairy prices and is well known for its efficiency and productivity.[323] As Tamilia and Charlebois indicate, it is surprising that "Canada still has marketing boards for numerous agricultural products while many other advanced economies that had them, have since dismantled them."[324]

This lack of competitiveness on the world stage is not news to Canadian dairy producers and processors. The two largest Canadian dairy processors, Saputo and Agropur[325] have large-scale operations outside

---

319 *Grant et al*, *supra* note 283 at 3.

320 *Ibid* at 33.

321 Sarah Reid, "Lessons for Canada from New Zealand's dairy industry" (27 May 2016), online: *TV Ontario* <https://www.tvo.org/article/lessons-for-canada-from-new-zealands-dairy-industry> [https://perma.cc/L2NT-C2ZK] at para 4.

322 *Tamilia & Charlebois*, *supra* note 297 at 133.

323 *Ibid.*

324 *Ibid* at 132.

325 Canadian Dairy Information Centre, "Canada's dairy industry at a glance" (2 March 2020), online: *Government of Canada* <https://www.dairyinfo.gc.ca/eng/about-the-canadian-dairy-information-centre/canada-s-dairy-industry-at-a-

Canadian borders, possibly in order to avoid the costs of remaining within the supply management system.[326] Processors like Saputo know that existing outside of Canada's jurisdiction is crucial if they want to capitalize on growing international demand and remain competitive in an international market.

Having the price of dairy so high that it makes international competitiveness nearly impossible is detrimental not only to producers and consumers, but also to the Canadian economy through the loss of additional export income and jobs. Artificially inflated prices caused by the quota system create a situation in which people willing to supply more at a lower price are losing out on producer surplus, while people willing to consume more at a lower price are losing out on consumer surplus.[327] Canada's current supply management system prevents these surpluses from accruing. This is referred to as a deadweight loss in economics.[328]

From an international relations standpoint, the argument against supply management of dairy products centres on the implications of the system on Canada's trade relationships with other nations. Canada's supply-managed dairy industry has been the subject of criticism from current and prospective trading partners throughout its history.[329] In 2018,

glance/?id=1502465180911> [https://perma.cc/47B9-WHW5].

326 *Sumner, supra* note 301 at 13; Agropur, "Agropur acquires Davisco Foods International and doubles its processing business in the United States" (22 July 2014), online: *Agropur Dairy Cooperative* <https://www.agropur.com/en/news/press-releases/agropur-acquires-davisco-food-international> [https://perma.cc/6JLX-MQB6].

327 For example, assume the monopolistic price for a unit of milk is $6 and the cost of production is $2. If a consumer is willing to spend $4 for a unit of milk, then at a price of $3 both the consumer and producer would earn an extra dollar. However, in a monopolistic market this cannot occur since the price is artificially set at $6.

328 Alicia Tuovila, "Deadweight Loss" (24 September 2019), online: *Investopedia* <https://www.investopedia.com/terms/d/deadweightloss.asp> [https://perma.cc/Z9AJ-HLUX].

329 Barrie McKenna, "The world is closing in on Canada's tightly regulated dairy industry" (29 March 2015), online: *The Globe and Mail* <https://www.theglobeandmail.com/report-on-business/international-business/the-world-is-rapidly-closing-in-on-canadas-dairy-industry/article23678491/> [https://perma.cc/KLU6-M62R];The Canadian Press, "Canada's dairy farmers say they've given enough in past trade deals" (24 January 2018), online: *CTV News* <https://www.ctvnews.ca/business/canada-s-dairy-farmers-say-they-ve-given-enough-in-past-trade-deals-1.3774175?cache=yes%3FclipId%3D104070>

American President Donald Trump called for the termination of quotas for Canadian dairy, stating that he believed that the system was unfair as it prevented American companies from accessing the Canadian market.[330] Eventually Canada was forced by the GATT to allow for importation of dairy products under a comprehensive system of tariffication.[331] Although this change ultimately had little effect on Canada's supply management system.

Supply management and the possibility of freeing up agriculture were discussed extensively during the Uruguay Round of WTO negotiations, but the dairy industry was largely excluded from these talks.[332] Canada's supply-managed industries were criticized before talks fell apart in the latest Doha Development Round of WTO discussions,[333] and supply management has been widely criticized by the WTO generally as being a protectionist policy against the spirit of free trade. Further, despite Canada's supply management system not exactly corresponding to the qualities of a government subsidy, in 2002 the WTO found that the effects of the elevated pricing scheme were similar enough to a subsidy to effectively be considered one.[334]

More recently, supply management became of greater concern with respect to the Comprehensive European Trade Agreement (CETA)[335] and the Trans-Pacific Partnership (TPP)[336] negotiations. CETA is a trade

---

[https://perma.cc/EZ9Y-D8GA]; Quintin Tack, "Canadian Dairy Farmers: Not Crying Over Spilt Milk" (24 April 2017), online: *Ivey Business Review* <https://iveybusinessreview.ca/5738/canadian-dairy-farmers-crying-spilt-milk/> [https://perma.cc/V67X-RYGZ].

330 Tahira Majii, "NAFTA in a Nutshell" (2018) 42:5 LawNow Magazine 36 at 38.

331 *Gifford*, *supra* note 272.

332 *Muirhead*, *supra* note 279 at 10.

333 *Findlay Supply Mgmt Problem*, *supra* note 251 at 12.

334 *Grant et al*, *supra* note 283 at *iv*.

335 Government of Canada, "Canada-European Union Comprehensive Economic and Trade Agreement (CETA)" (6 January 2020), online: *Government of Canada Global Affairs* <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/index.aspx?lang=eng> [https://perma.cc/4CRS-TT7E].

336 Government of Canada, "Comprehensive and Progressive Agreement for Trans-Pacific Partnership" (21 February 2020), online: *Government of Canada Global Affairs* <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-

agreement between Canada and twenty-eight European countries. Despite initial criticism from former trade minister Roy MacLaren and the then-director of bilateral trade relations for the European Commission Mauro Petriccione, Canada's supply-managed system was largely unaffected when the CETA agreement was signed in October of 2013,[337] save for an additional allowance of 17,000 tonnes of fine cheese that was allowed to be imported without tariff.[338]

The TPP was a proposed agreement that would have created the world's largest free trading zone, stretching through twelve Pacific countries. The deal was large not only geographically, but also in terms of economic impact. The twelve countries party to the agreement represented over $28.5 trillion (roughly 40%) of the world's economic output.[339] Canada's supply-managed dairy sector became a target of the negotiations from the outset. Canada remained an outsider to the negotiations until October 2012, in large part because of opposition to the country's system of supply-managed dairy by the US and New Zealand.[340] Negotiations stalled because Canada was unwilling to make the desired concessions with respect to its supply managed dairy industry, and even once they agreed to make certain compromises, they were not substantial enough to satisfy the United States.[341] The United States declared that it would proceed without Canada if it failed to make the necessary, more substantial concessions.[342] Eventually, the parties to the negotiations came

---

commerciaux/agr-acc/cptpp-ptpgp/index.aspx?lang=eng> [https://perma.cc/LM34-WQAN].

337 *Muirhead*, *supra* note 279 at 14.

338 *Ibid*.

339 Bill Curry, "The ABC's of TPP" (05 October 2015), online: *The Globe and Mail* <www.theglobeandmail.com/report-on-business/international-business/what-is-tpp-understanding-the-new-pacific-tradedeal/article26648948/>[https://perma.cc/W4AR-A63C].

340 *Muirhead*, *supra* note 279 at 14.

341 Lawrence Herman, "No Turning Back for Canada Now That Dairy Protection is Finally on TPP Table" (4 August 2015), online: *The Globe and Mail* <www.theglobeandmail.com/report-on-business/rob-commentary/no-turning-back-for-canada-now-that-dairy-protection-is-finally-on-tpp-table/article25834661/> [https://perma.cc/L5CR-2PN2].

342 Livingston International, "TPP: Canada Not Budging on Dairy Restrictions", online: *Livingston International Website* <www.livingstonintl.com/canada-regulatory-

to an agreement in October of 2015, and on February 4, 2016 the Trans-Pacific Partnership Ministers signed the TPP Agreement.[343]

In order to reach a deal, Canada had agreed to open its market to dairy imports (butter, cheese, milk powder, liquid milk, whey) from TPP members in an amount equivalent to 3.25% of domestic production, totaling a meagre 5% of Canada's domestic dairy market when combined with CETA allowances.[344] Harper's Conservative government also pledged to pay out "$2.4-billion in income support [to dairy farmers under the supply management system] and $1.5-billion to prop up the value of their production quotas... [with a]n additional $450-million...to help processors modernize operations."[345] However, after the 2015 federal election, Justin Trudeau's Liberal government made it clear that it would be reviewing the TPP agreement itself, as well as the promises made to dairy farmers, and that they would therefore not be committing to the specific compensation deals promised by the previous government.[346]

Many critics, including Dmitry Lysenko, an economist and economics professor at St. Mary's University,[347] were unenthusiastic with respect to the offer of compensation to farmers. Lysenko notes that with regard to the compensation package offered to dairy farmers:

---

updates/tpp-canada-not-budging-on-dairy-restrictions/> [https://perma.cc/J7XY-JHVQ].

343 Sophia Yan, "The controversial Trans-Pacific trade pact has been signed" (4 February 2016), online: *CNN Business* <https://money.cnn.com/2016/02/04/news/economy/tpp-signed-protests-trade-deal/> [https://perma.cc/2JXN-T75A].

344 Konrad Yakabuski, "TPP a Missed Opportunity for Truly Freer Dairy Trade" (16 October 2015), online: *The Globe and Mail* <www.theglobeandmail.com/report-on-business/rob-commentary/tpp-a-missed-opportunity-for-truly-freer-dairy-trade/article26827730/> [https://perma.cc/A4CU-NKB3] [*Yakabuski*].

345 *Ibid.*

346 Gordon Isfeld, "$4.3 Billion TPP Compensation for Canada's Dairy Industry is Not a Done Deal: Trade Minister Chrystia Freeland" (18 November 2015), online: *Financial Post, National Post* <http://business.financialpost.com/news/agriculture/4-3-billion-tpp-compensation-for-canadas-dairy-industry-is-not-a-done-deal-trade-minister-chrystia-freeland> [https://perma.cc/UF3N-LHJS].

347 Dmitry Lysenko, "Politically Savvy but Inefficient and Inequitable Assistance" (13 October 2015), online: *Policy Options* <https://policyoptions.irpp.org/2015/10/13/politically-savvy-but-inefficient-and-inequitable-assistance/> [https://perma.cc/H2XD-T7DJ].

> Apart from being…generous,…,the assistance to the supply-managed sectors is similarly unlikely to be effective in maintaining the viability of those sectors. The programs effectively stifle incentives for the sector to change.[348]

Additionally, as noted by Martha Hall Findlay, executive fellow at the University of Calgary School of Public Policy, such a small increase in the permitted amount of imported dairy will do little to drive down prices in Canada's domestic market, resulting in maintenance of the status quo.[349] While critics of the TPP were convinced that the trade deals were a missed opportunity to move from a supply management system to a free market system that would be more beneficial to consumers, dairy producers were not as optimistic that such a change would be beneficial. While the small increase in permitted foreign cheese imports did not please the dairy industry, the adjusted import level was accepted as a consequence of the trade agreement and compensation deal. The producers' bittersweet reaction was illustrated through a comment by Dairy Farmers of Canada's President, Wally Smith, when he stated that:

> We obviously would have preferred that no additional market access be conceded in the dairy sector… However, we recognize that our government fought hard against other countries' demands, and have lessened the burden by announcing mitigation measures and what seems to be a fair compensation package, to minimize the impact on Canadian dairy farmers and make up for cutting growth in the domestic market.[350]

Some months later, the industry adopted a more critical position of the deal and compensation package, likely due in part to the Liberal Government's lack of commitment to the compensation deal promised by the previous Conservative government. Tensions culminated in a demonstration on Parliament Hill on June 2nd, 2016, where farmers criticized the deal, demanded compensation, and requested stricter border regulations on milk substitutes that they asserted threatened their livelihood.[351]

---

348 *Ibid* at para 14.

349 *Yakabuski*, *supra* note 344.

350 Dairy Farmers of Canada, "Trans-Pacific Partnership to impact Canadian dairy farmers" (05 October 2015), online: *Dairy Farmers of Canada* (blog) <https://dairyfarmersofcanada.ca/en/dairy-in-canada/news-releases/trans-pacific-partnership-impact-canadian-dairy-farmers> [https://perma.cc/848E-Z2PV].

351 Chloe Fedio, "Dairy Farmers Take Trade Protest to Parliament with Cows, Tractors in

The discussion and debate surrounding the proposed TPP took a backseat after Donald Trump's victory in the 2016 presidential election. After he was elected, President Trump stayed true to his campaign promise to re-negotiate NAFTA and signed an order in January 2017 that pulled the US out of the TPP agreement.[352] Formal negotiations on the new deal, effectively a re-negotiated NAFTA, began in May 2017 and would subsequently come to be referred to as the US-Mexico-Canada Agreement (USMCA) in the United States and the Canada-US-Mexico Agreement (CUSMA) in Canada. After several months of negotiations, the leaders of all three countries reached and signed an agreement on November 20th, 2018.[353]

As it relates to the dairy industry, the new agreement grants more concessions to the United States than under the TPP, including the elimination of the controversial Class 7 category of dairy products.[354] Class 7 was a Canadian dairy designation given to a class of dairy products called diafiltered milk (milk that has been filtered through a membrane to concentrate it and raise its protein content). These products had previously been entering Canada from the United States tariff-free due to their inexistence at the time NAFTA was first negotiated in the 1990s and their subsequent classification as a protein ingredient instead of a dairy ingredient.[355] Class 7 was established in 2017 after the Canadian dairy

---

Tow" (2 June 2016), online: <www.cbc.ca/news/canada/ottawa/cows-tractors-parliament-hill-dairy-farmer-live-blog-1.3612266> [https://perma.cc/63B8-SYGK].

352 Jeremy Diamond & Dana Basch, "Trump signs order withdrawing from TPP, reinstate 'Mexico City policy' on abortion" (24 January 2017), online: *CNN Politics* <https: //www.cnn.com/2017/01/23/politics/trans-pacific-partnership-trade-deal-withdrawal-trumps-first-executive-action-monday-sources-say/> [https://perma.cc/YAQ6-R72].

353 Doug Palmer & Megan Cassella, "NAFTA 2.0 is signed- but it's far from finished" (30 November 2018), online: *Politico* <https://www.politico.com/story/2018/11/30/usmca-signed-g20-999748> [https://perma.cc/75E5-K9UL].

354 Kelsey Johnson, "Dairy 103: Justin Trudeau's dilemma" (1 October 2018), online: *iPolitics* <https://ipolitics.ca/2018/10/01/dairy-103-justin-trudeaus-dilemma/> [https://perma.cc/CQ4B-X8TC] [*Johnson*].

355 Hugh Stephens, "Comment: Authors of their own misfortune: Canada's dairy industry is about to lay in a bed of its own making" (28 September 2018), online: *Manitoba Co-Operator* <https://www.manitobacooperator.ca/comment/canadas-dairy-industry-is-about-to-lay-in-a-bed-of-its-own-making/> [https://perma.cc/D62J-HDU5].

industry identified the continuing penetration of American diafiltered milk products tariff-free into the Canadian dairy market as a threat to the Canadian dairy supply management system.[356] The industry pointed to the $475mill United States surplus in dairy trade with Canada in 2017 as evidence that the system was being undermined.[357] With the new category, United States diafiltered milk exports were effectively shut out from the Canadian market. Canadian dairy producers also increased their production of milk to meet the growing butterfat demand, which simultaneously raised the supply of skim milk products, a by-product of producing butterfat products.[358] The increased production of milk resulted in a surplus of skim milk products. As a result, Canadian producers sold the surplus on the world market at discounted prices. This displaced United States dairy exporters who complained that the ability of Canadian dairy exporters to sell at such low prices was the direct result of the Canadian closed supply management system because it effectively subsidized the production of a discounted product.

This discussion above demonstrates that the manner in which dairy became a focal point in the negotiations over the CUSMA was somewhat ironic. Had-it not been for the establishment of Class 7 in 2017, American dairy farmers may not have been as motivated to take action and lobby for the new trade agreement to address the new tariffs that arose from its creation (some tariffs were as high as 300%). It should also be noted that most American dairy farmers are located in Wisconsin, a pivotal swing state in the United States federal election. This was a key factor in bringing the grievances of American dairy farmers to the forefront. One of Donald Trump's economic officials stated, "the key to success is spelled M-I-L-K" when referring to Trump's electoral strategy.[359]

All three signatories have now ratified CUSMA.[360] Canada was the last country to sign in March 2020, however even before its ratification, the

---

356 *Ibid.*

357 *Ibid.*

358 *Ibid.*

359 *Ibid.*

360 David Ljunggren, "Canadian Parliament rushes through ratification of USMCA trade pact" (13 March 2020), online: *Thompson Reuters* <https://www.reuters.com/article/us-usa-trade-usmca-canada/canadian-parliament-rushes-through-ratification-of-usmca-trade-pact-idUSKBN2102I5>

effects of the agreement were already becoming apparent. The dairy sector is unanimously viewed as the hardest hit sector by the CUSMA. Approximately 3.6% of the dairy market share has been ceded to America dairy imports and because of a decline in domestic demand stemming from the macroeconomic effects of the agreement, shipments are projected to decline by US$771mil.[361] Moreover, the elimination of the Class 7 category "significantly prejudices processors' investments" which have been poured into the modernization of plants and in diafiltered milk technology. Graham Lloyd, the General Manager and CEO for Dairy Farmers of Ontario, said at the time that this action "fundamentally changes how the Canadian dairy system is functioning."[362]

The Canadian government has not ignored the outrage from dairy farmers in Canada. The Federal Budget released in early 2019 included almost $4bil in funding as compensation to producers across the dairy, poultry and egg farming industries who were negatively affected by the Canada-European Union Trade Agreement (CETA) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).[363] However, this announcement did not quell the backlash over the CUSMA, and the federal government continued to face criticism over what Official Opposition and Conservative leader The Honourable Andrew Scheer claimed was a mistreatment of dairy farmers.[364]

On August 16th, 2019 the federal government announced that it would be delivering $1.75 billion in compensation for dairy producers negatively impacted by the CETA and the Comprehensive and Progressive

---

[https://perma.cc/HJ2V-RT8Y] at para 2.

361 Nicholas Sokic, "Canadian dairy and agriculture biggest losers of new NAFTA: Report" (25 July 2019), online: *Financial Post/National Post* <https://business.financialpost.com/commodities/agriculture/canadian-dairy-agriculture-sector-biggest-losers-of-new-nafta-report> [https://perma.cc/JRW3-UUZG]; Marco Vigliotti, "Scheer slams Trudeau government for 'mistreatment' of dairy farmers" (17 July 2019), online: *iPolitics* <https://ipolitics.ca/2019/07/17/scheer-slams-trudeau-government-for-mistreatment-of-dairy-farmers/> [https://perma.cc/HN87-UHTG] [*Vigliotti*].

362 *Johnson*, *supra* note 354.

363 D.C. Fraser, "Dairy farmers look forward to CUSMA compensation" (25 February 2020), online: *Farmtario* <https://farmtario.com/news/dairy-farmers-look-forward-to-cusma-compensation/> [https://perma.cc/K8PP-9TJ2] at para 7 [*Fraser*].

364 *Vigliotti*, *supra* note 361.

Trans-Pacific Partnership (CPTPP).[365] The Honourable Andrew Scheer criticized the timing of the announcement, saying that it was "the exact same formula" and the "exact same scale" that the Conservatives had previously put forward.[366]

As it relates to compensation for CUSMA, on February 25th, 2020, the Minister of Agriculture and Agri-Food, The Honourable Marie-Claude Bibeau, committed to offering compensation to dairy farmers as a result of the CUSMA.[367] CETA and the CPTPP "opened up 3.25 per cent of the overall dairy market to international competition, with CUSMA rising the number to 8.4 per cent."[368] The Honourable Marie-Claude Bibeau stated that the government is "committed to protecting supply management, the system and to make these compensations." Pierre Lampron, President of Dairy Farmers of Canada, said he was "happy to have a commitment from the government for compensation." [369] However, the Minister did refrain from putting a timeline on when this further compensation would be offered.[370]

While the 2020 federal budget has yet to be released due to the COVID-19 pandemic, given that CUSMA was only recently ratified, it seems unlikely that a compensation package for the agreement will be included in the 2020 budget.

For his part, Prime Minister Trudeau has maintained a staunch defense of the supply management system, despite the assertion by Graham Lloyd, General Manager and CEO of Dairy Farmers of Ontario, that "Trudeau will no longer be able to argue that the system's pillars remain intact after conceding to the American demand to eliminate Class 7."[371] Dairy farmers also argue that Prime Minister Trudeau's espoused position as a defender of the system is no longer tenable in the face of the

---

365 Kathleen Harris, "Bibeau unveils $1.75B in compensation for dairy farmers harmed by trade deals" (16 August 2019), online: *CBC News* <https://www.cbc.ca/news/politics/bibeau-trade-deal-1.5249405> [https://perma.cc/J8HW-NWF4] at para 1.

366 *Ibid* at para 9.

367 *Fraser, supra* note 363 at para 1.

368 *Ibid* at para 4.

369 *Ibid* at para 10.

370 *Ibid* at para 7.

371 *Johnson, supra* note 354 at para 17.

new realities of CUSMA.[372] While the concessions made in the new trade agreement may indicate that the supply management days of the dairy industry are numbered, the immediate backlash and political rhetoric surrounding the new deal are indications that the dairy lobby and the CDC continue to wield significant power and influence, perhaps enough to stave off the calls to dismantle supply management altogether. The importance of the ability to organize and lobby as a cohesive unit is abundantly clear from the events leading up to and surrounding the creation of the CUSMA. The primary impetus for President Trump to use the dairy industry as a campaign focal point was the direct result of the electoral power wielded by Wisconsin swing-state dairy farmers. Prime Minister Trudeau, despite acquiescing on concessions in the dairy industry, has continued to express a staunch position defending supply management and has ostensibly expanded the compensation package that will be offered to farmers. Meanwhile, the Honourable Andrew Scheer has used the concessions as his own focal point to galvanize Canadian dairy farmers, claiming a Conservative government would "never back down from defending the (dairy) sector."[373] It is clear from this discussion that the political electoral power wielded by dairy farmers and the CDC is significant. Despite the concessions that have resulted from international pressure, the board endures.

THE FUTURE OF SINGLE DESK MARKETING BOARDS: LOSING THEIR RELEVANCE

After examining each of the marketing boards in turn, an apparent theme emerges. Each of these boards emerged in the wake of uncertain and difficult financial times for producers. During these times of crisis and instability, government intervention was deemed to be necessary in order mitigate the problems faced by producers, and the government's intervention via single-desk marketing boards was originally intended to exist only until the abnormal market conditions stabilized. As Dr. Milton Boyd argued, the problem with the continued existence of the CWB's single desk monopsony was that the current market and players were vastly

---

[372] *Ibid* at para 18.

[373] *Vigliotti*, *supra* note 361 at para 3.

different from when the board was created.[374] The CWB was initially created during WWI to aid in the war effort but was reintroduced in an attempt to stabilize prices during the Great Depression. Its full monopsony powers were only granted to help the war effort during WWII. The FFMC was created to address dire economic conditions and fishers' lack of market power during the 1960s. Finally, the CDC creation was the result of the market uncertainty and rampant overproduction that plagued the industry in the decades following WWII.

Each of these boards offered ailing producers the opportunity to improve their market position through the use of a single desk marketing system. Ultimately, each of these systems provided a stable, predictable, and sometimes higher than-normal-market return to producers. These boards were all intended to help alleviate the poor economic conditions that producers were facing at the time. However, when conditions changed, the boards remained in place.

The belief that these boards could market producers' goods better than the producers could themselves is one of the reasons why they were deemed to be useful. Producers were often small operations: single-family farms, or lone fishers. They did not possess the technology to run a marketing business, especially given the unavailability of the advanced telecommunications and Internet technology that exists today. Many producers were comfortable knowing that they had a reliable purchaser of their product during volatile times, but even as technology changed and producer sophistication increased, the boards continued to operate.

There are substantial theoretical and practical inefficiencies with single-desk marketing boards and supply management, and yet these boards managed to stay in place–even when they stopped being efficacious. Wheat farmers being forced to sell their product for less than its market value, fishers having to sell their catch to the FFMC at 40% of market value, and dairy farmers missing out on large export markets and having their expansion stifled by expensive quotas are all examples of how the inefficiencies of the system have been borne out in practice. Despite their inefficiencies, changing economic circumstances, the ever-increasing sophistication of producers, and a focus on globalization, trade liberalization and neoliberal tenants, single desk marketing boards have remained stubbornly in place.

---

[374] *Boyd*, *supra* note 41 at 7.

There are a number of reasons why these boards have been and continue to be so difficult to eliminate. Firstly, single-desk marketing boards are the creation of statute, meaning that in order to reform their operation or abolish a board outright, some form of legislative action is required. This means that dissolving the boards is not as simple as high-ranking board officials taking executive action to disband the monopsony. It takes a legislative body, in this case Parliament, to pass legislation that will result in a decision that is subject to debate, higher levels of scrutiny, and increased media and public attention. This process also creates considerable delay in the dissolution process, since it takes usually at least one legislative sitting to introduce and pass legislation, and the bill to dissolve the board must go through multiple readings before it is passed (and in the federal context, the legislation must also pass the senate). The statutory backing of these boards makes them much more resilient to change than a standard corporation would be.

The influence exerted by various industry groups in major food producing and consuming countries like Canada and the United States is one of the "most serious barriers to building a more just and sustainable food system."[375] Single-desk marketing boards create a strong, identifiable lobby group in the form of a statutorily defined group of producers. Instead of needing to seek out individuals who benefit from or support the board, single-desk marketing boards create a distinct, easily-identifiable and easily-mobilized group. For instance, when a group of wheat farmers wanted to lobby on behalf of the CWB, they only needed to look to the clearly defined group of wheat producers. In addition to the producers, the boards' bureaucracies often become lobbyists for their own existence, such as when the CWB's executives became concerned for their jobs and fought to promote their existence through a campaign of pointed advertising.[376] The FFMC has also become a bureaucratic lobby group in its attempts to justify its own existence through various advertisements, including its President's blog.[377] Moreover, the FFMC has filed a defamation suit against one of its staunchest critics in an effort to quiet his

---

375 *Lee, supra* note 295 at 243.

376 *CWB FCC, supra* note 84.

377 *Freshwater Fish Marketing Corporation*, "Presidents Blog", online: *Freshwater Fish Marketing Corporation* <www.freshwaterfish.com/presidents-blog> [https://perma.cc/KPC6-62V].

criticism,[378] a clear indication of members of the FFMC attempting to quell criticism of their organization and dissuade future criticism through the threat of litigation. Documents tabled in Parliament in 2018 demonstrated that the FFMC had spent "$88,200 on image consultants amid its mismanagement omnishambles".[379] Between December 2016 and February 2018, "the corporation paid the firm Changemakers for "general support in protecting FFMC's reputation and communicating with stakeholder groups."[380]

The CDC and its provincial marketing boards and producer associations also engage in lobbying for their own benefit. The CDC and a number of provincial boards and organizations are often found to be advertising the alleged value of supply management for Canadian society as a whole. For example, on the SaskMilk website there is a section about the dairy industry in Canada that claims that supply management is benefiting consumers and producers alike, and its elimination will not lower consumer prices.[381] This may be a questionable assertion given that domestic and international opinions seem to agree that eliminating supply management would almost certainly help consumers by lowering prices, and likely help producers by encouraging efficiency and allowing them to sell their milk on the free market. This attempt to sell people on the concept of supply management is not unique to Saskatchewan. It is a common idea disseminated by many main players in the Canadian dairy industry.[382] The CDC benefits from having what could debatably be the

---

378 The FFMC, has sued critic Kim Sigurdsson for defamation on the basis that his claim that "the Crown Corporation sold fish that's unfit for human consumption" on the basis that these claims are both erroneous and have caused irreparable harm to its reputation. Bartley Kives, "Freshwater Fish Suing for Defamation" (23 February 2016), online: *Winnipeg Free Press* <www.winnipegfreepress.com/business/freshwater-fish-suing-for-defamation-369763871.html> [https://perma.cc/8A5R-CSF9].

379 Dylan Robertson, "Hard-pressed fish marketer spends big on public image recovery" (26 November 2018), online: *The Winnipeg Free Press* <https://www.winnipegfreepress.com/local/hard-pressed-fish-marketer-spends-big-on-public-image-recovery-501222082.html> [https://perma.cc/U7KS-X5J6] at para 1.

380 *Ibid* at para 2.

381 SaskMilk, "Canada's Supply Management System" (2020), online: *SaskMilk Website* <http://www.saskmilk.ca/dairy-farming-in-canada/canadas-supply-management-system/> [https://perma.cc/X2W5-4DCL] [*SaskMilk*].

382 Examples of other players advertising for the maintenance of the supply management system are explored below.

most vocal and organized group of producers in favor of its existence. As a result, the CDC can allow vocal producers to lobby on its behalf in support of the board's supply management powers. Nonetheless, the board still advocates on its own behalf, and like all single-desk marketing boards, has become a form of institutional bureaucratic lobby.[383] "[T]he closed, concentrated, and controlling nature of agribusiness industries and their lobby groups not only works to their benefit, but also works to the public's detriment when special interests and economic concerns are permitted to trump the public interest."[384]

Another reason that these boards have been difficult to change or eradicate is because of the real or perceived benefits that producers receive from single-desk marketing. In the case of the CWB, many farmers believed that despite the reduction in freedom, the board benefitted them overall through enhanced bargaining strength.[385] Although there was significant criticism surrounding how the vote was conducted, a non-binding 2011 plebiscite on the issue revealed that 51% of barley farmers and 62% of wheat farmers supported the CWB.[386] However, employees of the CWB administered the plebiscite, and as a result many people questioned the legitimacy of the vote because the board had an incentive for the results to reflect a pro-monopsony sentiment.[387]

It should also be noted that a strong pro-monopsony result in a farmer plebiscite is not necessarily representative of farmer interests. The farmers who voted in the plebiscite had elected to become part of the CWB and grow grain under its jurisdiction in the first place. On the other hand, farmers who did not support the CWB may have decided to grow a type of crop not controlled by the board, or exit crop farming altogether because of their discontent with the CWB'S restrictions. Regardless of how many farmers actually supported the board, it is clear that a number of farmers saw a benefit from the CWB's monopsony. However, while they may have

---

383 Canadian Dairy Information Centre, "Canada's dairy industry at a glance" (2 March 2020), online: *Government of Canada* <https://www.dairyinfo.gc.ca/eng/about-the-canadian-dairy-information-centre/canada-s-dairy-industry-at-a-glance/?id=1502465180911> [https://perma.cc/9HDZ-TA3P].

384 *Lee*, *supra* note 295 at 244.

385 *Boyd*, *supra* note 41 at 6.

386 *Gunter*, *supra* note 90 at para 3.

387 *Ibid.*

gained stability through single-desk marketing systems, with an increase in business-savvy producers and a rise in potential processors and traders interested in the Canadian market, there are benefits to be achieved by enterprising producers without the interference of a single-desk marketing board.

On the other hand, the CDC has clearly benefited a number of producers (and in doing so, disadvantaged consumers) by charging prices that are far higher than market value for their products. Ambitious and efficient producers are hampered by the quota system and are prevented from accessing opportunities in substantial export markets that producers in voluntary jurisdictions have benefitted from for years. Even though producers benefit from higher-than-market prices, their expansion and ambition are thwarted by a supply-managed system. This ultimately amounts to a loss in potential revenues as businesses are unable to grow. Nonetheless, producers benefit extensively in the domestic realm, provided that they have the quota. This entrenched "quota club" is a formidable lobby group that advocates in favour of maintaining a status quo that disproportionately benefits them.

The last difficulty with respect to the abolition of supply management regimes is the paradox of collective action.[388] The idea is that the special interests of a smaller, well-organized group of producers with an intense and focused interest can prevail over the interest of the larger group of consumers, who have many interests to consider. For example in the dairy sector, far more people suffer because of the supply management system (millions of domestic consumers, but also international and some Canadian farmers) than those who benefit (10,371 farms with milk shipments).[389] Given this, conventional wisdom suggests that we live in a democracy where majority rules, and therefore supply management should

---

388 The paradox of collective action suggests that larger groups may be less successful than smaller groups in furthering their interests. Joan Esteban & Debraj Ray, "Collective Action and the Group Size Paradox" (2001) 95:3 American Political Science Rev 663 at 663. The origin of the problem of collective action for larger groups is the fact that while "each individual in any given group may share common interests with every other member, each also has conflicting interests". Keith Dowding, "Collective action problem" (7 March 2013), online: *Encyclopaedia Britannica* <https://www.britannica.com/topic/collective-action-problem-1917157> [https://perma.cc/M7ST-J8SQ].

389 *Dairy Farm Statistics, supra* note 283.

be eliminated since it does not provide a benefit to the majority of people. However, economist Mancur Olson elucidates the economic idea of collective action wherein majority objections might be overcome by a minority group:

> [I]t is not in fact true that the idea that groups will act in their self-interest follows logically from the premise of rational and self-interested behavior. It does not follow, because all of the individuals in a group would gain if they achieved their group objective, that they would act to achieve that objective, even if they were all rational and self-interested. Indeed, unless the number of individuals in a group is quite small, or unless there is coercion or some other special device to make individuals act in their common interest, rational, self-interested individuals will not act to achieve their common or group interests.[390]

Even though the total detriment to consumers in a supply management system far surpasses the benefit to producers, the problem is that consumers do not lose enough to be driven to action. It is not worth their time or efforts to protest, lobby, and organize in order to eliminate supply management. Despite being the most vulnerable stakeholder of the agribusiness sector[391], many consumers are unaware of the pricing issues caused by supply management. A study that examined milk pricing and consumer perceptions found that only 7.4% of consumer respondents believed that Canadian milk was more expensive than American milk.[392] Even more concerning was that 58.4% of respondents stated they had never heard of the CDC before.[393] Finally, a staggering 80.6% of respondents were unable to describe the CDC's main purpose.[394]

While some consumers blame marketing boards for increased prices, they are unable to "understand the complex pricing mechanisms of agricultural commodities."[395] It is clear that not only are consumers unorganized with regard to opposing the CDC and supply management, but they are actually largely ignorant of the workings of the dairy industry and how it directly affects their lives. Given this lack of awareness there is

---

390 Mancur Olson, *The Logic of Collective Action: Public Goods and the Theory of Groups* (Cambridge: Harvard University Press, 1965) at 1-2.

391 *Tamilia & Charlebois, supra* note 297 at 131.

392 *Charlebois et al, supra* note 258 at 13.

393 *Ibid.*

394 *Ibid.*

395 *Tamilia & Charlebois, supra* note 297 at 131.

little involvement of 'concerned consumers' in the discourse, and even less lobbying for the elimination of the current system.

In direct opposition to the anti-CDC lobbying that would typically be done by consumers to protest high prices, farmers involved in the supply management system actively promote the system as beneficial and as being in the consumers' best interests. Many provincial dairy board websites have a page telling the reader why supply management is good for all Canadians. The Dairy Farmers of Manitoba[396], Alberta Milk[397], SaskMilk[398], and BC Dairy Association[399], among others, all have pages on their websites that are dedicated to outlining the advantages of supply management. The Alberta Milk site emphasizes that "Canadians want supply management" and outlines a number of polls that support this claim[400] while the BC website has a page entitled "Supply Management: A Success Story" available for readers.[401] The Dairy Farmers of Canada website also has a news section with various articles criticizing any potential movement away from supply management,[402] as well as a farm policy page with more articles extolling the virtues of the current system.[403] There are also a number of news releases on the website dedicated to the problems that international trade deals and liberalization pose to supply management.[404] Dairy Farmers of Canada hosts a national conference

---

396 Dairy Farmers of Manitoba, "Our Industry" (2020), online: *Dairy Farmers of Manitoba* <https://www.milk.mb.ca/ourindustry/> [https://perma.cc/2UCA-6Y4Z].

397 Alberta Milk, "Supply Management" (2020), online: *Alberta Milk* <https://albertamilk.com/for-industry/supply-management/> [https://perma.cc/GPW8-YTAY] [*Alberta Milk*].

398 *SaskMilk, supra* note 381.

399 BC Dairy Association, "BC Dairy Industry" (2020), online: *BC Dairy Association* <https://bcdairy.ca/dairyfarmers/articles/bc-dairy-industry/supply_management> [https://perma.cc/KZ85-4LPV] [*BC Dairy Association*].

400 *Alberta Milk, supra* note 396.

401 *BC Dairy Association*, *supra* note 399 at para 11.

402 Dairy Farmers of Canada, "News Releases" (2020), online: *Dairy Farmers of Canada* <www.dairyfarmers.ca/news-centre/news> [https://perma.cc/7W9Q-B8ZQ].

403 *Ibid.*

404 Dairy Farmers of Canada, "News Releases Trade Deal", online: *Dairy Farmers of Canada* <https://dairyfarmersofcanada.ca/en/search?keywords=trade+deal> [https://perma.cc/ZZA4-PAM6].

where, among other things, CETA and Trans Pacific Partnership negotiations are discussed as they pertain to supply management, and members engage in strategizing how to best maintain the status quo in the face of changing international trade norms.[405]

The power of the dairy farmers' lobby group has not gone unnoticed. Jeffrey Simpson from the *Globe and Mail* article argues:

> …that dairy farmers will make such a stink if the government so much as touches supply management that it would make the Quebec student protests look like a toddler's tea party. They showed it four decades ago when they painted slogans on barn roofs across Quebec, descended on Ottawa, dumped milk over the head of agriculture minister Eugene Whelan and bullied the federal Liberal government into the racket.[406]

Referring to the article, Chris Selley confirms that "the lobby is very powerful, and politicians clearly live in fear of it."[407] No one disputes the power of the dairy lobby group, and in fact, The Lobby Monitor ranked the Dairy Farmers of Canada as the most active lobby in Canada in 2012.[408] They earned first place by having the most interactions with publicly held officeholders,[409] with roughly $80 to $100 million each year

---

405 Yves Leduc, "Monitoring Trade Talks" (16 July 2014), online (pdf): Dairy Farmers of Canada<https://www.dairyfarmers.ca/content/download/3862/38671/file/DFC_AGM_MONITORING_TRADE_TALKS_en_final.pdf> [https://perma.cc/8A3E-ST9U].

406 Chris Selley, "Chris Selley's Full Pundit: We are not afraid of Big Dairy" (22 June 2012), online: *The National Post* <http://news.nationalpost.com/full-comment/chris-selleys-full-pundit-we-are-not-afraid-of-big-dairy> [https://perma.cc/9LDF-NU6B] [*Selley*]; Jeffrey Simpson, "Political hell hath no fury like dairy farmers aroused" (22 June 2012), online: *The Globe and Mail* <www.theglobeandmail.com/globe-debate/political-hell-hath-no-fury-like-dairy-farmers-aroused/article4362082/> [https://perma.cc/T4H8-DDZG].

407 *Ibid*; It has even been claimed that thousands of Quebec dairy farmers joined the Conservative Party for one day and one purpose- to vote against leadership candidate Maxime Bernier who campaigned to abolish supply management. See: Andrew Coyne, "Andrew Coyne: Tories cry foul as Maxime Bernier spills the beans, er, milk on leadership race" (12 April 2018), online: *The National Post* <https://nationalpost.com/opinion/andrew-coyne-tories-cry-foul-as-maxime-bernier-spills-the-beans-er-milk-on-leadership-race> [https://perma.cc/9V6M-ZT9F].

408 The Lobby Monitor "Dairy, oil, gas, mining were top lobbies of 2012" (24 January 2013), online: *The Lobby Monitor*, <www.lobbymonitor.ca/2013/01/23/dairy-oil-and-gas-mining-are-top-lobbies-of-2012/11369> [https://perma.cc/3YKA-BLTW].

409 *Ibid.*

spent on lobbying.[410] The main focus behind the lobbying of Canadian dairy is to advocate for the maintenance of supply management and to mitigate threats to its continued existence.[411]

The structure of the electoral system and the way in which votes and seats are distributed in Canada also allows for powerful lobby groups to gain political and economic influence. Since producers are greatly affected by supply management they will likely not vote for a party that may abolish, or that has abolished, supply management. Consumers on the other hand, are unlikely to decide whom to vote for based on this particular issue, since many are unaware of its existence to begin with. Politicians fear eliminating supply management because it will almost certainly cause them to lose producer votes and will likely gain them no favour with consumers who did not perceive the system as a problem in the first place. In Martha Hall Findlay's critique of supply management, she revealed that behind closed doors, politicians agree that supply management systems are nonsensical and sub-optimal, however they are also intimidated by the dairy lobby and therefore agree that eliminating them is not politically viable.[412] Moreover, Findlay writes that because the number of dairy producers is much smaller than the number of other types of farmers, and the distribution of dairy farms is scattered over a number of federal ridings, there are actually only thirteen ridings with over 300 dairy farms, the majority of which are in Ontario and Quebec. Given that 90% of all farmers are in non-supply managed industries, there is still a much greater number of non-dairy, non-supply managed farmers in each of these thirteen ridings.[413] She writes that even in those ridings with dairy concentrations in Quebec and Ontario, "there are now few, if any, ridings where dairy votes could plausibly swing elections- particularly compared to the votes of all those in those same ridings who would benefit from dismantling supply management ."[414] However, despite being completely outnumbered, a strong Canadian dairy lobby has created a political environment where supply management continues to exist despite

410 *Findlay Flawed Defence*, *supra* note 280.

411 *Ibid*.

412 *Findlay Supply Mgmt Problems*, *supra* note 251 at 1.

413 *Ibid* at 22.

414 *Ibid* at para 10.

widespread criticism of the system. In the "absence of a strong consumer lobby, politicians cater to the producer lobby rather than to broader interests."[415]

Despite difficulties with removing supply management regimes, the trend increasingly appears to be the disbanding of such systems in favor of a voluntary system, whereby producers can choose whether or not to sell their products to the former marketing corporation. This was evidenced in the case of the CWB, where the board first became voluntary for a temporary period not exceeding 5 years. During this period the Government of Canada was able to sell the company to G3 Grains, resulting in the effective privatization of the CWB. Canadian farmers were allowed to retain equity in the marketing corporation, but ultimately G3 Grains had the option to buy out their equity. The CWB's transition demonstrates the difficulty of eliminating supply management, in that the transition is an ongoing and long-term process, not an event. Such has also been the trend with the FFMC. Saskatchewan and Ontario have already withdrawn, Alberta has closed its commercial in-land fishery but remains a signatory to the Act, the Northwest Territories have teetered on the edge of withdrawal, and the Manitoba Progressive Conservative government withdrew its participation under the *Freshwater Fish Marketing Act*. While the FFMC still operates in the Northwest Territories, the clear trend for this single-desk board seems to be towards abolishment of a single-desk system and a movement towards voluntary, rather than forced, monopsony marketing.

Finally, the CDC exists as an anomaly to the trend of declining marketing boards. It is tempting, based on the fate of other single-desk marketing boards in both Canadian and international jurisdictions, to hypothesize that the CDC's supply management days are numbered. Especially because it seemed that supply management of Canadian Dairy was deemed to be problematic by a number of international trading partners in the wake of the recent concessions made in the CUSMA. Nevertheless, the Canadian dairy industry managed to emerge from trade agreement discussions still wielding significant political power, with politicians such as Prime Minister Trudeau and Official Opposition leader the Honourable Andrew Scheer still vying for their favour. For reasons

---

[415] Michael Hart, "Great Wine, Better Cheese: How Canada Can Escape the Trap of Agricultural Supply Management" (2005) 90 Backgrounder CD Howe Institute at 8.

unbeknownst to many, the Canadian government has stood by the supply management system, making only minor concessions with respect to freeing up imports.

A few factors stand out in explaining why the CDC continues to operate as a single desk marketing system while the CWB and FFMC struggle or have been dismantled completely. The first of which is the formidable and highly organized nature of the Canadian Dairy Farmers. As noted earlier, the Canadian Dairy lobby receives $80 million dollars or more in lobbying funds per year.[416] Moreover, they are one of the most active lobbies in Canada, and will mobilize and be extremely vocal if need to be. Politicians seem to fear Canada's dairy lobby based on the long perpetuated myth that a move towards axing the supply management system would likely cost an election. However as noted earlier, this is unlikely, if not completely false. Part of the Dairy industry's lobbying power may come from being a big fish in a smaller pond. As discussed above, Canadian Dairy represents one of the largest if not the largest, lobby groups in Canada. Thus, they are more likely to get more ear time with politicians and exert more influence. Beyond this, the dairy industry has formulated nostalgia and mythology around dairy farmers, the view of "small family-owned farms feeding a hungry nation."[417] The recurring idea in the industry's advertisements, fact sheets and lobbying is that these "poor" "small" "family farmers" are just trying to make a meager living and the CDC ensures their existence and survival. The industry maintains that milk from other jurisdictions without supply management is of poorer quality and contains impurities and hormones. While much of this is untrue, these notions tend to create sympathy among politicians and consumers.

Another consideration is the lack of consumer education and drive. Many consumers do not understand that they are paying more for milk and thus do not advocate in favour of abolishing supply management. This issue was discussed in greater detail before when collective action theory was analyzed. Consumers just do not feel outraged enough or realize what is at stake and thus are not vocal about the issue. Whereas, dairy producers, as we have seen, are not only very aware of the effect that supply management has on them, but also are very vocal in support of it.

---

[416] *Findlay Flawed Defence*, *supra* note 280.

[417] *Tamilia & Charlebois*, *supra* note 297 at 136.

A final factor that differentiates the CDC from other single-desk marketing boards is that dairy is predominantly a Central Canada industry. Over 70 per cent of milk is produced in Quebec and Ontario, with Quebec being home to over 50 per cent of the country's total dairy farms.[418] This factor also helps to explain the government's reluctance in ending supply management. Since Quebec and Ontario make up the majority of Canada's population, they also hold the majority of seats in Parliament; their provincial governments are potentially able to mobilize in defence of a provincial economic interest. [419] Governments at the federal level are often sensitive to a particular need to maintain at least some substantial roster of members of parliament from Quebec; anything less may undermine the legitimacy of a party as a national entity. Even under Prime Minister Stephen Harper, who had very little support in Quebec, the Conservatives held 8 of the 13 seats in Quebec with 300 or more dairy farms.[420] It seems plausible that former Prime Minister Harper would not have wanted to do anything that would be unpopular in these ridings and erode the small progress he had made within the province. When you contrast this with the pre-dominantly Western FFMC and exclusively Western CWB, this theory seems even more compelling.

While the reasons why supply-managed dairy appears to be untouchable are not abundantly clear, it is obvious that the Canadian Dairy lobby is a very strong force in Canadian politics. It is also clear that the neoliberal, free trade agenda of today's advanced trading economies is at odds with supply management. Based on this climate it seems increasingly likely more concessions will be required in the future and Canada's dairy industry may see the gradual erosion of its supply management.

---

418 Barrie McKenna, "Canada's Dairy Industry is a Rich, Closed Club" (25 June 2015), online: *The Globe and Mail* <www.theglobeandmail.com/news/politics/canadas-dairy-industry-is-a-rich-closed-club/article25124114/> [https://perma.cc/Y7QE-QXA7] at para 9.

419 *Benda*, *supra* note 23 at 239.

420 *Findlay Supply Mgmt Problems*, *supra* note 251 at 23.

CONCLUSION

After examining single-desk marketing boards in Canada, a number of themes emerge.

First, in each case (the CWB, the FFMC, and the CDC), the marketing boards emerged in tumultuous socioeconomic conditions. The CWB was created because of the need for wartime supply of grain to Britain in WWI, and later to manage producer stress during the Great Depression. The FFMC was borne out of extreme economic distress among producers at a time when fish marketing was dominated by a small number of foreign corporations. Finally, the CDC was established due to widespread producer distress resulting from a tumultuous and unpredictable dairy market in the decades following WWII.

Second, as they are created by legislation and without sunset clauses, marketing board schemes can have considerable durability. Active legislative attention is needed to limit their powers or dissolve them, and any such action will potentially be in the face of the lobby groups that the scheme helped to create or empower in the first place.

Third, a marketing board scheme creates or further empowers an inherently well-defined and well-organized private sector interest group. The producers who benefit from the boards are defined by law, making them well-equipped to identify themselves, communicate their opinions, and lobby the government in favour of their interests. Specifically, producers and the public bodies that regulate the boards can advocate in favour of their strong economic interest in preserving a monopsony or monopoly that protects them from the impacts of open competition. Further, other potential lobby groups for the diminution of a market system–such as value-added wheat producers–may have little effect because the system itself discourages them from emerging and thriving.

Fourth, a marketing board scheme can create a powerful public-sector lobby in favour of its retention. The bureaucracy and administration behind the single-desk marketing board see the maintenance of this system as protecting their own jobs and prestige.

Fifth, the Olson hypothesis on collective action appears to operate in the context of single-desk marketing boards. The persistence of the CDC is a convincing demonstration that a small special interest group can preserve its privileges in the face of a widespread and highly regressive social policy. In the case of the dairy industry, this involves raising the prices of a staple product so producers can benefit at the expense of consumers, particularly those who are most vulnerable and in need.

Sixth, the power of the special interest groups created by marketing The concentration of dairy farmers in some Quebec ridings, coupled with their vocal opposition to altering the status quo, may cause political parties to become increasingly hesitant to make changes to the supply management system. Every political party in Canada wishes to have at least substantial elected representation from the province of Quebec; this can be importing to the party's status as a truly national presence. Conversely, no party wishes to potentially trigger or exacerbate separatist sentiments.

Seventh, a significant factor that has contributed to the winding down of single-desk marketing boards or the supply-managed industry is a change in producer attitudes. Each of the boards examined above was created during a perceived time of need, and producers actively supported and assisted in bringing about their existence. However, this may no longer be the reality today. Part of the change in attitudes toward these boards may be explained by an increase in the economic or political clout of producers. Canadian marketing board, for example, were organized at a time when the country's understanding of markets was "much less sophisticated" than it is today.[421] There appears to be an increasing belief among producers that they themselves are more capable of directly marketing their product. This mindset, coupled with an increase in resources for producers to lobby on their own behalf, provides some explanation for the change in producer attitudes.

Commercialization and increased sophistication among producers also explain these changes. While all three industries have experienced significant advances in these areas, the shift from the family wheat farm to the large corporate farm is one of the most influential examples of this change. This modern sophistication, combined with emerging marketing opportunities (e.g. increasing prosperity and demand in other countries), and marketing technologies such as digital and telecommunications advances, have increased market access for individual farmers far beyond what was possible in the days of the early family farm. The culmination of these advances may influence producers into believing that they no longer

---

[421] *Tamilia & Charlebois, supra* note 297 at 124

benefit from having to sell their product through the marketing board. For instance, with the CWB, many producers saw that marketing opportunities would be more accessible if the board's monopsony on barley was eliminated. With regard to the FFMC, many Canadian fishers, including many northern Indigenous fishers, are unimpressed with the board's performance and believe that they would be more capable of capitalizing on economic opportunities themselves. While dairy producers are missing out on large foreign marketing opportunities, in contrast to grain and fish producers, they are so well compensated domestically that they seem content to allow the dairy marketing scheme to limit them to operating within the well-protected Canadian market.

Eighth, the dissolution of marketing systems can benefit from incremental phase-out plans. These phase-outs reduce the shock to producers, and with that, their political opposition. With the CWB, producers were able to phase out their participation in the system to some extent by turning to the production of other crops. The eventual transition out of the system was not an abrupt elimination of the board, but a systematic move to dual marketing. With the FFMC, the ability of various provinces and territories to opt out will likely hasten the eventual abandonment of the single-desk marketing system in the Northwest Territories, particularly now that Manitoba (the second-to-last provincial body to opt out of the FFMC) has decided to exercise its statutory opt-out right. As it relates to dairy farms and the CDC, the promises made by the federal government to compensate producers negatively affected by recent trade agreements have been met with support by the Dairy Farmers of Canada.[422] While the Canadian government has yet to put such a plan in place, Australia's phasing out of their dairy system provides an example of how such a phase out can be effective. Some productive strategies include temporary tax breaks to compensate producers and the inclusion of a phase-out period to allow producers the opportunity to see the benefits that accrue from innovation and increased market access. A similar plan to phase out the Canadian dairy market could proceed incrementally. As Tamilia and Charlebois argue, "market liberalism, at least for dairy products, is a fact of life in many developed countries that had well-

---

[422] *Fraser, supra* note 363 at para 10.

entrenched marketing boards. There is no reason why Canada cannot reform its own marketing boards."[423]

Ninth, while pressure from potential and existing trade partners may be a significant factor in winding down boards, it is not necessarily decisive. With the CWB, pressure from the United States in the form of various trade complaints and bargaining at WTO talks decreased government enthusiasm for maintaining the system and lead to a trimming of the powers of the CWB via the Doha Round Agreement. Canada was not only competing with American wheat producers in the Canadian and United States markets, but also with American producers in international markets, which lead to considerable interest in the diminishment or elimination of the CWB monopsony on the part of American producers. In contrast, freshwater fish marketing has not been an area of interest for any of Canada's trading partners thus far, and as such, has not factored into the FFMC's demise. Furthermore, as far as international trade pertains to the Canadian dairy industry, while it was expected that pressure from international trade partners (e.g. New Zealand during TPP negotiations) might actually lead to a diminution of the dairy market system, it has thus far survived with only minor increases in exposure to competition.

So far, much to the dismay and surprise of its critics, the dairy industry endures despite foreign pressure for reform. However, it should be noted that some of the trade partners who favour a transition to an open Canadian market lack the influence required to effect such change. For example, while New Zealand was a vocal opposition to the supply management system in the time leading up to TPP negotiations,[424] the distant Canadian market may only be a very small part of New Zealand's overall prospects, with the much larger and closer Asian market ripe for imports. The European Union (EU) may also not have wanted to push Canada very far on dairy marketing because subsidizing production in general is the single biggest budget expense in the EU itself.[425]

---

423 *Tamilia & Charlebois, supra* note 297 at 140.

424 *Sarlo, Martin, Lee, supra* note 308.

425 European Union, "How the EU budget is spent" (24 February 2020), online: *European Union* <https://europa.eu/european-union/about-eu/eu-budget/expenditure_en> [https://perma.cc/DU36-AEDR].

In 2018 the EU supported farmers with €58.82 billion.[426] None of Canada's trading partners seem to have been resolved to obtain a drastic opening up of the Canadian market. A conscious or unconscious consideration in this lack of enthusiasm may be that by leaving Canadian producers to focus on their domestic market, they remain less eager than they might otherwise be to become international competitive.

Tenth, from a policy perspective, single desk marketing boards are obsolete. While they may have originally helped Canada's agribusiness sector to develop and be competitive[427], marketing boards have now become problematic. Overall, supply management harms consumers, farmers and the economy in the long run.[428] Marketing boards "were created during an era when the world was less dynamic, less open and more regionally confined."[429] This is no longer the case today. Producers are far more business savvy, technology has drastically increased market access and information, and single-desk marketing boards have led to a number of inefficiencies. It has become increasingly evident that single-desk marketing and supply management do not serve the best interests of consumers, producers or the economy.

Eleventh, the persistence of the dairy marketing system in Canada is out of sync with developments in other areas in Canada and in comparable jurisdictions like Australia. Dairy producers in Canada have proved to be extraordinarily adept marketer of their political message to both elected politicians and the wider Canadian public.

---

426 European Commission, "The common agricultural policy at a glance" (2019), online: *European Union* <https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/cap-glance_en> [https://perma.cc/Q4D5-VJPW].

427 Michael Troughton, "The role of marketing boards in the industrialization of the Canadian agricultural system" (1989) 5:4 J of Rural Studies 367.

428 *Tamilia & Charlebois, supra* note 297 at 140.

429 *Ibid* at 141.