

## **Report to Congress on Policy Barriers to U.S. Grain Producers**



**U.S. Department of Agriculture, Foreign Agricultural Service  
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**Cover: U.S. wheat during harvest. Source: USDA's Agricultural Research Service.**

# **Report on Policy Barriers to U.S. Grain Producers**

## **Introduction**

The Secretary of Agriculture, in consultation with the Office of the U.S. Trade Representative (USTR), is pleased to provide this Report on Policy Barriers to U.S. Grain Producers, as required by Section 303 of the Agriculture Reauthorizations Act of 2015 (H.R. 2051). Using the U.S. Department of Agriculture's (USDA) overseas network and Washington-based staff, the Foreign Agricultural Service (FAS) has taken inventory and identified Canada to be unique in meeting the specifications described in the Agriculture Reauthorizations Act of 2015 as a country "the grain of which receives official grading in the United States but which do[es] not offer official grading for United States grain or provide only the lowest designation for United States grain." This report describes policy barriers faced by U.S. grain exported to Canada, includes an analysis of possible inconsistencies with trade obligations, and describes the actions taken by the Executive Branch to remedy these policy barriers. USDA and USTR continue to address the barriers that U.S. grain exports face in Canada and work to create an environment in which U.S. grain competes on a level playing field with all trading partners.

## **U.S.-Canada Grain Trade & Border Statistics**

With the elimination of the Canadian Wheat Board (CWB) single desk on August 1, 2012, as the sole buyer and seller of western Canadian wheat, Canadian farmers and Canadian grain companies gained the opportunity to market directly to the United States. The statistics presented below look at average trade flows that have occurred in marketing years (August-July) 2012/2013, 2013/2014, and 2014/2015, since the elimination of the CWB single desk:

- U.S wheat exports to the world averaged 26.7 million metric tons (MMT) over the three marketing year periods. For the same time period, Canadian worldwide wheat exports averaged 18.1 MMT.
- U.S. wheat exports to Canada have averaged 53 thousand metric tons (TMT) over the three marketing years and accounted for a 74-percent share of total wheat imported by Canada.
- For the same time period, Canadian exports to the United States have averaged 3.1 MMT. Fourteen percent of Canada's wheat exports are to the United States and account for a 98-percent share of total wheat imported by the United States.

- Canada is a significant market for U.S.-produced flour and pasta product exports. The United States ships approximately 11 TMT of flour and 75 TMT of pasta products to Canada each year, accounting for 40 to 45 percent, respectively, of total U.S. exports of these products worldwide.
- An estimated 11 percent of Montana, 28 percent of North Dakota, and 8 percent of Minnesota wheat production is within 50 miles of a Canadian grain elevator, totaling 3.2 MMT. An estimated 9 percent of North Dakota and 4 percent of Montana production is within 25 miles of a Canadian grain elevator, totaling 1.01 MMT.<sup>1</sup>

### **Canadian Grain Definitions**

**Class:** A class of grains is a grouping with similar functional qualities (end-use characteristics). Canadian wheat varieties fall into classes and each class is unique.<sup>2</sup> For example, *Canada Eastern Hard Red Winter* is a class of wheat that is considered good for milling.

**Variety:** Multiple varieties are designated within each class. For example, there are 38 varieties designated within the *Canada Eastern Hard Red Winter* class. *Frontenac* is one variety within this class<sup>3</sup>.

**Grading Factor:** A grading factor is a physical condition of grain, the result of growing conditions, handling procedures, or storage practices. It is a visual characteristic that indicates a reduction in quality. Examples include frost/heat stress, sprouted kernels, or heated kernels.<sup>4</sup>

### **Canadian Grain Grading and Inspection Requirements**

A number of grain sector policies limit the ability of U.S. wheat and barley exporters to receive a premium<sup>5</sup> grade in Canada, including the provisions of the Canada Grain Act and Seeds Act.

### **Canada Grain Act**

The Canada Grain Act (R.S.C., 1985, c. G-10, [hereinafter Grain Act])<sup>6</sup> establishes the Canadian Grain Commission (CGC),<sup>7</sup> which “in the interests of the grain producers, (shall)

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<sup>1</sup> U.S. Wheat Associates “Canada Fact Sheet 2015”

<sup>2</sup> Canadian Grain Commission website: [www.grainscanada.gc.ca/wheat-ble/classes/classes-eng.htm](http://www.grainscanada.gc.ca/wheat-ble/classes/classes-eng.htm) Canadian Wheat Classes

<sup>3</sup> Canadian Grain Commission website: <http://www.grainscanada.gc.ca/legislation-legislation/orders-arretes/ocgcm-maccg-eng.htm> Canadian Varieties by Class.

<sup>4</sup> Canadian Grain Commission website: <https://www.grainscanada.gc.ca/wheat-ble/wgfm-mfcb-eng.htm> Grading factors for Canadian wheat.

<sup>5</sup> Premium grade indicates use for milling purposes as opposed to grain for feed use.<sup>6</sup> The *Canada Grain Act* is available at: <http://laws-lois.justice.gc.ca/PDF/G-10.pdf>

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<sup>7</sup> §3 of the *Canada Grain Act*.

establish and maintain standards of quality for Canadian grain and regulate grain handling in Canada, to ensure a dependable commodity for domestic and export markets.”<sup>8</sup> The CGC is specifically charged with two relevant activities: (1) establishing the grain grades and standards, and (2) implementing a system for grading and inspection.<sup>9</sup>

### (1) Establishing Grain Grades

The CGC works to fulfill its mandate by establishing various classes of Canadian wheat and barley. Grain grades are assigned by class according to various grading factors established through the Canada Grain Regulations. These grades represent the quality of the grain in a specific class. Specifically, each Canadian grain class groups together approved wheat or barley varieties that have similar functional qualities (end-use characteristics). Moreover, these grades and classes only relate to varieties of wheat or barley approved for sale in Canada (see description of varietal registration system below).

Further, the Grain Act directs the CGC to “establish grades and grade names for any kind of western grain and eastern grain and establish the specifications for those grades” by regulation.<sup>10</sup> The explicit division between “eastern grain” and “western grain,” are defined in the Grain Act as “grain grown in the [Eastern or Western] Division,” defined geographically within Canada, further underscores that grading is only available to Canadian grains.<sup>11</sup>

### (2) Implementing Inspections

Pursuant to the Canada Grain Act, the CGC is mandated to provide for the inspection and certification of grades. Inspection procedures also differentiate between Canadian and foreign wheat and barley. In particular, Section 32(1) of the Grain Act provides that:

Subject to this Act, an inspector, after making an official inspection of grain pursuant to this Act, shall issue an inspection certificate in prescribed form,

- (a) where the grain was grown in Canada,
  - (i) assigning to the grain a grade established by or under this Act or, if the grain is eligible to be assigned more than one grade, assigning to the grain the grade constituting the highest level of excellence for which the grain is eligible, and
  - (ii) stating the dockage to be separated from the grain in order that it may be eligible for the grade so assigned; or

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<sup>8</sup> §13 of the *Canada Grain Act*.

<sup>9</sup> The Commission’s primary function to further this objective is to “recommend and establish grain grades and standards for those grades and implement a system of grading and inspection for *Canadian grain* to reflect adequately the quality of that grain and meet the need for efficient marketing in and outside Canada.” §14(1)(a) of the *Grain Act*.

<sup>10</sup> §16(1) of the *Grain Act*.

<sup>11</sup> §2 of the *Grain Act*. The full definitions are as follows: “‘Western Division’ means all that part of Canada lying west of the meridian passing through the eastern boundary of the city of Thunder Bay, including the whole of the Province of Manitoba” and “‘Eastern Division’ means that part of Canada not included in the Western Division.”

(b) where the grain was grown outside Canada, stating the country of origin of the grain or stating that the grain is foreign grain.

Thus, when U.S. grain enters a Canadian grain elevator, it must be segregated from Canadian grain, since it will not be issued a Canadian grade certificate, while the Canadian grain will. The certificate for U.S. grain can only state the country of origin for that grain and not issue a grade.

### (3) Varietal Registration System

Varietal registration requirements also affect the official Canadian grading system and can act as an additional hindrance to U.S. grain farmers and traders trying to deliver grain into the Canadian bulk handling system. Even if grain grown outside Canada were eligible to receive a premium grade, under the Canada Grain Act, unregistered varieties are only eligible to receive the lowest grade allowable in each class. In particular, paragraph 28 of the Canada Grain Act states:

Notwithstanding paragraph 27(4)(b), where grain of any kind is of a variety produced from seed of a variety that is not registered under the Seeds Act for sale in or importation into Canada, no person shall, except with the permission of the Commission, assign to that grain a grade that is higher than the lowest grade established by regulation for that kind of grain.

As discussed below, the rate at which Canadian farmers will have access to new varieties will continue to lag behind the adoption rate by farmers in the United States who have immediate access to commercialized varieties. Therefore, U.S. farmers will grow varieties not registered in Canada. Even if grain grown outside of Canada were eligible to receive a premium grade, U.S. farmers would incur significant cost to grow and segregate the small number of Canadian registered varieties if they wished to receive a grade higher than the lowest grade for their shipment to Canada.

### **Impact on Sales of U.S. Grain to Canada**

The barriers described above to assigning U.S. grain a premium grade encourage both a price discounting of high-quality U.S. grain appropriate for milling use and *de facto* segregation at the Canadian elevator.

U.S. wheat and barley can be sold without a grade directly to interested Canadian purchasers at prices based on contract specifications. However, contract-based sales are a relatively small proportion of all sales in Canada. Most sales occur through the bulk handling system in grain elevators. Canadian grain elevators offer economic efficiencies by collecting and storing grain from many small-volume growers and demanding higher prices for their ability to fulfill larger contracts.

## *Varietal Registration Process*

Only a limited number of varieties of wheat and barley currently being grown in the United States are registered for use in Canada due, in part, to the cumbersome and slow process for registering new varieties under Canada's Seeds Act. The process, which can be a deterrent to seed developers who bear the responsibility to register their seeds in Canada, requires new varieties to be vetted by Recommending Committees before being approved for use in Canada. Under the Seeds Act, industry-led, crop-specific Recommending Committees must set crop-specific procedures for crop performance trials, then determine crop-specific "merit" criteria (e.g., agronomics, end-use quality, and/or disease resistance), and assess new varieties to determine if they perform as well or better than reference varieties. Finally, the Recommending Committee sets requirements for two to three years of pre-registration field trials.

Canada is making changes to streamline and modernize the process used to register new crop varieties. In 2013, the Canadian Government presented an options paper seeking guidance on how to modernize and streamline the crop varietal registration system. Among the options was the removal of the oversight role of Canada's Federal Government in varietal registration. On April 14, 2015, the Government of Canada made public its plans to reform the system, which did not include removal of the Canadian Government's oversight role in varietal registration. Instead, the focus was shifted to streamlining the procedures for the crop-specific Recommending Committees, dividing the registration system into two tiers (basic and enhanced), and allowing for the "incorporation by reference" that would speed up administrative changes by up to 24 months.

In the United States, unlike Canada, grain varieties are not regulated at the Federal level. The U.S. Grain Standards Act establishes classes of grain and authorizes USDA's Grain Inspection, Packers & Stockyards Administration's (GIPSA) Federal Grain Inspection Service (FGIS) or a designated or delegated State Department of Agriculture, on behalf of FGIS, to inspect and certify the quality of the grain and class. FGIS inspectors (or the designated State inspector) are prohibited from attesting to the variety of grain since varieties are not regulated at the Federal level. In the United States, public (land grant universities) wheat breeding programs and private breeders all release varieties with no Federal oversight. Wheat stakeholders (millers, bakers, wheat commissions, etc.) determine what quality traits are desired. Growers decide what varieties to plant. There are thousands of wheat varieties available in the United States, for example.<sup>12</sup> As of 2012, there were 340 wheat varieties registered in Canada, with 56 of these of U.S. origin.<sup>13</sup> However, of those 56 varieties, only 20 varieties are currently planted by U.S. farmers. For farmers in the northern tier States interested in exporting a hard red spring wheat, only two U.S. varieties are registered in Canada and grown in the United States.

Despite the changes being implemented to the Canadian varietal registration system, the rate at which Canadian farmers will have access to new varieties will continue to lag behind the

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<sup>12</sup> <http://www.wheatworld.org/wheat-info/fast-facts/>

<sup>13</sup> <http://www.agr.gc.ca/eng/about-us/public-opinion-and-consultations/crop-variety-registration-modernization/crop-variety-registration-in-canada-issues-and-options/?id=1374783569676>

adoption rate by farmers in the United States who have immediate access to commercialized varieties. In addition, U.S. grain farmers will choose to grow varieties that fit their agronomic needs, not those of Canadian grain farmers.

### **Analysis of Inconsistencies with Trade Obligations**

Policies that negatively impact the flow of goods between the United States and our trading partners raise significant concerns for the U.S. Government. U.S. trade agreements contain rules that help to ensure reduced barriers to trade in goods and services. Canada and the United States are members of the World Trade Organization (WTO), and thus they are subject to the obligations in the WTO Agreement, including under the General Agreement on Tariff and Trade (GATT) and Agreement on Technical Barriers to Trade (TBT Agreement), which also facilitate the elimination of trade barriers. The United States closely monitors foreign government policies and, consulting with U.S. stakeholders, works to ensure our trading partners live up to their international trade commitments.

As described above, the Canada Grain Act, as implemented through regulations and CGC action, establishes grain grades and inspection requirements in such a way as to prevent or severely limit the grading of foreign grain. This encourages a price discount on U.S. grain. Given the inability to receive a premium grade, Canadian grain elevator operators are encouraged as a practical matter to segregate U.S. grain. As a result of this segregation, U.S. growers are unable to take advantage of the competitive pricing advantages of bulk storage, handling, and distribution facilities available to Canadian growers. This may result in less favorable conditions for sale of U.S. grain, as compared with domestically produced grain of the same type and quality, thus raising concerns with respect to Canada's trade obligations.

### **Actions the Executive Branch Is Taking to Remedy the Policy Barriers**

The Executive Branch has pressed Canada to remove barriers related to grain grading, including at the Cabinet- and senior-official level. This matter has been described in USTR's National Trade Estimate Report on Foreign Trade Barriers and raised bilaterally at meetings, including by the Secretary of Agriculture and in the U.S.-Canada Consultative Committee on Agriculture. FAS's Office of Agricultural Affairs in the U.S. Embassy in Ottawa (FAS Ottawa) frequently engages with the Canadian Government on these issues, including Agriculture and Agri-Food Canada, the Canadian Grain Commission, and the Canadian Grains Council. The U.S. Minister-Counselor for Agricultural Affairs posted to Canada serves as a U.S. Government representative on the Canada-U.S. Grain and Seed Task Group Communications Sub-Committee. As part of this government-to-government forum, the United States has identified policy options that would allow the registration of more imported grain varieties and supported legislative reform allowing for the grading of imported grain. In 2013, the Canadian Government presented an options paper seeking guidance on how to modernize and streamline the crop variety registration system. Among the options is to remove the oversight role of Canada's Federal Government in varietal registration. The U.S. Government provided comments through bilateral consultations and through the Canada-U.S. Grain and Seed Task Group Communications Sub-Committee, as well as through U.S.



industry and U.S. Embassy/Ottawa consultations. Both the U.S. wheat industry and U.S. Embassy/Ottawa have requested U.S. unregistered varieties be graded on their merit.<sup>14</sup>

In addition to pressing the Government of Canada, the Executive Branch also regularly engages with U.S. and Canadian industry to better understand the effects of Canada's grain policies. FAS Ottawa also provides routine analysis and reports on Canada's grain policies.

A bill that would have addressed grain grown outside Canada being unable to receive a Canadian premium grade was introduced in Canada's House of Commons on December 9, 2014, but was not passed prior to the October 2015 Federal elections. Bill C-48, a bill to modernize the Canada Grain Act, was sponsored by then-Canadian Minister of Agriculture and Agri-Food Gerry Ritz as part of the Government's efforts to modernize and streamline the CGC's operation while reducing costs to the grain sectors. Senior USDA and USTR officials are highlighting the need for Canada's new Government officials to prioritize legislative reform that allows grain grown outside of Canada to receive a Canadian premium grade.

### **Conclusion**

Canada's wheat sector has undergone major changes with the elimination of the Canadian Wheat Board. USDA and USTR continue to press the Canadian Government to move forward swiftly with legislative changes that would enable grain grown outside Canada to receive a premium grade and changes to its varietal registration system. These issues were raised on multiple occasions this year by the Secretary of Agriculture and U.S. senior officials with their Canadian counterparts. USDA and USTR will continue to consult with stakeholders and consider all available options to remedy barriers to U.S. grain.

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<sup>14</sup> U.S. Wheat Associates response to the Canadian Grain Commission's request for comments on Canada's wheat class modernization.