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Cheese giant enters standoff with Canadian supermarkets over fines as pandemic supply challenges mount

With demand high and production down because of COVID-19, producer balks at grocers' fines for light shipments

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Publishing date:

Nov 25, 2020 • Last Updated 23 hours ago • 4 minute read

Lactalis Canada Inc. — the multinational dairy processing giant behind the Beatrice, Lactantia, Astro yogurt, Cracker Barrel and Black Diamond brand names — told retailers in a letter last week that it is making cheese at maximum capacity in order to stay on top of climbing demand driven by both stay-at-home orders and the holiday season. PHOTO BY POSTMEDIA

One of Canada's biggest cheesemakers is refusing to pay fines imposed by supermarkets for light shipments, anticipating rising consumer demand during the latest tide of coronavirus infections and lockdown orders.

The blanket refusal flouts convention in the grocery business, where supermarkets have historically charged suppliers penalties when their shipments come up short. But some in the sector argue those fines are no longer fair given that food producers are facing volatile demand and a fresh wave of absenteeism in their factories as COVID-19 cases spike again.

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Lactalis Canada Inc. — the multinational dairy processing giant behind the Beatrice, Lactantia, Astro yogurt, Cracker Barrel and Black Diamond brand names — told retailers in a letter last week that it is making cheese at maximum capacity in order to stay on top of climbing demand driven by both stay-at-home orders and the holiday season.

"In the spirit of fair and cooperative practice, Lactalis Canada will not accept any penalties or fines over the holidays effective immediately until January 11, 2021," reads a version of the Nov. 19 letter obtained by the Financial Post.

One executive at a multinational food manufacturer estimated that their company had been charged hundreds of thousands of dollars in fines in Canada in November alone

Most grocery chains stopped charging fines during the first frantic months of the pandemic last spring, when new safety rules and wild swings in eating habits made it near-impossible for manufacturers to fill every order exactly. This fall, however, retailers started reimposing the fines during a relatively stable period while infections were low.

But Food, Health and Consumer Products of Canada (FHCP), a major trade association for the manufacturing sector, said production capacity has dropped to around 80 per cent, on average, due to social distancing and other safety precautions on the factory floor.

"There's only so much we can make," FHCP chief executive Michael Graydon said. "When the demand outstrips our capacity to make the products, it's disingenuous to then turn around and fine us."

One executive at a multinational food manufacturer estimated that their company had been charged hundreds of thousands of dollars in fines in Canada in November alone. The executive spoke on condition they not be named for fear of negatively influencing retailer relationships.

Loblaw Cos. Ltd., the country's largest grocer, in September sent a letter to suppliers informing them that the chain would start charging fines again on Oct. 4 after months of leniency. At the time, Loblaw said it knew "a second wave is possible and that we may need to adjust to specific circumstances" with suppliers.

"We will continue to partner with our suppliers to address any COVID-related challenges to meet customer needs and ensure we can all operate safely," Loblaw spokesperson Catherine Thomas told the Financial Post in September. "To satisfy our customers' expectations, we need the products we order to

arrive on time and in full ... For every vendor affected by COVID, we have many who are not. Common sense will rule in cases where we need to be flexible."

Loblaw on Tuesday declined to comment on the Lactalis letter, as did Walmart Canada and Empire Co. Ltd., Sobeys' parent company. Metro Inc. said in a brief statement that it will "continue to exercise judgment in our procurement policies."

Lactalis Canada said the letter was intended to help establish a more collaborative approach to the latest demand challenges.

"There is significant pressure on manufacturers to meet consumer demand at this time as a result of the second wave of COVID-19 and the regular festive season," spokesperson Roopa Shah said in an email. "For Lactalis Canada specifically, as a dairy manufacturer, we typically deal with shorter shelf-life products and high delivery frequencies on larger volumes and, as such, are more heavily impacted by this demand and associated fees."

Lactalis' letter comes amid rising hostilities between suppliers and retailers in the grocery business, with the food manufacturing sector pushing back against fees charged by big supermarkets.

Fees and fines have long been a sore spot in the sector, but tensions flared this summer when Walmart started charging suppliers new fees to help pay for its multi-billion-dollar infrastructure investments. Loblaw followed with a similar new fee last month.

Fines for light shipments in the middle of a pandemic only escalated those tensions, said Graydon at FHCP.

"In a normal time, this would be aggravating," he said. "In the middle of a worldwide pandemic, where the numbers are going through the frigging roof and we're in lockdown, to continue this behaviour is just ... it's ridiculous."

Graydon said manufacturers can be forced to pick and choose which orders they fulfil when supply is strained, making decisions based on which stores

charge big fines for light shipments. That, he said, often ends up harming smaller grocers that don't have the power to charge fines.

In recent months, the Canadian Federation of Independent Grocers (CFIG) has sided with suppliers in their fight to get federal and provincial governments to intervene by introducing regulations to stop grocery chains from bullying farmers and food processors.

"We applaud what this company is doing," said Gary Sands, senior vice-president at CFIG. "We hope others follow suit and say, 'No.'"