Canadian Labour Congress

Congrès du travail du Canada

CANADIAN LABOUR CONGRESS

SUBMISSION

TO THE HOUSE OF COMMONS STANDING COMMITTEE

ON AGRICULTURE AND AGRI-FOOD

ON BILL C-27, THE CANADIAN FOOD INSPECTION

AGENCY (CFIA) ENFORCEMENT ACT

The Canadian Labour Congress represents 3 million workers in both public and private sectors across Canada. Among these are workers in agriculture, food production and processing, as well as the transport and distribution of food. The CLC also organizes food inspection and public health workers at all three levels of government. Safe and healthy food is a leading social concern of the CLC. We welcome the opportunity to appear as a witness and thank the Committee for involving the public in its deliberations on C-27.

Before we comment on the content of Bill C-27, I would like to make two overarching observations. The first is that the Bill contains no initial purpose clause. No one reading the Bill for the first time would have any inkling that the Bill existed for the purpose of enforcing tangible food standards and other product safety standards, nor other activities which have or can have an impact on human health. This is in contrast, for example, to the *Food and Drugs Act,* which states that the function of a food standard is that it is necessary to prevent injury to the health of the consumer or the purchaser of the food [Sec. 6.1(1)]. The flaw in C-27 should be remedied by inserting a Purpose clause after the Short Title:

> **Purpose of the CFIA**
> **2. The purpose of the CFIA is the proper enforcement of standards of safety of food and other products, as well as those related activities that may have an impact on human health.**

This health and safety purpose means that the CFIA should more appropriately come under the authority of the Minister of Health rather than the Minister of Agriculture.

Second, there is a deep flaw in the CFIA because it tries to combine the promotion of trade and commerce with ensuring, through the enforcement of regulations, the safety of the Canadian food supply. These two aims are flatly incompatible because effective regulation is invariably a constraint on trade, commerce and the normal flow of goods. No one believes in sacrificing safety for the sake of trade. We are sure that the Government of Canada shares this view and, if so, it should say so. On the other hand, a healthy society reduces the need for costly policies and programmes. A healthy society is also an economically prosperous society.

The mandate of promoting trade and commerce is an exceedingly weak one: it relies on a simple statement that "the Government of Canada wishes to promote trade and commerce" in the Preamble to the CFIA Act of 1997. A brief statement in a Preamble, unrelated to the work of the Agency, is meaningless, yet it is the license to pursue incompatible aims. This situation could be remedied easily by inserting a new clause at the beginning of C-27, after the Short Title and Definitions:

Mandate of the CFIA
3. The CFIA exists solely for the enforcement of the food and

related standards defined in the scope of the Act. No Agency personnel shall have any contact with any party which is or may be, regulated under the Act except for the purpose of compliance, enforcement and administration of the Act.

If the government is unable to insert such a purpose and mandate to the CFIA, the Bill should be withdrawn. The Bill as it stands, is contrary to the public interest. A consequential amendment is that the phrase in the Preamble to the 1997 CFIA Act, "Whereas the Government of Canada wishes to promote trade and commerce", is removed. The current situation is that the public can only find out, roughly and with great difficulty, how much money the CFIA spends on market promotion and investment.

Section 56 of the Act gives the Agency strong powers to make Regulations. This is how things should be, provided they are not used to introduce artificially high standards which would drive small producers and processors out of business. But we cannot say how strong an Act C-27 will be until we see the Regulations under Sec. 56 and the "consolidation, modernization and enhancement of the Agency's regulatory base" which will follow the enactment of C-27. It is clear that the government's intention is to implement the programme of Smart Regulation. There is a grave danger here of making C-27 toothless and ineffectual. The danger is twofold. First, the explicit aim of Smart Regulation is to enhance market performance and competitiveness – the very thing, we have just argued, that CFIA should not do.

Market performance and competitiveness belong in a wholly different branch of industrial strategy. The second danger is that the type of regulation proposed under the Smart heading will be feeble and ineffectual. Most food standards are currently "specification standards": they specify e.g., tangible limits or prohibitions on the presence of food contaminants. For instance, the *Seeds Act* says quite bluntly "no seeds can be sold, imported and exported unless they conform to the prescribed standards". The *Food and Drugs Act* says that no person shall manufacture, prepare, preserve, package or store for sale any food under insanitary conditions.

These standards are in principle effective and enforceable. But one tenet of Smart Regulation is that standards should be in the form of "performance standards", which specify a goal and leave it to the party regulated to fulfill it. For instance, "foods shall be manufactured in such a way that they are adequate to protect human health and may contain additives in quantities that do not pose a danger to most human beings under normal patterns of consumption": this is a performance standard. As such, it is unenforceable: parties can be brought to justice only when they are found to have breached the standard and the damage to health is already done. This is not a preventive or precautionary approach. The situation could be remedied by inserting a new clause under the Regulation heading:

> **57. So far as is feasible, Regulations under this Act shall be as specific as the regulated activity or topic permits**.

Further, specification standards have to be enforced under a compliance policy that has regulatory force and which is known to the public. Take the recent BSE crisis. The debate about food safety and the merits of re-opening the US border to Canadian beef were conducted in an atmosphere of Agency secrecy and consequent public ignorance. No one knew how many Canadian cows were tested, the age and condition of those tested, the rules for making test results public and the protocols for action in the event of positive tests. Few knew the international rules for tolerance of BSE cases, nor whether the debate about public safety had any meaning. Just as bad was ignorance of the parallel US testing system and the suspicion that the degree of testing was lower than that for Canada and the results of tests suppressed.

In her 1999 Report, the Auditor General of Canada pointed out that the CFIA lacked transparency; its compliance activities were not reported and its only communication with the public was one-way – from the Agency to the public [1999, Chapter 12, Agriculture and Agri-Food Canada, 25.148-150]. This situation has not essentially changed since 1999.

A new clause is needed under the Regulations section:

58. Compliance policies for each area of enforcement are to be made public, approved by the Minister and they shall have statutory force as a mandatory requirement in the work of the Agency and the administration of the Act.

Despite the apparent forceful nature of the Act, it actually weakens the food safety regime, again in the name of trade and commerce. The Act authorizes the CFIA to enter into agreements with domestic and foreign governments, agencies and organizations (read: corporations) for the purposes of the collection, use and exchange of information for regulatory purposes (Sec. 8). The CFIA may enter into agreements with foreign governments or organizations where the foreign legal requirements are similar to those of Canada or where foreign production systems are similar to those in Canada (Secs. 9-11). It may also enter into agreements with foreign governments and private organizations over inspection results (Sec. 14).

The first objection to these sections is that there is no way of verifying the terms of the agreement. The Canadian public simply does not know whether foreign (read: US) legal requirements, inspection systems and facilities are comparable to those in Canada and we can have no confidence that the Agency does, either. From what we know of conditions in the major meat packing facilities in the United States, the more apt comparison is not with Canada but with the stockyards and slaughter houses of Chicago a century ago. Yet the American government and American businesses are being let off lightly under the terms of C-27. A final observation is that these provisions discriminate against Canadian food processors in that they have to meet standards set by regulation and not by some agreement, the tangible terms of

which are unknown.

Canadian companies can get off the hook in a different way. Sec. 57 of Bill C-27 allows the incorporation by reference of the voluntary standards of standard-writing bodies and of the industries' own trade associations. In so far as these are weaker, less rigid and less normative than regulations, they amount to an exercise in deregulation or to industry self-regulation, much the same thing.

The Canadian Labour Congress would prefer to see Secs. 8-14 and 57 simply removed. The least we would ask is that the Committee deliberate on a radical reworking of these sections, since they detract fundamentally from the effectiveness of the Act as it stands.

All of which is respectfully submitted on behalf of the Canadian Labour Congress:

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