

**Brief respecting Bill C-27,
The Canadian Food Inspection Agency Enforcement Act**

Submitted by
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I am presenting on behalf of the Beyond Factory Farming Coalition, a national organization established in 2002 representing hundreds of thousands of Canadians. It is made up of local, provincial and national organizations, which are organized to deal with farm, labour, health, environmental, animal welfare, rural, urban and economic issues pertaining to livestock production. Our vision is “Livestock Production for Health and Social Justice” We have serious concerns about Bill C-27 and I am pleased to be able to present them to you here today.

Bill C-27 is Step 2 of a 3-step plan to restructure Canada’s food and agriculture regulations. Step 1 was the creation of the CFIA. Step 2 consolidates the CFIA’s regulatory power under one Act. Step 3 will not come before Parliament, as it will be the establishment of new regulations, which are passed by Order in Council without public debate.

Bill C-27 makes the CFIA into a more powerful agency, but does not balance the increased power with increased transparency requirements or other checks and balances.

Because Bill C-27 will replace the enforcement portions of the Agri-food Acts, it will require the CFIA to develop a new set of “one size fits all” enforcement regulations. Any time there is a major re-writing of regulations, there is the opportunity to implement significant policy changes via re-structuring of the rules that govern the area concerned.

We also know that the Prime Minister has stated a commitment to implement the recommendations of the External Advisory Committee on Smart Regulations (EACSR) which was submitted in September 2004, and mentioned in the Throne Speech.

In the context of the EACSR report we know that Bill C-27 is not just a bit of housekeeping, but the mechanism to further a specific policy agenda that is being implemented piece by piece, below the radar of the Canadian public, and perhaps without full knowledge of some of our elected representatives. I am pleased that this Committee is taking time to study Bill C-27 closely in order to better understand its implications.

As I was watching the Brier (curling championship) finals recently, an analogy came to mind. The 1997 CFIA Act was the Lead’s innocuous-looking guard rocks, out in front of the rings. Bill C-27 is the Second’s stones, perhaps in a position to count. The regulatory re-write will be the Third’s rocks – setting up for the final play. Unfortunately, it looks like the USDA is the Skip, and Cargill and Monsanto are the coaches. Once the new “smart” regulations are in place, the Americans will be calling the shots.

Parliament will not have another opportunity to intervene in the shaping of Canada’s food and agriculture regulations if Bill C-27 is passed, so it is imperative that you carefully study this bill, its context, its implications, and the chain of events it will precipitate.

A big part of the problem with Bill C-27 is that it does not tell the CFIA which side it is on. The agency has a contradiction written into its very mission –

“The objectives of the Agency are to contribute to a safe food supply ... and to facilitate trade in food, animals, plants and related products.”

Canadian Food Inspection Agency Annual Report 1997-1998

<http://www.inspection.gc.ca/english/corpaffr/ar/ar98/finle.shtml>

Bill C-27 does nothing to deal with the fact that regulating food and agriculture for health and safety is in conflict with promoting trade. Regulations by their very nature limit and control private benefits for the purpose of protecting the greater public interest.

The EACSR report exacerbates the problem, as its Vision includes the following statement:

INNOVATION – The regulatory system must enhance market performance and support innovation, competitiveness, entrepreneurship and investment in the Canadian economy.

– [Smart Regulation: A Regulatory Strategy for Canada, Report to the Government of Canada, External Advisory Committee on Smart Regulation, September 2004

<http://www.pco-bcp.gc.ca/smartreg-regint/en/08/index.html>]

There is evidence that the CFIA is inappropriately influenced by its connection to private industry. For example, the 2000 Auditor General’s report on the CFIA says:

Key advisory mechanisms draw heavily from industry. Among the members of the Ministerial Advisory Board, there are eight industry representatives, three academics, and one consumer representative. The Agency's "Group of Thirty" key stakeholders includes 30 industry groups, seven academic and professional groups and one consumer group.

- [2000 - Chapter 25 - Canadian Food Inspection Agency - Food Inspection Programs, Office of the Auditor General of Canada, page 39.

[http://www.oag-bvg.gc.ca/domino/reports.nsf/html/0025ce.html/\\$file/0025ce.pdf](http://www.oag-bvg.gc.ca/domino/reports.nsf/html/0025ce.html/$file/0025ce.pdf)

Furthermore, in a recent presentation to this Committee, you heard that the Canadian Meat Council’s Director, Regulatory and Trade, had previously worked for 34 years for Agriculture and Agri-Food Canada and the CFIA. The Canadian Meat Council represents the largest meat packing interests in Canada, and it said:

“We have worked closely with the Food Inspection Agency for many years, ... The regulatory or procedure manual changes all the time, and we're constantly in discussion about how these things should be applied, how they should change, how they would work best, right across Canada.”

-- [38th Parliament, 1st Session, Standing Committee on Agriculture and Agri-Food, Evidence, Thursday, February 17, 2005]

The tail seems to be wagging the watchdog. Bill C-27 does nothing to remedy this situation. On the contrary, it fails to provide needed mechanisms for increased transparency, public participation and public accountability regarding inspection and enforcement measures.

Therefore, our central concern with Bill C-27 is that it creates a framework to permit an unelected bureaucracy, the CFIA, to re-structure the regulations that govern Canada’s food and

agriculture in a way that will put trade ahead of public safety, and will put integration with the US regulatory system ahead of legitimate Canadian democratic control over the rules that govern the food we eat.

We believe that the CFIA's dual mandate compromises it to the extent that it is not possible to accept such an increase and consolidation of its powers without first addressing the CFIA's mandate. A re-vamped CFIA should be solely concerned with regulation for health, safety and the integrity of Canada's agriculture.

A model for a re-vamped CFIA could be The Food Standards Agency of the United Kingdom (<http://www.food.gov.uk/>). It is an independent food safety watchdog set up by an Act of Parliament in 2000 to protect the public's health and consumer interests in relation to food. It reports directly to Parliament, via the Health Ministry.

The role of promoter of Canadian agricultural exports, trade and commerce could be assigned to some other body, such as the Department of Agriculture and Agri-Food Canada, Industry Canada or DFAIT.

Until the CFIA becomes completely focussed on regulation for health, safety and the integrity of Canada's agriculture, we believe it would be a mistake to consolidate and expand the CFIA's authority and powers by passing Bill C-27.

Now I would like to turn to some very specific concerns with Bill C-27.

Section 8 authorizes the CFIA to make arrangements with foreign governments and "prescribed organizations" (i.e. private companies) for collection, disclosure and use of information for the purpose of enforcing or administering any law, or carrying out an investigation. This power is far too sweeping, and is open to potential abuse, particularly by foreign governments and organizations that are not governed by Canada's Privacy and Access to Information laws. I have searched, but have not found any reference to a bilateral agreement on these issues between Canada and the USA, for example.

Bill C-27 will increase the CFIA's ability to collect information about Canadians. But it does not require the CFIA to become more transparent by providing Canadians with full disclosure of its inspection results, test results, or rationale for its decisions. In the latest available CFIA annual report, the Auditor General's assessment includes the following:

In my opinion, while several good improvements have been made this year, overall the information on the performance of the Agency does not yet adequately meet my expectations for fair and reliable reporting.

-- [Canadian Food Inspection Agency Annual Report 2002-2003, 5.0 Auditor General's Assessment of Performance Information
<http://www.inspection.gc.ca/english/corpaffr/ar/ar03/5e.shtml>]

The Privacy Act says:

“(2) Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed

(b) for any purpose in accordance with any Act of Parliament or any regulation made thereunder that authorizes its disclosure;”

Thus, it appears that Section 8 of Bill C-27 may authorize the CFIA to disclose personal information it collects.

Section 9 allows the CFIA to adopt foreign government’s or organization’s inspection results for products being imported to Canada. This falls into line with the EACSR’s recommendation to have a “test it once” system for agriculture products in North America. This seems to be an abdication of Canadian responsibility for Canadian health and safety.

Section 23 permits the CFIA to apply to the Courts for permanent injunctions to stop persons from committing an offence, whether or not it has undertaken prosecution in respect of the offence. This goes beyond what is allowed under the CFIA Act. Why would the CFIA need such authority? And is there danger that permanent injunctions would be used in an unfair manner? Given that there are no appeal mechanisms built into Bill C-27, this seems like an unduly arbitrary power.

Section 56 enumerates the many types of regulations that may be made under this Act. Section 57 allows regulations defined by reference material produced by outside organizations. The devil will be in the details. Again our concern here is that given the dual mandate of the CFIA and the Throne Speech endorsement of the EACSR recommendations, Sections 56 and 57 would give the CFIA the green light to implement regulations that:

- would rely on a risk management framework, instead of on a health and safety protection framework, shifting the burden of proof from the regulated entity and onto the general public and shifting liability away from the regulator;
- would rely on un-enforceable “performance-based approaches”, voluntary measures, and information strategies instead of enforceable standards and precise limits (Section via 56(o) and 57 (b))
- would integrate Canada’s agriculture and food system with the American system for trade reasons, to the detriment of public health and economic opportunities for farmers to serve other markets;
- would adopt testing and approval processes and decisions that are made in Washington instead of in Canada through consultation with the Canadian public (Section 56 (n)); and
- would cascade to provincial and local jurisdictions, creating barriers to appropriate cultural diversity that reflects local and regional values, in order to increase inter-provincial trade and commerce.

The dual mandate of the CFIA and its heavy reliance on large industry stakeholders for input leads to concerns that under Section 56 the CFIA will create regulatory requirements that are inappropriate for smaller and medium-sized producers and processors which function primarily as barriers to markets for these independent farmers and businesses, and which are not as necessary health and safety measures (Section 56 (r)).

Large industry stakeholders have an interest in expanding their own market share. A regulatory system skewed towards high speed processing, centralization, high technology, expensive inputs, fees and capital requirements will have a negative impact on the rural economy by concentrating meat and livestock production around a few large packing plants. It will also reduce consumer choice by eliminating the small scale sector that provides regional, ethnic, and cultural diversity in food production.

The large scale, export-oriented industrial model favoured by the CFIA's industry stakeholders also makes Canada more vulnerable to trade issues such as the continuing BSE border closure and the hog countervail. The CFIA's bungling of the Avian Influenza situation appears to be a result of its focus on "optics" for trade purposes instead of a fair, reasonable and science-based response to solving the disease problem.

Summary and Recommendations:

- ▶ The CFIA's dual mandate is a fundamental problem that needs to be fixed.
- ▶ The EACSR's recommendations to restructure Canada's regulatory system to one based on risk management, vague and unenforceable measures, integration with the US regulatory system and the promotion of entrepreneurship and competitiveness have created a policy environment where re-writing of regulations is likely to reduce, rather than enhance the health and safety of Canadians and the integrity of Canadian agriculture.
- ▶ The CFIA has a poor record on transparency and public disclosure, which Bill C-27 does not remedy, but rather provides the CFIA with increased authority to collect, share and use information, even with foreign governments and private organizations.
- ▶ The CFIA's close relationship with large agri-food industry stakeholders jeopardizes the chances that new enforcement regulations under Bill C-27 will be fair to independent family farmers and food processors.
- ▶ Bill C-27 is not simply a house-keeping measure, but is a mechanism to consolidate and enhance the authority of the CFIA so as to make structural changes to Canada's food inspection and enforcement regime.

Therefore, we recommend that Bill C-27 should not be passed.