



Parliamentary Centre
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Government Structure and Legislation in Agriculture

Canada-China Legislative Cooperation Project:
2005 China-Canada Seminar on Agricultural
Legislation and Technical Cooperation

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Beijing, China



Government Structure and Legislation in Agriculture

- Objectives:
 - To explore government structure as it affects the development of the agriculture and agri-food sector
 - To outline the Constitutional and legislative bases for agriculture
 - To present policy and regulatory processes in Canada
 - To highlight how Canada is approaching the the cross-mandate (horizontal) issues facing governments in agriculture and agri-food development



Government Structure and Legislation in Agriculture

- Canada: a bicameral parliamentary democracy
- Head of State: Governor General: Her Excellency
The Right Honourable Adrienne Clarkson
 - Representative of the Queen of Canada
- House of Commons
 - Members elected from “ridings” (seats) across Canada
 - Prime Minister chosen by party with the most seats
 - Official Opposition Leader chosen by party with the second largest number of seats
- Senate of Canada
 - Members appointed by the Government of the day



Government Structure and Legislation in Agriculture

- Cabinet Ministers:
 - Selected by Prime Minister, appointed by the Governor General
 - Usually an elected Member of the House of Commons
 - Includes the Government Leader in the Senate
 - Responsible for legislation assigned by the Prime Minister or defined within the legislation
 - Nearly all legislation defines the “Minister” for the purposes contained in the legislation, e.g., Minister of Agriculture and Agri-food
 - Responsible for all activities within the Department and Agencies reporting to the Minister (Portfolio)
 - Scope of responsibilities defined by legislation and any other mandate assigned by the Prime Minister



Government Structure and Legislation in Agriculture

- Cabinet:
 - Chaired by the Prime Minister
 - Composed of all Ministers in the current Cabinet as well as the Leader of the Government in the Senate
 - Several committees named from the Cabinet
 - Cabinet structure and operations defined by the Prime Minister
 - Analogous to China's State Council
- Cabinet Portfolio
 - Represents all of the responsibilities assigned to a Cabinet Minister
 - Includes a department of government and all agencies reporting to the Minister



Government Structure and Legislation in Agriculture

- Central Agencies of Government:
 - Privy Council Office
 - The Prime Minister’s “department”
 - Coordinates all Cabinet activity and resolves issues among Ministers
 - Prepares the “Speech from the Throne” for the start of each Parliament
 - Manages the “Machinery of Government”
 - Takes on tasks which span several departments
 - Finance Canada: taxation and fiscal policy
 - Treasury Board: government operations, programs and funding arrangements
 - Foreign Affairs Canada: all relations abroad



Government Structure and Legislation in Agriculture

- Departments and Agencies
 - Every department has mandate and scope defined in legislation
 - Departments are the central policy advisors to the Minister for the Portfolio
 - Almost all agencies defined in legislation
 - All legislation assigned to a specific Minister (Portfolio)
 - Some legislation “enables” action by government or Minister
 - Some legislation requires action by government or Minister
 - Some legislation authorizes the Minister to take action directly without consent of Cabinet and Governor in Council
 - Some legislation authorizes the Minister to take action following consent of the Governor in Council



Government Structure and Legislation in Agriculture

- **Agriculture and Agri-food Portfolio:**
 - Agriculture and Agri-food Canada
 - Canadian Food Inspection Agency
 - Canadian Grain Commission
 - National Farm Products Council
 - Canadian Dairy Commission
 - Farm Credit Canada
 - Review Tribunal



Government Structure and Legislation in Agriculture

- **Agriculture and Agri-food Portfolio:**
 - **Agriculture and Agri-food Canada**
 - Policy development for the department, and participation in policy development across the Portfolio
 - Manages the relationship with provinces which have a shared jurisdiction in agriculture
 - Biological research
 - Domestic and international marketing
 - Lead on agricultural trade negotiations (under the direction of Foreign Affairs Canada)
 - Domestic program delivery
 - Land and water development and management in western Canada
 - Manages overall relationship with provinces in agriculture and agri-food
 - “Home” for the Rural Secretariat
 - “Home” for the Cooperatives Secretariat



Government Structure and Legislation in Agriculture

- Canadian Constitution (Constitution Act 1982)
 - Several sections and schedules of the Constitution Act set out federal and provincial powers affecting agriculture and agricultural policy decisions:
 - Section 91: Federal Powers
 - Section 92: Provincial Powers
 - Section 93: Education
 - Section 95: Concurrent powers in Agriculture and Immigration
 - Charter of Rights and Freedoms
 - Rights of Aboriginal Peoples
 - Equalization and Regional Disparities
 - All of these components limit and guide the establishment of agricultural policies and programs in Canada
 - All federal laws and the Constitution can be found at:
<http://laws.justice.gc.ca/>



Government Structure and Legislation in Agriculture

- Canadian Constitution (Constitution Act 1982)
 - Section 92: establishes specific, exclusive powers for provincial governments
 - Sets out the federal “override” power
 - Provincial laws cannot be contrary to federal laws
 - Property and civil rights (and contract law) placed in provincial jurisdiction, e.g., Crop insurance
 - The federal government can withdraw powers from provincial governments
 - Used to establish the Canadian Wheat Board to achieve common treatment of all farmers in western Canada
 - Provinces cannot treat local products different from products exported from the province
 - Particularly important in designing marketing and trade policies and legislation



Government Structure and Legislation in Agriculture

- **Canadian Constitution (Constitution Act 1982)**
 - Section 93: Establishes education exclusively within provincial powers
 - All agricultural extension and education lies within provincial jurisdiction
 - Section 91:
 - Establishes specific and general federal powers
 - All residual powers remain with the Federal government
 - Does not exclude the federal government from expenditures made for activities within provincial jurisdiction (federal fiscal power)
 - Federal government can spend money on matters exclusive to the provinces



Government Structure and Legislation in Agriculture

- Canadian Constitution (Constitution Act 1982)
 - Section 95: Establishes concurrent federal and provincial powers for agriculture and immigration, unless powers are specifically assigned elsewhere in the Constitution
 - Federal government cannot assign its powers to a province
 - Provincial governments cannot assign powers to the federal government
 - Unless otherwise assigned, powers and responsibilities in agriculture and immigration cannot be divided
 - Either order of government can refuse to take action, but cannot give up the power or responsibility to take action
 - Does not change the specific powers assigned to provinces for “local works”



Government Structure and Legislation in Agriculture

- Canadian Constitution (Constitution Act 1982)
 - Charter of Rights and Freedoms (Schedule B, Part I):
 - Sets out all of the rights and freedoms available to Canadians:
 - Fundamental freedoms
 - Democratic rights
 - Mobility rights
 - Legal rights
 - Equality rights
 - Official languages of Canada
 - Minority language educational rights
 - Enforcement
 - Application of the Charter
 - All policies and programs must meet all of the requirements in the Charter



Government Structure and Legislation in Agriculture

- Canadian Constitution (Constitution Act 1982)
 - Rights of the Aboriginal Peoples of Canada (Schedule B, part II)
 - Essentially, aboriginal peoples of Canada do not pay income tax because of the treaty rights
 - When using income tax systems to deliver programs, some arrangement with aboriginal groups must be made since they are not required to file income tax information



Government Structure and Legislation in Agriculture

- Canadian Constitution (Constitution Act 1982)
 - Equalization and Regional Disparities (Schedule B, Part III)
 - Provides for equalization payments by the federal government to provinces to assure reasonably comparable levels of services at reasonably comparable levels of taxation
 - This provision assumes that provinces have equal capacity to provide for (pay for) agricultural programs since differences in fiscal capacity have been dealt with through equalization payments



Government Structure and Legislation in Agriculture

- Legislation
 - Almost all legislation in Canada specifies the Minister responsible for the Act
 - e.g., For the purposes of this Act, "Minister" means the Minister of Agriculture and Agri-Food
 - By naming the Minister, the Prime Minister assigns the legislation to that Minister; Canadian Wheat Board Act is an exception
 - All actions taken by government must fall within authorized directions by Parliament
 - All expenditures by government must be authorized by Parliament
 - Annual Appropriations Act
 - Subsequent Supplementary Appropriations in Fall and Winter as required
 - All expenditures must meet the requirements of the Financial Administration Act
 - Legislation must have precision in the powers delegated by Parliament to Minister or Governor in Council
 - In most cases, lengthy consultation processes are involved in enacting legislation



Government Structure and Legislation in Agriculture

- Legislation in Agriculture:
 - Department of Agriculture and Agri-Food Act
 - Extremely broad in scope:
 - (4) The powers, duties and functions of the Minister extend to and include all matters over which Parliament has jurisdiction, not by law assigned to any other department, board or agency of the Government of Canada, relating to
 - » (a) agriculture;
 - » (b) products derived from agriculture; and
 - » (c) research related to agriculture and products derived from agriculture including the operation of experimental farm stations.
 - (5) The Governor in Council may assign any other power or duty to the Minister



Government Structure and Legislation in Agriculture

- Legislation in Agriculture:
 - All legislation in agriculture can be found at:
 - <http://laws.justice.gc.ca/en/subject/50.html>
 - Legislation in agriculture is mostly permanent
 - May require periodic review
 - Normally does not expire, or have default legislation, like the US Farm Bill
 - Legislation in agriculture mostly “enables”:
 - Minister may be empowered to take action directly through programs, or
 - Minister may be empowered to take action following approval by Governor in Council, through regulation or expenditures, for example
 - This is contrary to US Farm Bill which “directs” action in substantial detail



Government Structure and Legislation in Agriculture

- Legislation affecting agriculture
 - Several Acts are assigned to different Ministers which affect agriculture:
 - Canadian Wheat Board Act
 - “Traditionally” assigned to a Minister from western Canada, only rarely to the Minister of Agriculture and Agri-food
 - Pest Control Products Act
 - Regulates the introduction and use of pest control products
 - Food and Drugs Act
 - Regulates the safety and quality of food, and packaging, labeling, and advertising of food products



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- Policy setting:
 - All policies must fall within the legislated authority of the Minister or Government
 - If not, legislative change must be sought from Parliament
 - Policy setting involves:
 - What Parliamentary authority is being used
 - What change in the economy or society is being sought under the policy
 - What role is appropriate for government in pursuing the policy
 - What program instruments can be used to implement the policy
 - What resources (funds, human resources, physical resources) are available to implement policy
 - Policy approval requires Cabinet consent



Government Structure and Legislation in Agriculture

- Program setting:
 - Within the policy guidance, how can programs best be designed to achieve the policy objectives for the economy or society
 - Establishing the administrative, evaluation, timing and reporting requirements for the program
 - Establishing the details on how expenditures can be made
 - Programs details must be precise, clear, auditable, with evaluation criteria, risk assessments and mitigation measures
 - Program approval requires Treasury Board (Cabinet Committee) consent



Government Structure and Legislation in Agriculture

- Regulation setting:
 - All regulation requires that legislation of Parliament authorizes the government to establish regulations
 - All regulations must be within the scope and powers provided in legislation
 - Regulations are drafted and published (Gazette) for public review before coming into effect
 - Government can by-pass this step for urgent or uncontroversial applications
 - Timetables are established for review and application
 - Regulations are designed to be specific, unambiguous, clear
 - Following public review, the regulations may be brought into force
 - Cabinet approval is required
 - Parliamentary Committee may review all regulations



Government Structure and Legislation in Agriculture

- **Cross-Departmental Priorities**
 - Portfolios represent historical roles in government
 - Many new issues arising which cover several of the Portfolios and levels of government
 - No clear mandate within one Portfolio
 - Two very broad alternatives available to government:
 - Create new cross-departmental/portfolio groups
 - Re-organize government with every new issue
 - Two examples: rural development, cooperatives



Government Structure and Legislation in Agriculture

- Other examples of cross-departmental issues:
 - Biotechnology
 - Pesticides
 - Species at risk
 - Right to farm
 - Aquaculture
 - Animal welfare
 - Riparian areas
- Governments must increasingly deal with issues which cut across mandates, federally, provincially, municipally
 - Need to streamline decision making
 - Establish clear operational guidelines within and across governments
 - Clarify precisely the responsibilities
 - Find new mechanisms to assure balanced decision making



Government Structure and Legislation in Agriculture

- Rural Development
 - Not just an issue for agriculture
 - Spans all rural and remote areas of Canada
 - Involves federal and provincial governments
 - Issues cover:
 - Agriculture
 - Fisheries
 - Transportation
 - Health
 - Education
 - Water
 - Environment
 - And more...industry, tourism, aboriginal affairs, etc.



Government Structure and Legislation in Agriculture

- Rural Development
 - Rural Secretariat established to explore all aspects of rural development
 - Reports to Parliamentary Secretary under Minister of Agriculture and Agri-food
 - Involves more than 30 departments and agencies of the federal government
 - Housed in Agriculture and Agri-food Canada
 - Reviews all policy documents going to Cabinet
 - Maintains liaison with provincial counterparts
 - Operates programs for development of rural areas



Government Structure and Legislation in Agriculture

- **Cooperatives Secretariat:**
 - Legislation for federal cooperatives under the Minister of Industry Canada, but government-wide secretariat is based in Agriculture and Agri-food Canada
 - Promotes the development of all types of cooperatives in Canada
 - Manages programs for the development of cooperatives



Credit

- Several presentations in this seminar make use of presentations prepared earlier for the
- [Small Farmers Adapting to Global Markets Project](#)
- Canadian International Development Agency (CIDA), the Ministry of Commerce (MOFCOM) and Agriculture and Agri-food Canada (AAFC)
- (www.ccag.com.cn)



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