

**IMPLICATIONS OF CANADA AGRICULTURAL PRODUCTS ACT  
REGULATIONS FOR HARMONIZATION, CONVERGENCE  
AND COMPATIBILITY IN HORTICULTURE:  
THE BRITISH COLUMBIA EXPERIENCE**

*John Schildroth*

**INTRODUCTION**

The Canada Agricultural Products Act (CAP), among other things, regulates the marketing of agricultural products in import, export and interprovincial trade, and it provides for national standards and grades of agricultural products in Canada. It was designed to facilitate the orderly marketing of both fresh and processed fruits and vegetables, by prescribing standards in four areas:

1. Health and Safety;
2. Quality Standards (grades);
3. Packaging; and
4. Labelling.

This paper discusses how the application of two of these standards, grades and packaging, impact on provincial industry competitiveness. Impacts upon competitiveness, in turn, serve as a barrier to harmonization, convergence and compatibility (H/C/C) in horticultural regulations across political jurisdictions. The two applications of the CAP Act regulations selected for review are those pertaining to bulk containers carrying processing vegetables, and those involving a small potato grade standard. The paper concludes with some observations and conclusions regarding possible H/C/C initiatives/directions that could be taken within the existing policy framework for horticulture.

## **HISTORICAL CONTEXT**

The federal Fresh Fruit and Vegetable Regulations and the Processed Products Regulations, both under the CAP Act, have their origins in the early 1900s. Officially, these regulations were put in place to ensure “orderly marketing”. In practice, the regulations were introduced to secure higher grade local produce in the domestic fresh market in horticultural products, partially by controlling the importation of lower-grade fresh produce from other provinces or countries. Processing of produce was seen largely as a residual activity.

An indigenous, competitive industry was in existence in certain horticultural sub-sectors in British Columbia at this time. For example, B.C. tree fruits were exported across the Pacific, and indeed were the dominant temperate climate tree fruit product in the Asia-Pacific market at that time. At the end of World War I, a B.C. Royal Commission was struck to investigate grower complaints of anti-competitive practices by fruit packers and processors in the tree fruit industry, which in turn led to recommendations calling for orderly marketing practices and regulations. Consequently, the earlier introduction of the federal CAP Act and its attendant regulations promoting orderly marketing were consistent with, or at least complementary to, the later recommendations of the British Columbia Tree Fruit Royal Commission.

In particular, orderly marketing for horticultural products, including for that produce in which British Columbia had a comparative advantage, was deemed to be a necessary policy objective, and was shared by the federal and provincial authorities of the day.

The federal CAP Act has been amended over the past 80 years. The present Act dates from 1988, less than ten years ago chronologically, but light years ago in terms of changing competitive conditions in the North American horticultural industry. The Canada-U.S. Free Trade Agreement, the North American Free Trade Agreement, the Agreement on Internal Trade in Canada, and the World Trade Organization have all been established over this short period while much of the CAP Act and its attendant regulations have remained, a rock of certainty and familiarity for those seeking shelter from a seething sea of change and uncertainty.

Consequently, B.C. horticultural growers have typically embraced the federal CAP Act regulations as necessary to their industry’s continued economic health. The fact that this Act and its attendant regulations were developed to address public policy issues that have been pre-empted by global marketing issues has largely not been acknowledged, and has certainly not been embraced. The known benefits of the existing regulatory framework is typically preferred to the unknown outcomes associated with de-regulation or re-regulation. Institutions, once established, take on a life of their own, a force that may resist policy harmonization, convergence and compatibility (H/C/C).

## THE REGULATIONS

Under the CAP Act, the federal minister of agriculture can specify container, labelling and grade standards for agricultural products in Canada to ensure the orderly marketing of product.

Bulk containers are not considered standard containers under these regulations, and consequently the interprovincial and international movement of these bins, potentially containing ungraded/unlabelled produce, is prohibited. A federal Ministerial Exemption is possible if sufficient supplies of product, fresh or frozen, are deemed not available within the province for processing or further-processing. However, these exemptions are discretionary, involve time delays, and decisions to grant/not grant an exemption are not necessarily based upon buyer (i.e., processor) needs.

Grade standards, such as the small potato grade, are required by the federal government for the interprovincial and international movement of fresh horticultural products, to ensure that quality standards are observed. The CAP Act grade may only be a "floor" standard, below which no fresh product can move across provincial or international borders as imports or exports. A specific horticultural industry sector may actually employ a higher grade quality standard, in order to be market-competitive. The absence of a particular CAP Act grade for a product effectively means no interprovincial or international movement of that grade of product.

## BRITISH COLUMBIA EXPERIENCE

### Processing Vegetables and Bulk Container Regulations

At the beginning of 1988, the dawn of the present free trade decade, there were four major vegetable processors in British Columbia; today there is one (the smallest of the original four), and its present survival is allegedly a function of creatively end-running CAP Act Bulk Container regulations. In 1988, the B.C. farmgate value of processing vegetables (i.e., corn, beans, peas) was about \$10 million. Frozen fruit and vegetable processing value-added was approximately \$50 million according to Statistics Canada, with roughly 80 percent of that value generated from freezing vegetables. The loss of value-added and processing jobs since then has been substantial.

Processors freezing corn, peas and beans, or packaging already-frozen product, require large quantities of a single grade of product, fresh or frozen, in bulk containers, on a continuous basis. Ministerial Exemptions to CAP Act regulations are designed to provide flexibility to the system by allowing bulk importations of horticultural products when local sources are insufficient to meet processor demand.

In British Columbia, product was contracted with local producers via the B.C. Vegetable Marketing Commission before the start of the growing season. Price was negotiated through a binding arbitration system involving the Commission and the local processors. Quantities and grades could not be contracted with the certainty required by processors, given the variability of yields and weather conditions. Consequently, the four processors typically found themselves short of a particular commodity of a particular grade each season.

In order to get a Ministerial Exemption to bring in a bulk shipment of the short product, the processor had to satisfy federal officials that neither the B.C. Vegetable Commission nor another local processor had the necessary product. Arguments also had to be made for US imports, as opposed to other Canadian supplies.

There were at least three problems with this process.

1. The processor had to attempt to source an input from a direct competitor, i.e., another B.C. processor. This was further complicated by the fact there were only four processors;
2. The processor had to try to get an input from the B.C. Vegetable Marketing Commission, with which there was, typically, ongoing negotiations on price; and
3. Initiating the process with the federal bureaucracy did not guarantee the processor would get the necessary product in a timely fashion. The decision to grant a Ministerial Exemption was often delayed until late in the season when British Columbia supply could be accurately determined. As a result, processors had to delay production decisions and this constrained their ability to develop effective strategic plans, which are an essential component of any competitive strategy. Indeed, given the nature of the Bulk Container Ministerial Exemption review process, it was a virtual certainty that if a B.C. processor was short of product, they would experience costly time delays in accessing the requested grade of commodity from the United States.

The regional characteristics of horticulture played a definitive role. In Ontario, the other major vegetable-producing region in the country, the impact of the CAP Act regulations was muted. Why?

1. There were many more processors, ensuring anonymity and increasing the probability that the desired bulk product was indeed available;
2. The major Ontario processors typically had plants in both Ontario and Quebec, allowing for same-firm interprovincial transfers of bulk product without a permit;
3. There was much more processing vegetable production in Ontario, looking for a processor- buyer; and
4. The relationships among the Ontario vegetable marketing boards, the processors, and the federal officials in Ontario responsible for the CAP Act Bulk Container regulations were more cooperative and business-oriented, and less confrontational or defensive.

In the case of British Columbia, the growers, through the Vegetable Marketing Commission, saw the CAP Act as an opportunity to minimize the importation of competitive international bulk containers of fresh and frozen corn, peas and beans for processing by B.C. processors. Because British Columbia is essentially isolated on the west coast, and the area for growing vegetables commercially is limited to the Fraser Valley, U.S. or Mexican bulk imports for processing was the only option. Intra or inter-provincial shipments of bulk produce were never options for British Columbia.

By placing restrictions on bulk shipments at provincial borders, CAP Act regulations have the dual effects of insulating local horticultural producers from competitive rivals and of lessening incentive for these producers to develop sustainable markets for their products outside provincial boundaries. Border restrictions encourage inward-looking production strategies and maximum rent-seeking behaviour.

Innovation is the development of new products, the use of new technology, new packaging techniques, new purchasing techniques, new marketing or distribution techniques, or new management practices. In the absence of competitive rivals, firms have little incentive to undertake these innovations. This type of competitive pressure was lacking in British Columbia. CAP Act regulations insulated B.C. vegetable producers from competitive rivals seeking contracts to supply local processing operations. Competition among growers within the province was virtually non-existent, as growers marketed their products through co-operatives.

At the same time, British Columbia food processors, who relied upon competitive raw product inputs, faced increasing competition from American and Mexican food processors as tariffs on packaged processed products were reduced/eliminated under the Canada - United States Free Trade Agreement (FTA) and the North American Free Trade Agreement (NAFTA). The lack of incentives to innovate at the producer level constrained the ability of B.C. processors to compete against imported processed products.

A favourable economic climate is one that encourages both Canadians and foreigners to invest in the Canadian agri-food sector. By restricting interprovincial and international trade, CAP Act regulations do little to encourage investment in British Columbia. Any prospective investors would be hesitant to become involved in British Columbia processing operations, which do not have open access to competitive sources of inputs and which must operate, in turn, in a market in which competition is increasing.

CAP Act regulations, in fact, encourage international processors to import competitively priced, value-added products and to market them in Canada through Canadian subsidiaries as opposed to having them processed in Canada. This, in fact, is the situation in British Columbia now.

### **Small Potatoes - Canada No. 1 Grade**

Following the signing of the FTA, the federal government began a review of its many regulations, including those in horticulture. It was discovered that the wording of the CAP

Act regulation concerning the Canada No. 1 Small Potato Grade (1.5 to 2.25 inches) was a problem from a federal/provincial perspective, and it was inconsistent with Canada's changing trade obligations. The regulation established a No.1 Small Potato Grade, but then went on to prohibit any interprovincial or international movement of small potatoes. Either the regulation had to be amended to allow for cross-border trade, as this is the area in which the federal government has jurisdiction, or the grade had to be revoked and no small potatoes could be marketed interprovincially or internationally.

Potato grower organizations across Canada, through the Canadian Horticulture Council, asked the federal government to revoke the No. 1 Small Grade, as some grower groups were fearful of severe price competition from imported small potatoes. The B.C. growers were one such group.

Again, to understand the current horticultural policy nexus, one needs to look at the regional peculiarities of production and regulation. In the case of potatoes, a reverse symmetry exists along the Canada/U.S. border. On the east coast, Prince Edward Island and, to a lesser extent, New Brunswick, are competitive in potatoes, and wish to export potatoes interprovincially and internationally. Prince Edward Island finds the lack of a small potato grade to be restrictive and a disadvantage. Across the border in Maine, producers there would like to see more restrictions on P.E.I. potato exports.

On the west coast, just the opposite situation exists. In Washington State, potatoes are aggressively marketed in Pacific Rim countries. Small potatoes are typically called 'peelers', and are more a by-product of large-scale, table potato production. Across the border in British Columbia, small potatoes are a niche market that earns a very attractive premium. An effective ban on imports of small potatoes protects the B.C. market and keeps the small potato price high. For example, small potatoes in British Columbia realize \$42 per cwt., versus a \$12 per cwt. maximum for normal values calculated for a B.C. regional potato dumping ruling under the Canadian International Trade Tribunal (CITT), against U.S. potato imports. The AD order has been in place since 1985. The lack of a No. 1 Small Potato Grade Standard is more effective than a potato anti-dumping ruling.

Ironically, any attempt to harmonize potato grade standards would find British Columbia and Maine opposed to the development of a small potato standard, or at the least wanting special safeguards, while Prince Edward Island and Washington State will be supportive of any H/C/C initiative on potato grades. The regulation, or lack of it, has different impacts in different parts of Canada and the United States.

## SUMMARY AND CONCLUSIONS

Trade agreements only partially explain why H/C/C of technical regulations in horticulture have become a policy priority of governments. Another important part of the explanation has to do with the changing nature of demand for horticultural products. Processors are now major users of horticultural products, and their standards can be very

specific as in frozen potato products. Processors are not interested in processing low-grade bulk product, so the orderly marketing benefits of the CAP Act regulations are no longer effective or necessary.

Consumer demand has also changed, both in the domestic market and through international opportunities. The growing demand for quality and variety in fresh produce is satisfied by imported product, because our CAP Act standards ensure that only quality product can be imported. Today in British Columbia grocery stores, a mix of imported and domestic apples are more likely to satisfy changing B.C. consumer tastes than simply B.C. apples. Our highest quality apples are exported; they are not marketed in the province. Again, orderly marketing is no longer the issue; being competitive in domestic and export markets is now critical to success. Consequently, there is the need to harmonize standards (H/C/C) to bring our institutional regulations into line with industry's strategic interests.

H/C/C initiatives should not be seen as zero sum games, in which some parties gain while others lose. The small potato grade example illustrates that point. For the past four years, Canada has had a No. 1 Creamer Potato Grade in place. These are potatoes from 3/4 to 1 5/8 inches, smaller than the small size. Despite the protection provided by the lack of a small grade since 1990, and despite the protection of a regional anti-dumping duties, B.C. potato producers have not been driven out of the creamer potato market in British Columbia. In other words, when faced with competitive imports from California, B.C. growers made the necessary adjustments. There is considerable room for both producers and importers to adjust when the protected price was \$42 cwt. and the floor price, established by the regional dumping duty, was \$12 cwt.

H/C/C initiatives in horticulture will not only have differential impacts between countries, but will have quite different regional impacts within each country. Documenting the existing technical standards policy, and estimating the differential impacts of existing horticultural regulations are necessary first steps to H/C/C initiatives. Where technical regulations have provided protection from competition, we need to first address the political economy of the regulation before asking the scientific and technical experts in each country to sit down together to devise an H/C/C strategy.

It is much easier to undertake H/C/C in horticulture when the industry is experiencing growing and/or changing market opportunities in which they are competitive. The possible challenges from increased competition under H/C/C is balanced with new opportunities, perhaps in other commodities.