



Agriculture and
Agri-Food Canada

Agriculture et
Agroalimentaire Canada

Deputy Minister

Sous-ministre

Ottawa, Ontario
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DMC 271732

The Honourable Robert Black, Senator
Chair
Standing Senate Committee
on Agriculture and Forestry
The Senate
Ottawa ON K1A 0A4

Dear Senator Black:

Please find attached, in both official languages, the information requested by the Standing Senate Committee on Agriculture and Forestry following the appearance of Agriculture and Agri-Food Canada senior officials on May 5, 2022.

I trust that the committee members will find this information useful.

Sincerely,

Chris Forbes

Attachments

**Information Requested by the
Standing Senate Committee on Agriculture and Forestry (AGFO)
May 5, 2022**

Question 1:

Senator Brent Cotter (ISG): Thanks. My question is for Mr. Jurgutis.

In the legislation that we're talking about right now, the Agricultural Products Marketing Act, there is a series of provisions that link up with provincial marketing boards. I have two questions. One is on the degree to which there has been consultation with the provinces to ensure that provinces are onside with this regulatory streamlining.

My second question about the exception in the framework with respect to the marketing of milk. Could you speak to that and why it's carved out?

Mr. Steven Jurgutis: Thank you, Mr. Chair, for the questions.

On the first question, yes, there were two series or rounds of discussions and consultations with the provincial administrative bodies who have a role to play in terms of the provincial marketing boards. We received positive feedback about the changes that were being proposed as well as the mechanisms by which they would be put in place. We didn't hear in those discussions and consultations any concerns or potential negative aspects of the change that was being proposed.

In terms of the exception as it pertains to the marketing of milk, currently, there is a link between what is done interprovincially. Essentially, this is a space in which the collection of levies for any of that interprovincial activity was within this act, the APMA. Essentially, the exception that was previously in place remains within the change that will happen that will go forward, the difference just being there will be a bit more of that connection and synergy between the activities and the delegated powers for the provincial boards that are for the activities strictly within a province as well as for the interprovincial and, in this case, for the marketing of milk that would stay to the interprovincial.

There is not a difference in terms of what that current exception is in this new legislation.

Senator Cotter: Why is milk itself carved out from the general framework here?

Mr. Steven Jurgutis: I will have to get back to you with the specifics on that. I know there is a historical, specific reason, but I prefer to make sure I get that exactly right in terms of providing you with the correct information, so we commit to get back very quickly on that.

Response from AAFC:

Dairy is a supply managed commodity and like other supply managed commodities, the overall structure of the system was established with the cooperation of the federal government and individual provinces. When the supply management system was created, the intention was that the Agricultural Products Marketing Act (APMA) would only be used by provincial marketing boards to round out areas that are not covered by the delegations to national agencies created under the Farm Products Agencies Act or the Canadian Dairy Commission Act (CDCA).

Following a 1999 World Trade Organization (WTO) ruling, Canada was required to de-regulate the marketing of milk for dairy product exports. Dairy stakeholders indicated that the integrity of the domestic market should not be compromised in the process of de-regulating the export market. As a result, in 2001 all milk Delegation Orders under the APMA were dovetailed with the Dairy Products Marketing Regulations under the CDCA, by amending the definition of milk to be “for consumer use in liquid form in Canada”, and delegating authority with respect to interprovincial trade only. Since the supply management system is a comprehensive scheme and these amendments only change the mechanism used to make the delegations, these changes will not have any impact on supply managed commodities. The specific clauses related to milk as part of this legislative update maintain the conditions that were created following the WTO ruling and the 2001 regulatory changes.

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Question 2:

Senator Marty Klyne (PSG): I only have one question, but it's in two parts. It's for Mr. Jurgutis of Agriculture Canada, and it's also related to Part 4 of the bill, which deals with the Agricultural Products Marketing Act.

Based on what you said in the introductory remarks, the changes proposed to the legislation through Bill S-6 are about streamlining the regulatory process and not about changing or modifying any of the powers that have been delegated to provincial marketing boards. Given that you've advised Senator Cotter that the consultations have taken place with the boards, the first part of my question is the following: Given that consultations have taken place, do you have a timeline for when those boards may begin to see improvements in efficiencies and processing? Second, as I understand it, the bill also builds or makes more explicit the range of powers given to boards with a new section 3, explaining that they may exercise any or all powers available to them at the provincial level. Why was that not previously available to them, and what is the upside or benefit of now making it explicit that they have the full range of powers that were available to them?

Mr. Steven Jurgutis: Thank you for the questions.

In terms of the first one, there will be a period of 36 months from the time that the bill receives Royal Assent for marketing boards to ensure, as part of this requirement, that they are communicating with their members what the changes are and what established levies are. The reasoning behind having a long period was to allow time for marketing boards to be able to do that.

Realistically, we'll probably see that a large number of them will move to satisfy that requirement rather quickly, just recognizing that, in some cases, some of the boards in some of the provinces are rather small, so implementing the change might take longer for them.

But they will have a period of up to 36 months, but it will be incumbent upon them to ensure they meet that requirement, which is to make clear to their members what the potential levies are and what changes might be coming. I would envision that all of that would happen fairly quickly.

In terms of the specific second part of your question — and I'll look to get back to you in writing just to make sure we've got this right — but, essentially, part of the changes here are just to have clarity between how the provincial aspect, and the interprovincial and federal aspects would work together. This doesn't really necessarily change any of the powers that they have; it's just making sure the

language in there is clear so there's a synergy between the two. Essentially, they still have the same power they previously had in terms of establishing and setting levies for their members to undertake the same activities within the province. This is just to make sure that, within that, we have coherence between the two.

Thank you.

AAFC's response:

These amendments are not changing any of the powers that have already been delegated to provincial marketing boards, they are simply changing the mechanism through which the powers are delegated. Federal powers over the marketing of agricultural products in interprovincial and export trade will now be delegated to provincial marketing boards directly in the Act to those boards named in the schedule to the APMA, rather than through individual regulatory instruments.

Neither the APMA as it currently stands nor the proposed amendments delegate any new powers that the marketing boards do not already have at the provincial level, it simply extends those provincial powers so they can also be exercised for interprovincial and export trade.

The language was, however, updated to reflect current drafting conventions. The current subsection 2(1) of the APMA reads in part as follows: "[...] exercise all or any powers like the powers exercisable [...] locally within the province". Whereas subsection 3(1) in clause 96 of Bill S-6 reads in part as follows: "[...] exercise [...] all or any powers like the powers that it may exercise under the law of a province."

With respect to levies, subsection 3(2) in clause 96 of Bill S-6 provides marketing boards with the same authorities to establish levies as the current subsection 2(2) of the APMA. The only difference being that marketing boards will now have some flexibility in choosing the mechanism with which they use to establish the levies, therefore reducing their administrative burden.

As for administrative bodies, the proposed changes in subsection 3(3) of clause 96 of Bill S-6, do not provide them with any new powers, it simply codifies recent jurisprudence on the subject.

There were several court cases, where producers argued before the courts that the provincial administrative bodies had no jurisdiction to hear appeals of decisions made by marketing boards because administrative bodies had not expressly received a delegation under the APMA. The most notable court case is the *Grenier c. Fédération des producteurs acéricoles du Québec*, 2016 QCCA 1203 that went to the Court of Appeal of Québec. The producers were not successful in court. The courts determined that although the administrative bodies had not expressly received a delegation, it could be implied that it did have such delegation/jurisdiction. As a result, it was determined that it would be prudent for

administrative bodies to be granted the federal delegation of powers expressly in the APMA to make it clear that they do have the authority to hear the cases and mitigate future litigation.

When administrative bodies do not expressly receive a federal delegation under APMA, not only does it expose them to litigation risks, but it also exposes provincial and federal governments.

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Question 3:

Senator Robert Black (CSG): Thank you very much. I just have one question for you, Mr. Jurgutis.

Carrying on with the levies question, certainly subsection 96(3) already has the power to establish and impose these levies. Are there existing regulations that ensure that these levies and charges are set at rates relative to the finances of a given product or commodity? If not, how can we ensure that our agricultural processors and processes are protected financially?

Mr. Steven Jurgutis: Thank you, Mr. Chair.

I am not aware specifically whether there's a stipulation that has a correlation between commodity prices, for example, and the amount that could be collected on levies. Generally speaking, we haven't seen or heard issues from producers in terms of levy amounts. Certainly, in some small number of cases, there might be issues or concerns raised, and that's part of the reason there is the provincial supervisory boards that also have a role to play. Part of what that will do, the changes will make sure there is clarity what that is, both at the provincial, and interprovincial and federal levels

I will need to clarify whether there is an exact stipulation. I don't believe there is, but there are mechanisms in place — and they vary by the different marketing boards — as to how levies are set and what they are to be used for. That is with the participation of producers, as well. It's very much a direct, close relationship and correlation between how that is established, and how the levies are set and how the money is used.

AAFC's response:

There are no regulations that ensure that levies are set at rates relative to the finances of a given product or commodity. Rather, levy rates are approved by producers through the producer run provincial marketing boards. Marketing boards are created under provincial legislative frameworks when producers want to assemble in order to better leverage their collective resources to:

- promote and develop the industry for their commodity;
- conduct research, gather, compile and distribute data/information related to the production, processing, consumption and marketing of their commodity;
- develop procedures to maximize returns for producers;

- encourage sustainable production of a uniform high-quality product; and
- establish levies on their commodity as the source of funding for the board's operation and for it to be able to carry out its objectives.

The provincial legislative framework usually sets out the terms and conditions for marketing boards (e.g., membership, constitution of the board of directors, quorum) as well as the powers that provinces delegate to them for the marketing of their agricultural products within their provincial boundaries. The proposed amendments to the APMA do not delegate any new powers that the marketing boards do not already have at the provincial level, it simply extends those provincial powers to interprovincial and export trade.

Normally, levies are discussed and adopted by members (agricultural producers). Generally speaking, producers are not opposed to paying levies on agricultural products as they understand that these levies are used by the provincial marketing boards, to which they belong, to conduct research, analysis, and to negotiate new markets for their agricultural products.

These changes to the APMA will not result in additional levies being collected from producers. These amendments will simply make it less cumbersome for marketing boards to make changes to the federal levy amount (i.e., levies charged on interprovincial and export trade). Marketing boards will be able to establish/amend their federal levy without having to use the federal regulatory process. As a result, marketing boards will have more time and resources to work on achieving their 'raison d'être' (i.e. to help producers become more profitable and enhance the competitiveness of their sector).