



USDA Foreign Agricultural Service

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## Canada

### Agricultural Situation

### Bill C-27, the Canadian Food Inspection Agency Enforcement Act

### 2004

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**Report Highlights:**

On November 26, 2004, Bill C-27, was introduced into the House of Commons. The intention of the legislation is to consolidate, modernize and enhance the inspection and enforcement powers of the Canadian Food Inspection Agency. The bill comes at time when increased security has become paramount for maintaining the safety of Canada's food supply, and will aim to increase harmonization with the United States Bioterrorism Act.

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Includes PSD Changes: No  
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Ottawa [CA1]  
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## INTRODUCTION

On November 26, 2004, the Minister of Agriculture and Agri-Food, the Honorable Andy Mitchell, introduced Bill C-27, the Canadian Food Inspection Agency Enforcement Act. The intention of the legislation is to consolidate, modernize and enhance the inspection and enforcement powers of the Canadian Food Inspection Agency (CFIA). The act aims to better protect against, and respond to, bioterrorism. Many elements of the legislation are similar in scope to the U.S. Bioterrorism Act.

## BACKGROUND

The CFIA was created in 1997 as a result of a federal government decision to combine all federal food inspection and animal and plant health services into a single inspection agency, reporting to Parliament through the Minister of Agriculture and Agri-Food. The CFIA is responsible for the administration and/or enforcement of all federal legislation related to food inspection, agricultural inputs (seed, feed and fertilizers), and animal and plant health. Some of this legislation dates back as far as the 1940s and 1950s, and as a result, is becoming outdated.

Since the creation of the CFIA, there has been the recognition by the Government of Canada that the modernization of the legislative base of the CFIA would be an important strategic step in furthering the improvement of federal inspection activities related to food safety, animal health and plant protection. While there had been a previous unsuccessful attempt by the Government of Canada to consolidate federal inspection and enforcement authorities, recent events like discovery of BSE in Canada and the U.S., as well as the security ramifications of September 11<sup>th</sup>, have created added urgency for an agency like CFIA to consolidate its powers and be granted greater enforcement capabilities.

## OBJECTIVES OF BILL C-27

There are three principle objectives of Bill C-27. The first objective is to provide the CFIA with the basic inspection and enforcement tools that it needs to continue to protect Canada's food supply, and its animal and plant resource base. The second objective is to allow CFIA inspectors to do their jobs more effectively and efficiently. The third and most important objective is to provide Canada with modern border enforcement tools, many of which will also be more consistent with recent U.S. legislation. Through these objectives, Bill C-27 attempts to address inconsistencies and gaps between the powers and authorities that were brought together when the CFIA undertook responsibility for the various pieces of legislation within its mandate. Bill C-27 also attempts to update and change the antiquated and inconsistent approach of CFIA's inspection and enforcement activities.

Bill C-27 will contribute and support several Government of Canada initiatives such as the Agriculture Policy Framework (APF) and the Smart Regulation. As well, the Act will complement Canada's National Security Policy and the recently created Canada Border Services Agency (CBSA).

## HIGHLIGHTS OF BILL C-27

Under the proposed legislation, new powers will be afforded to CFIA inspectors in order to eliminate gaps and inconsistencies. Currently, many inspectors have very limited authority to carry out inspection activities. For example, some inspectors can examine records but cannot copy them, while others do not have any authority at all to examine or copy records. Bill C-27 would correct this and give all inspectors the same powers. All inspectors would have the same authority for seizure, detention, and forfeiture, and the same authority to conduct searches and administer oaths. In addition, Bill C-27 would provide new authorities to inspectors and they are:

- The ability to obtain a telewarrant to search a premise, when such premise is in a remote location.
- The power to hold and test any regulated product to determine whether it meets legislative requirements.
- The power to stop an operation in relation to the preparation of a regulated product.
- The authority to take photographs.
- The authority to request distribution lists, especially during a recall.

Additional measures the proposed Act would provide are:

- The authority to hold products while awaiting test results.
- The authority to order the removal of imported products that do not meet CFIA legislative and regulatory requirements.
- Provisions to make tampering with regulated food products, their containers, or their labels (or threatening to do so) illegal.
- The Minister of Agriculture and Agri-Food would be able to exempt any person or regulated product from the application of any of the requirements of the CFIA legislative and regulatory requirements, in the event of a natural disaster or public emergency.
- The enhanced enforcement within the proposed Act will assist both the CBSA and CFIA in better managing food safety, animal health and plant protection issues at border points through:
  - The authority to stop imports of food, feed, seed and fertilizer at the border.
  - The power to hold and test products at their point of entry.
  - The authority to license importers.
  - The authority to establish systems to record the origin and destination of products.
  - The ability to share information with other governments.
- A licensing provision is included within the Act for importers of products.

### STATUS OF BILL C-27

After two rounds of debate in the House of Commons, Bill C-27 has been referred to the Standing Committee on Agriculture and Agri-Food, where it will be debated and amended by members of the committee and various stakeholders. The bill has not gone through second reading in the House of Commons. Sending the bill to the Standing Committee on Agriculture and Agri-Food prior to second reading enables the Committee to make significant amendments to the bill, without the fear that the amendments could be thrown out when the bill returns to the House of Commons. The bill will return to the House of Commons to be read, debated and voted on for a second and third time prior to being passed. It will then move into the Senate where it will follow a similar process before being passed into law.

### IMPLICATIONS OF BILL C-27

The implications of Bill C-27 are dependent upon the changes made to it in the Standing Committee. The bill has the ability to provide some modern enhancements to Canada's food inspection and animal and plant health systems, while providing the various CFIA inspectors some uniformity and enhancement to their powers. Many of the bill's provisions are very similar to the provisions of the U.S. Bioterrorism Act of 2002, particularly in terms of enhanced CFIA enforcement. However, concerns have been raised about possible new CFIA authorities, especially the agency's new authority to issue import licenses. Trade sources familiar with the pending regulations indicate that the licensing envisioned would provide CFIA with greater control to ban companies that fail to comply with, or are habitual violators of the current regulations. In this regard, licensing provides the same measure of control that FDA uses through its authority to debar repeated violators of the Bioterrorism Act. By implementing a licensing provision within the Act, the Government of Canada is attempting to give CFIA greater regulatory control over the production and importation of food and other regulated products. The licensing provision also has similarities with the registration requirement contained in the U.S. Bioterrorism Act. Finally, the licensing provision in the Act applies not only to importers who bring products across international borders, but also to companies who are moving products across provincial borders. Because of this provision's application to inter-provincial movement of products, the Act does not appear to violate National Treatment provisions of the WTO. In conclusion, based on all available information obtained so far, Post believes that the licensing provision has been put in place in order to better monitor product movement rather than as a hindrance to trade.

Under the licensing provision, the Minister of Agriculture and Agri-Food has the discretion to deny or restrict licenses to those who are not in compliance with the regulations outlined in the Act. This is very similar to debarment regulations outlined in the U.S. Bioterrorism Act. Stakeholders will be consulted during the normal regulatory development and consultation process, and the CFIA will continue to provide information on the proposed licensing regime to interested stakeholders. Nevertheless, it will be important to monitor any amendments to Bill C-27 and the implementation of

this legislation to ensure that any import licensing provisions do not act to restrict trade, or are in any way not consistent with WTO rules on import licensing.

## CONCLUSION

It is imperative that Canada reforms its regulation and enforcement system so that it works closer with the new legislation that has been introduced and implemented in the United States. Canada cannot afford to have out-of-date legislation that could possibly impede the flow of goods across the U.S./Canada border on daily basis. Bill C-27 attempts to improve regulatory cooperation with the United States, and introduces new approaches to mutual cooperation for regulatory inspection. By modernizing, consolidating and enhancing enforcement powers, Bill C -27 is a step towards increasing the security and safety of Canada's food supply. In addition, Bill C -27 is an imperative step towards greater harmonization with U.S. legislation.

For a copy of Bill C-27 please go to:

[http://www.parl.gc.ca/38/1/parlbus/chambus/house/bills/government/C-27/C-27\\_1/C-27\\_cover-E.html](http://www.parl.gc.ca/38/1/parlbus/chambus/house/bills/government/C-27/C-27_1/C-27_cover-E.html)

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